

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 22 September 2016 that denied the appellant's request for reimbursement of the costs of a hotel stay in connection with an authorized non-local medical transportation supplement provided under section 62 and Schedule C section 2(1)(f) of the Employment and Assistance for Persons with Disabilities Regulation. The ministry determined that the appellant was provided funds for fuel for the trip, and that accommodation was reserved for her for 22 August 2016 at a hotel (Hotel A) because this hotel was the least expensive available. As this hotel has confirmed that there was a reservation for the appellant and that she failed to show, and as the ministry is required to pay for the one night stay regardless, the ministry is satisfied that the appellant was assisted for the least expensive mode for transportation and that therefore her request for reimbursement for a stay at another hotel (Hotel B) was denied.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The information before the ministry at reconsideration included the following:

1. From the ministry's files, as set out in the ministry section of the Request for Reconsideration:

- The appellant is a recipient of disability assistance, with a dependent spouse.
- On 12 August 2016, the appellant submitted a Request for Non-local Medical Transportation Assistance to attend an appointment with a specialist in another city scheduled for 23 August 2016, and also requested overnight accommodation at Hotel B in that city for the night of 22 August 2016. The charge for the one-night accommodation at that hotel would be \$182.85.
- The appellant's request for non-local medical transportation was reviewed on 22 August 2016. The ministry determined that the appellant was eligible for overnight accommodation. However it was determined that Hotel B was not the most economical hotel, and that accommodation could be booked at Hotel A for \$120.75. In addition to accommodation, this amount included parking and breakfast. The appellant was advised that the ministry could issue her a cheque for \$120.75 and that she could make her own accommodation arrangements, or the ministry could proceed with booking the accommodation at Hotel A. She agreed to have the ministry worker book her accommodation at Hotel A, and have the hotel bill the ministry for her accommodation. She was provided with a cheque for mileage costs for the trip, and was provided with booking information regarding her accommodation at Hotel A.
- On 26 August 2016, the appellant's spouse attended the ministry office and stated that when they got to Hotel A they were advised that the accommodation had not been booked. He submitted a receipt from Hotel B for \$182.85 and indicated that they stayed there instead of Hotel A. He requested reimbursement of the cost of the accommodation at Hotel B.
- The ministry contacted Hotel A later in the day of 26 August 2016 and was advised that the appellant did not show up for her reservation. The appellant's request for reimbursement for the hotel expenses at Hotel B was denied.
- On 30 August 2016 the appellant was advised of the ministry's decision to deny her request for reimbursement. The appellant's spouse stated that he called Hotel A 3 times and was told that there was no paperwork and no reservations were made. He also advised the ministry that he was told by Hotel A that their rate was \$189.00 per night and that a credit card was needed in order to make a reservation. Her spouse stated that he knew that the rate at Hotel B was cheaper and that a credit card was not required, so they stayed there instead.

2. The appellant's Request for Reconsideration dated 08 September 2016. Under Reasons, the appellant writes:

"My husband, [name], advocates for me at the Ministry office because of my severe health condition. He did the Request for Non-local Medical Transportation Assistance for my appointment with the [specialist] in [city] on August 23, 2016 and the form was submitted

on August 12, 2016. It was confirmed by the specialist that I am not able to travel the same day as my appointment and therefore require overnight accommodation. This was prearranged but when we contacted [Hotel A] on August 22, 2016 they said that they had no reservation in our name. We only had verbal confirmation from MSD in [home city] so they were not able to accommodate us. We provided confirmation of the cost of alternative accommodation and we respectfully request reimbursement.”

Attached to the Request for Reconsideration were the following:

- A submission by the appellant’s spouse describing, and expressing his frustration with, his interactions with ministry workers in securing approval by the ministry on 22 August 2016 for the requested non-local medical transportation assistance for the appellant to see the specialist the next day. The panel notes that this submission does not provide any information regarding the actual travel, including any reference to any reservation at Hotel A or their stay at Hotel B that evening.
- A black and white copy of a screenshot of the appellant’s (or that of her spouse) cell-phone display showing a number of phone calls, with the date and time not legible, first to Hotel A, then to Hotel B, then again to Hotel A and finally another to Hotel B.

