

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 13 November 2014 which determined that the appellant was not eligible for assistance with the medical transportation health supplement because she did not meet the criteria set out in Schedule C, section 2(1)(f) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because the orthotist she was referred to was not a medical or nurse practitioner in her local area and was not a specialist as defined under Schedule C, section 1 of the EAPWDR and required by s. 2(1)(f)(ii) of Schedule C of the EAPWDR.

**PART D – Relevant Legislation**

EAPWDR, section 62 and Schedule C, section 2(1)(f).

## PART E – Summary of Facts

The ministry was not in attendance at the hearing. After confirming that the ministry was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation (EAR).

The following evidence was before the ministry at the time of reconsideration:

- The appellant is designated as a Person with Disabilities (PWD) and eligible to receive general health supplements.
- A letter dated 23 July 2014 by another physician, a medical consultant, to the appellant's physicians stating that the proposed plan to go ahead with splinting is reasonable and to proceed and make the referral to the certified orthotist who does this in the major city nearest to the appellant's home town.
- A referral note dated 14 August 2014 by the appellant's physician, a medical practitioner, to a certified orthotics clinic stating that the appellant had a "moderate severe OA features predominantly carpo metacarpal joints of both hands" and indicating that Orthotics would be indicated in those circumstances, to assess the case and make recommendations.
- On 18 September 2014, the appellant completed and signed a Request for Non-Local Medical Transportation Assistance form to travel to a major city for an appointment with a certified orthotist that was scheduled for 15 October 2014.
- A business card for the certified orthotist with whom the appellant had make the appointment.
- A doctor's note dated 6 May 2010 by the appellant's physician stating that she had "extreme vasoconstriction of her periferal vasculature (?) triggered by cold conditions" and that her medical condition is affected by her housing condition.
- A 2-page application for a disability parking permit dated 17 October 2014, signed by the appellant and supported by her physician.
- A receipt dated 28 October 2014 indicating that the disability parking permit was issued to the appellant and paid for.
- In her Request for Reconsideration dated 3 November 2014, the appellant indicated that her local doctor had referred her to a certified orthotics clinic in the nearest major centre as there was no such specialist closer to her home town.

In her Notice of Appeal dated 20 November 2014, the appellant stated that such medical professional was not available in her home community and that she had to go to the nearest major centre to have an appointment with a specialist as a result of a referral by her physician.

At the hearing the appellant testified that she first contacted the ministry on 7 August 2014 and was given a reference number. She called again, left messages and the ministry called her back a few times and she discussed the issue with ministry staff and advised them that the appointment was scheduled for 15 October 2014. On 10 October 2014, the ministry advised her that someone was working on her file and that they would contact her. On 14 October 2014, the day after a long weekend, the appellant checked her mail but nothing had come and the same day the orthotics clinic called her to confirm her appointment for the next day and at 4:07 PM, the ministry called her to inform her that her request for medical transportation was denied. The appellant stated she was very upset, panicked, and did not want to cancel her appointment as it was extremely important for her and she made alternate arrangements with a friend for the next day to drive her and attend to her appointment at the closest major centre that is about 2 ½ to 3 hour away in good conditions. On 15

October 2014 she then attended to her appointment, as scheduled and owes the cost of transportation to her friend. She stated that the certified orthotist she saw was preparing a quote for orthotics the cost of which she believed would be covered by the ministry.

The panel determined the additional oral evidence was admissible under s. 22(4) of the Employment and Assistance Act as it was in support of the records before the minister at reconsideration and provided consistent additional information about the events surrounding the appellant's request for the medical transportation supplement.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant was not eligible for assistance with the medical transportation health supplement because the certified orthotist she was referred to was not a medical or nurse practitioner in her local area and because she was not a specialist under s. 2 of Schedule C of the EAPWDR was a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation can be found at Schedule C of the EAPWDR that first defines who qualifies as a specialist:

**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*.

And section 2 (*General Health Supplements*) indicates at paragraph 1 (f) who is eligible for medical transportation assistance:

**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.

The ministry argued that the appellant was not eligible for medical transportation supplement because the specialist she was referred to in a city other than the appellant's local area was not a recognized specialist by the College of Physicians and Surgeons of BC.

The appellant argued that she was unfairly treated by the ministry because she had advised them of the appointment with the certified orthotist on 7 August 2014 and that she had filed the appropriate paperwork by 19 September 2014 but was not advised of the ministry's decision until the eve of her appointment and was left at the last minute to make travel arrangements overnight. She argued that she had been referred to the certified orthotist by 2 medical practitioners and that she needed the orthotics for her hands as required by her medical condition. She also argued that she searched the internet and found that the clinic she was referred to was a certified clinic and they were specialists in orthotics.

The panel notes that the ministry was advised of the appellant's condition and need to travel over 2 months prior to the scheduled appointment and that the appellant made every efforts to comply with the conditions posed by the ministry, in particular showing that the specialist she was referred to was the nearest available specialist in the field of orthotics, that the estimated costs were the lowest possible given the scarcity of interurban transportation in her region and that there were no resources available to the appellant's family unit to cover the cost. It is unfortunate that the appellant was left in the predicament of being informed of the ministry's denial on the eve of her appointment.

Yet, the ministry's authority in terms of medical travel is very limited as provided by s. 2 (1)(f), Schedule C of the EAPWDR and, as in the circumstances of the appellant, when medical travel must take place outside the local area of the patient, the ministry may only provide medical transportation supplement for travel to the nearest suitable hospital or to the office of the nearest available specialist and only if the specialist is recognized in accordance with the bylaws made by the board for the College of Physicians and Surgeons of BC. In this case, the panel finds the specialist in question was a certified orthotist and that there was no evidence she was a specialist as defined by s. 1, Schedule C of the EAPWDR.

Thus, the panel finds the reconsideration officer had no discretion in applying the legislation and the panel finds the ministry reasonably determined the certified orthotist was not a "specialist" under the legislation and consequently, reasonably determined it had no authority to provide medical transportation supplement to the appellant.

Therefore the panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.