



PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 18 August 2014 that denied the appellant's request for a non-local medical transportation supplement for her child A to attend an appointment with an orthodontist in another city. The ministry held that the request did not meet all the requirements set out in section 2(1)(f) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation. Specifically, the ministry determined that an orthodontist is not a "specialist" as defined in section 1 of Schedule C, and therefore a visit to an orthodontist does not meet the requirements of section 2(1)(f)(ii) of Schedule C. Accordingly, the ministry does not have the ability to assist with transportation costs to see an orthodontist.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C, sections 1 and 2(f).

Interpretation Act, section 29.

PART E – Summary of Facts

The ministry did not appear at the hearing. After confirming that the ministry was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration included the following:

1. From the ministry's files: the appellant is a recipient of disability assistance, with 2 dependent children, A and B.
2. A Health Insurance BC Request for Travel Assistance (TAP) form dated 20 May 2014 for A to travel to another city to visit Dr. X on 18 July 2014, with a confirmation number.
3. A Request for Non-Local Medical Transportation Assistance, dated 20 May 2014, completed by the appellant, for travel to and from another city on 18 July 2014 to attend the office of an orthodontist (Dr. X) for appointments for A and B. At the end of the form, the appellant writes: "Need ferry fares also for B. A is covered."
4. A report dated 18 December 2012 regarding the appellant's child A, headed "Cleft Palate/Craniofacial Clinic," from the Children's & Women's health Center of British Columbia. The letter notes that A was referred to the team orthodontist, Dr. X, for management of her craniofacial and limb reduction syndrome. The letter goes on to summarize A's multiple medical conditions, reviewing the need for ongoing monitoring by a plastic surgeon, a specialist in otolaryngology, and the orthodontist. As part of the recommendation, the letter states:
 - "To see [Dr. X] for orthodontic evaluation and further planning which will probably involve orthodontic treatment and orthognatic surgery."
 - [A] has features of an oromandibular limb hypogenesis spectrum that has likely arisen from vascular induced embryopathy. She will require orthodontic and orthognatic interventions. ..."
5. A letter from Dr. X dated 15 June 2012, stating that he has recently seen A for an initial orthodontic examination. He goes on to write that given the child's extensive medical history and unusual craniofacial and dental findings, he has referred the child to the Cleft Palate and Craniofacial Anomalies Team at a [Provincial Health Services Authority] hospital. He is a member of that team and thinks that she most likely has some sort of syndrome. Under his signature, credentials include D.D.S., F.R.C.D.(C), and Diploma, American Board of Orthodontics.
6. The appellant's Request for Reconsideration, dated 29 July 2014, regarding the denial of transportation assistance for A. The appellant writes that these trips were previously funded, the last one on 22 November 2013. The appellant writes that A has a medical diagnoses of craniofacial and limb reduction.. The child is having her oral care being managed by Dr. X in another city as there is no orthodontist where she resides. A has a Class III skeletal and dental malocclusion with narrow maxilla, bimaxillary and interior cross-bite, significant dental crowding. A is being monitored at six-month intervals, to keep watch to prepare for upcoming dental surgery. The appellant adds that these trips have been previously funded – the last approval was for 22 November 2013.

7. In the reconsideration decision, the ministry notes that a review of the appellant's files show that in November 2013 the ministry assisted with transportation to see an ophthalmologist. A request for additional travel assistance to see an orthodontist was denied at that time.

The appellant's Notice of Appeal is dated 20 August 2014. In an attached letter, the appellant writes that her child A has some medical diagnoses for which she is being monitored by a [Provincial Health Services Authority] hospital Cleft Palate and Craniofacial Anomalies team. Dr. X is part of that team, working out of an orthodontics office in another city. He wants to see her every six months for follow-ups to monitor how her mouth is growing, and is planning on having A go through two phases of the orthodontic surgery as well as jaw surgery, and then she will have to have braces afterwards. At this time she has difficulties eating food normally and is a slow eater.