3. Also before the ministry at reconsideration were the following:

- The above-mentioned Request for Non-local Medical Transportation Assistance completed by the appellant’s spouse on her behalf, dated 12 August 2016 for an appointment with a specialist on 23 August 2016, requesting over-night accommodation for 22 August 2016 at Hotel B at a cost of \$182.85.
- A note from the appellant’s specialist dated 23 February 2016, stating that due to her [medical condition] the appellant requires over-night accommodation when she comes to see him for a medical appointment to preserve her health.
- A debit card transaction record from Hotel B in the amount of \$182.85 dated 22 August 2016 at 18:43.
- An undated, unstamped letter from the ministry to Hotel A, referring to a booking number and confirming a reservation for the appellant for accommodation for 1 night, checking in on 22 August, for 2 guests and 1 room. The letter states: “Please invoice [name’s] authorized stay to the [MSDSI] at the medical rate of \$105/night including tax.” The panel notes that in this sentence [the name] is a female first name that bears no relation to that of the appellant or her spouse.

Information submitted on appeal

The appellant’s Notice of Appeal is unsigned and undated, received by the Tribunal on 29 September 2016. Under Reasons for Appeal, she writes:

“The ministry verbally told us that we had a reservation at [Hotel A]. On the way to the appointment we stopped [in a city en route] to phone to confirm the reservation & were told there was no reservation.”

On 19 October, the appellant’s advocate submitted the following set of documents:

1. A 7-page letter from the appellant’s spouse. In his letter, he sets out to express concerns surrounding PWD file information gathering, management and internal transmission or lack thereof. He begins by explaining that he is a primary in-home caregiver on a daily basis of his

wife and has observed her health to be in steady decline. He also reviews his background, training, work experience and current employment. He then raises issues regarding the processing of the appellant's Application for Nonlocal Medical Transportation Assistance on 22 August 2016, the day of travel to the appointment with the specialist. In particular, he comments on a challenge by a ministry worker of the availability and adequacy of the specialist's note, and why he had to complete again the Application multiple times on the day of travel. He also questions why, in response to a Freedom of Information (FOI) request, at least two interactions with ministry workers were not included in the records provided by the Ministry.

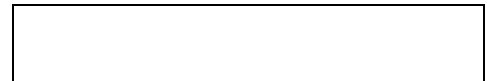
In connection with the issue under appeal, the appellant's spouse writes: "I submit to you that there was a missed opportunity to here solve this particular set of circumstances, that if only [the local ministry worker] had handed to me a copy of the hotel confirmation letter (that he only read out loud to me), this would have been the second opportunity to resolve this issue which has caused so much distress."

The spouse goes on to discuss how he sees the attitudes of the Minister and the ministry as "elitist" in responding to the needs of persons with disabilities.

2. 3 pages of ministry notes of ministry contacts with or regarding the appellant or her spouse for the month of August 2016 (9 entries in total). The following are of note (without abbreviations):
 - 08/22/2016 13:42
-faxed to Hotel A, fax # [], booking # [] for 1 night, checking in August 22, medical rate + tax + 120.75 (including parking , breakfast). Spouse [name] wants to stay at [Hotel B] for \$182/night. Worker advised we give the most economical hotel, so if client wants to stay at [Hotel B], worker can give \$120.75 to client and he can pay the difference to [Hotel B] himself. Spouse then agreed for worker to book accommodation at [Hotel A], direct billing. SR is pending hotel invoice.
 - 08/26/2016 16:21
.... Talked to [Hotel A] today, confirmed client never showed up at hotel (contrary to what client had claimed that they showed up on August 26 [sic] at hotel and was told booking was not done) even though accommodation was booked. This worker had verbally advised spouse [name] about details of the hotel booking on August 22, and client and spouse also were given information of booking in person when they came and picked up cheque on August 22. Hotel confirmed will bill the ministry for client's no-show.
3. 3 versions of the appellant's Request for Non-local Medical Transportation Assistance, all with the same substantive information, one dated 12 August 2016, and 2 dated 22 August 2016, the latter as provided to the appellant as a result of the FOI request, with one of the latter showing the spouse as patient and the appellant as applicant and one vice versa.
4. Screenshots of 2 pages of the appellant's social media page, showing her distressed state of mind after learning that they had no booking at Hotel A.

