

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) September 28, 2016 reconsideration decision denying the appellant’s request for a health supplement for transportation because the ministry determined that the eligibility requirements in Schedule C, Section 2(1) and Section 62 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) had not been met. Specifically, the ministry determined that the appellant had not:

- attended the office of a medical practitioner or nurse practitioner in her local area;
- been referred to the nearest available specialist by a local medical practitioner;
- been referred to the nearest suitable general or rehabilitation hospital or suitable hospital as defined by the *Hospital Insurance Act*; or
- demonstrated that she had no available resources to cover the cost.

## PART D – Relevant Legislation

EAPWDR Section 62, Schedule C Section 2 (1) (f)

## PART E – Summary of Facts

The appellant is a single recipient of disability assistance (PWD).

The evidence before the ministry at reconsideration included the following:

- written request by the appellant for non-local medical transportation assistance dated July 13, 2016;
- appellant's request for reconsideration received by the ministry on September 9, 2016 in which the appellant states:
  - she lives in Municipality A, which is a small village approximately 70 km from the city for which she requested a health transportation supplement (Municipality D);
  - there are no doctors in Municipality A other than locums who are not accepting new patients;
  - she is prescribed medications that include a narcotic pain medication, but there is no practitioner licensed to dispense narcotic medications in Municipality A;
  - the nearest town (Municipality B) does not have the necessary medical care facility;
  - the appellant's general practitioner (gp), and her several specialists practice medicine in Municipality D;
  - the appellant's gp is licensed to dispense the appellant's narcotic medication.
- handwritten note from the appellant's gp dated September 7, 2016 stating that the appellant was seen for medical care not available in Municipality B.

At the hearing the appellant provided:

- a document from the BC College of Physicians & Surgeons stating that currently there are only 2 physicians taking new patients in Municipality C, which is 25 km closer to the appellant's home than Municipality D;
- oral evidence from the appellant stating that her advocate had telephoned the offices of the two Municipality C doctors listed as available and was informed that they are not taking new patients;
- a copy of a placard distributed by the Municipality A regional health care society, which read: "\$5,000.00 reward for information leading to the capture of a G.P. physician that will practice in [the area of Municipality A] for a minimum of 3 years." The placard lists a website for further information.

The panel determined that the two documents and the oral evidence submitted by the appellant at the hearing were admissible under Employment and Assistance Act Section 22 (4 )(b) as evidence in support of the information before the ministry at the time of reconsideration because they related directly to the comment raised by the ministry in the reconsideration decision that the patient had not explored the option of finding a medical practitioner in Municipality C.

The ministry relied on the reconsideration decision.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry reconsideration decision of September 28, 2016 denying the appellant's request for a health supplement for transportation because the ministry determined that the eligibility requirements in Schedule C, Section 2(1) and Section 62 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) had not been met. Specifically, the ministry determined that the appellant had not:

- attended the office of a medical practitioner or nurse practitioner in her local area;
- been referred to the nearest available specialist by a local medical practitioner;
- been referred to the nearest suitable general or rehabilitation hospital or suitable hospital as defined by the *Hospital Insurance Act*; or
- demonstrated that she had no available resources to cover the cost.

Relevant legislation:

### **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

#### **Schedule C – 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.

During the hearing the appellant withdrew her argument that her gp's clinic in Municipality D was a "hospital" as defined in the *Hospital Insurance Act* and *Regulation* but maintained that her gp is a "medical practitioner in the local area" because Municipality D is the nearest place in her local area where there is a medical practitioner licensed to dispense her prescribed medication.

The ministry's argument is contained in the reconsideration decision, summarized as follows:

1. although the ministry accepts that there are no family doctors available to the appellant in Municipalities A or B, Municipality D is not the nearest community to the appellant where she could access a general practitioner because Municipality C is 25 km closer to the appellant's home;
2. the appellant's gp is not a "specialist" as defined by the legislation;
3. the gp's clinic is not a "hospital" as defined by the *Hospital Insurance Act*;
4. expenses for routine medical visits are to be met through monthly support assistance and the appellant has not indicated that she does not have sufficient funds to cover the cost.

### Panel Decision

To be eligible for a health supplement for transportation under EAPWDR Schedule C, Section 2 (1) a person must meet Criterion 4 and at least one of the criteria listed in Numbers 1-3 above, namely that she must be attending:

1. the office of a medical practitioner in her local area; or
2. the office of the nearest available specialist; or
3. the nearest general or rehabilitation hospital as defined by the *Hospital Insurance Act* or *Regulation*.

The panel finds that the ministry reasonably determined that the appellant's gp is not a specialist as defined by Schedule C of the EAPWDR (# 2, above) and that the clinic in Municipality D where the appellant attends is not a hospital by any legislative definition relevant to this appeal (#3, above).

The remaining criterion (#1, above) requires that the appellant be attending the office of a medical practitioner in her local area. In the reconsideration decision the ministry conceded that there are no family doctors available to the appellant in Municipalities A or B, but implied that the appellant should have accessed the nearest family doctor in Municipality C because it is closer than Municipality D. In so doing, the ministry has suggested that the term "local" includes Municipality C, which is approximately 45 km from the appellant's home. The appellant has provided evidence from the BC College of Physicians & Surgeons that there is no family doctor in Municipality C who is accepting new patients. Because there is no physician available to the appellant in Municipalities A, B or C Municipality D becomes the appellant's "local area". Otherwise the appellant cannot access the office of a medical practitioner. The panel therefore finds that the ministry's determination that the gp's office in Municipality D was not the office of a "local" medical practitioner was an unreasonable application of the applicable legislation in the circumstances of the appellant.

However, the legislation also requires that a person seeking a health supplement for travel have no resources available to cover the cost of transportation (# 4, above). The appellant has not offered evidence to indicate that she has no resources to cover the cost of travel. The panel therefore finds that the ministry reasonably determined that the appellant failed to demonstrate that she had no resources available to cover the cost.

In conclusion, the panel finds that although the ministry did not reasonably determine that the appellant failed to meet one of the criteria set out in EAPWDR Schedule C Section 2 (1) (f) (i) – (iv) the ministry reasonably determined that the appellant was not eligible for a travel health supplement because she failed to meet subsection (vi), in that she failed to demonstrate that there were no resources available to cover the cost.

The panel therefore confirms the reconsideration decision of the ministry.