

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry), reconsideration decision dated September 22, 2014 in which the Ministry denied the Appellant's request for a health supplement for transportation to attend appointments with a physiotherapist in another area of the province because the request did not meet two criteria in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation:

1. Section 1: "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 of the College of Physicians and Surgeons of British Columbia under section 19(1) (k.3) and (k.4) of the *Health Professions Act*; and
2. Section 2(1)(f): the least expensive appropriate mode of transportation to or from (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.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 62 and Schedule C sections 1 and 2(1)

PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration included the following:

The Appellant's Request for Reconsideration dated September 22, 2014 with the following documents attached:

- A letter to the Ministry from an advocate dated September 10, 2014. The Advocate stated that the Appellant travelled from her community to another area of the province by bus to see a gastroenterologist (physician specialist) to whom she was referred by a physician. The physician specialist referred the Appellant to a specialized physical therapist (physiotherapist) whom she saw on July 16, 2014, the day after her appointment with the physician specialist. The Advocate stated that the Appellant indicated she was unaware that she could request assistance with non-local medical costs, and noted that while the physician specialist is registered with the College of Physicians and Surgeons of BC (the College), the physiotherapist is not. The Advocate added that the Appellant had to pay her own expenses to see the physiotherapist even though the physiotherapist is registered with the College of Physical Therapists of BC as specified in Schedule C section 2(1)(c) of the EAPWDR. The Advocate stated that the Appellant has a very limited pension income and must budget accordingly to cover prescriptions, food, bills, and rent.
- A letter to the physician specialist from the physiotherapist dated July 21, 2014. The physiotherapist described the Appellant's two year history of bowel problems which are treated with laxatives and enemas, and ten year history of stress urinary incontinence with limitations in pelvic floor muscle control. Physiotherapy intervention included education, motor control retraining, and exercises. The physiotherapist provided the Appellant with contact information for a physiotherapist in her home community. In a handwritten note, the Appellant indicated that her local hospital advised her that the "physio specialist" had moved away and there is no longer such trained person in her home community.
- An invoice to the Appellant from the physiotherapist dated July 17, 2014 for \$134.00, with notations indicating the Appellant had paid the invoice and had been referred to the physiotherapist by the physician specialist.
- A letter to the Appellant from the Ministry dated August 15, 2014 denying the Appellant non-local medical transportation costs for appointments in another area of the province and advising of her right to apply for reconsideration.
- A prescription from the physician specialist for "Holy Crap" (which the Appellant indicated is a breakfast cereal) with the notation "bowel issues".
- Two pages of clinical notes (which the Appellant stated are from the physician specialist's medical file) outlining the Appellant's referrals; treatments including exercises; and medical conditions.
- A note from a Nurse Practitioner dated July 14, 2014 advising that the Appellant is travelling to another area of the province for an appointment with a specialist physician.
- A copy of the physiotherapist's business card indicating that she is a registered physiotherapist and certified in anatomical acupuncture.
- A referral note from the physician specialist to the physiotherapist dated July 16, 2014 containing the physiotherapist's address, and indicating the Appellant's diagnosis as Pelvic floor dysfunction and requesting that she be assessed and managed appropriately. This note also contains handwritten notations with phone numbers for the Medical Services Plan and the Ministry, the physiotherapist's fees for assessment and treatments, and an illegible entry regarding a "physical medicine doctor".

- A hotel invoice dated July 18, 2014 indicating that the Appellant paid \$614.56 for a four night stay: July 15, 16, 17, and 18th.
- A receipt for transportation from the Appellant's home community dated July 15, 2014 indicating a payment of \$40.00.

Subsequent to the reconsideration decision, the Appellant filed a Notice of Appeal dated September 30, 2014 in which she stated the following:

- The bus only travels from her home community on Tuesday, Thursday, and Saturday.
- Her physician specialist sent her to a "vaginal wall physiotherapist" whom she could see no sooner than Thursday.
- The bus leaves at 8:00 a.m. on Thursday, so she had to wait until Saturday to return home. This meant that she needed accommodations for four days: July 15, 16, 17, and 18th: she arrived on the 15th; saw the physician specialist on the 16th; saw the physiotherapist on the 17th; and returned home by bus on Saturday, July 19th.
- The Ministry allowed her two nights reimbursement to see the physician specialist, but she had to stay at the hotel for four nights.
- The physician specialist said she had to go to the "vaginal wall physiotherapy clinic" which required another day as her appointment with the physician specialist was at 3:00 p.m.
- If she did not go the physiotherapist, she would not have been following the physician specialist's orders, so she went as directed.