The hearing

The appellant did not attend the hearing due to her chronic medical condition. She was represented



by an advocate and her spouse appeared as a witness.

At the hearing, the appellant's advocate provided coloured, more legible copies of the screenshots submitted at reconsideration and before the hearing.

The appellant's spouse began by explaining that he is the primary in-home caregiver of the appellant, who has a serious chronic medical condition. He described the level of care he provides. He explained that it is essential that when the appellant visits the specialist she needs to be well rested so that the tests she has during the appointment do not give misleading results. Thus the need for overnight accommodation before seeing the specialist.

The appellant's spouse reviewed their interactions with the ministry on 22 August 2016, the day they had to leave for the medical appointment the next day, along the same lines as he described in his submission at reconsideration. He went on to state that, while he was fully aware that the ministry had made reservations for them at Hotel A, he was not given a booking number or anything in writing to this effect.

The appellant's spouse explained that the appellant is not able to sit for prolonged periods. Usually on this drive to a medical appointment they would stop for a rest 2 or 3 times, but with their delay in leaving they made only one rest stop in a city en route. The stated that during this stop, he called Hotel A to attempt to confirm the reservation there and was told that there was no such reservation. He then called Hotel B to determine if the reservation he made in connection with their original 12 August 2016 application still stood and was advised it was still available. He then again called Hotel A to double-check (speaking to another person) if there was a reservation in either of their names or some permutation thereof, and was again advised that there was no reservation. Finally he called Hotel B to confirm that they would take up the reservation still available there. .

The appellant's spouse acknowledged that the couple did not "show" in person at Hotel B, explaining that given the results of the phone calls he did not see much point in doing so, particularly as he was anxious to have his chronically ill wife settled for the night to be properly rested for her appointment with the specialist the next day.

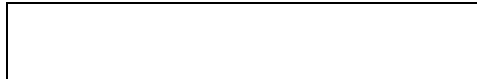
The balance of the testimony by the appellant's spouse and the summary by her advocate went to argument (see Part F, Reasons for Panel Decision, below).

The ministry stood by its position at reconsideration. The ministry representative stated that the ministry had paid the bill from Hotel B.

Admissibility of new information

The panel finds the information following information is in support of the records before the ministry at reconsideration as this information tends to corroborate information provided by the appellant in her Request for Reconsideration and by the ministry in its section of the Request for Reconsideration:

- That provided by the appellant in her Notice of Appeal,
- By her advocate, with the records from the ministry as a result of the FOI request,
- By the appellant's spouse in his submission on appeal regarding the worker not handing him



the confirmation letter and in his testimony at the hearing regarding his telephone conversations with Hotel A, and

- The clearer screenshot of the spouse's phone calls submitted at the hearing.

The panel therefore admits this information as evidence under section 22(4) of the Employment and Assistance Act.

The panel accepts as argument the balance of the submission by the appellant's spouse on appeal and that portion of the his testimony on appeal relating to his interactions with ministry workers before he picked up the cheque for fuel costs, and the appellant's social media entries.

PART F – Reasons for Panel Decision

This appeal relates to the appellant's request for reimbursement of the costs of a hotel stay in connection with an authorized non-local medical transportation supplement provided under section 62 and Schedule C section 2(1)(f) of the EAPWDR. The ministry provided the appellant funds for fuel for the trip, and reserved accommodation for her for 22 August 2016 at Hotel B because this hotel was the least expensive available. The issue is whether the ministry was reasonable in denying the appellant's request for a stay at another hotel.

More specifically, the issue is whether the following ministry determination is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant: as Hotel A has confirmed that there was a reservation for the appellant and that she failed to show, and as the ministry is required to pay for the one night stay regardless, the ministry is satisfied that the appellant was assisted for the least expensive mode for transportation and that therefore her request for reimbursement for a stay at another hotel was denied.

