

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 25, 2015 which denied the appellant a medical transportation supplement to pay an hourly wage to a person who escorted him to a medical appointment in another community on the basis that the request does not meet the legislative criteria as set out in the *Employment and Assistance for Persons With Disabilities Regulation* Schedule C, section 2(1).

PART D – Relevant Legislation

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

PART E – Summary of Facts

The ministry did not attend the hearing. The panel received confirmation from the Tribunal that the ministry had been notified of the date, time and location of the hearing. Accordingly, under s. 86(b) of the *Employment and Assistance Regulation*, the panel heard the appeal in the ministry's absence.

The evidence before the ministry at the time of the Reconsideration Decision included:

1. The appellant's Request for Reconsideration ("RFR") dated March 13, 2015 to which is attached one page of submissions also dated March 13, 2015 as well as a copy of the Ministry Medical Transportation Policy ("the Policy") dated April 1, 2010;
2. A letter dated February 27, 2015 prepared by the ministry and addressed to the appellant's family physician ("the GP") requesting confirmation that the appellant requires an escort and air travel to attend a medical appointment in another community ("the Ministry Letter");
3. A letter dated February 27, 2015 prepared by the appellant's family physician ("the GP Letter") responding to the Ministry Letter;
4. A letter dated March 4, 2014 prepared by the appellant and addressed to the ministry requesting that it pay his escort an hourly wage for the provision of escort services to the appellant while traveling to a medical appointment in a different community ("the Appellant Letter"); and
5. An invoice dated March 10, 2015 prepared by the appellant's escort addressed to the ministry in relation to the provision of medical escort services to the appellant ("the Invoice").

The appellant is a single recipient of disability assistance. In the Ministry Letter, the ministry sought confirmation from the appellant's GP that the appellant required air transportation and an escort to a medical appointment in another community ("the Appointment"). The GP answered both questions in the affirmative and the ministry subsequently approved the payment of airfare costs, overnight accommodations and meals for the appellant and his escort to attend the Appointment.

In the RFR, the appellant writes that the GP confirmed that it was necessary for him to have someone escort him to the Appointment and that he did not have a family member or friend who was willing and/or able to do so. He further comments that the escort who accompanied him to the Appointment contacted a local nursing company which confirmed that the ministry paid a rate of \$35.00 per hour for medical escort services for other clients with Persons With Disability designations as a medical transportation expense.

In the Appellant Letter, the appellant requested that the ministry approve payment of an hourly wage to his escort in the amount of \$35.00 per hour escort services provided traveling to and from the Appointment and the Invoice, prepared by the escort, includes 25 hours of escort services provided at a rate of \$35.00 per hour for a total of \$875.00. The ministry refused to pay the Invoice on the basis that it did not constitute approved transportation costs to the Appointment.

Notice of Appeal

In his Notice of Appeal, the appellant writes that without the help of the escort, he would not have made it to or from the Appointment.

Evidence At Hearing - Witness

The appellant called the escort as a witness at the hearing. He stated that he had worked with the appellant in his professional capacity for a period of time prior to the Appointment. The appellant advised him that he did not have anyone to accompany him to the Appointment despite the advice of the GP as set out in the GP Letter.

The escort agreed to take time off from his employment and accompany the appellant to the Appointment and he made inquiries with two different home healthcare organizations to determine how they were reimbursed for their travel costs and wages in similar situations. The \$35.00 hourly rate included in the Invoice was based on the escort's discussions with these organizations.

The escort further stated that he has another client who has also utilized a paid medical escort to out of town medical appointments and that he is puzzled why the appellant does not receive the same treatment. The escort stated that the appellant will be unable to attend future out of town medical appointments without a paid escort as he has no one else willing or able to accompany him.

In response to questions from the Panel, the escort referred to the Policy and stated that it does not specifically preclude the ministry from paying a medical escort's hourly rate for those services.

