

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated November 7, 2016, which denied the appellant's request for a supplement to cover the cost of transportation to an office of a physiotherapist.

The ministry found that the request for a health supplement to cover the least expensive appropriate form of transport to receive physiotherapy services in an adjacent community did not meet the legislated requirement of Schedule C, Section 2(1)(f) of the *Employment and Assistance Regulation* (EAR) because:

- A physiotherapist is not a medical or nurse practitioner and the travel is not within the appellant's local area [Section 2(f)(i)];
- A physiotherapist is not a specialist in a field of medicine or surgery [Section 2(f)(ii)]; and
- There is no information that the physiotherapist is located in a general or rehabilitation hospital and that the appellant would receive a benefit under the *Medicare Protection Act* or the *Hospital Insurance Act* [Section 2(f)(iii),(iv) and (v)].

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Sections 67, and Schedule C, Sections 1 and 2(1)(f)

Interpretation Act, Section 29

PART E – Summary of Facts

The appellant is a single recipient of income assistance with a Persons with Persistent Multiple Barriers (PPMB) designation.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Undated Request for Non-Local Medical Transportation Assistance in which the appellant requested travel by personal vehicle from her community to another community for a series of appointments (“2 days a week”; specific dates not identified) at a physiotherapy and rehabilitation centre, with no named referring medical or nurse practitioner;
- 2) Letter from the appellant’s medical practitioner (MD) dated October 21, 2016 indicating that the appellant has been prescribed post-operative physiotherapy and that there is no physiotherapy available at the hospital in the appellant’s community so her only alternative is private physiotherapy in an adjacent community; and
- 3) Request for Reconsideration dated October 21, 2016.

In her Request for Reconsideration the appellant wrote that she would like the ministry to reconsider its decision and that:

- Local public transit to the physiotherapy location is not available; and
- She barely has enough to feed herself and wants to return to work as soon as possible.

Additional Information

In her Notice of Appeal dated November 10, 2016, the appellant wrote that she disagrees with the ministry's reconsideration decision because she cannot afford to go to her physiotherapy appointments unless the ministry pays the costs, and therefore she will not fully recover from her surgery and not be able to return to work. She also indicates that the legislation needs to be changed.

No additional written evidence was presented at the hearing by either the appellant or the ministry.

At the hearing, the appellant stated she has been off work for four years and she had been denied workers compensation benefits. She has recently had surgery requiring a 4 to 6 week recovery period and that after 8 to 10 weeks she would be able to return to work if she was able to get the physiotherapy services that she requires. In total, 10 physical therapy sessions were required. While she did attend four physiotherapy appointments in the two weeks immediately following her surgery, the appellant explained that she is no longer receiving the physiotherapy that she requires because the ministry did not approve a health supplement for physiotherapy services or the cost of transportation to the nearest physiotherapy office and because she does not otherwise have the resources available to cover those costs.

The appellant stated that she had no other options to get the physiotherapy she needs as there are no other programs available to her. She said that her MD had tried to get her into physiotherapy at the general hospital in the adjacent community without success.

Through her representative, the appellant explained that there was no public transportation between

the appellant's community and the adjacent community, so the appellant has to rely on her family to provide her with a private vehicle so that she could attend the physiotherapy sessions. Therefore the cost of transportation was limited to the cost of fuel for the private vehicle. The appellant's extended family comprises herself and her parents who are retired and on a limited income. As a result the ministry is the last resource.

The appellant's representative suggested that the legislation did not make any sense because there was no opportunity to receive the physiotherapy services in the appellant's community only because, even though facilities exist to provide physiotherapy in a hospital in the appellant's community, the surgery was to a part of the appellant's body that did not qualify the appellant to receive physiotherapy at that hospital. The appellant's representative said that she (the appellant's representative) knew that some physiotherapy services were being provided at the local area hospital because the appellant's representative was receiving physiotherapy there for an injury to a different part of her body.

The appellant said that she thinks that the ministry's denial of the benefit also does not make any sense because without the physiotherapy she is not going to recover from recent surgery and she will have to remain on social assistance as she will not be able to return to work.

At the hearing, the ministry relied on its reconsideration decision and explained that the ministry did not have any discretion in this case: it can only approve or deny a request for a health services supplement based on what the legislation allows. With respect to the transportation costs which are the subject of this appeal, Schedule C Section 2(1)(f) does not permit funding of those costs because the services are not being provided in the local area, they are not being provided by a medical practitioner or a nurse practitioner, they are not being provided in a hospital, and the transportation is not required to receive a benefit under the *Medicare Protection Act*.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of transportation to an office of a physiotherapist as the ministry found that the request for a health supplement did not meet the legislated requirement of Schedule C, Section 2(1)(f) of the EAR, was a reasonable application of the applicable legislation in the circumstances of the appellant, or was reasonably supported by the evidence.

Under Section 67 of the EAR, the applicant must be a recipient of income assistance. If that condition is met, Schedule C of the EAR specifies additional criteria that the person's family unit must meet in order to qualify for specified general health supplements.

In this case, the requirements of Schedule C, Section 2(1)(f), which apply to transportation costs are at issue, as follows:

(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 67 [*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.

Section 29 of the *Interpretation Act* provides as follows:

Expressions defined

29 In an enactment:

... "**medical practitioner**" means a registrant of the College of Physicians and Surgeons of British Columbia entitled under the *Health Professions Act* to practise medicine and to use the title "medical practitioner";

"**nurse practitioner**" means a person who is authorized under the bylaws of the College of Registered Nurses of British Columbia to practise nursing as a nurse practitioner and to use the title "nurse practitioner" ...

