

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development and Social Innovation (the ministry) dated 02 June 2016 that denied the appellant's request for a medical travel supplement under section 2(1)(f) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation to cover the costs of travel to visit the office of his general practitioner (GP) in another city. The ministry determined that the appellant's request did not meet any of the medical travel purposes set out in section 2(1)(f) of Schedule C and in particular held that his GP is not in the appellant's local area as required in sub-paragraph (i) of section 2(1)(f) of Schedule C and is not a specialist as defined under section 1 of Schedule C, as required in sub-paragraph (ii) of section 2(1)(f) of Schedule C

## PART D – Relevant Legislation

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

## PART E – Summary of Facts

With the consent of both parties, the hearing was conducted in writing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at reconsideration included:

- The appellant is a recipient of disability assistance.
- Request for Non-local Medical Transportation Assistance dated 29 April 2016 completed by the appellant. The request is for travel from the appellant's home in Community A on 04 May 2016 for a same-day visit to the office of a physician in City B.
- Letter dated 27 May 2016 from the appellant's physician, whose office is in City B. The GP writes:  
" [The appellant] has been a patient of mine for over 20 years. He has numerous complex medical problems.

First of all, he has just completed treatment for hepatitis C, and needs close monitoring to determine that he has successfully cleared the virus. Unfortunately, hepatitis C has caused quite significant liver [damage...] It is critical that he continues to have close follow-up with myself since I am well acquainted with his numerous complex medical problems. If there is any significant lapse in the provision of appropriate healthcare, this could potentially be life-threatening.

[The appellant] also has chronic pain and decreased function affecting his left arm and hand [....].

[The appellant] also has quite significant neurocognitive problems. He has a developmental disorder, and he has considerable difficulties understanding complex information. He has also had lifelong major difficulties in interpersonal relationships. He tends to take things the wrong way, misinterpret what people are saying or doing, and can easily get very angry and agitated. [...]. Over the years, I have encountered numerous significant challenges in my interactions with [the appellant], but I have come to realize over the past 10 years or so that if [the appellant] is dealt with in a respectful, patient and friendly manner, he will respond the same way. It has taken years to develop a good trusting relationship with [the appellant], something which I believe is going to be very difficult for him to establish with an alternative healthcare practitioner.

Also, because of his neurocognitive challenges, he was easily led astray in his youth, which resulted in a fairly brief episode of use of street drugs including opiates. He has been on the methadone program to manage his previous problem with opioid addiction [for several years...], and has been perfectly stable on the methadone program, with no evidence of relapse to street drug use, [for several years]. Normally I am required to see my methadone clients every two weeks, but now that [the appellant] has moved up to the [Community A area] to live with [a relative...], I am allowing him to see me every four weeks. However, the cost of transportation from [Community A] to [City B] and back again poses a significant financial burden on him. Complicating this is the fact that there are no family physicians taking on new patients in the [Community A] area, particularly patients with the combination of challenging physical and mental health problems that the appellant has.

[Redacted]

Because of these unique and complex circumstances, I am requesting that the ministry reconsider the issue of funding the appellant's transportation costs from [Community A] to [City B] and back again every four weeks, In order to ensure access to the medical care that he needs.”

[Panel note: This letter was re-submitted to the Tribunal by the appellant's advocate on appeal. In its submission on appeal, the ministry stated that all documents submitted by the appellant were reviewed at reconsideration. Due to an administrative error, the letter from the physician was not included in the Record of Ministry Decision.]

- The appellant's Request for Reconsideration dated 26 May 2016, attached to which is a submission from the appellant's advocate giving 4 reasons for reconsideration (see Part F, Reasons for Panel Decision, below).
- The ministry relied on the following facts, not disputed by the appellant:
  - a) The appellant's physician is registered as by the College of Physicians and Surgeons of BC as a general practitioner (GP) with a General Family Practice.
  - b) The distance between Community A and City B is 140 km.

#### Notice of Appeal

The appellant's Notice of Appeal is dated 10 June 2016. Under Reasons, the appellant's advocate writes:

“This is a critical health care need! Please review my submission for reasons why it is critical and [the appellant's] Doctor's letter as to the necessity of this need.”

#### Additional information submitted before the hearing

Before the hearing, the appellant's advocate submitted the following:

- An email to the appellant's advocate from the local Division of Family Practice referring to an assessment conducted in 2013/14 that found that there were an estimated 4,500 patients in the local area without GPs. Since then, one physician left the community and one went into a specialized role, leaving a further 1,500 – 2,000 without GPs. Many residents commute long distances to seek primary care.
- An article in a local newspaper reporting to the lack of family physicians in the local area.

