

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”), reconsideration decision dated March 3, 2016 in which the ministry denied the appellant’s request for a fee for her escort on a trip for dental surgery at a hospital in another community. The ministry approved medical transportation costs for bus and cab fares, accommodations, and meals for the appellant and her escort but denied the request for an additional \$250 for the escort. The ministry found that there is no provision for a wage or fee for escorts under health supplements for medical transportation in Schedule C, section 2(1)(f) of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”).

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act* - EAPWDR - section 5

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - sections 62 and Schedule C section 2(1)(f)

*Hospital Insurance Act* – section 1

## PART E – Summary of Facts

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

1. A Request for Reconsideration ("RFR") signed by the appellant on February 24, 2016 in which she provides her argument for disagreeing with the ministry's decision. The panel will address both parties' arguments in Part F - Reasons.
2. A Request for Non-local Medical Transportation Assistance signed by the appellant on January 12, 2016. The appellant requested transportation assistance for 5 days for hospital treatment in another community. She indicated that an escort is medically required, that she is unable to contribute to the transportation costs and that she requires accommodation, bus transportation and meals. In an attached submission, she provided a breakdown of transportation and escort costs. Regarding the escort costs, the appellant included transportation for her escort plus \$250 "escort fees."
3. A letter from a hospital dated January 8, 2016 that states the appellant is scheduled for dental surgery.
4. A letter from a doctor dated January 8, 2016 that states the appellant has a medical condition, will be having dental surgery at the hospital, and will require an escort during her 4-7 day stay in the hospital's location for medical reasons.
5. Information from the ministry's record indicating the appellant is a sole recipient of disability assistance. The ministry provided a total of \$368.16 to assist with transportation costs for the appellant and her escort, including bus fares, meals for 7 days, and cab fare. The ministry also covered the cost of accommodation by direct billing. The ministry noted that the appellant requested the additional \$250 for the escort because the escort had to take time off work.

Subsequent to the reconsideration decision, the appellant filed a Notice of Appeal dated April 29, 2016. The panel accepts it as argument in support of her reconsideration submission regarding the need for an escort.

The appellant did not attend the hearing. The panel confirmed the appellant had been notified of the hearing date and teleconference instructions and proceeded with the hearing in her absence pursuant to section 86(b) of the Employment and Assistance Regulation.

At the hearing, the ministry discussed a policy titled *Included in Medical Transportation, April 1, 2006*. The ministry explained that the policy does not define medical transportation but lists food and accommodation as well as escort costs that may be considered for a client who is incapable of travelling independently. The ministry explained that the expenses covered for the escort are the same as for the client: accommodations, meals, and transportation costs. The ministry noted that there is also a rate schedule that the ministry uses to determine the maximum payable for each item but a fee for escort services is not included in the rates.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision of March 3, 2016 which denied the appellant's request for a fee for her escort on a trip for dental surgery at a non-local hospital was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry approved medical transportation costs for bus and cab fares, accommodations, and meals for the appellant and her escort but denied the request for an additional \$250 for the escort. The ministry found that there is no provision for a wage or fee for escorts under health supplements for medical transportation in Schedule C, section 2(1)(f) of the EAPWDR.

The following legislation applies to the appellant's request for medical transportation costs:

### **EAPWDA - Disability assistance and supplements**

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

### **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*] 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

### **EAPWDR – 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 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.

#### **Hospital Insurance Act - Definitions**

**1** In this Act:

"hospital" means, except in sections 24 and 29 (2) (a),

(a) a hospital as defined by section 1 of the *Hospital Act* that has been designated under this Act by the Lieutenant Governor in Council as a hospital required to provide the general hospital services provided under this Act,

### *Positions of the parties*

In her RFR, the appellant submits that because of her medical condition, surgery could not take place without an escort. She argues that the government has legislation in place to prevent high-risk patients from being admitted to hospital and after 4 years of preparation for her surgery, hundreds of dollars in health care, and government cutbacks in dentistry, her doctors had this one chance to do the surgery. In her Notice of Appeal, the appellant submits that the ministry is being “totally unfair” in denying the escort fee. She asks why should she “be made to choose life or death?” and notes that her doctors have provided letters explaining why and supporting her need for an escort.

