

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the Ministry) reconsideration decision dated December 7, 2016, which denied the appellant's request for a supplement to cover the cost of transportation and living expenses to attend a hearing in another community.

The Ministry found that the request was for a medical transportation supplement to cover the cost to travel to another community in British Columbia (BC) to attend a hearing in court and did not meet the legislated requirement of Schedule C, Section 2(1)(f) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) because the appellant was not requesting travel costs to or from:

- An office, in the local area, of a medical practitioner or nurse practitioner [Section 2(1)(f)(i)];
- The office of the nearest available specialist in a field of medicine or surgery upon the reference of a medical practitioner or nurse practitioner [Section 2(1)(f)(ii)]; or
- The nearest general hospital or rehabilitation hospital as defined under section 1.1 of the Hospital Insurance Act Regulations, or the nearest suitable hospital as defined under section 1 of the *Hospital Insurance Act* [Section 2(1)(f)(iii) and(iv)].

In addition, the Ministry found that the travel was not necessary to enable the appellant to receive a benefit under the *Medicare Protection Act* or the *Hospital Insurance Act* [Section 2(1)(f)(v)].

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 5

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 17 and 55

PART E – Summary of Facts

The appellant is a single parent in receipt of Persons with Disabilities (PWD) assistance.

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

- 1) Scheduling Notice dated November 18, 2016 for a hearing to be held on November 25, 2016 under the *Family Maintenance Enforcement Act* in the Law Courts located in another BC community, describing the Notice as a “Summons to a Default Hearing” (the Hearing) and identifying the appellant as a party to the Hearing; and,
- 2) Request for Reconsideration dated November 28, 2016.

In her Request for Reconsideration the appellant wrote that she would like the ministry to reconsider its decision because the court documents and the judge made her a party to the case and that she would fax further documents.

Additional Information

In her Notice of Appeal (NOA) dated November (sic) 13, 2016, the appellant wrote that she disagrees with the ministry's reconsideration decision because “funds were issued and left at office from Kamloops supervisor. funds need form - provided. funds 2nd form requested.” At the hearing the appellant indicated that she had dated the NOA November 13, 2016 in error and that she had actually signed the NOA on December 13, 2016. She also confirmed that the reference to “funds ... issued and left at (the) office” related to a supplement for the cost of transportation to the community in which the default hearing was to be held (transportation cost) and the cost of accommodation in that community (living cost), and she was told by a ministry worker that a cheque was to be delivered to the Ministry's local office before the ministry subsequently decided that the appellant was not entitled to compensation for those costs. The panel accepted the NOA reasons as written information in support of records that were before the minister when the decision being appealed was made.

The ministry provided a written submission dated January 4, 2017 indicating that, while the ministry did not assess the appellant's request under section 55 of the EAPWDR in the reconsideration decision under appeal, the Ministry has since determined that the appellant is not eligible for the transportation supplement under that section. The panel determined that it does not have the authority under Part 3 of the *Employment and Assistance Act* to consider any Ministry decision other than the reconsideration decision under appeal, which in this case was the ministry's reconsideration decision denying a request by the appellant for what was described in that reconsideration decision as a request for a medical transportation supplement to cover the cost to travel to another community in BC to attend a hearing in court under Schedule C, Section 2(1)(f) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

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

At the hearing, the appellant stated that the court hearing she felt she had to attend was a family maintenance enforcement default hearing. She explained that she has two children and that the payor in default owed a significant amount in unpaid maintenance over many years. She said that there were 10 other earlier court hearings that she did not want or need to attend, but that a default

hearing is very important as it is the most extreme method of enforcing child support and can even involve the possibility of jail time for a payor in default. She pointed out that the Scheduling Notice identifies her as a party to the proceedings and the judge has indicated that she had to be there.

The appellant also stated that a several days before the hearing the local Ministry office had called to say that a cheque to cover transportation and living costs would be available for pick-up at the local ministry office within a few days. She subsequently received a call from the Ministry to say that her transportation and living supplement was not approved. She was under a lot of stress at the time because the day before the hearing she had an important medical appointment for an examination relating to a potentially serious medical condition. As she was not provided with the supplement she had no other option but to not attend the hearing. Her solicitor did attend the hearing on her behalf, but the appellant incurred significant legal costs as a result because those costs were not covered by legal aid.

