

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 9 June 2015 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) as she was not attending an appointment to see a specialist or attending a hospital.

PART D – Relevant Legislation

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

PART E – Summary of Facts

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

- The appellant is a recipient of disability assistance and designated as a Person with Disabilities (PWD).
- The appellant is being treated for severe epilepsy by a neurologist who recommended that she wear a cranial helmet during the day due to her uncontrolled seizures.
- On 4 March 2015, the appellant went to a regional hospital to be measured for a cranial helmet.
- Subsequently, the ministry decided that the appellant was not eligible for a cranial helmet on the basis it would only fund the less expensive basic equipment and told the appellant to submit a new request for a hockey helmet.
- The equipment sought, a hockey helmet, was not available in the appellant's community as there were no sports' stores and the closest sports store was in the regional centre.
- An Occupational Therapist (OT) indicated that since the appellant would be wearing this helmet all day, every day, it was important for her to try a number of helmets to ensure she was supplied with a helmet that was comfortable and a good fit according to the OT's letter dated 1 June 2015.
- A one-page letter dated 28 April 2015 by the appellant's OT indicating that the appellant was required to travel to the closest regional centre for an equipment trial that could not take place in the appellant's community as the hockey helmet vendor does not travel and there are no vendors in her community. The OT requested the ministry to provide travel assistance to the appellant so she could try a piece of "necessary medical equipment".
- On file, there is a one-page undated "Progress Notes" from Health authorities indicating the name of the sports' store in the regional centre as the supplier, what helmets to look for and some instructions: "find a helmet and facemask that fits your head and is comfortable and ask sales rep to sent me a quote" with billing to the ministry's address.
- A 2-page Request for Non-Local Medical Transportation Assistance dated 29 April 2015 signed by the appellant indicating that the cost of transportation to an equipment trial centre would be estimated at approximately \$100, travel and meals, included a departure date of 2 May 2015 and that the appellant had no other resources to pay for transportation.
- On 1 May 2015, a ministry worker reviewed the appellant's request and was unable to connect with the medical equipment supplier because the phone number provided did not belong to a vendor of medical supplies and the worker was unable to locate the correct number for the supplier.
- On 2 May 2015, the appellant travelled to the regional centre with the hope of trying hockey helmets and leaving with one. However, the supplier had to invoice the ministry before the appellant could take home her helmet and while she found a helmet that fitted her, she had to leave without it.
- A letter to the appellant from the ministry dated 4 May 2015 indicated that her request for transportation for medical equipment trial was denied because "[t]here is a local supplier [name] who services your area, with which you can make arrangements to trial equipment..." That same day the ministry worker had spoken to a medical supplier that confirmed they were providing trial medical equipment in the appellant's community.
- On 8 May 2015, the ministry record indicated that it issued a purchase authorization to the supplier for a cranial helmet.
- In her request for reconsideration dated 2 June 2015, the appellant indicated that there had been

many requests from doctors and neurologists that she be supplied with a specific cranial helmet but the ministry denied that request because it was not the least expensive appropriate medical equipment for the appellant. As a result of that ministry decision, she was required to make arrangements to go to the regional centre to trial a number of hockey helmets but came back without the equipment as it had to be invoiced to the ministry first. As of the date of her request for reconsideration, the appellant had not yet her hockey helmet since the supplier would not release it without payment from the ministry.

On 16 July 2015 the hearing for this appeal was adjourned to allow the appellant to file further documents. The same day, the following documents were provided to the Tribunal:

- A 1-page letter from the OT dated 1 June 2015 indicating that the appellant went to the hospital on 4 March 2015 to be measured for a cranial helmet but that the ministry declined funding for this helmet because it would only fund the basic equipment and that the appellant should submit a new request for a hockey helmet. As medical vendors in the appellant's area do not sell hockey helmets, she was required to travel out of her community to a sports store to try one that would fit her.
- A 1-page addendum to the letter of 1 June 2015 by the OT and dated 24 June 2015 indicating that the neurologist did not specify a hockey helmet but recommended that the appellant wear a helmet providing the best protection "as she hits her head when having a seizure". Thus, the appellant had to travel to the regional centre to try a hockey helmet that would be appropriate for her but she could not leave with the helmet before a quote was sent to the ministry requesting a specific helmet.
- A 1-page letter from a medical practitioner dated 17 June 2015 indicating that the appellant is at high risk of head trauma and that her current hockey helmet with a face mask [provided by the ministry] was inadequate as it had a neck / chin strap which put the appellant at risk of airway compromise and that she required a specific cranial helmet.
- A 2-page letter dated 24 June 2015 by the OT explaining that there was a specific cranial helmet that had been recommended for the appellant that had a face shield on a pivot and quick release buckle chin strap but the ministry declined to fund this helmet as it determined a hockey helmet with face guard would be an adequate substitute. The appellant wore a hockey helmet as approved by the ministry for the previous 2 ½ weeks and it was found inappropriate because when the appellant had a seizure while in hospital, her face turned purple and her airway was obstructed by the chin strap of the helmet. On another occasion when she was in her community, she had to be transported by ambulance to the hospital because the chin strap again obstructed her airway. The quick release chin strap recommended on the cranial helmet is designed to prevent this. Further, the visor on the hockey helmet can trigger a seizure, as they are visual in nature. Finally, the appellant must remove the hockey helmet during meals due to face guard and she is unprotected against seizures at that time while the plastic face shield of the requested cranial helmet is on a pivot mount, allowing her to eat without having to remove the helmet.
- 6 notes on prescriptions sheets dated in 2015 by medical practitioners stating that:
 - The appellant needs a medical escort all the time when travelling out of home;
 - The appellant should work on a safe housing plan including home support and emergency response;
 - 3 medical professionals recommend a specific cranial helmet because of the risks of hurting her head when she falls as a result of a seizure;
 - Because of her condition, the appellant needs 24 hour observation;

- A purchase order dated 30 June 2015 for the specific cranial helmet recommended by the medical practitioners.

At the hearing the appellant testified that she was suffering from severe epilepsy and had to be followed by the highly specialized neurologist who recommended the cranial helmet, not a hockey helmet. She gets \$906 per month disability assistance and it cost her \$100 to go to the regional centre and the travel took 6 hours return trip by car, which was a great inconvenience to the appellant. Once the hockey helmet was ready, the ministry declined to pay the \$20 cost of shipping the helmet from the regional centre to the appellant's community and a third party had to pick it up and bring it to her, as a favour. One of the seizures while she was wearing the hockey helmet happened at a ministry's office and they had to call 911 and she was transported to the hospital in ambulance. After she submitted her request for medical transport on 29 April 2015 she did not receive any call or advice from the ministry before or on 2 May 2015, the day she travelled to the regional centre.

The ministry indicated that the hearing was an opportunity to see if it had the correct interpretation of the legislation in restricting transportation benefits, limited to destinations covered under MSP. He also indicated that other avenues might have been explored but that was not part of the reconsideration decision and that in his opinion s. 69 [*Health supplement for persons facing direct and imminent life threatening health need*] did not apply to the appellant because of her PWD designation. However he mentioned that a crisis supplement (s. 57 of the EAPWDR) might have been another option but at the hearing the appellant was concerned that she may have misled the ministry if she had asked for such a grant.

The ministry did not object to the admissibility of the additional evidence. The panel finds the additional oral and documentary evidence was admissible under s. 22 (4) of the Employment and Assistance Act (EAA) as it was in support of the records before the ministry at reconsideration and it completes and corroborates that information.

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 she did not meet the criteria set out in Schedule C, section 2(1)(f) of the EAPWDR as she was not attending an appointment to see a specialist or attending a hospital 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, where 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.

Panel review of the evidence and the issues:

This appeal is exceptional in that most of the information provided did not come from the ministry but from the appellant and medical professionals that were involved in her health issues and is very confusing because of a reversal of decision about the helmet the ministry authorized. The panel reviewed the evidence and finds that the events unfolded as follows:

- The appellant suffers from severe epilepsy and is being treated by a highly specialized neurologist for that condition;
- At the beginning of 2015 the neurologist recommended that the appellant wear a cranial helmet due to uncontrolled seizures and that she hits her head when that occurs;
- On 4 March 2015 the appellant went to her local hospital to be measured for a cranial helmet;
- Subsequently – the appeal record does not include any information about this decision – the ministry determined that a cranial helmet was not the least expensive device and that it would only fund the most basic equipment, in this case a hockey helmet and requested that the appellant submit a new request for a hockey helmet;
- As the medical vendor that services the appellant's community does not sell hockey helmets but only medical supplies (including cranial helmets), the appellant was required to travel to the regional centre, 3 hours by car, one way, from her own community, to try a hockey helmet that would fit;
- At the ministry's request, on 29 April 2015 the appellant faxed a completed Request for Non-Local

Medical Transportation Assistance” indicating that she planned going to the regional centre on 2 May 2015 for equipment trial. The estimated transportation cost was \$83.60 and with meals it amounted to approximately \$100. The ministry acknowledged having received that form on that day;

- On 1 May 2015, the ministry reviewed the appellant’s request but the worker was unable to connect with the medical vendor of medical supplies because the phone number provided was for the sports shop where the appellant was planning to try hockey helmets. The ministry worker did not contact the appellant to inform her of the problem;
- On 2 May 2015, the appellant travelled to the regional centre to try a hockey helmet but it was understood that she could not return with the helmet as the ministry needed to get a quote from the store and then would pay directly the store for the helmet before it could be released to the appellant;
- On 4 May 2015, the ministry worker contacted the medical vendor responsible for the appellant’s area who confirmed they provided medical equipment trials in that community. Then the ministry determined the appellant was not seeing a specialist or attending hospital and therefore she was not eligible for non-local medical transportation assistance and informed the appellant the same day;
- On 8 May 2015, after discussion with a third party, the ministry file indicated that it issued a purchase authorization to the supplier for a cranial helmet. However, the evidence presented shows that the purchase order was dated 30 June 2015 and the proper cranial helmet was not obtained by then;
- On 5 June 2015, the appellant received her hockey helmet that was brought for her by a third party as the ministry declined to pay the \$20 shipping fee;
- After having received her hockey helmet and wearing it, the appellant had two severe seizures, one in the hospital and the other in the ministry’s office and in both occasions her face turned purple and her airway was obstructed by the hockey helmet chin strap and a medical practitioner confirmed in a letter dated 17 June 2015 that the hockey helmet was inadequate.

Position of the parties:

The appellant argued that she was requested by the ministry to get a hockey helmet instead of the cranial helmet recommended by her neurologist and physicians and that the medical vendor did not provide hockey helmet trials in her community. She argued that she had no choice but to go to the regional centre to try a hockey helmet that would be approved by the ministry and requested in advance medical transportation assistance but did not hear from the ministry until 2 days after her trip, when she was informed she was denied travel assistance. No other options were discussed with her by ministry workers and she did what was asked from her and did not anticipate that she would be deprived of \$100, which is a significant amount of money for her, given that she is on disability assistance.

The ministry argued that it had no choice but to apply the legislation and, given that the appellant did not travel to visit a specialist in the field of medicine or a hospital, it could not approve the medical transportation supplement. The ministry also argued that disability assistance is higher than income assistance and that added funding could be used to face those kind of particular issues.

Panel decision:

At the outset, the panel finds the appellant was measured for the proper cranial helmet in a hospital on 4 March 2015 and that she did not get to go try a hockey helmet until 2 May 2015 because of the ministry's decision. Then she did not get the hockey helmet until 5 June 2015, 3 months after she had tried the cranial helmet. She ended up having the proper equipment sometime after 30 June 2015, 4 months after the initial trial.

The panel notes that this is an unfortunate set of circumstances given that a neurologist had made a specific recommendation that the ministry decided not to follow, hoping to get a cheaper product for the appellant. Ultimately the right medical device was authorized and provided to the appellant. Meanwhile though, the appellant had made every effort to comply with the ministry's directions to get the hockey helmet but she also ended up being denied the transportation costs incurred because of the ministry's decision not to fund the proper cranial helmet that she had already been fitted with at the hospital on 4 March 2015.

The panel further finds that although the ministry received the appellant's request for non-local medical transportation supplement on 29 April 2015, a Wednesday and reviewed it two days later, on the Friday, for a trip that was scheduled to occur the next day, a Saturday, and although there were concerns with this trip, the ministry did not contact the appellant until after she had made the trip and had incurred those expenses. This was a fairly simple situation at the time: the ministry was only willing to cover a hockey helmet, the medical vendor was not available to try hockey helmets and the appellant had to go to a sports shop to get one. The ministry worker claimed to be unable to contact the medical vendor because the phone number supplied did not belong to a medical vendor but did not contact the phone number provided which would have shown that it was a sports shop phone number.

Why the ministry worker wanted to confirm with the vendor remains unclear since whether it was a medical vendor or a sports shop, in both cases the travel was not to see a specialist or a visit to the nearest hospital as required by s. 2 (1)(f). The ministry worker did not contact the appellant to let her know of its concerns in any event.

From the documentation presented, it is clear that the appellant and her OT believed that medical transportation assistance would be available to cover the costs of this trip and thus the appellant made that request. The ministry could have assisted the appellant to determine whether this was a legitimate option but the workers limited their intervention to denying the request despite having directed the appellant to get a hockey helmet.

