

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated December 22, 2016 which held that the appellant was not eligible for a health supplement for transportation for \$188.94 for escort accommodation on December 2 and 3, 2016. Specifically:

On December 2 - because the appellant has not provided any information to indicate why his brother was unable to stay with him at his house as his sister did and the minister is not satisfied that a hotel room is the least expensive appropriate mode of transportation in accordance with Schedule C, Section 2(1)(f); and

On December 3 - because the minister finds that there is insufficient evidence to support that the appellant's escorts were medically required to remain at his location to monitor the appellant's recovery post-surgery and the minister has determined that a hotel room does not enable the appellant to receive a general hospital service under *the Hospital Insurance Act* in accordance with Schedule C, Section 2(1)(f)(v) and as this overnight was not required to attend surgery, the minister finds that it is not the least expensive appropriate mode of transportation as required by Schedule C, Section 2(1)(f).

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

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The following evidence was before the ministry at the time of reconsideration:

- A Reservation for 1 hotel room in the appellant's community for December 2 - 4, 2016 (2 nights) totaling \$188.94.
- A reservation confirmation at a hotel in another province for 1 room for November 29 - December 2, 2016 (3 nights) for 4 adults at \$104.55 per night.
- A Request for Non-Local Medical Transportation Assistance dated November 14, 2016.
- A letter dated November 14, 2016 from the appellant's sister on behalf of the appellant which contains an itinerary of travel and expenses related to the appellant's surgery totaling \$976.62. Included in this letter were after surgery return expenses of 2 nights' accommodation at the appellant's location as well as trip mileage totaling 685 km to the appellant's escorts home communities.
- A letter from the appellant's physician dated November 7, 2016 indicating that the appellant is scheduled for surgery in another province on November 30 and that he requires travel with an escort and the distance that he must travel will require overnight lodging.
- A letter from an out of province medical clinic dated September 23 confirming that the appellant is scheduled for surgery on November 30, 2016.
- A Request for Reconsideration dated December 8, 2017 which included a letter dated December 7, 2016 from the appellant's physician who reported that due to the appellant's psychiatric instability, he required 2 persons to assist him with transportation to the out of province location for his surgery on November 30, 2016.
- On November 18, 2016, the appellant was issued \$541.08 by direct deposit to cover his Non-Local Medical Transportation expenses.

The Notice of Appeal dated January 9, 2017 included a letter from the appellant's sister who had enclosed a copy of the appellant's Power of Attorney and his Representation Agreement because she was unable to obtain the appellant's signature within 7 business days as required.

The appellant's sister states that on December 22, 2016 she explained to a ministry representative that the reason her brother, who had also accompanied the appellant, was not able to stay with the appellant at his house was because there was no place for him to sleep. The appellant's sister wrote that she stayed with the appellant and slept on his living room floor because she didn't want him to be alone and to make sure he had no complications after his surgery. The appellant's sister further indicated that it was a Friday evening when they returned and they knew that the appellant had no other support coming in to see him until Monday. They stayed an extra night to make sure he was okay. She feels that the amount paid for December 2, 2016 accommodation of \$94.47 should be reimbursed.

The ministry relied on its reconsideration decision.

The panel determined that the information provided by the appellant on appeal substantiates the evidence that was before the ministry at the time of reconsideration. The panel therefore accepts the additional submission under section 22(4)(b) of the *Employment and Assistance Act* as information in support of the information and records that were before the minister when the decision being appealed was made.

PART F – Reasons for Panel Decision

The decision under appeal is whether the Ministry's reconsideration decision which held that the appellant was not eligible for a health supplement for transportation for \$188.94 for escort accommodation on December 2 and 3, 2016 is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

Specifically:

On December 2 - because the appellant has not provided any information to indicate why his brother was unable to stay with him at his house as his sister did and the minister is not satisfied that a hotel room is the least expensive appropriate mode of transportation in accordance with Schedule C, Section 2(1)(f); and

On December 3 - because the minister finds that there is insufficient evidence to support that the appellant's escorts were medically required to remain at his location to monitor the appellant's recovery post-surgery and the minister has determined that a hotel room does not enable the appellant to receive a general hospital service under the Hospital Insurance Act in accordance with Schedule C, Section 2(1)(f)(v) and as this overnight was not required to attend surgery, the minister finds that it is not the least expensive appropriate mode of transportation as required by Schedule C, Section 2(1)(f).

