

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 30 September 2016 that denied the appellant's request for non-local medical transportation assistance for hotel accommodation for the period 10 to 13 September 2016. The ministry determined that the appellant did not meet one of the criteria for medical transportation assistance as set out in section 2(1)(f) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation. In particular, the ministry found that the information provided did not establish that there are no resources available to the appellant's family unit to cover the cost, as required under sub-paragraph (iv) of section 2(1)(f), either because the appellant could have stayed with a friend or that ICBC would cover the cost of the hotel accommodation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 5.

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

Background

The decision under appeal relates to the appellant's request for non-local medical transportation assistance for hotel accommodation for the period 10 to 13 September 2016.

The following chronology sets the context for this request:

- 01 – 07 September 2016: The ministry had provided non-local medical transportation assistance to the appellant for travel from his home for a stay at Hospital A in another city. The appellant's wife travelled with him and stayed with a friend.
- 07 September: The appellant was discharged from Hospital A late in the afternoon. In the early evening, he had a fall and was taken to the ER at Hospital B. He was discharged from that hospital shortly before midnight. He stayed at a hotel that night, at his own expense.
- 08 – 09 September: The ministry paid for the appellant's hotel accommodation. On 08 September the appellant had a medical appointment. On 09 September he was hit by a bus, resulting in a visit to the ER at Hospital C.
- The appellant requested ministry assistance for ongoing hotel accommodation as he had an appointment with a specialist on 12 September and was scheduled for other tests and appointments on 15 and 22 September.

The request for ongoing accommodation for the September 15 appointment and thereafter has been assessed separately by the ministry and is not the subject of this appeal.

Information before the ministry at reconsideration

The ministry had before it the following information relevant to this appeal:

- The appellant is a recipient of disability assistance.
- A Discharge – Transition Planning Record completed by a nurse at Hospital A dated 7 September 2016. Under Discharge destination, the nurse notes, "Staying @ a friends house."
- A Medical Certificate dated 08 September 2016 written by a physician, who states, "Due to the fact that [the appellant] cannot weight bear at the present time he must stay in [City] for the next 2 weeks and shall be assessed again then."
- From the reconsideration decision: In reviewing the appellant's file notes on 11 September 2016 a ministry worker noted that from the "after-hours contact centre, the appellant phoned the ministry explaining that he continued to stay in a hotel in [City], but that ICBC will be paying for the hotel. On 12 September he explained to a ministry worker that he was involved in an accident with a bus and was injured. Ministry notes specify that the appellant was hit by a bus on 09 September 2016 and that any further stay in [the City] would be funded by ICBC.
- The appellant's Request for Reconsideration dated 16 September 2016. He writes:

[Redacted]

“On September 1, 2016 I was admitted to [Hospital A] for observation and tests. On 7th of September I was discharged from the hospital. I had another fall that evening and was taken by ambulance to [Hospital B] where I was examined and discharged again. I had nowhere to stay and I talked to Ministry after hours and they said that they could not do anything except put me in a shelter at 5 am the next day. I said I was going to a hotel and would pay for it myself and then talk to the ministry in the morning. The ministry paid for 2 night's hotel. I then submitted my doctor's note stating that I am unable to weight bear on my knee and that I should remain in [City] for 2 weeks and then would be reassessed at that time.” He then goes on to explain future appointments

Information submitted on appeal

- The appellant’s Notice of Appeal is dated 11 October 2016. Under Reasons for Appeal, the appellant writes”

“The situation changed when I was discharged from hospital and my friend could only accommodate us for one night and it was a couch. ICBC refused from day one to cover hotel costs.”
- A “To whom it may concern” letter dated 11 October 2016 from a law firm stating:

“ Please be advised that we represent [the appellant] with respect to a motor vehicle collision on September 19 *[sic]*, 2016.
[The appellant] stayed at a hotel in [City] from September 9 – 30th due to injuries and medical appointments. We requested reimbursement from ICBC and they have refused to pay this cost.”
- A “To whom it may concern” letter dated 14 October 2016 from a friend. She writes:

“I am a friend of [the appellant’s wife and the appellant] and had offered them a place on my couch for the few hours that they needed before [they left for] home on September the 7th.
This is not a regular situation and I am not usually available to house a guest as I have 3 children who are up at all hours of the day and night.”