She writes that A has been diagnosed with Class III skeletal and dental malocclusion with narrow maxilla, bimaxillary and anterior cross-bite, and significant dental crowding. She is congenitally missing some teeth. She also has some other teeth that have unusual morphology. The appellant refers to the letter of 12 December 2012, summarized in paragraph 4 above.

The appellant writes that A has been seen and monitored by Dr. X on 15 June 2012, 22 March 2013 and 22 November 2013. The ministry covered the transportation costs for all of these dates. While the ministry claims it denied transportation costs for 22 November 2013, what it fails to see is that it refused to give her any extra funding for her other child, B, as they had already paid her for the travel expenses to cover her ophthalmology appointment for 7 November 2013, but that appointment was rescheduled for 22 March 2013.

The appellant notes that there is no orthodontist in her hometown; this is why they have to travel to the other city for appointments. A is entitled to TAP because of her medical needs.

The appellant goes on to describe how her application for transportation assistance for both A and B was denied by the ministry, and how she discovered that the combined application resulted in two denials, and two separate Requests for Reconsideration.

Also attached to the Notice of Appeal is material summarized in paragraphs 2 to 6 above, as well as another Request for Reconsideration, dated 29 July 2014 regarding the denial of transportation assistance for B. A reconsideration decision relating to this request is also included.

At the hearing, the appellant submitted the following documents:

- An undated hand-written Pharmacare Special Authority Request for a prescription from the hospital team Medical Director, a paediatrician.
- A hand written memo dated 26 Aug 2014 and signed by the paediatrician requesting assistance regarding the above.
- A single page of photos of the appellant's child.
- A two page typed letter dated 25 August 2014 from Dr. X addressed to the appellants' family doctor regarding A's many physical problems.
- A six page typed letter dated 18 July 2014 letter from the paediatrician outlining A's many physical and emotional problems.

In her presentation and in answer to questions, the appellant referred to the above documents and the 18 December 2012 report in describing A's medical/dental conditions and how A's care is being managed, monitored and planned by the hospital team, of which Dr. X is a member. She stated that A has been described to her as a "medical miracle." A has had 14 surgeries since birth and will require several more, including those planned by Dr. X. Because of the child's dental/cranial facial anomalies, she has difficulty eating – it takes her 15 minutes to chew something that another child would take a few seconds – and the medical team is reluctant to have the orthodontics procedures done until A gains more weight. The appellant stated that the medical team is also waiting to do genetic testing.

The appellant stated that Dr. X has been authorized to issue TAP forms to cover A's visits to his office. While this covers the ferry costs, there are other expenses and these are a drain on her grocery budget. It is embarrassing for her to have to go to the ministry to request emergency funding.

The balance of the appellant's presentation went to argument as to how children deserve the right to get medical care and treatments for conditions that affect their health (see Part F, Reasons For Panel Decision, below).

The panel finds that the information provided in the appellant's Notice of Appeal, in the documents submitted at the hearing and in her testimony at the hearing is in support of the information and records before the ministry at reconsideration, as it substantiates the information provided in the 18 December 2012 report. Accordingly, the panel admits this evidence under section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable in denying the appellant's request for a non-local medical transportation supplement under section 2(1)f) of Schedule C of the EAPWDR for her child A to attend an appointment with an orthodontist in another city. More specifically, the issue is whether the ministry determination, finding that an orthodontist is not a "specialist" as defined in section 1 of Schedule C, and therefore a visit to an orthodontist does not meet the requirements of section 2(1)(f)(ii) of Schedule C and as a result the ministry does not have the ability to assist with transportation costs to see an orthodontist, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is from Schedule C of the EAPWDR:

Definitions

1 In this Schedule:

"**specialist**" means a medical practitioner recognized as a specialist in a field of medicine or surgery in accordance with the bylaws made by the board for the College of Physicians and Surgeons of British Columbia under section 19 (1) (k.3) and (k.4) of the *Health Professions Act*.

