

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) January 6, 2016 reconsideration decision denying the appellant’s request for a health supplement for transportation to the office of a specialist and to a suitable general hospital because the ministry determined that the eligibility requirements in Schedule C, Section 2(1) (f) and Section 69 of the Employment and Assistance for Persons with Disabilities Regulation had not been met. Specifically, the ministry determined that the appellant had not been referred to the nearest available specialist by a local medical practitioner and had not been referred to the nearest suitable general hospital.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR):

- Sections 62, 69b and Schedule C, Section 2(f)

PART E – Summary of Facts

The appellant is a single recipient of disability assistance.

The evidence before the tribunal at the time of reconsideration included the following:

- November 5, 2015 request for non-local medical transportation assistance from the appellant's home in Area A to the office of a medical specialist ("Dr. X") in Area B, seeking reimbursement for proposed travel of 852 km plus hotel and parking costs;
- November 4, 2015 note from Dr. X stating that the appellant is under her care, has an appointment scheduled on November 10, 2015 and requires an escort due to her medical condition;
- request for reconsideration and extension request received by the ministry December 9, 2015;
- appellant's additional documents relating to her request for reconsideration received by the ministry December 29, 2015, including appellant's submissions and:
 - news release dated May 30, 2011 announcing a new outpatient clinic affiliated with a general hospital in Area B ("The Clinic");
 - description of services offered by The Clinic;
 - newspaper article dated December 23, 2015 discussing the shortage of family doctors in Area A;
 - newspaper article dated June 1, 2015 stating an expected increase in the doctor shortage in Area A.

New Evidence

Prior to the hearing the appellant submitted a 21 page written submission which included the following exhibits:

- A: copy of EAPWDR Schedule C, Section 2(1)(f);
- B: letter from the appellant's general practitioner (gp) ("Dr. Y") dated January 22, 2016 to all her patients announcing her withdrawal from practice due to a sudden medical condition;
- C: January 28, 2016 letter from Dr. X stating that the appellant had been under his care since 2012 and has not seen a same-field specialist in Area A because she has been unable to find a local gp to make the referral;
- D: February 5, 2016 letter from a doctor in a different medical specialty ("Dr. Z") who practices at The Clinic. Dr. Z. stated that he has been treating the appellant since 2011, but discharged her from his clinical department because she has not been seen since 2014 and no longer resides in Area B, and the catchment area of The Clinic does not include Area A;
- E: copy of ministry procedures/guidelines relating to medical transportation covering the period 2005 to 2015;
- F: copy of ministry's "Authority Level Matrix" denoting staff levels for authorizing spending determinations.

At the hearing the appellant submitted additional new evidence, marked as exhibits:

- G: March 7, 2016 note from Dr. Y stating that the appellant has under her care for several years, has been seeing Drs. X and Z at The Clinic, and has been asked to find a new gp;
- H: December 12, 2014 "pain management/operating room booking request" from Dr. Y to the general hospital in Area A together with fax cover sheet to Dr. Y stating that the booking request cannot be completed without the appellant's medical history;
- I: March 24, 2015 progress report from Dr. X to Dr. Y stating that she had seen the appellant that day and would continue to see her every 3 months. Dr. X added that the appellant had

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moved from Area B to Area A because her spouse's business had failed but was now going well;

J: undated list of Area A doctors under the headings "Doctors Called" and "On Waiting List".

The ministry representative objected to the admission of Exhibit F ("Authority Level Matrix") on the ground that it was irrelevant to the reconsideration decision, but did not object to the admission of the other exhibits.

The panel determined that Exhibits A, E, and F were not admissible under Employment and Assistance Act Section 22 (4)(b) as evidence in support of the information before the ministry at the time of reconsideration because they contained legislation and policies already known to the ministry and formed part of the appellant's argument, rather than evidence. The panel also determined that Exhibit B was inadmissible because it addressed new information that was not before the minister at reconsideration.

The panel determined that Exhibits C, D, G, H, I and J were admissible as evidence in support of the information before the ministry at reconsideration because they did not address new issues and provided additional detail in support of the appellant's position.

At the hearing the appellant stated that she moved to Area A for health reasons, as part of a treatment plan suggested by her doctors. Her blood work is done in a local Area A laboratory and she picks up her prescriptions at a local pharmacy. She has visited several Area A walk-in clinics but the doctors will not prescribe all of her medications and will not keep a record of her visits. She has made 7 previous visits to Area B, paid for by ministry-approved medical transportation supplements for repeated treatments to alleviate pain.

