

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”) dated February 17, 2016 that denied the appellant’s request for a health supplement for transportation because the ministry determined that the appellant did not meet the eligibility requirements to receive a general health supplement under section 67 of the Employment Assistance Regulation (EAR) as he is not a “qualifying person” as defined under section 66.1 of the EAR, and the appellant does not meet the eligibility criteria under section 76 of the EAR. Specifically, the ministry determined that the appellant is not someone who has persistent multiple barriers to employment and is not a person in receipt of assistance for people receiving special care. The ministry further found that the appellant does not meet the eligibility criteria under section 76 of the EAR as the minister is not satisfied that the appellant faces a direct and imminent life threatening need and requires the necessary health supplement to meet the life threatening need. In addition, the ministry found that the appellant’s request does not meet the legislative requirements under section 2(1)(f) of Schedule C of the EAR because he has not been referred to the nearest available specialist in a field of medicine or surgery in accordance with the bylaws of the College of Physicians and Surgeons of British Columbia.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) section 4  
EAR sections 66.1, 67 and 76; Schedule A section 8(1) and Schedule C section 2(1)(f)

## PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was properly notified, the hearing proceeded pursuant to Section 86(b) of the Employment and Assistance Regulation.

The documentary evidence before the ministry at reconsideration included the following:

1. A letter from Physician A dated December 30, 2015 advising that the appellant has appointments with that physician scheduled for January 14 and 19, 2016. The appellant resides in community B and Physician A resides in community A.
2. A ministry form titled “Request for Non-Local Medical Transportation Assistance” completed and signed by the appellant on December 30, 2015. The form indicates that the appellant seeks to travel to community A and is not able to contribute to the cost of this medical transportation.
3. A letter from Physician A dated January 19, 2016 which states that he is a GP specialist in Chronic pain and Addictions. The letter advises that the appellant has been seeing him for several months for chronic pain treatments. As far as Physician A is aware, these treatments are not available in the appellant’s hometown or vicinity. He recommends that the appellant have repeat injections every 4-6 weeks and reports that he feels that these treatments are medically necessary for the appellant to maintain an active and independent life.

The appellant’s *Request for Reconsideration* signed and dated by the appellant on January 10, 2016. Under “Reason for Request for Reconsideration” the appellant has written that he received serious neck and shoulder injuries in January 2001 and has suffered chronic pain that is very debilitating. His family physician arranged for the appellant to see Physician A, who is the only doctor that has been able to give the appellant some hope for a potential cure for his pain. The appellant reports that since seeing Physician A he has made small but positive progress. He had tried to see two other doctors in a nearby community but the wait time to see them is 2-5 years and the appellant reports that at his age he has limited time left. He feels that he really needs these treatments and reports that all of the local doctors are temporary and none can help him except to prescribe narcotics which he desperately needs to get rid of.

In the *Reconsideration Decision* the ministry states that the appellant is currently a sole employable recipient of income assistance.

The appellant’s *Notice of Appeal* was signed and dated on February 29, 2016 and stated that the appellant “will advise” regarding his reasons for appeal. With the *Notice of Appeal*, the appellant submitted a receipt dated February 1, 2016 showing that (unknown person) received \$425 from Person A.

At the hearing, the ministry summarized the evidence and arguments presented in the *Reconsideration Decision*. In response to questions from the panel the ministry indicated the following:

- the ministry was unaware of who signed the receipt for \$425 dated February 1, 2016 and had no information regarding Person A..
- the ministry did not have any documentation from the appellant’s GP regarding the appellant’s medical condition..
- the ministry could not comment on whether a wait time of 2 – 5 years could be considered to be

“available” but the ministry noted that section 2(1)(f) required that the physician be recognized as a “specialist.”

The panel reviewed the receipt dated February 1, 2016 and could identify no basis on which it was in support of the information that was before the ministry at the time of reconsideration. Accordingly, the panel determined that the receipt does not meet the test of admissibility under s. 22(4)(b) of the *Employment and Assistance Act* and should not be admitted.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision that determined that the appellant was not eligible for a health supplement for transportation, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant is not eligible to receive a general health supplement under section 67 of the EAR as a qualifying person as defined under section 66.1 (someone who has persistent multiple barriers to employment, or is in receipt of assistance for people receiving special care); is not someone who faces a direct and imminent life threatening need and requires the necessary health supplement to meet the life threatening need pursuant to section 76 of the EAR; and does not meet the legislative requirements under section 2(1)(f) of Schedule C of the EAR because he has not been referred to the nearest available specialist in a field of medicine or surgery in accordance with the bylaws of the College of Physicians and Surgeons of British Columbia.

The relevant legislation is as follows:

From the EAA:

### **Income assistance and supplements**

**4** Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

From the EAR:

### **Definitions**

**66.1** In this Division:

"**qualifying person**" means a person who

- (a) has persistent multiple barriers to employment, or
- (b) is a recipient of income assistance who is described in section 8 (1) [*people receiving special care*] of Schedule A.