In the reconsideration decision, the ministry states that it does not cover additional fees for escorts and argues that it is expected that the appellant would have made other arrangements to meet the need. The ministry submits that although the appellant’s doctor confirmed the need for an escort and the ministry funded the other travel costs, the information provided does not demonstrate that paying the \$250 fee was the appellant’s only option or the least expensive option to meet her need. The ministry submits that there is no provision in the legislation for a wage or fee to pay for escort services.

At the hearing, the ministry reaffirmed that a fee or wage for the escort is outside the scope of the legislation and not considered a medical transportation cost. Further, neither the ministry’s policy nor its rate schedule for travel expenses includes an escort fee. The ministry noted that section 2(1)(f) of EAPWDR Schedule C gives it discretion over funding for medical transportation, describing health supplements that “may be paid for by the minister”. The ministry submits that it is reasonable to require an escort at times to ensure the client’s safety, especially after surgery, and the ministry has covered the escort’s transportation and accommodation costs. However, section 2(1)(f) of Schedule C requires the “least expensive appropriate mode of transportation” to and from the hospital and the ministry argued that the escort fee is not the least expensive way of having an escort accompany the appellant. The ministry argued that the appellant could engage an escort who would not lose wages if they took time off work, and there was no information provided to show whether an alternate person could have travelled with the appellant.

### *Panel’s decision*

As noted by the ministry, the appellant is a recipient of disability assistance who is therefore eligible under section 62(1) of the EAPWDR for the general health supplements available under Schedule C of the regulation. Section 5 of the EAPWDA gives the ministry the authority to provide supplements to eligible clients. The panel notes that this is subject to the regulations and specific eligibility requirements must be met for each item requested.

The ministry accepted the appellant’s request for bus and cab fare, meals, and accommodation for herself and the escort, finding that those items met the criteria for the “least expensive appropriate mode of transportation” to the “nearest suitable hospital” to “receive a benefit” under hospital insurance legislation as set out in clauses (iv) and (v) of section 2(1)(f) of EAPWDR Schedule C. The ministry was also satisfied that the appellant had no resources to cover the cost of the transportation as required by section 2(1)(f), clause (vi).

While section 2(1)(f) specifically relates to a health supplement for “the least expensive appropriate mode of transportation”, the panel notes that “transportation” is not defined in the legislation, nor is

there any specific provision for an escort. Nevertheless, as noted by the ministry at the hearing, the ministry has the discretion under EAPWDR section 2(1) to provide the health supplement and ministry policy specifies that “transportation” includes travel expenses such as bus fare, meals, and accommodations for both the client and an escort where one is required. The panel finds that the ministry policy reasonably supports the plain meaning of “appropriate mode of transportation” by allowing the ministry to cover expenses such as accommodation that are directly associated with the travel. As noted by the ministry, an additional escort fee is not covered under the policy or the regulation.

While the appellant argued that it is unfair for the ministry to deny an escort fee to compensate the escort for lost wages, the panel finds that the ministry reasonably determined that an escort fee is not supported by the provisions for medical transportation under section 2(1)(f) of EAPWDR Schedule C. As noted by the ministry, the appellant has not met the “least expensive” criteria in section 2(1)(f) as there is no information to show that she considered an escort who would not require any additional fees, and as stated above, escort fees are not included in the ministry policy which sets out the components of transportation that the ministry considers “appropriate” under section 2(1)(f).

### *Conclusion*

As the criteria for the least expensive appropriate mode of transportation in section 2(1)(f) of EAPWDR Schedule C were not met, the panel finds that the ministry reasonably denied the appellant’s request for an escort fee. The panel confirms the ministry’s reconsideration decision as a reasonable application of the applicable enactment in the circumstances of the appellant pursuant to sections 24(1)(b) and 24(2)(a) of the *Employment and Assistance Act*.