Under s. 2 (1)(f) of Schedule C of the EAPWDR, the purpose of the travel was not to see a medical or nurse practitioner, or a specialist in the field of medicine or surgery or to the nearest hospital or rehabilitation hospital, which are the requirements under that section. However, the panel finds that the trip at issue was medical transportation for the following reasons:

- This trip was requested as a result of the ministry's decision to deny the recommended cranial helmet for a more cheaper alternative, a hockey helmet;
- The appellant had already been to a hospital to have her measurements taken for the recommended cranial helmet but those measurements were not relevant to a hockey helmet;
- The appellant followed the ministry's directions and went to the only facility that provided any

- opportunity to try a number of hockey helmets and determine which would fit for her needs;
- While a sports shop is not a hospital, in this case the ministry determined that a hockey helmet was medically required for the appellant and therefore the travel to try the said helmet was for a medical purpose;

Thus, the panel finds that under these circumstances and given the ministry's decision and directions, the sports shop was a substitution to a hospital as the latter could not provide the medical service required for the appellant, i.e. trying hockey helmets to find a medically suitable one.

At the hearing, s. 69 of the EAPWDR was referred to. It states:

- 69** The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that
- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
 - (b) the health supplement is necessary to meet that need,
 - (c) a person in the family unit is eligible to receive premium assistance under the *Medicare Protection Act*, and
 - (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
 - (i) paragraph (a) or (f) of section (2) (1);
 - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

At the hearing the ministry took the position that s. 69 if the EAPWDR does not apply because the appellant being designated as a PWD, is eligible for the health supplement at issue. The panel notes that under s. 69 the criteria of s. 2 (1)(f) of Schedule C must be met.

At the hearing the ministry also indicated that a "crisis grant" could have been another option. A crisis grant is called a crisis supplement in the legislation and can be found at s. 57 of the EAPWDR. It states:

- 57** (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if
- (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and
 - (b) the minister considers that failure to meet the expense or obtain the item will result in
 - (i) imminent danger to the physical health of any person in the family unit, or
 - (ii) removal of a child under the *Child, Family and Community Service Act*.
- (2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.
- (3) A crisis supplement may not be provided for the purpose of obtaining
- (a) a supplement described in Schedule C, or
 - (b) any other health care goods or services.
- (4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:
- (a) if for food, the maximum amount that may be provided in a calendar month is \$20 for each person in the family unit,
 - (b) if for shelter, the maximum amount that may be provided in a calendar month is the smaller of

- (i) the family unit's actual shelter cost, and
- (ii) the maximum set out in section 4 of Schedule A or Table 2 of Schedule D, as applicable, for a family unit that matches the family unit, and
- (c) if for clothing, the amount that may be provided must not exceed the smaller of
 - (i) \$100 for each person in the family unit in the 12 calendar month period preceding the date of application for the crisis supplement, and
 - (ii) \$400 for the family unit in the 12 calendar month period preceding the date of application for the crisis supplement.
- (5) The cumulative amount of crisis supplements that may be provided to or for a family unit in a year must not exceed the amount calculated under subsection (6).
- (6) In the calendar month in which the application or request for the supplement is made, the amount under subsection (5) is calculated by multiplying by 2 the maximum amount of disability assistance or hardship assistance that may be provided for the month under Schedule A or Schedule D to a family unit that matches the family unit.
- (7) Despite subsection (4) (b) or (5) or both, a crisis supplement may be provided to or for a family unit for the following:
 - (a) fuel for heating;
 - (b) fuel for cooking meals;
 - (c) water;
 - (d) hydro.

While the ministry suggested that if the appellant had exhausted her monthly disability allowance because of that trip, she could have applied for a crisis supplement, the appellant was not comfortable with that suggestion and wanted to be honest when she deals with the ministry and was concerned that this could be "cheating". The panel finds this was not part of the reconsideration decision and that a crisis supplement is not relevant to this appeal.

Therefore, the panel finds the trip undertaken by the appellant was at the request of the ministry, that the trip was a medical transportation (to try a medical device) and that the sports shop was the only available substitution to a hospital and that the ministry unreasonably determined that the appellant had not met the conditions of s. 2 (1)(f), Schedule C of the EAPWDR.

Conclusion:

Given those circumstances, the panel concludes that the ministry's decision was not a reasonable application of the legislation in the circumstances of the appellant and rescinds the decision. Therefore, the ministry's decision is overturned in favour of the appellant.