**67** (1) 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) a family unit in receipt of income assistance, if
  - (i) the family unit includes a qualifying person, or
  - (ii) the health supplement is provided to or for a person in the family unit who is a dependent child,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is a dependent child, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who
  - (i) is a continued person under section 66.3 (1) or (2) [*access to medical services only*], or
  - (ii) is a continued person under section 66.4 (1) [*access to transitional health services*] and was, on the person's continuation date, a qualifying person or part of a family unit that then included a qualifying person, or
  - (iii) is a continued person under section 66.4 (2).

(1.1)-(1.2) Repealed. [B.C. Reg. 145/2015, Sch. 1, s. 8 (b).]

(2) Subject to subsection (3), 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 recipient in the family unit who

- (a) has received income assistance under the *BC Benefits (Income Assistance) Act* or the Act continuously from March 31, 1997 and on March 30, 1997 was eligible under section 37 (1) (a) of the BC Benefits (Income Assistance) Regulations, B.C. Reg. 272/96, as it read on March 30, 1997, for the health care services and benefits referred to in that provision, or
- (b) is a dependant of a recipient referred to in paragraph (a).

(3) Subsection (2) applies only until the earlier of the following dates:

- (a) the date the recipient ceases to receive income assistance;

(b) the first day of the calendar month after the minister makes a determination that the recipient, or any dependant of the recipient other than a dependent child, is capable of accepting employment.

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

**76** 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).

### **Schedule A**

#### **People receiving special care**

**8** (1) For a person who receives accommodation and care in a special care facility or a private hospital or who is admitted to a hospital because he or she requires extended care, the amount referred to in section 28 (a) [*amount of income assistance*] of this regulation is the sum of

- (a) the actual cost, if any, to the applicant or recipient of the accommodation and care at the rate approved by the minister for the type of facility, plus
- (b) a comforts allowance of \$95 per person for each calendar month.

### **Schedule C**

#### **Health Supplements**

##### **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 67 [*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.

#### **Qualifying Person**

##### Appellant's Position

The appellant presented no argument regarding whether he met the criteria for a "qualifying person."

##### Ministry's Position

The ministry argues that under section 67 of the EAR, a health supplement may be provided to a person in receipt of income assistance if they are a "qualifying person." Section 66.1 of the EAR

defines a “qualifying person” as someone who has persistent multiple barriers to employment or is a recipient of income assistance as described in section 8(1) (people receiving special care) of Schedule A of the EAR. The ministry has determined that the appellant has not qualified as a person with persistent multiple barriers to employment. The appellant did not dispute this conclusion. The ministry also argues that the appellant does not qualify as a person receiving special care and the appellant did not dispute this conclusion.

#### Panel Decision

The panel notes that the appellant presented no evidence that he was a “qualifying person” as there is no information in the record to indicate that he has persistent multiple barriers to employment or is receiving special care. Accordingly, the panel concluded that the ministry reasonably determined that the appellant did not meet the criteria to be a “qualifying person” under section 66.1 of the EAR and is therefore not eligible for a general health supplement under section 67 of the EAR.

### **Direct and Imminent Life Threatening Health Need**

#### Appellant’s Position

The appellant presented no argument regarding whether he faced a direct and imminent life threatening health need for medical transportation.

#### Ministry’s Position

The ministry argues that the appellant does not meet the eligibility requirements under section 76 of the EAR because the ministry is not satisfied that the appellant’s medical condition causes him to be facing a direct and imminent life threatening need for medical transportation.

#### Panel Decision

The panel notes that the appellant provided no medical evidence that he faced a direct and life threatening need for medical transportation and made no claim that he had such a need. The evidence of Physician A is that the appellant requires injection treatments to maintain an active and independent life. Accordingly, the panel concluded that the ministry reasonably determined that the appellant did not face a direct and life threatening need for medical transportation.

### **Nearest available specialist**

#### Appellant’s Position

The appellant argues that Physician A is the only doctor who has been able to give the appellant some hope for a potential cure for his pain. The appellant did try to access other physicians in a community which is closer to the appellant than community A but he found that the wait time to see these physicians was 2 – 5 years and at his age he doesn’t feel that he can wait that long. The appellant also argued that all of the doctors who are available in his home community are temporary. The appellant advanced no argument as to whether Physician A was a specialist as defined by the College of Physicians and Surgeons of British Columbia.

#### Ministry’s Position

The ministry acknowledges that Physician A notes that he specializes in chronic pain and addictions but the ministry argues that Physician A does not meet the legislative requirements under section 2(1)(f) of Schedule C of the EAR because he is not a medical practitioner who 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.

**Panel Decision**

The panel notes that there is no evidence that Physician A meets the eligibility requirements to be considered the “nearest available specialist” as required under section 2(1)(f) of Schedule C of the EAR. In his letter of January 19, 2016, the physician refers to himself as a “GP specialist”. Consequently, the panel concluded that the ministry reasonably determined that Physician A does not meet the legislative requirements under section 2(1)(f) of Schedule C of the EAR because he is not a medical practitioner who 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.

**Conclusion**

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry’s determination that the appellant was not eligible for a health supplement to cover the costs for transportation to attend an appointment with Physician A at community A was a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel therefore confirms the ministry’s reconsideration decision.