Section 1 of Schedule C of the EAR provides as follows:

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*.

Section 67 of the EAR provides as follows:

General health supplements

67 (1) The minister may provide any health supplement set out in section 2 [general health supplements] ... of Schedule C to ...

(a) a family unit in receipt of income assistance, if

(i) the family unit includes a qualifying person ...

Appellant's Position

The appellant's position is that she should receive the transportation supplement and the physical therapy service funding because there are no facilities for the required physiotherapy in her local community, because she does not have the resources to cover the cost of those services or the transportation to the community where she would receive the services, and she needs the physiotherapy so that she can fully recover and return to work.

Ministry's Position

The ministry's position is that the appellant, designated as a PPMB, is eligible to receive health supplements under Section 67 of the EAR; however, the appellant's request for a supplement to cover the cost of transportation for a series of appointments with her physiotherapist does not meet all of the requirements specified in Schedule C, Section 2(1)(f) of the EAR.

The ministry argued that a physiotherapist is not a medical or nurse practitioner as defined in the legislation (in this case, the *Interpretation Act*) and the appellant is not seeking transportation to an office in her local area, as required by Section 2(f)(i) of Schedule C.

The ministry argued that the appellant is not seeking transportation to the office of the nearest available specialist in a field of medicine or surgery pursuant to Section 2(f)(ii) of Schedule C, as physiotherapist is not a specialist in a field of medicine or surgery. The ministry argued that there is no information indicating that the physiotherapist is located in a general or rehabilitation hospital and that the appellant would be eligible to receive a benefit under the *Medicare Protection Act* or the *Hospital Insurance Act* as required by Section 2(f)(iii),(iv) and (v) of Schedule C.

[]

The ministry acknowledged that there is sufficient information to establish that the appellant has no resources to cover the cost of the transportation pursuant to Section 2(f)(vi) of Schedule C.

Panel Decision

At the hearing the appellant argued that she should receive non-local medical transportation assistance and a health supplement paid for by the ministry for the required 10 visits to obtain the necessary physical therapy services.

The panel finds that the reconsideration decision under appeal is limited to the ministry's decision that the appellant is not entitled to non-local medical transportation assistance under Schedule C Section 2(1)(f) and does not include an appeal of any decision by the ministry with respect to a health supplement to cover the cost or partial cost of a physical therapy service under Schedule C Section 2(1)(c).

In order for a family unit to qualify for the cost of the least expensive appropriate mode of transportation, one of either Section 2(1)(f)(i), Section 2(1)(f)(ii), Section 2(1)(f)(iii), or Section 2(1)(f)(iv) of Schedule C of the EAR must apply. In addition, both Sections 2(1)(f)(v) and 2(1)(f)(vi) of Schedule C must both apply.

Section 2(1)(f)(i) of Schedule C of the EAR stipulates that the ministry may provide a health supplement for the least expensive appropriate mode of transportation to or from a local area office of a medical practitioner or nurse practitioner. In the undated Request for Non-Local Medical Transportation Assistance, the appellant requested travel by personal vehicle from her community to another community for a series of appointments on unspecified dates at a physiotherapy and rehabilitation centre, with no named referring medical or nurse practitioner. Included with her request for reconsideration was a letter from her MD confirming that he was the referring medical practitioner.

The requirement in Section 2(1)(f)(i) of the EAR is that the requested travel is specifically to or from the office of a medical or nurse practitioner, defined in Section 29 of the *Interpretation Act* as a person who is a registrant of the College of Physicians and Surgeons of British Columbia or is authorized under the bylaws of the College of Registered Nurses of British Columbia to practice nursing as a nurse practitioner, and there is no discretion provided to the ministry in the section to determine otherwise. The appellant did not dispute the ministry's finding that the physiotherapist identified in her request is not a registrant of the College of Physicians and Surgeons of BC or the College of Registered Nurses of British Columbia and is therefore neither a medical practitioner nor a nurse practitioner. The panel finds that the ministry's conclusion, that the appellant's request did not meet the requirements of Section 2(1)(f)(i) of Schedule C of the EAR as the proposed travel was not to an office of a medical practitioner or nurse practitioner in the local area, was reasonable.

Section Section 2(f)(ii) of Schedule C of the EAR sets out that the ministry may provide a health supplement for the least expensive appropriate mode of transportation to or from 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. As mentioned above, in her request for reconsideration the appellant provided a letter dated October 21, 2016 from her MD referring the appellant to a physiotherapist. However, as also mentioned above, a physiotherapist is

not a specialist as defined in Schedule C Section 1 of the EAR. The panel finds that the ministry reasonably concluded that the appellant's request did not meet the requirements of Section 2(1)(f)(ii) of Schedule C of the EAR as the requested travel was not to an office of the nearest available specialist in a field of medicine or surgery.

The appellant did not dispute that the physiotherapist is not located in a hospital, a general hospital or a rehabilitation hospital, as required by Section 2(f)(iii),(iv) and (v) of Schedule C. The panel finds that the ministry' reasonably determined that the appellant's request did not meet the requirements of Section 2(1)(f)(iii),(iv) and (v) of Schedule C of the EAR as the requested travel was not to the nearest suitable general hospital or rehabilitation hospital as defined in Section 1.1 of the Hospital Insurance Act Regulations or the nearest hospital as defined in Section 1(e) of the *Hospital Insurance Act* to receive a benefit under the *Medicare Protection Act*.

Conclusion

The panel finds that the ministry's reconsideration decision was a reasonable application of the applicable enactment in the circumstances of the appellant and was reasonably supported by the evidence. Therefore the panel confirms the decision and the appellant is not successful in her appeal.