The hearing

Regarding the “staying with a friend” issue, the appellant stated:

- While he has sometimes stayed with his friend when visiting [City] for medical appointments, this is not always the case: it depends on whether it’s convenient for her. His wife was able to stay during the 01- 07 September period because one of the friend’s children was visiting elsewhere.
- He had planned to stay with the friend the night of 07 September, then leave for home the next morning, but things changed. He had the fall shortly after being discharged from Hospital A and ended up in the ER at Hospital B. By the time he was discharged from there, it was too late to call the friend, so he stayed at a hotel.
- He does not have a discharge report from Hospital C following going there after being hit by a bus on 09 September. The only reference about staying with a friend in a discharge report from his visits to hospitals is contained in that from Hospital A on 07 September.
- He relies on a wheelchair for mobility, and is awaiting knee replacement for both knees. While his friend’s home is wheelchair accessible, he cannot use crutches and it’s all he can do to go to the bathroom. However, that is not the issue – the friend’s home was simply not available

during the period under consideration.

As to ICBC covering the costs of hotel accommodation, the appellant stated:

- The reference in the letter from the law firm to a motor vehicle collision on September 19, 2016 was a typographical error. The correct date is September 09, 2016, as is clear from the next paragraph of the letter.
- He never definitively advised the ministry that ICBC would cover the costs of his hotel accommodation. He would have expressed this in terms of “expected that” or “hoped that.” In the event, ICBC has somehow taken the position that he was at fault in the accident with the bus.
- The reason for the need for his extended stay in [City] was his pre-existing medical condition and the need for further tests after his fall on 07 September, not because of injuries sustained in being hit by the bus.

Admissibility of additional information

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence the information and records that were before the minister when the decision being appealed was made and “oral or written testimony in support of the information and records” before the minister when the decision being appealed was made. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA - to determine whether the ministry’s reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry’s decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

In this case, the panel finds that the information regarding ICBC not paying his hotel costs in the appellant’s Notice of Appeal, in the letter from the law firm, and in his testimony at the hearing, is in conflict with the ministry records that show that the appellant advised the ministry that ICBC would fund his hotel costs. As this information submitted on appeal cannot be said to substantiate or corroborate the records before the ministry at reconsideration, the panel does not admit this information as evidence.

The panel finds that the information in the Notice of Appeal, in the letter from the friend, and in the appellant’s testimony at the hearing relating to not staying with his friend is new information. It cannot be said to corroborate or substantiate any information or records before the ministry at reconsideration. The panel therefore does not admit this information as evidence.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable in denying the appellant's request for non-local medical transportation assistance for hotel accommodation for the period 10 to 13 September 2016 because the ministry determined that the appellant did not meet all the criteria for medical transportation assistance as set out in section 2(1)(f) of Schedule C the EAPWDR. 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:

- that the information provided did not establish that there are no resources available to the appellant's family unit to cover the cost, as required under sub-paragraph (iv) of section 2(1)(f) of Schedule C, either because the appellant could have stayed with a friend or that ICBC would cover the cost of the hotel accommodation.

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 ministry's position

The position of the ministry, as set out in the reconsideration decision, is that in the hospital discharge report dated 09 September 2016, the nurse indicates that the appellant is staying with friends. The ministry considers this an alternate resource that he used or could have used instead of incurring hotel costs. It is noted that the appellant's file indicates that although his wife stayed with friends, he may not have due to their residence not being wheelchair accessible. The ministry notes that the appellant is only able to weight bear on one knee but it is unclear why he was unable to use crutches to access non-wheelchair accessible buildings.

Further, in the reconsideration decision the ministry notes that the appellant explained that he was involved in an accident where he was hit by a bus and mentioned that ICBC was providing funding to him for accommodations. He provided no further detail of ICBC's involvement with funding and the ministry therefore does not have information to establish that he did not receive medical transportation funding [from ICBC] for his stay in [City]. The ministry stated that legislation requires that the appellant demonstrate that there are no resources available to cover his medical transportation costs. The ministry has no evidence that ICBC did not cover these costs or evidence that he applied to ICBC in an effort to have them cover the cost.