In a letter dated 07 July 2016, the ministry stated that its submission would be the reconsideration summary provided in the Record of Ministry Decision.

#### Admissibility of additional information

The panel finds that the Information submitted by the appellant's advocate regarding the lack of family physicians in the local area is in support of the evidence before the ministry at reconsideration, as this information tends corroborate the reference in the GP's letter in this regard. The panel therefore admits this additional information as evidence pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable in denying the appellant's request for a medical travel supplement under section 2(1)(f) of Schedule C of the EAPWDR to cover the costs of travel to visit the office of his GP in another city. More specifically, the issue is whether the following ministry determinations are reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant:

- That the appellant's request did not meet any of the medical travel purposes set out in section 2(1)(f) of Schedule C, and in particular
- That his GP is not in the appellant's local area as required in sub-paragraph (i) of section 2(1)(f) of Schedule C and is not a specialist as defined under section 1 of Schedule C, as required in sub-paragraph (ii) of section 2(1)(f) of Schedule C

The relevant legislation is from the EAPWDR, Schedule C:

### 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 positions of the parties

The position of the ministry, as set out in the reconsideration decision, is that the ministry is unable to approve the appellant's request because it does not meet the legislative criteria. The legislation does not provide discretion if it does not meet the legislative criteria.

- His physician is a GP but not in his local area. City B is 140 km from Community A.
- His physician is registered as a general practitioner with a General Family Practice. He is not recognized as a specialist by the College of Physicians and Surgeons and therefore does not qualify as a specialist for the purposes of the medical transportation supplement.
- The transportation is not to enable the appellant to receive services at the nearest suitable general hospital or rehab hospital.

The appellant's position, as explained in the submission at reconsideration, is based on 4 reasons:

1. The appellant has a variety of complex medical issues along with serious life-threatening health issues. In recent months he has undergone intensive medical intervention, requiring

comprehensive medical supervision. It is critical at this point in time that he does not have any lapse in the provision of appropriate healthcare or would jeopardize his life.

2. The appellant is challenged with a developmental disorder, requiring a physician with advanced assessment skills who can interpret and decipher his communication and behaviour challenges. His GP has established a positive, productive relationship.
3. His GP has a long-standing history of the appellant's health issues, is up to date with his current health care program and has an in-depth knowledge of his unique challenges. Having provided care for the appellant over the long term, he has the in-depth knowledge of its current condition and would be aware of the subtleties should his health deteriorate. These changes may not be evident to the appellant, making his supervision all the more essential.
4. There are no family physicians taking on new patients in his community, let alone highly qualified ones who can effectively communicate with him or have the time to take on such a complicated health portfolio.

The advocate noted that the appellant will require ongoing transportation costs to his physician on a monthly basis until he is able to transition him with a local family doctor here in his new community.

#### Panel decision

At issue is the appellant's request for a medical travel supplement to cover the cost of a same-day return bus trip from his home in Community A to see his physician in City B, a distance by road of some 140 km. There is no dispute that the physician is a general practitioner, not a "specialist" as defined in Section 1 of Schedule C of the EAPWDR as 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 BC. The panel therefore finds that the ministry was reasonable in finding that the appellant's request did meet the requirements of sub-paragraph (ii) of section 2(1)(f).

Sub-paragraph (i) of section 2(1)(f) provides for the supplement to cover the costs of a visit to the office a general practitioner, but only if the office is *in the local area*. The legislation does not define "local area." The panel considers the term "local area" to mean "a particular community, town or city and nearby environs." The panel would expect the ministry to apply this criterion with some flexibility, depending on geographic circumstances. In applying such flexibility, it might be appropriate for the ministry to take into account not only the number of GPs in a particular "local area," but also, as the appellant argues, whether these GPs are taking on new patients. The ministry might therefore expand that area to a somewhat wider but contiguous area, but not to the extent proposed by the appellant in this instance. Given that that the GP's office is in another city over 100 km from the appellant's residence in Community A, and that this community is just beyond the outskirts of another large urban centre, the panel finds that the ministry was reasonable in determining that the GP's office is not "in the local area" and that therefore the criterion set out in sub-paragraph (i) of section 2(1)(f) had not been met.

The panel has reviewed the legislation and finds that the minister has no discretionary authority to make exceptions respecting its application under unusual or exceptional circumstances, such as those described by the appellant's GP.

Conclusion

Based on the foregoing, the panel finds that the ministry's decision denying the appellant's request for medical transportation assistance to visit the office of his GP in another city was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision. This appeal is thus not successful.