

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 a podiatrist 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 a podiatrist 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

The ministry did not attend the hearing. After confirming that the ministry was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration included:

- The appellant is a recipient of disability assistance.
- Request for Non-local Medical Transportation Assistance dated 21 April 2016 completed by the appellant, and signed by the appellant's referring medical practitioner. The request is for travel from the appellant's home in Community A on 03 May 2016 for a same-day visit to the office of a pedorthist in City B. The request was faxed to the ministry from a health authority office in Community A on 28 April 2016.
- Appointment Notice for 31 March 2016 for the appellant to attend a general hospital in City B for diagnostic imaging.
- Referral letter from the appellant's physician to an orthotic provider dated 27 April 2016, requesting the latter to provide the appellant with custom orthotics to offload pressure points on his foot.
- The appellant's Request for Reconsideration dated 20 May 2016. Under Reasons, the appellant's advocate writes that the appellant was referred to the pedorthist in City B for custom footwear because of his foot deformities. The appellant had an appointment in City B for medical imaging on 31 March 2016 but the pedorthist's office is not open in City B on Thursdays. He received an appointment to see the pedorthist on 03 May 2016 at 1 PM. There are no services in Community A for this footwear. If he is able to get footwear, he needs to get to City B and therefore he needs travel assistance. The pedorthist is not a doctor but he provides the service for specialized footwear. The appellant was referred to the pedorthist by his physician.

Notice of Appeal

The appellant's Notice of Appeal is dated 08 June 2016. Under Reasons, the appellant writes that he was referred by his physician to the pedorthist for specialized footwear – his disability is due to a problem with his foot. This service is not available in his community.

Additional information submitted before the hearing

- Submission dated 07 July 2016: a set of 14 photographs, with images of the appellant's feet, with and without footwear.
- Submission dated 14 July 2016: copy of Orthoses Request and Justification dated 20 January 2016, completed by the appellant's physician, recommending bilateral custom foot orthotics. A note in a different hand in the space for type of orthoses recommended shows "custom footwear."
Also attached is a "To whom it may concern" letter from an orthotics provider in City A stating that, while the business can and does provide orthotics in City A, it does not carry or provide specialty footwear.

The hearing

At the hearing, the appellant and his advocate provided a history of the appellant's foot abnormality, dating back to 1989 and an accident helping a friend, resulting in 7 broken bones in his right foot. The foot never healed properly and he is left with limited mobility. The advocate reviewed the appellant's current condition by referring to the photographs submitted on appeal. She described how, because of the abnormality of the right foot, this foot requires a shoe one size larger than that for the left foot. He has two pairs of shoes, one a set of runners and one a set of work-boots. The latter provide support for his ankles, but are too hot in the summer.

The advocate explained that there was a hospital bus that went from Community A to City B at a cost of \$5.00. However, taking this bus would mean that the appellant would have to sit around in strange surroundings for 6 hours. He cannot stand for long because of his disability.

The advocate clarified that the appellant's physician had referred him to the pedorthist in City B for custom orthotics (shoe inserts). These had been approved by the ministry, up to a cost of \$250. Due to some confusion with the application, a request to the ministry for custom-made footwear is pending. This would require more visits to the same pedorthist.

The balance of the presentation by appellant's advocate went to argument, based on the need for the ministry to take into account the lack of services in rural communities (see Part F, Reasons for Panel Decision, below).

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 a podiatrist in another city. More specifically, the issue is whether the ministry determinations 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 a podiatrist 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, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

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 appellant is not eligible for assistance with his non-local medical transportation costs to attend the appointment with the podiatrist because a podiatrist is not recognized as a specialist under the EAPWDR. A podiatrist is not a medical practitioner recognized as a specialist by the College of Physicians and Surgeons of BC. The travel costs are also not required for the appellant to receive services from the nearest suitable general hospital that would be covered by the *Medicare Protection Act* or covered under the *Hospital Insurance Act*. As the travel does not meet the above criteria, the ministry is unable to approve the appellant's request.

The appellant's position, as explained by his advocate at the hearing, is that it is unrealistic and unfair that the legislation does not recognize that recipients of disability assistance living in remote, rural communities face a lack of services to meet their medical needs and must travel to urban centres where such services are more readily available. He recognizes that the podiatrist in City B is not a "specialist," but he should not be put at a disadvantage in accessing services essential to his well-being simply because of where he lives. He submits the panel should set a precedent by overturning

the ministry's unreasonable decision and approving his travel request.

Panel decision

The panel does not have the jurisdiction to "set a precedent" by making a decision that is not consistent with the legislation.

Section 2(1)(f) of Schedule C of the EAPWDR provides that the ministry may pay a medical transportation supplement for local and non-local travel only under specified circumstances: to the office of a medical practitioner or nurse practitioner locally, to the nearest suitable hospital in BC or to the office of a nearest available "specialist." The legislation does not cover any other transportation costs that may be required for medical reasons, even if recommended by a physician and the service provided is a benefit under the *Medicare Protection Act* or is paid for by the ministry under provisions elsewhere in Schedule C of the EAPWDR. For instance, the ministry is not authorized to provide transportation assistance for visits to a private x-ray or blood-work clinic, to an optometrist for filling an eye-glass prescription, to a physical or massage therapist, or as in this case, to a pedorthist for the fitting of an orthosis.

A "specialist" is 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 (CPSBC). A medical practitioner is defined in the *Interpretation Act* as a registrant of the CPSBC. Registration as a medical practitioner requires graduation from a recognized medical school, with a degree as a Doctor of Medicine (M.D. or equivalent). As a pedorthist is not a medical practitioner, the panel finds that the ministry was reasonable in determining that a visit to his office would not be a visit to a "specialist" as defined in the legislation. The panel has reviewed the legislation and finds that the minister has no discretionary authority to make exceptions in this regard under unusual or exceptional circumstances, such as those relating to the lack of services in a rural community.

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 a pedorthist 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.