

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated November 10, 2015 which denied the appellant's request for a medical transportation supplement because she did not meet the legislative criteria under Schedule C of the Employment and Assistance for Persons with Disabilities Regulations (EAPWDR). In particular, the ministry found that the appellant's :

- medical practitioner is not in her local area, pursuant to section 2(f)(i);
- medical practitioner is not a specialist in a field of medicine or surgery, pursuant to sections 1 and 2(f)(ii); and
- travel was not to the nearest general hospital or nearest suitable hospital, pursuant to section 2(f)(iii) and (iv).

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Schedule C, Sections 1 and 2(f).

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration included of:

1. Duplicate copies of a partially illegible letter from the appellant's physician. Attached to the letter was a note hand written on his prescription pad that stated that the appellant came in for a consultation on 01/09/15.
2. Memorandum dated October 10, 2015 enclosing the appellant's request for medical transportation;
3. Request for reconsideration signed and dated October 29, 2015, and attached to the request were two letters, one from the appellant and her advocate and one from her physician.
 - The letter from the advocate and the appellant, which was signed and dated October 29, 2015, states in part that the appellant suffers from multiple medical conditions but that one in particular causes many challenges to her daily living. Her physician is sensitive to her challenges and is willing to accommodate while others do not. They acknowledge that the physician is not a specialist. Furthermore the ministry has funded her travel to her physician on and off for several years.
 - The letter from the medical practitioner, which is signed and dated October 15, 2015, lists her multiple medical conditions and states in part that the appellant consults him because he is familiar with all of her specific problems and sympathetic with the challenges she has. He stated that the appellant has mobility issue arising from her left foot and ankle which adds difficulty for her use of public transit. He also stated that his background is in sports medicine, which is helpful in dealing with this condition.

A Notice of Appeal signed and dated November 22, 2015. With the notice of appeal were letters from the advocate and a second doctor.

- The letter from the advocate, which is signed and dated November 23, 2015, lists the dates of previous doctor's appointment for which the ministry paid for medical travel costs and states in part that the physician the appellant consults is a specialist in her care, her disability is very rare and as such requires special consideration, and for the appellant to be able to continue to receive adequate care it is absolutely critical that the ministry continue to fund her transportation cost.
- The letter from the second physician, which is signed and dated November 22, 2015, states in part that alternative transportation for the appellant to consult with her primary physician would require buses and that is unreasonable given her medical conditions and it would cause her disorientation and agitation. He further states that the appellant has a trusting relationship with her primary physician, which is critical for ongoing management of her symptoms.

Prior to the hearing the appellant submitted a 33-page document containing a portion of her Person with Disabilities application, letters of support, notes and reports from her medical care givers.

At the hearing the appellant submitted a 2-page letter signed and dated December 21, 2015. The letter was from the appellant's advocate and it, in part, described the challenges the appellant faces due to her medical conditions. She also played a 5 minutes video which demonstrated how sounds are amplified for her and how this overwhelms her sensory.

At the hearing the appellant stated that:

- She understands that the ministry followed the legislation but is requesting that the ministry make an exception based on compassion;

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- Described her medical condition and why she needs special consideration to meet her needs;
 - Her physician is willing to accommodate her special needs whereas other physicians have not;
 - She cannot take public transit because it's too loud and it takes over 4 hours to travel round trip;
 - She feels dismissed by the ministry and society and labelled as obstructive;
 - She should have access to her primary physician every 6 weeks as required for the monitoring and management of her health;
 - She cannot wear ear plugs as they would worsen her condition, and ear protection must be worn 24 hours a day, 7 days a week, the specialist she sees will not prescribe them and they cost \$500;
 - The doctors in her area are not accepting new patients;
 - There is a history of the ministry paying for the costs of this medical transportation and then it suddenly stopped;
 - There are not community services that offer medical transportation for free, and no other resources or people to help her; and
 - She can only manage to go to the grocery store for 20 minutes once per month and does most of her shopping online.

The appellant's advocate reaffirmed her argument and added that in this rare case they are asking the ministry to make an exception.