The appellant's position

The appellant's position, as explained at the hearing, is that the issue was not wheelchair accessibility at the friend's home – he had stayed there before and he planned on staying there on the night of 07 September 2016 before he had his fall and had to go to hospital – but simply one of availability. He argues that the ministry erred in referring to the hospital discharge report as dated 09 September 2016, as this would have been from the hospital where he was taken after his bus accident: he was not given any such discharge report. The ministry must have been referring to the discharge report dated 07 September 2016 when he left Hospital A. He submits that the ministry knew of his fall and subsequent visit to the ER at Hospital B and his bus accident two days later, and that it would be a stretch to assume that his plans on leaving Hospital A still held 3 days later. In any event, the letter from his friend submitted on appeal clearly shows that he was not able to stay with her after 07 September 2016. Therefore the ministry was unreasonable in concluding that staying with a friend was “an alternative resource.”

The appellant's position is also that the ministry was unreasonable in denying his request on the basis a *possible* ICBC settlement, the amount and timing of which uncertain.

Panel decision

The panel notes that there are two inconsistencies between the reconsideration decision and the information before the ministry at reconsideration:

- The panel notes that there is no copy of a discharge report from the hospital dated 09 September 2016. The ministry referred to a discharge report that stated that the appellant would be staying with friends. The only discharge report with an entry to that effect is that of 07 September 2016 from Hospital A. As the appellant explained, he was forced to change his plans for that night when he had a fall and was admitted to the ER at Hospital B.
- The ministry states that its information is that the appellant can only weight bear on one knee. The physician's Medical Certificate before the ministry states only that the appellant “cannot weight bear at the present time [08 September 2016].” There is no reference to the restriction applying only to one knee.

In the context of the discussion below, the panel finds that these inconsistencies are not material to the panel's decision.

A general principle in administrative law is that it is the responsibility of an applicant for a public benefit to provide the information required to establish eligibility. In this case, the ministry had the obligation to consider whether the information provided through the appellant's request for non-local

medical transportation assistance for hotel costs for the 10 – 13 September 2016 period met the “no resources available” criterion in the legislation. As the appellant is a recipient of disability assistance, the availability of the appellant’s own financial resources was not an issue. However, the ministry had before it information that pointed to the appellant having other resources available to him, raising questions as to whether the appellant met the criterion.

Taking into account the discussion in Part G above under *Admissibility of additional information* regarding the jurisdiction of the panel being limited to determining if the ministry’s decision is reasonable based on the admissible evidence and the legislation, and not assuming the role of decision-makers of the first instance, the issue here is not whether the appellant satisfactorily addressed these questions on appeal. Rather the issue, as stated at the beginning of Part F above, is whether the ministry was reasonable in its determination that that the information provided did not establish that there are no resources available to the appellant’s family unit to cover the cost – that is, whether the questions raised by the ministry were reasonable grounds for denying the appellant’s request.

The ministry had before it information that the appellant’s wife stayed with a friend while he was in hospital from 01 to 07 September 2016 and that he planned to stay there on leaving that hospital. The ministry also knew of the appellant’s fall and subsequent admittance to the ER at another hospital on 07 September and his bus accident on 09 September, and that he stayed in a hotel the nights of 07, 08 and 09 September with the ministry paying for the latter two nights. The ministry raised the possibility that not staying with the friend might be because of unexplained medical/mobility reasons. Despite the intervening events of 07 – 09 September, considering that his wife stayed with the friend and that he planned to stay there on leaving the hospital on 07 September, the panel finds that the ministry was reasonable in expecting the appellant to provide information, including any supporting medical documentation as necessary, as to why staying with the friend for the requested 10 – 13 September period was not a “resource available.”

The ministry was informed by the appellant that ICBC would cover his hotel costs. This would mean that he would have a “resource available.” The appellant’s Request for Reconsideration is dated 16 September 2016, or after the period at issue. Considering his earlier statements to the ministry, the appellant had the opportunity to advise the ministry on the status of any claim and dispel any misunderstandings in that connection. Taking into account his earlier statements that ICBC would cover the hotel costs, the panel finds that the ministry was reasonable in finding that the information before the ministry at reconsideration did not establish that ICBC was not a “resource available.”

Conclusion

Based on the foregoing, the panel finds that the ministry’s decision to deny the appellant’s request for non-local medical transportation assistance is reasonably supported by the evidence and is reasonably supported by the legislation in the circumstances of the appellant. The panel therefore confirms the ministry’s decision. The appellant’s appeal is not successful.