The escort stated that he confirmed with two home healthcare organizations that in addition to transportation costs, they were paid \$35.00 per hour by the ministry for medical escort services and that this rate was paid from the time they left until the time they returned. The escort confirmed that he was reimbursed his airfare, accommodation and meal expenses incurred while escorting the appellant to the Appointment and that he assumed, based on his discussions with the home healthcare organizations and his other clients, that he would also be paid \$35.00 per hour for his time although he did not seek advice or pre-approval from the ministry in this respect prior to the Appointment. The escort stated that it was only after he returned from the Appointment and when he presented the ministry with the Invoice that he was advised that his hourly rate and the Invoice would not be paid.

Evidence At Hearing – The Appellant

The appellant stated that a man who does his job should be paid and that without the escort, he never would have made it to his medical appointment.

In response to questions, the appellant stated that he had no family or friends who were willing or able to accompany him to his medical appointment and that the March appointment was his first with another scheduled in the near future.

Admissibility

Section 22(4) of the *Employment and Assistance Act* ("EAA") provides the legislative test for the admissibility of evidence at a hearing. With respect to oral testimony, section 22(4)(b) provides that it is admissible if it is in support of the information and records that were before the ministry when the decision being appealed was made.

The evidence of the appellant and the escort is consistent with and reflects the documents noted above and as such it is admitted pursuant to section 22(4)(b) of the *EAA* on the basis that the panel finds that it was in support of the information and records that were before the ministry when the decision being appealed was made.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's Reconsideration Decision, which denied the appellant a medical transportation supplement to pay an hourly wage to a person who escorted him to a medical appointment in another community on the basis that the request does not meet the legislative criteria as set out in the *Employment and Assistance for Persons With Disabilities Regulation* Schedule C, section 2(1), was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant

Section 62 of the *EAPWDR* enables the ministry to provide health supplements as follows:

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

(a) a recipient of disability assistance,

...

Schedule C, section 2 of the *EAPWDR* sets out the health supplements that may be paid for or provided by the ministry. The provision relating to transportation costs is as follows:

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.

Positions of the Parties

The appellant argues that section 2 of Schedule C to the *EAPWDA* and the Policy do not preclude payment of an hourly wage to a medical escort as a transportation cost and that the escort deserves to be paid an hourly wage of \$35.00 per hour given that other organizations receive similar compensation in similar circumstances.

The ministry argues in the reconsideration decision that although wages for an escort are not specifically identified as an item that cannot be considered in Schedule C, section 2 of the *EAPWDR* and the Policy, they are not included as one of the specific items that can be included in transportation costs and therefore cannot be included.

Discussion

Under section 62(1)(a) of the *EAPWDR*, a recipient of disability assistance may be provided health supplements as set out in Schedule C section 2. Section 2(1)(f)(ii) of Schedule C allows for the ministry to pay for the least expensive mode of transportation to or from the office of the nearest available specialist in the field of medicine or surgery.

On the recommendation of the GP, the ministry authorized the payment of the transportation costs of the appellant and the escort to the Appointment and either paid for or reimbursed their airfare, hotel accommodation and meals to both.

While the appellant argues that the escort should also be paid an hourly wage of \$35.00 per hour for the time that he spent accompanying him to the Appointment, neither section 2(1)(f) of the *EAPWDR* nor the Policy contemplate such a payment.

Section 2(1)(f) of Schedule C refers to the payment of the least expensive appropriate "mode of transportation." The Policy, which is the ministry's interpretation of the legislation, provides that medical transportation includes transportation costs, food or support costs, accommodation costs and escort costs. Escort costs are further described as including "medical transportation only when accompanying a patient who is 18 years of age and under or incapable of traveling independently due to medical reasons." As with section 2(1)(f) of Schedule C, the Policy does not include language that would allow for the payment of an hourly rate to an escort and having considered both provisions, the panel finds that the ministry was reasonable in its determination that payment of an hourly rate to a medical escort is not a transportation cost.

The appellant argues that escorts for others in his situation have been paid an hourly rate by the ministry but without the benefit of the ministry's evidence at the hearing the panel is not able to determine the circumstances under which such payments may have been made as compared to that of the appellant.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's decision to deny the appellant a medical transportation supplement to pay an hourly wage to the escort on the basis that such a payment did not meet the legislative criteria as set out in the *EAPWDR* Schedule C, section 2(1) was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.