The ministry relied on the reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry reconsideration decision of January 6, 2016 denying the appellant's request for a health supplement for transportation to the office of a specialist and to a suitable general hospital because the ministry determined that the requirements in Schedule C, Section 2(1) (f) and Section 69 of the Employment and Assistance for Persons with Disabilities Regulation had not been met. Specifically, the ministry determined that the appellant had not been referred to the nearest available specialist by a local medical practitioner and had not been referred to the nearest suitable general hospital.

Applicable Legislation:

EAPWDR

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*] [*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,

Health supplement for persons facing direct and imminent life threatening health need

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) the person's family unit is receiving 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).

Schedule C

General health supplements

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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 argues that she has been under the care of Area B gp Dr. Y and specialists Drs X and Z for several years, and that in March 2013 she moved to Area A from Area B for health reasons. Because she has been unable to find a gp in Area A she has continued to see Drs. X, Y and Z, and these doctors have been unsuccessful in referring her to a gp or specialist in Area A. The appellant also argues that she requires the integrated medical services provided at The Clinic. She adds that she should not be prohibited by legislation from maintaining a relationship with a medical practitioner outside Area A.

The ministry argues that there are several specialists in Area A who practice the same medical specialty as Dr. X. Although the appellant has not yet found a gp in Area A, a referral to an Area A specialist can be made by a gp or specialist from Area B. The ministry also argues that there are several suitable general hospitals in or nearer to the appellant's home than the Area B general hospital to which The Clinic is attached. Finally, the ministry argues that the appellant is not eligible for benefits under EAPWRD Section 69 because she is otherwise eligible for general health supplements under Section 62.

Panel Decision

Section 2(1) (f) of EAPWDR Schedule C outlines the criteria for eligibility for a medical transportation supplement for a person who is a recipient of disability assistance under Section 62 (1). The criteria relevant to this appeal are:

1. transportation must be to or from the office of the nearest available medical specialist if the person has been referred to a specialist by a local medical practitioner;

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2. transportation must be to or from the nearest suitable general hospital as defined by the Hospital Insurance Act and regulations.

1. Referral by Local Medical Practitioner

The appellant moved to Area A in 2013. She states that she has been unable to find a local medical practitioner, and because she does not have a local medical practitioner she has remained under the care of her gp Dr. Y in Area B, who has continued to refer her to specialists Dr. X and Dr Z, also located in Area B. Specialist Dr. X states in Exhibit C that the specialist services he provides are also available in Area A, but require a referral by a local medical practitioner. The appellant stated that she has on occasion utilized the services of local medical practitioners at walk-in clinics, but there is no evidence that she has asked any of the walk-in clinic doctors for a referral to a specialist. Although the panel is sympathetic to the difficulties experienced by the appellant in obtaining a local medical practitioner the legislation is clear. In order to be eligible for a non-local medical transportation supplement to the office of the nearest medical specialist a person requires a referral from a local medical practitioner. The panel therefore finds that the ministry reasonably determined that the appellant was not eligible for a medical transportation supplement under EAPWDR Schedule C Section 2(1) (f) (ii).

2. Transportation to the Nearest Suitable General Hospital

The appellant argues that she requires specialized, integrated care from The Clinic, and that this level of care is not available in Area A. In his letter dated February 5, 2016 Dr. Z notes that he discharged the appellant from his clinical department at The Clinic because she had not been seen by him since 2014 and no longer resides in Area B, and that the catchment area of The Clinic does not include Area A. She is therefore no longer able to utilize the services of The Clinic.

There is a general hospital in Area A which offers services in the specialty field of Dr. X, as stated by Dr. X in Exhibit C. It also offers services in the specialty field of Dr Z, as implied by Exhibit H, a “pain management/operating room booking request” for a booking at the general hospital in Area A. The panel therefore finds that the ministry reasonably determined that the appellant was not eligible for a medical transportation supplement under EAPWDR Schedule C Section 2(1) (f) (iii) because she did not seek transportation to or from the nearest suitable general hospital.

Section 69 Health Supplement for Persons Facing Direct and Imminent Life Threatening Health Need

EAPWDR Section 69 states that this supplement is available to person who is otherwise not eligible for the health supplement under this regulation. The panel finds that the ministry reasonably determined that this section is not applicable to appellant’s circumstances because she is otherwise eligible for Schedule C health supplements under Section 62 of the EAPWDR.

Conclusion

In conclusion the panel finds that the ministry’s determination that the appellant is not eligible for the health supplement she requested November 5, 2015 for medical transportation under EAPWDR Schedule C, Section 2(1) (f) is a reasonable application of the applicable legislation in the circumstances of the appellant, and confirms the decision.