At the hearing, the Appellant stated that she not only had the cost of transportation, but also had to pay for a hotel and meals. It took her a year to get an appointment with the physician specialist and he was very short with her and gave her the piece of paper with the physiotherapist's address, and a prescription for "Holy Crap" which she already takes along with watching her diet. She stated that she did not know there was financial help with travel costs until someone on the bus mentioned that she should contact the Ministry. The Appellant contacted the Ministry about getting assistance with her hotel costs after the accommodations she had originally booked turned out to be unsuitable due to a lack of air conditioning. She stated that she has had her medical condition since October 2012 and has been getting bladder infections but the doctors cannot find the problem. In response to a question from the panel, the Appellant confirmed that the physiotherapist she saw had an office near the hospital but was not located inside a hospital.

The panel finds that the information in both the Notice of Appeal and Appellant's testimony at the hearing relates to the details of the Appellant's medical travel expense claim. The panel therefore admits the information under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made.

At the hearing the Ministry relied on its reconsideration decision and did not introduce any new evidence. The Ministry summarized section 62 of the EAPWDR and the requirements relating to medical transportation in Schedule C. The Ministry indicated that it paid the portion of the Appellant's travel claim that related to her appointment with the physician specialist including transportation, hotel, and meals, but it did not pay the additional hotel and meal expenses that were incurred for the appointment with the physiotherapist. In its reconsideration decision, the Ministry indicated that it paid for two nights of accommodation and meals for three days.

In response to a question from the panel, the Ministry indicated that it could consider paying for travel to the physiotherapist appointment if the physiotherapist was located in a hospital pursuant to Schedule C section 2(1)(f)(iii) of the EAPWDR.

In response to another question from the panel, the Ministry stated that a client would normally request a health supplement for medical travel and be given the go ahead at the time the appointment with a specialist is booked if the Ministry finds the request to be eligible. However, the Appellant would have been given accurate information when she called the Ministry about her hotel expense from the area of the province where her appointments were. The Ministry noted in its reconsideration decision that the Appellant contacted it regarding the hotel when the accommodations she had originally booked proved to be unsuitable.

The Ministry noted in its reconsideration decision that the Appellant is a sole recipient of Medical Services Only and has Persons with Disabilities designation. It further noted that section 62(1)(a) of the EAPWDR states that the minister may provide a general health supplement to a recipient of disability assistance. The Ministry stated in its decision that the Appellant contacted the Ministry on July 17, 2014 to request a health supplement for medical transportation and advised that she had no resources or funds for a hotel. The Ministry determined that the request for a health supplement to attend the physician specialist's appointment meets the legislative criteria for transportation because a nurse practitioner referred the Appellant to the physician specialist and the Ministry was satisfied that the Appellant used the least expensive mode of transportation and did not have resources to cover the costs.

The Panel makes the following findings of fact:

1. The Appellant's physiotherapist is a physiotherapist registered with the College of Physical Therapists of BC.
2. The Appellant pursued a health supplement for medical travel expenses after she contacted the Ministry from another area of the province about staying in a hotel.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision which denied the Appellant's request for a health supplement for transportation to attend appointments with a physiotherapist in another area of the province because the physiotherapist is not a "specialist" under Schedule C sections 1 or 2(1)(f) was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant.

The legislation that applies to the Appellant's request for a health supplement for medical transportation is as follows:

EAPWDR - General health supplements

62 (1) Subject to subsections (1.1) and (1.2), the minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who is (c) a person who was a recipient of disability assistance on the day he or she became 65 years of age

EAPWDR – SCHEDULE C Health Supplements

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.

Appellant's position

In her Notice of Appeal, the Appellant argued that she had to stay in a hotel for four nights total because the physician specialist sent her to the physiotherapist whom she could not schedule for the same day as her appointment with the physician specialist. Due to the bus schedule, she could not return to her home community until Saturday, July 19th. The Appellant added that if she did not go to

the physiotherapist she would not have been following the physician specialist's orders, and regardless of whether the Ministry pays for the physiotherapist, the physician specialist required that she go there, and therefore the "extra day hotel" is a valid cost.

At the hearing, the Appellant argued that the Ministry has misunderstood the word "physiotherapist" because the physiotherapist is not at a regular clinic, but is a "specialist" who gave her exercises to try and help her medical condition. The Appellant added that the Ministry does not realize that it was her doctor (the physician specialist) who made her go to the physiotherapist. She feels that years of waiting, and the trip to the physician specialist would have been wasted if she did not follow his orders to see the physiotherapist. She wonders why the Ministry won't support her to see a physiotherapist outside her community when the local one has moved away. The Appellant feels that what the physician specialist said should take precedence over the legislation and if the Ministry doesn't want to pay for the physiotherapist because they are not registered with the College, she accepts that but her hotel bill should still be covered because the Ministry can't tell her that she shouldn't follow her doctor's orders. The Appellant added that "it does not sound right" that the Ministry won't pay travel costs for a physiotherapist that is outside the hospital.