Employment and Assistance for Persons with Disabilities Regulation

The applicable legislation is summarized below:

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.

Schedule C - General health supplements

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

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- (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 ministry's position is that the minister was satisfied that the appellant was referred to the nearest available specialist in a field of surgery by his family physician and that the appellant doesn't have resources to cover the costs to attend surgery. The ministry found that the route travelled by the appellant was not the most direct or the least expensive way, in consideration of his significant mental health condition, the requirement to have 2 people travel with him and the fact that he had no closer family or friends that could take him to the out of province location for his surgery.

The ministry also found that the appellant's request for mileage is the least expensive appropriate mode of transportation and as a result the minister has determined that the appellant was eligible for a health supplement for transportation for mileage for \$246.60 in accordance with Schedule C, Section 2(1)(f).

The Appellant's position

The appellant's position is that while his family does not live in the same community as the appellant, they have helped him get to his consult appointment and his surgery appointment and have determined the least expensive way to transport the appellant to his surgery location and then return him home. The appellant argues that they should be compensated for all their related expenses. The appellant argues that it was a Friday evening when they returned to his home and his family knew that the appellant had no other support coming in to see him until Monday so they stayed an extra night to make sure he was okay. Also, he had no sleeping room at his house for both his sister and brother. It is further argued that the amount paid for December 2, 2016 accommodation of \$94.47 should be paid.

The Panel's findings and conclusion

The panel acknowledges that the appellant, prior to his scheduled surgery, requested Non-Local Medical Transportation Assistance totaling \$976.62. On November 18, 2016, the appellant was issued \$541.08. At reconsideration, the ministry determined that he was eligible for a health supplement for transportation for additional mileage for \$246.60 to cover the cost of his escort's travel. Therefore, the balance remaining from the original request is \$188.94, the exact amount requested for 2 nights' accommodation for the appellant's family escort while remaining in the appellant's community after his surgery.

The panel also acknowledges that the appellant on appeal has requested that the amount paid for December 2, 2016 accommodation of \$94.47 should be reimbursed; however, does not reiterate the original request for reimbursement for accommodation on December 3, 2016.

The panel notes that EAPWDR Section 62 and Schedule C, Section 2(1)(f) allow for payment of transportation expenses as a health supplement in the appellant's circumstances. The panel finds that while indicating that the appellant requires two persons to assist him with transportation to an out of province location for an expedited surgery that would also require overnight lodging; there was no mention by the appellant's physician of any assistance required once the appellant returned home after surgery. The panel also finds that given the distance already travelled for the return trip from the place of surgery to the appellant's location, the ministry was unreasonable to expect the appellant's escorts to continue travelling another 685 km that same day in winter conditions. The panel accepts the position as given by the appellant's sister and explained to a ministry representative that the reason her brother, who had also accompanied the appellant, was not able to stay overnight with the appellant at his house was because there was no place for him to sleep. The appellant's sister had indicated that she stayed with the appellant and slept on his living room floor. The panel therefore finds that the ministry was not reasonable in its determination that the appellant, who qualified for the health supplement for transportation, has received the maximum amount available to him according to the legislation. The panel finds that the cost for a hotel room for December 2, 2016 should also be included as the least expensive appropriate mode of transportation in accordance with Schedule C, Section 2(1)(f)

Having reviewed and considered the evidence and the legislation, the panel finds that the ministry's reconsideration decision, which denied the appellant's request for funding for overnight accommodation for the appellant's family escort to remain in the appellant's community on December 3, 2016, is reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. However, the panel also finds that the ministry's reconsideration decision, which denied the appellant's request for funding for overnight accommodation on December 2, 2016, was not reasonable as noted above. The panel rescinds the ministry's reconsideration decision and the appellant is successful on appeal.