

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) August 18, 2014 reconsideration decision denying the appellant's request for a non-medical transportation supplement for her child Z to visit an orthodontist in another city because the ministry determined that an "orthodontist" is not a "specialist" as defined in section 1 of Schedule C of the Employment and Assistance for Persons With Disabilities Regulation, and therefore a visit to an orthodontist does not meet the requirements of section 2(1)(f) 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(1)(f).

Interpretation Act, section 29.

PART E – Summary of Facts

The appellant did not appear at the hearing. After confirming that the appellant was notified, the hearing proceeded in accordance with section 86(b) of the EAPWDR.

The evidence before the ministry at reconsideration included the following:

In her request for reconsideration dated July 29, 2014, the appellant states that these trips were previously funded, with the last one being on November 22, 2013. Before that was May/June 2013. The orthodontist is seeing her child Z to keep an eye on her teeth.

A request for non-local medical transportation assistance dated May 20, 2014, for the appellant's children Y and Z for an appointment on July 18, 2014 to an orthodontist in another city. At the end of the form the appellant writes: "Need ferry fares for Z. Y is covered."

From ministry files:

The appellant's family unit is designated as Persons With Disabilities. There are no resources available for the appellant to cover the costs of transportation.

The appellant had requested medical transportation in November 2013 for Y and Z to attend orthodontic appointments. This request was denied. There were no further requests made in May/June 2013.

Additional information provided on appeal:

With her Notice of Appeal dated September 2, 2014 the appellant submitted a letter in which she is asking for coverage to travel to another city so that her children Y and Z can see an orthodontist. The appellant writes: "Both Y [it is unclear whether the appellant is referring to Y alone or to both Y and Z] have been seen and monitored by the practitioner on June 15, 2012, March 22, 2013, November 22, 2013, which MSD has covered the transportation costs for all of these dates. MSD "claims" they denied the transportation costs for November 22, 2013 appointment. What they fail to see is that they refused to give me any extra funding for Z, as they had already paid me for the travel expenses to cover Z's ophthalmologist appointment which was cancelled on November 7, 2013, due to transportation not running first thing in the morning. That appointment was rescheduled to November 22, 2013. [My city] does not have an orthodontist, which is why we have to travel to [another city]. On August 25, 2014, Y and Z had appointments to see [the orthodontist], they were originally supposed to see him on July 18, 2014 but had to reschedule." The appellant explains that the reason for rescheduling were Y's medical issues.

The ministry relied on its reconsideration decision and added the following information: It may be possible that in the past the ministry issued funds in error.

With exception to the information respecting the ophthalmologist appointment the panel admits the appellant's letter as being in support of the information that was before the ministry at reconsideration pursuant to section 22(4) of the Employment and Assistance Act; the appellant is providing additional details about her child Z's orthodontist appointments.

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-medical transportation supplement for her child Z to visit an orthodontist in another city because the ministry determined that an orthodontist is not a "specialist" as defined in section 1 of Schedule C of the Employment and Assistance for Persons With Disabilities Regulation, and that therefore a visit to an orthodontist does not meet the requirements of section 2(1)(f) of Schedule C.

The following sections apply to this appeal: sections 2 and 3 of Schedule C of the EAPWD

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 section 29 of the *Interpretation Act*:

"**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 appellant argues that children have the right to get medical care and treatments; since there is no local orthodontist available she has to travel out of town to receive medical support for her child Z. When she combined Z's visits in the past with those of her other child Y these appointments were funded by the ministry.

The position of the ministry is that orthodontists are not recognized as medical practitioners, neither are they recognized as specialists in the field of medicine or surgery by the College of Physicians and Surgeons of BC; for these reasons section 2(1)(f)(ii) of Schedule C does not apply in the appellant's case. In addition, the appellant's request does not fit any of the remaining eligibility categories for medical transportation pursuant Schedule C section 2(1)(f): transportation to and from an office, in the local area, of a medical practitioner or nurse practitioner (section 2(1)(f)(i)); the nearest suitable general hospital or rehabilitation hospital as set out in section 2(1)(f)(iii); or the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the Hospital Insurance Act (section 2(1)(f)(iv)). The ministry argues further that orthodontic services are not set out under BC's Medicare Protection Act. If in the past the ministry has issued funds in error it is not compelled to continue doing so.

Panel decision:

The legislation provides that the ministry may pay a medical transportation supplement for local and non-local travel only under specific circumstances: to the office of a medical practitioner or nurse practitioner locally, to the nearest suitable hospital in BC, or to the office of the nearest available "specialist"; these provisions are set out in Section 2(1)(f) of Schedule C of the EAPWDR. 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 section 29 of 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). Z's 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 finds that, even though Z's orthodontist 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.

For these reasons, 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 and this decision was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.