In the Request for Reconsideration, the Appellant's advocate argued that there was some confusion surrounding which medical practitioner should have been submitted to the Ministry for medical transportation costs because the Appellant was confused about the entire process and was unaware that she could request non-local medical costs. As the Appellant has a very limited income and was already in another area of the province to see the physician specialist, the cost of the physiotherapist to whom she was referred should be covered pursuant to Schedule C section 2(1)(c) of the EAPWDR.

Ministry's position

The Ministry argued that it could not fund the portion of the Appellant's travel costs that relates to her appointment with the physiotherapist because it is bound by the legislation which requires the "specialist" to whom the client was referred to be "a medical practitioner recognized as a specialist in a field of medicine or surgery" (EAPWDR Schedule C section 1), and the Appellant's physiotherapist is not recognized as such. Furthermore, in order for medical transportation costs to be eligible, the transportation must be to or from "the office of the nearest available specialist in a field of medicine or surgery" pursuant to EAPWDR Schedule C section 2(1)(f) clause (ii).

The Ministry noted at the hearing that the Appellant's travel costs to see the physiotherapist would also not be eligible under EAPWDR Schedule C section 2(1)(f) clause (iii) because the Appellant was not requesting transportation to or from "the nearest suitable general hospital or rehabilitation hospital".

The Ministry argued that although the Appellant did not contact it about a health supplement for medical transportation until she was already in another area of the province, she was provided with accurate information when she called about her hotel expense and the Ministry funded the eligible portion of her trip.

Panel's decision

EAPWDR Schedule C Section 2(1)(f) relates specifically to a health supplement for transportation for a family unit that is eligible for general health supplements under section 62 of the EAPWDR. It states that the minister may pay transportation costs to or from "the office of the nearest available specialist in a field of medicine or surgery". The word "specialist" in this section is defined in EAPWDR Schedule C section 1 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 British Columbia under section 19(1) (k.3) and (k.4) of the Health Professions Act."

The panel finds that the Appellant's physiotherapist is a physiotherapist registered with the College of Physical Therapists of BC and notes that the Appellant accepted that the Ministry would not pay for the physiotherapist because the physiotherapist is not registered with the College of Physicians and Surgeons and is not located in a hospital.

The Appellant argued that the Ministry should cover her hotel bill for the extra days she required to see the physiotherapist because her doctor (the physician specialist) told her to go to the physiotherapist. The panel notes that the Appellant's argument is not supported by any of the provisions in the EAPWDR. None of the medical transportation criteria in Schedule C section 2(1)(f) reference a situation in which the "specialist" refers a patient to any other health care provider including a physiotherapist. The panel therefore finds that the Ministry reasonably denied the Appellant's request for a health supplement to attend the physiotherapy appointment.

With regard to the Appellant's evidence that she did not know she could claim non-local medical costs until she contacted the Ministry about her hotel expense along with the Advocate's information that the Appellant was confused about the process, the panel notes that such a lack of awareness suggests that the Appellant was prepared to pay her travel expenses without any assistance from the Ministry. The Ministry confirmed at the hearing that the Ministry had made no agreement in advance to have any of the costs covered. Therefore, when the Ministry explained to the Appellant that only the costs associated with the physician specialist's appointment would be covered, the Appellant provided no legislative authority for claiming reimbursement of her additional hotel expense.

With regard to the Appellant's advocate's argument that the cost of the physiotherapist should be covered by the Ministry under Schedule C section 2(1)(c) of the EAPWDR, the panel notes that this section does allow the Ministry to pay for a physiotherapist who is registered with the College of Physical Therapists of BC. However, the transportation provisions in Schedule C section 2(1)(f) would still need to be met as the Appellant's physiotherapist is located in another area of the province, and as stated above, physiotherapists that are not located in a hospital are not covered by the medical transportation provisions of Schedule C.

Conclusion

Given that the criteria for transportation in EAPWDR Schedule C section 2(1)(f) is not met, the panel finds that the Ministry reasonably denied the Appellant's request for a health supplement for transportation to her physiotherapy appointment including her claim for additional hotel costs. The panel confirms the Ministry's reconsideration decision as being reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the Appellant.