General health supplements

2 (1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation:

(f) the least expensive appropriate mode of transportation to or from

- (i) an office, in the local area, of a medical practitioner or nurse practitioner,
- (ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,
- (iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or
- (iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*,
provided that
- (v) the transportation is to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, and
- (vi) there are no resources available to the person's family unit to cover the cost.

And from the *Interpretation Act*:

Expressions defined

29 In an enactment:

"**medical practitioner**" means a registrant of the College of Physicians and Surgeons of British Columbia entitled under the *Health Professions Act* to practise medicine and to use the title "medical practitioner";

The position of the ministry, as set out in the reconsideration decision, is that orthodontists are not recognized as specialists in the field of medicine or surgery by the College of Physicians and Surgeons of BC. Orthodontists are recognized as dental specialists and registered with the Royal

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College of Dentists of Canada. The ministry has no ability to assist with transportation costs to see an orthodontist.

The appellant's position is that children deserve the right to get medical care and treatments if it is essential for their health. Dr. X is providing a specialty health service that is medically essential to meet her child's special needs. Dr. X is a member of the team of medical specialists that has taken on the management, monitoring and planning of her child's complex medical care. The orthodontics work that Dr. X is planning is an essential element of the child's treatment program. Under these circumstances, the appellant submits that it is unreasonable for the ministry to deny transportation assistance for A to visit the orthodontist as monitoring and treatment progresses.

Panel decision

The evidence is compelling that the appellant's child, A, has severe and complex dental/craniofacial anomalies requiring extensive treatment. The child's health care is being managed, monitored and planned by a team headed by a pediatrician and including other medical "specialists" as defined in section 1 of Schedule C of the EAPWDR, and centered at a Provincial Health Services Authority hospital in a different city. Dr. X, whose office is in another city, is also a member of the team, as the team's orthodontist.

The legislation provides that the ministry may pay a medical transportation supplement for local and non-local travel only under specified circumstances: to the office of a medical practitioner or nurse practitioner locally, to the nearest suitable hospital in BC or to the office of a nearest available "specialist." The legislation does not cover any other transportation costs that may be required for medical reasons, even if recommended by a physician, the service provided is a benefit under the *Medicare Protection Act* or is paid for by the ministry under provisions elsewhere in Schedule C of the EAPWDR. For instance, the ministry is not authorized to provide transportation assistance for visits to a commercial x-ray laboratory or blood-work clinic, to an optometrist for an eye-glass prescription, to a physical or massage therapist or to a hospital or a specialist in another province or country.

A "specialist" is defined in Section 1 of Schedule C of the EAPWDR as a *medical practitioner* recognized as a specialist in a field of medicine or surgery in accordance with the bylaws made by the board for the College of Physicians and Surgeons of BC (CPSBC). A medical practitioner is defined in the *Interpretation Act* as a registrant of the CPSBC. Registration as a medical practitioner requires graduation from a recognized medical school, with a degree as a Doctor of Medicine (M.D. or equivalent). Dr. X, the orthodontist, does not have a medical degree, but the degree of Doctor of Dental Surgery or D.D.S., and therefore is not eligible to qualify as a medical practitioner as defined in legislation. The panel therefore finds that, even though Dr. X is a dental specialist, the ministry was reasonable in determining that a visit to his office would not be a visit to a "specialist" as defined in the legislation and that therefore the ministry has no ability to assist with transportation costs to his office. The panel has reviewed the legislation and finds that the minister has no discretionary authority to make exceptions in this regard under unusual or exceptional circumstances, such as those relating to the appellant's child's medical conditions and treatment.

Based on the foregoing, the panel finds that the ministry was reasonable in denying the appellant's request for medical transportation assistance for her child to see an orthodontist was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the



ministry's decision.