

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of June 20, 2016 wherein the ministry determined the appellant was not eligible for a health supplement for transportation because the appellant did not meet the legislated criteria set out in Schedule C section 2(1)(f) *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

The ministry found the appellant’s appointment was with a psychologist who is not a specialist in the field of medicine registered in the College of Physicians and Surgeons of British Columbia as set out in Schedule C section 2(1)(f)(ii) EAPWDR and further, that the appointment is at a location not considered a hospital as required in Schedule C section 2(1)(f)(iii) and (iv) of the EAPWDR.

PART D – Relevant Legislation

EAPDWA - section 5  
EAPWDR - section 62 and Schedule C section 2(1)(f)

## PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Request for Non-Local Medical Transportation Assistance dated May 1, 2016;
- Letter dated April 8, 2016 from a health authority to the appellant regarding a sibling's appointment with a Registered Psychologist (RP);
- Request for Reconsideration dated June 6, 2016 with a one-page attachment outlining her argument in support of her request.

The appellant is a recipient of disability assistance, has one dependent child, and is eligible to receive health supplements set out in Schedule C of the EAPWDR. On May 5, 2016 the appellant requested NMTA so her son could attend an assessment appointment with a RP in another community. The appointment has been set up by her doctor. The ministry determined the appellant's son had a scheduled appointment to see a RP on May 10, 2016 at a community assessment center in another community. The ministry denied the appellant's request as the RP is not registered as a specialist with the College of Physicians and Surgeons of BC (the College) and the location of the appointment is not in the nearest hospital.

At the hearing the appellant stated that she took her son to see a local pediatrician to have him examined as she thought he might have another disability. She stated that after the pediatrician examined her son he referred her to a RP for an assessment which would be done in another community. The examination or assessment was not offered in her community. The appellant stated the assessment had to be done before the school year began and was necessary so he could obtain assistance with much needed life skills.

The panel finds the information provided by the appellant is in support of the information and record that was before the ministry at the time the reconsideration decision was made and is admissible as evidence under section 22(4) of the EAA.

The ministry relied on the facts in the Reconsideration decision.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision of June 20, 2016 which held the appellant was not eligible for a health supplement for non-local medical transportation assistance because the appellant's son's appointment was with a RP, a specialist who is not registered with the College and further that the appointment was not in the nearest suitable hospital as set out in Schedule C section 2(1)(f) of the EAPWDR was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The legislation considered:

### **EAPWDA**

Disability assistance and supplements

Section 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.

General health supplements

### **EAPWDR**

Section 62 - 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 disability assistance,

### **General health supplements**

Section 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.

### **Schedule C - Health Supplements – Definitions**

Section 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*.

## **Hospital Insurance Act Regulations**

Definitions

### Section 1.1

In these regulations, unless the context otherwise requires:

**"general hospital"** means a hospital or a portion of a hospital as defined under paragraph (a) or (c) of the definition of "hospital" in the Act, the prime function of which is to provide services and treatment for persons suffering from the acute phase of illness or disability;

## **Hospital Insurance Act**

Definitions - Section 1

In this Act:

**"beneficiary"** means a beneficiary as defined in section 1 of the *Medicare Protection Act*;

**"benefits"** means the general hospital services authorized under 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,

(b) a private hospital as defined by section 5 of the *Hospital Act* with which the government has entered into an agreement requiring the hospital to provide the general hospital services provided under this Act,

(c) a hospital owned and operated by Canada that has been designated under this Act a "federal hospital",

(d) an agency or establishment that

(i) provides a service to hospitals or a health service and

(ii) has been designated as a hospital facility by the Lieutenant Governor in Council, or

(e) an establishment in which out patient services are available that has been designated a diagnostic and treatment centre by the Lieutenant Governor in Council for providing out patient benefits to beneficiaries in accordance with this Act and the regulations;

## **In reference to section 2(1)(f)(ii) EAPWDR - Specialist**

### Ministry's Position

The ministry's position is that the appointment for the appellant's son was with a RP who is not a specialist registered with the BC College of Physicians and Surgeons and is not a specialist as defined under Schedule C, section 1 (Definitions) EAPWDR. The ministry's position is that the appellant's request did not meet the legislated criteria to be eligible for the health supplement.

### Appellant's Position

The appellant's position is that the legislation is blatantly unfair when her son, who was being cared for by a pediatrician specialist registered with the College, refers her to another doctor, a registered psychologist, for an assessment that her son needs for necessary life skills assistance. The appellant argued the ministry should exercise some discretion to provide travel expenses on a case by case basis to address cases that do not specifically meet the legislated criteria where the need is greater than the legislation and especially when the referral appointment is made by a doctor who is registered with the College. The appellant argued she had no idea that since the RP is not registered with the College (BC College of Physicians and Surgeons) her travel expenses would not be covered and also did not know the RP was not registered with the College.

### Panel Decision

The jurisdiction of a panel is set out in section 24 of the *Employment and Assistance Act*, which states the panel must determine whether the decision being appealed is reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. The panel's jurisdiction is to either confirm or rescind the ministry's decision; it has no discretion to make a new decision.

Neither the panel nor the ministry can exercise discretion on these matters to make a decision that does not comply with the *Employment and Assistance Act or its Regulation or the Employment and Assistance for Persons with Disabilities Act or its Regulation*.

The definition of a specialist set out in Schedule C, Definitions, section 1 defines a specialist as 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*. The evidence before the panel is that the assessment was to be conducted by an RP, who is not registered with the College, and is not a specialist included in the Definition under section 1.

The panel finds the ministry's decision that the appellant was not eligible for a health supplement for non-medical travel because she did not meet the legislated criteria set out in Schedule C, section 2(1)(f)(ii) EAPWDR was reasonable.

### **In reference to section 2(1)(f)(iii) and (iv) EAPWDR – nearest suitable hospital**

#### Ministry's Position

The ministry's position is that the appointment for the appellant's son was at an assessment center, not a general hospital, and the center is located in another community. The ministry argued the assessment center did not meet the legislated criteria of the nearest suitable hospital or the definition of a hospital under Hospital Insurance Act as required by the legislation.

#### Appellant's Position

The appellant did not offer an argument on the definition of hospital nor was she aware the appointment had to be the nearest suitable general hospital or rehabilitation hospital for the travel to be approved.

#### Panel Decision

The panel finds the assessment center is not a hospital as defined under *Hospital Insurance Act*. The evidence is the assessment center is located in another community and therefore does not meet the legislated criteria set out in Schedule C, section 2(1)(f)(iii) or (iv) EAPWDR.

The panel finds the ministry's decision that the appellant was not eligible for a health supplement for non-local medical travel because she did not meet the legislated criteria set out in Schedule C section 2(1)(f)(iii) or (iv) EAPWDR was reasonable.

The panel finds the ministry's decision that the appellant was not eligible for a health supplement for non-local medical travel as the appellant did not meet the legislated criteria was reasonably supported by the evidence and confirms the ministry's decision.