

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated April 23, 2015 which denied the appellant a medical transportation supplement, specifically, an additional night of accommodation for the appellant and her medical escort on March 31 2015, 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) as follows:

1. The additional night of accommodation did not satisfy the legislative definition of the least expensive, appropriate mode of transportation; and
2. It could not be established that there were no resources available to the appellant to cover the cost of the additional night of accommodation.

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

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment Assistance Act*.

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

1. The appellant's Request for Reconsideration ("RFR") dated April 20, 2015 to which is attached one page of written submissions also dated April 20, 2015; and
2. A Request for Non-Local Medical Transportation Assistance form dated March 6, 2015 and completed by the appellant ("the Request Form").

The appellant is a single recipient of disability assistance. On March 6, 2015, she completed the Request Form which provided details of a medical appointment that she was to have at a hospital located in a different community than where she lived. Specifically, she was to undergo a diagnostic test and see a specialist on March 31, 2015 at 1:45pm and 3:00pm respectively ("the Appointments"). The appellant's home community and the community in which she travelled to for the Appointments were both in the same time zone.

In the Request Form, the appellant requested transportation assistance including two nights' accommodation on March 30 and 31, 2015 at an estimated total cost of \$300.00. Further, the appellant indicated that she required an escort to accompany her to the Appointments and that she was unable to contribute to the cost of the transportation even after considering assistance from family, friends and voluntary agencies. The ministry refused to pay the cost of the hotel for the appellant and her escort on the night of March 31, 2015.

In the RFR, the appellant writes that if she were to leave the Appointments at 3:30 or 3:40pm on March 31, 2015 to begin driving home, if all conditions were perfect she would arrive home between 7:30 and 7:40pm but that would assume no stops for an evening meal, washroom breaks or stops to stretch. The appellant stated that such an arrangement was unacceptable given her health issues and her escort's circumstances. Given that the ministry refused to pay for appellant and her escort's accommodation on March 31, 2015 the appellant writes that it was her responsibility to pay for it.

The appellant's Notice of Appeal is dated April 28, 2015 and it includes one page of written submissions and a receipt from the hotel where she and her escort stayed on March 30 and 31, 2015. In the written submissions, the appellant writes that she suffers from rheumatoid arthritis and receives injections for treatment. She says that she uses a motorized wheelchair for local errands and appointments that require walking any distance and that she has joined a gym at a reduced rate to assist her in retaining her mobility. She writes that her condition has no cure, that it is progressive in nature and that she has had surgeries on both hands to attempt to retain the use of them. She states that it is a challenge to find anyone to transport her to the city where the Appointments occur and to assist her in getting to the Appointments once there. The appellant notes that her escort refuses to drive in the dark due to their age and lack of comfort driving on a highway that could have wildlife on it. The appellant references the hotel receipt and indicates that she borrowed the amount to pay for the hotel accommodation on March 31, 2015.

Subsequent to submitting the Notice of Appeal, the appellant provided a letter prepared by a medical specialist and dated May 11, 2015 ("the Specialist Letter"). In it, the specialist notes that the appellant has debilitating rheumatoid arthritis and that she has great difficulty moving and sitting still for a number of hours. The physician continues that it is impossible for the appellant to be in a car for long periods of time as she needs to get up and stretch at least every 20-30 minutes.

The ministry provided no submissions or additional evidence and relied only on the reconsideration decision.

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 written 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.

On review of the appeal submissions, the panel finds that the written testimony is consistent with and reflects the evidence in the RFR submissions and the Request Form. 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.

The hotel receipt reflects the actual cost of the appellant and her escort’s hotel accommodation. An estimate of the amount was provided in the Request Form. The Specialist Letter references the need for the appellant to take breaks to stretch and the appellant referenced this in the reconsideration submissions. As such, the panel admits these two documents pursuant to section 22(4)(b) of the *EAA* on the basis that they were 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, specifically, an additional night of accommodation for the appellant and her medical escort on March 31 2015, was reasonably supported by the evidence or was 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 a second night of accommodation was necessary because the time it would take for the return trip to her home community extended into the night and her escort refuses to drive at night due to their age and lack of comfort in doing so. The appellant further argues that she did not have the resources to pay for the second night of accommodation and that she had to borrow money for it.