The applicable legislation is from the EAPWDR:

General health supplements

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,
- (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 is a continued person.

And from Schedule C of the EAPWDR:

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 appellant's position

The position of the appellant, as explained by her advocate and by her spouse at the hearing, is that she and her spouse exercised due diligence by applying for the non-local medical transportation

assistance on 12 August 2016, fully 10 days before their planned departure on 22 August 2016, the day before her scheduled appointment with the specialist. However, the ministry only began to review the application on 22 August 2016. In the process, there were several aggravating telephone conversations with different ministry workers on the morning and into the afternoon of their planned day of departure. The request for assistance was finally approved and they were able to attend the ministry office to pick up to the cheque for fuel and begin their journey in midafternoon, much later than planned. They acknowledge that they were informed of the reservation at Hotel A, but they were not given anything in writing concerning the reservation or even provided the booking number.

The appellant's advocate argued that the appellant's spouse further exercised due diligence by phoning Hotel A during a rest stop to confirm the reservation at that hotel. Indeed, the evidence is that he phoned twice. On both occasions he was advised that the hotel did not have a record of the ministry's booking for that evening. Being aware of the ministry's "least expensive" requirement, and having determined during the course of his conversations with Hotel A that Hotel B offered a lower rate, (at least in terms of standard rates, government rates being unavailable to them), the appellant and her spouse again acted responsibly by choosing to stay at Hotel A.

The appellant submits that given this background the ministry was unreasonable in denying her reimbursement for the stay at Hotel A.

The ministry's position

In the reconsideration decision, the ministry noted that the appellant's spouse had indicated that they wanted to stay at Hotel B for \$182 per night and that the ministry advised that Hotel A was more economical and offered the equivalent of the cost for that hotel to him and he could pay the balance if they chose to stay at Hotel B. The ministry further noted that her spouse agreed to the stay at Hotel A and the ministry confirmed the booking for one night on 22 August 2016, citing the booking number in the decision.

The ministry also noted that on 26 August 2016 the appellant's spouse advised that they had trouble with their accommodations and Hotel A was not booked. Her spouse provided a receipt for Hotel B for \$182.85 and requested the ministry reimburse them for their stay on 22 August 2016.

The ministry further noted that on 30 August 2016 it confirmed with Hotel A that the appellant did have a reservation there for 22 August 2016; however they failed to show. The ministry would be required to pay for the one night accommodation. Further the ministry noted that the appellant had been provided all of the pertinent details of the hotel booking for that night when they picked up the medical transportation funds for fuel.

The position of the ministry, as set out in the reconsideration decision, is that the appellant was eligible to receive a health supplement for transportation to attend her appointment with the specialist in another city. The ministry provided her with funds for fuel and reserved accommodation for 22 August 2016 at Hotel A because it was the least expensive mode of transportation. Hotel A has confirmed there was a reservation for her and that she failed to show. As a result, the ministry is required to pay for the one night stay regardless. The ministry is satisfied that she was assisted for the least expensive mode of transportation and accordingly her request for reimbursement for the stay at the Hotel B was denied.

Panel decision

The panel has reviewed the information provided by the appellant's spouse at reconsideration and at the hearing regarding his interactions with the ministry leading up to the ministry's approval of the appellant's non-local medical travel request, originally submitted on 12 August 2016 and approved on 22 August 2016. The panel considers relevant to this appeal that it took some time, and several interactions with the ministry, to sort out various aspects of the appellant's request, and it was only in the early afternoon of the day of travel, 22 August 2016, that the ministry ultimately approved the request. At that point, the appellant and her spouse were provided a cheque for fuel, and verbal information that the ministry had confirmed over-night accommodation for them at Hotel A. The appellant stated in her Request for Reconsideration that the appellant and her spouse were only verbally told that they had this reservation. There is no reference on the ministry records made available to the appellant through their FOI request that they were given any written confirmation of this booking, including most crucially the booking number that the hotel had provided the ministry when it made the reservation earlier that day and which is noted in the ministry records and in the reconsideration decision. While the ministry states in the reconsideration decision that the appellant "had been provided all the pertinent details for the one night accommodation," at the hearing the ministry did not dispute that written confirmation was not provided the appellant.