The appellant also stated that she had asked the Family Maintenance Enforcement Program (FMEP) office to serve the payor in default with notice of the default hearing but the FMEP office had refused to do so.

At the hearing, the ministry explained that in its reconsideration decision dated December 7, 2016 it had determined that attending court is not a benefit under the *Medical Protection Act* and that the appellant's request for transportation to attend court in another community did not meet any of the eligibility categories for a medical transportation supplement under Schedule C of the EMPWDR, and that the ministry has now also reviewed the appellant's eligibility for a transportation and living cost supplement under Section 55 of the EAPWDR and concluded that the appellant is not eligible for that supplement because the ministry had determined that the appellant was not required to appear in court.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the transportation and living costs required to attend a family maintenance enforcement hearing as the ministry found that the request did not meet the legislated requirement of Schedule C, Section 2(1)(f) of the EAPWDR, was a reasonable application of the applicable legislation in the circumstances of the appellant, or was reasonably supported by the evidence.

The requirements of Section 67 and Schedule C, Section 2(1)(f) of the EAPWDR apply to general health supplements and medical transportation costs to attend the office of a medical practitioner, a nurse practitioner or a hospital. As the appellant has asked for transportation and living costs to attend a default hearing, the relevant legislation, as referenced by the Ministry in the Request for Reconsideration dated November 28, 2016 and as corroborated by its subsequent written submission dated January 4, 2017, is as follows:

EAPWDA

Disability assistance and supplements

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.

EAPWDR

Assignment of maintenance rights

- 17** (1) An applicant or recipient who has or may have in the future a maintenance right for himself or herself or for a dependant may, with the consent of the minister, assign the maintenance right to the minister.
- (2) An assignment under this section is terminated if
- (a) the assignor ceases to receive disability assistance or hardship assistance, or
 - (b) the minister or the assignor delivers written notice to the other of the termination.

Supplements for moving, transportation and living costs

55 (1) In this section:

"living cost" means the cost of accommodation and meals; ...

"transportation cost" means the cost of travelling from one place to another.

- (2) Subject to subsections (3) and (4), the minister may provide a supplement to or for a family unit that is eligible for disability assistance or hardship assistance to assist with one or more of the following: ...

- []
- (g) transportation costs, living costs, child care costs and fees resulting from
 - (i) the required attendance of a recipient in the family unit at a hearing, or
 - (ii) other requirements a recipient in the family unit must fulfil

in connection with the exercise of a maintenance right assigned to the minister under section 17 [*assignment of maintenance rights*].

- (3) A family unit is eligible for a supplement under this section only if
 - (a) there are no resources available to the family unit to cover the costs for which the supplement may be provided, and
 - (b) a recipient in the family unit receives the minister's approval before incurring those costs.
- (4) A supplement may be provided under this section only to assist with
 - (a) the cost of the least expensive appropriate mode of moving or transportation, and
 - (b) in the case of a supplement under subsection (2) (f) or (g), the least expensive appropriate living costs.

Appellant's Position

The appellant's position is that she was required by the judge to attend the default hearing and that the legislation provides for payment of a transportation and living expense supplement under these circumstances.

Ministry's Position

The ministry's position is that it was remiss in not determining whether or not the appellant was eligible for transportation and living costs under Section 55 of the EAPWDR in its reconsideration decision, but that upon subsequent review it has determined that the appellant is not eligible for those cost under Section 55.

Panel Decision

As mentioned above, the panel does not have the authority to consider any Ministry decision other than the reconsideration decision under appeal.

In this instance the reconsideration decision under appeal is the ministry's reconsideration decision of December 7, 2016 which denied a request by the appellant for a medical transportation supplement to cover the cost to travel to another community in BC to attend a hearing in court under Schedule C, Section 2(1)(f) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR). However, the appellant did not request a medical transportation supplement to cover the

cost to travel to another community in BC; rather, the appellant requested a supplement to cover transportation and living costs to attend a family maintenance default hearing in another community, which the Ministry did not address in its reconsideration decision.

Conclusion

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