The ministry argues in the reconsideration decision that it cannot establish that the appellant's travel arrangements, including the second night of accommodation on March 31, 2015, was the least expensive, appropriate mode of transportation and that the appellant did not have the resources available to cover the cost of the additional night.

Discussion

Least expensive appropriate mode of transportation

Under section 62(1)(a) of the *EAPWDR*, a recipient of disability assistance may be provided health supplements which are 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 appropriate mode of transportation to or from the office of the nearest available specialist in the field of medicine or surgery.

In the Request Form, the appellant's physician referred her to a specialist for two appointments on March 31, 2015 with the latter ending at approximately 3:30 or 3:40pm. It was the appellant's evidence in the reconsideration submissions that without any breaks to stretch, use the washroom or have an evening meal, she would return home between 7:30 and 7:40pm. This calculates to total driving time of approximately 4 hours. However, it was the appellant's evidence that leaving at that time would result in rush-hour traffic and that she requires stretching breaks due to her medical condition which is supported by the Specialist Letter which recommends breaks "at least every 20-30 minutes." Applying this evidence, the panel finds that taking a break every 20-30 minutes would result in between 6 and 12 stops adding 30-60 minutes to the trip assuming breaks of 5 minutes each. Further, it is reasonable to assume that the appellant and her escort would stop for an evening meal adding further time, likely up to an additional hour, to the trip.

In the Reconsideration Decision, the ministry raises several arguments. They are as follows:

- the appellant has not provided evidence as to why her escort is not able to drive in the dark and that in any event it is not a result of the appellant's medical conditions.
- no current evidence of the appellant's need for stretching breaks has been provided.
- the appellant has not explained whether alternate escorts were available to her.

On review of the time contingencies associated with the appellant's return trip, it is reasonable to assume that one to two hours would be added to the total time required resulting in a portion of the drive taking place at night. In the appeal submissions, the appellant notes that each trip is a challenge when it comes to finding someone willing to transport her to her from her community to that in which her medical appointments are scheduled and to assist her in getting to those appointments once she is there. The appellant has provided evidence from a specialist setting out the need for frequent stretching breaks.

Section 2(1)(f)(ii) of Schedule C to the *EAPWDR* provides for the ministry to pay for the least expensive "appropriate mode of transportation." Given the aforementioned, the panel finds that the ministry's determination that the appellant's travel arrangements, including an additional night of accommodation, was not the least expensive appropriate mode of transportation was not reasonable.

No resources available

For the ministry to pay for an applicant's transportation to a medical appointment as a health supplement

under section 2(1) of Schedule C of the EAPWDR, section 2(1)(vi) requires that there are no resources available to the person's family unit to cover the cost.

In the Request Form, the appellant confirms that she is unable to contribute to the cost of the medical transportation despite consideration of contribution from family, friends and volunteer agencies. In the reconsideration submissions, the appellant confirms that it is her responsibility to pay for the additional night of accommodation. In the appeal submissions, the appellant writes that she had to borrow the amount paid for the second night of accommodation and the receipt from the hotel was submitted as evidence.

In the Reconsideration Decision, the ministry argues that as there was no information provided as to how the second night of accommodation was paid for and with no receipts being attached, it could not establish that the appellant did not have the resources available to cover the cost of the hotel on March 31, 2015.

Given the evidence set out above, the panel finds that the ministry's determination that it could not establish that the appellant did not have the resources available to cover the cost of the hotel on March 31, 2015 to be unreasonable.

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 hotel accommodation for the appellant and her escort on the night of March 31, 2015 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 an unreasonable application of the legislation in the circumstances of the appellant. The panel therefore rescinds the ministry's decision.