In the reconsideration decision, the ministry relies on receiving information from Hotel A that the appellant and her spouse did have a reservation and that they "failed to show." However, the ministry did not address or take into account that in her Request for Reconsideration the appellant stated: "...we stopped [in a city en route] to phone to confirm the reservation & were told there was no reservation." At reconsideration the appellant also provided a copy of a screenshot of her (or that of her spouse) cell-phone display showing a 4 calls made around 5:00 pm. At the hearing, the appellant's spouse explained that he first called to Hotel A to attempt to verify the reservation there; then a call to Hotel B to determine if the their reservation made in connection with the original 12 August 2016 still stood; then again to Hotel A to double-check (speaking to another person) if there was a reservation in either of their names or some permutation thereof; and finally to Hotel B to confirm that they would take up the reservation still available there. At the hearing, the appellant's spouse confirmed the appellant's statement at reconsideration that they were advised that there was no reservation at Hotel A in either of their names. The panel finds this information credible, given that the appellant and her spouse substantiated making these calls with the screenshot of the cell-phone display.

The appellant's spouse acknowledged at the hearing that the couple did not "show" in person at Hotel A, explaining that given the results of the phone calls he did not see much point in doing so, particularly as he was anxious to have his chronically ill wife settled for the night to be properly rested for her appointment with the specialist the next day. The panel accepts as reasonable the appellant's argument that phoning ahead en route to attempt to confirm the reservation made by the ministry was equivalent to trying to check in at Hotel A and being told that there was no reservation. In the panel's view, considering that the appellant was twice advised over the phone that there was no reservation in either of their names, particularly as the appellant did not have the booking number, it is unreasonable under the circumstance for the ministry to have concluded that the couple "failed to show."

On the basis of this evidence, the panel finds that the ministry was also unreasonable in not considering the likelihood that some mix-up had occurred when the appellant's spouse phoned the hotel to verify the reservation. Further, the ministry has not provided any information that in contacting Hotel A on 26 August the ministry discussed whether there was any records or recollection of the appellant's spouse phoning the hotel to verify the reservation and being told none was on record, or whether it were possible that he would have been told this by mistake. There is no dispute that the ministry made a reservation at Hotel A for the night of 22 August 2016 for the appellant, and the evidence suggests the responsibility for the mix-up rests with Hotel A, though the appellant not being advised of the booking number that they could have used as a reference in their phone calls to the hotel likely played a part in this mix-up. The panel also cannot discount the possibility that the reference to the other name in the confirmation letter might have contributed to any confusion.

The panel considers that the hotel billing the ministry for the reservation while advising the appellant that no reservation had been made is a matter between the ministry and the hotel, and not a burden to be placed on the appellant. The panel also recognizes that sometimes such administrative mix-ups simply happen.

Section 62 of the EAPWDR authorizes the minister to provide a health supplement set out in section 2 of Schedule C to or for a family unit in receipt of disability assistance. Section 2 of Schedule C states that non-local medical transportation to visit the office of the nearest available specialist is a health supplement that may be paid for by the minister if provided to a family unit that is eligible under section 62. However, in the panel's view, given the evidence pointing to a mix-up by the hotel, what the ministry was billed for, and paid for, was a *reservation*, not an actual *stay* provided to an eligible family unit as part of the "mode of transportation."

The ministry also had before it the explanation provided by the appellant's spouse that he was told by Hotel A during one of the phone calls that their [standard] rate was \$189 per night and that a credit card was needed, while the rate at the other hotel was less and that a credit card was not required. For these reasons, and because they could not claim government rates, they opted to stay at the less expensive hotel.

Based on the foregoing, the panel finds that the ministry was not reasonable in determining that the appellant was assisted for the least expensive mode for transportation, as there was sufficient evidence before the ministry at reconsideration that the reservation made by the ministry was not available to her. Given the explanation regarding the rates for the two hotels as described above, the panel finds that the ministry's decision to deny her request for reimbursement for a stay at the other hotel is not reasonably supported by the evidence. The panel therefore rescinds the ministry's decision in favour of the appellant.