At the hearing the ministry relied on its reconsideration decision and added the following:

- The ministry has no control over the legislation and therefore cannot change it to accommodate the appellant's needs; and
- The appellant's medical transportation costs were paid in the past because the ministry was under the impression that the physician the appellant was consulting outside of her local area was a specialist. Upon review of the appellant's file, it was discovered the physician is not a specialist.

Admissibility of New Information

The ministry objected to the admissibility of the advocate's letter dated November 23, 2015 because it speaks to a precedent of medical transportation costs being paid, and to the letter from the second physician dated November 22, 2015 because it is not consultations with this physician for which the appellant is claiming medical transportation costs.

The panel found that the letter from the advocate dated November 23, 2015, the letter from the second physician dated November 22, 2015, the 33-page submission, the letter dated December 21, 2015 and video provided additional detail or disclosed information that was in support of the information addressed in the reconsideration. Accordingly, the panel has admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which denied the appellant's request for a medical transportation supplement because (1) her physician is not in her local area, (2) her physician is not a specialist in a field of medicine or surgery, and (3) her travel was not to a general hospital or suitable hospital, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant legislation requires the following:

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.

The Appellant's Position

The appellant's position is that she requires a medical transportation supplement because her medical condition makes it unbearable for her to take the bus to her medical appointments, she has no other transport and her primary physician is a specialist in her care as he understands and accommodates the challenges she faces due to her medical conditions.

The Ministry's Position

The ministry's position is that the appellant does not meet the legislative requirements found in Schedule C section 1 and 2(f) of the EAPWDR. In particular her primary physician is not in her local area, the primary physician is not a specialist in a field of medicine or surgery, and she is not traveling to a general or suitable hospital.

The Panel Decision

The ministry has based its denial on the legislative criteria found in Schedule C, sections 1 and 2(f) of the EAPWDR.

Local Area

Section 2(f)(i) of the EAPWDR states that the ministry may provide a health supplement for the least expensive appropriate mode of transportation to or from an office, in the local area, of a medical practitioner. The evidence does not establish that the appellant's primary physician is in her local area and by the appellant's own account he is a 4 hour bus ride away round trip. Furthermore, the appellant does not dispute that her primary physician is not in her local area. The panel finds that the ministry reasonably determined that the evidence establishes that the appellant is not eligible for medical transportation costs to consult with her physician whose office is in another area pursuant to section 2(f)(i) of the EAPWDR.

Specialist

Section 2(f)(ii) of the EAPWDR states that the ministry may provide a health supplement for the least expensive appropriate mode of transportation to or from 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. Section 1 of the EAPWDR defines a specialist as a medical practitioner that is 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. The appellant argues that the primary physician is a specialist in her care as he understands and accommodates her condition and the ministry should make an exception in her case, on compassionate grounds. However the panel notes that the legislation clearly defines what a specialist is and the appellant acknowledged that her primary physician is not a specialist according to this definition. The panel finds that the ministry reasonably determined that the evidence establishes that the appellant is not eligible for medical transportation costs to consult with her physician who is not a specialist pursuant to sections 1 and 2(f)(ii) of the EAPWDR.

General or Suitable Hospital

Section 2(f)(iii) and (iv) of the EAPWDR states that the ministry may provide a health supplement for the least expensive appropriate mode of transportation to or from the nearest suitable general hospital or rehabilitation hospital, or the nearest suitable hospital. The evidence does not establish that the appellant's request for a health supplement is for medical transportation to or from the nearest suitable general hospital or rehabilitation hospital or suitable hospital, and the appellant does

not dispute this. The panel finds that the ministry reasonably determined that the evidence establishes that the appellant is not eligible for medical transportation costs to or from the nearest suitable general hospital or rehabilitation hospital or suitable hospital pursuant to sections 2(f)(iii) and (iv) of the EAPWDR.

Conclusion

The panel finds that the evidence establishes that the ministry was reasonable in its determination that the criteria set out in Sections 1 and 2(f) of the EAPWDR has not been met by the appellant. As a result the panel finds that the ministry's decision to deny the appellant's request for a health supplement for medical transportation was a reasonable application of the legislation and was reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision.