



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the Ministry) reconsideration decision made under the *Employment and Assistance for Persons with Disabilities Act* section 5 and the *Employment and Assistance for Persons with Disabilities Regulation*, Schedule C section 2(f) and dated February 17, 2017, that denied the appellant's request for a supplement to cover the cost of transportation and accommodation to an out-of-province medical facility for a medical investigation, because the ministry was not satisfied that the out of province specialist was the nearest available specialist for the services desired and was not satisfied that the Appellant did not have the resources available to cover the cost.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act, section 5
Employment and Assistance for Persons with Disabilities Regulation, Schedule C, section 2(f)
Hospital Insurance Act, section 24

PART E – Summary of Facts

Nature of the Appellant's Application

In the Appellant's application was for a health supplement, specifically transportation, accommodation and incidental costs to attend an out-of-province medical appointment.

Evidence at the Time of Reconsideration

A. The Appellant's Request for Non-Local Medical Transportation Assistance dated October 19, 2016 to attend an assessment out-of-province, with attached

- invoice for airfare (travel commencing November 28, 2016) totaling \$356.33 (\$240.58+ \$105.25 + \$10.50) airport ground transportation receipt for \$72.08 (\$18 + \$54.08), accommodation receipts totaling \$286.44 (\$160 + \$126.44), taxi receipts totaling \$73, medical transport service totaling \$74, food costs totaling \$55.29
- Letter to the Appellant dated December 9, 2016 from the ministry denying her the supplement applied for

B. Request for reconsideration dated January 26, 2017, in which the Appellant states

- that she needs transportation to meet with a specialist in another province, giving the date of the appointment, the airfare and other expenses required, emphasizing that she has obtained sale prices for the airfare, and
- stating that this is a very important appointment and the appointment is with the only specialist in Canada who has previous experience with the specific procedure (QEEG, a Quantitative EEG) which is required for her rehabilitation and recovery

C. Letter from an advocacy association dated February 10, 2017 in support of the reconsideration request and stating

- that the out-of-province appointment with the specialist was made through the Appellant's physician
- that another physician, a colleague of the Appellant's GP, wrote a letter of support dated October 18, 2016 saying that in order to see the out-of-province specialist the appellant needed accommodation in the city where the specialist practices
- that the out-of-province specialist was uniquely positioned to benefit the Appellant because of the unique nature of the examination and because this specialist had examined the Appellant several years ago, and because this specialist would have access to information about the Appellant from both before and after her accident
- the ministry requested that the Appellant have the specialist fax confirmation of the appointment to the ministry, and the Appellant also attempted to have the specialists office do so, but the specialist's office would not release client records to an unknown fax number
- that the ministry declined to contact the specialist directly
- that the appellant had applied for out-patient treatment at a hospital in her home city, but the treatment in her home city would not have been a sufficient substitute for the QEEG to be performed out-of-province, and the local hospital declined to examine her
- that the Appellant's GP secured an appointment with the out-of-province specialist who was familiar with and had performed the QEEG procedure on the Appellant in the past
- that the Appellant was uncertain if there would be follow-up visits or procedures required, and that uncertainty coupled with the cost and challenge of returning to the airport for a flight home on the same day as the appointment necessitated the two night

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stay in the out-of-province city and that the Appellant's disability required rest prior to medical appointments, and that the ministry had granted rest time to the appellant in the past

- the rest requirement was supported in a note from a physician dated October 18, 2016 in which note the physician confirmed the date of the appointment out-of-province and stated that the Appellant required travel and accommodation support
- that the ministry indicated in a conversation with a worker that it would authorize accommodation expenses and transportation to the out-of-province city once the proper forms were completed
- that the Appellant, her GP the other physician local to the Appellant's home city and those physicians' staff members believed the QEEG procedure to be available in the out-of-province city

D. Letter dated November 29, 2016, a day after the Appellant had flown to the out-of-province city for her appointment with the specialist, from that specialist, which said that the Appellant came from her home city to see him to repeat the QEEG investigation that he had performed some years ago, but that the centre in the hospital, which was the only centre in Canada where the technique was available, was closed a few years ago and the Appellant was not clearly informed of its closure.

Evidence Provided on Appeal

Appellant's Additional Evidence - Written

A. The appellant submitted a letter from a GP (not her family physician) dated March 8, 2017 advising that the Appellant was referred to the out-of-province specialist for follow-up on a program not available any closer than the specialist's city and there is no comparable procedure in British Columbia; further advising that the Appellant had been seen in the out-of-province program a few years ago and it would be the only place to compare past and present symptoms and would be uniquely beneficial to the appellant.

Appellant's Additional Evidence - Oral

B. The Appellant further gave oral evidence as follows:

- that when she had had the QEEG procedure in the past, it was in a hospital in the out-of-province city where the specialist practices
- that the QEEG procedure was available only in the one location and nowhere else in Canada
- that she attended on her GP, a local physician, who supported her getting another QEEG and he referred her to the out-of-province specialist for that purpose
- that her GP's staff had made the arrangements with the out-of-province specialist's staff for her appointment with the specialist, and that the arrangements were not made physician-to-physician directly
- that she had given the ministry notice, and one of its social workers had told her that her expenses would be covered and to submit the paperwork after she returned home from the out-of-province appointment
- that she was not aware until she arrived at the office of the out-of-province specialist who had treated her before with the QEEG procedure that the procedure was no longer available in the out-of-province city nor anywhere else in Canada
- that she had formerly lived in a larger city in British Columbia, but about two years ago

relocated to her present home city because it was less expensive, and had attempted to access services at a local hospital in her new city, but was told that her problem was a mental health issue, not a neurological one, and that her damage was psychiatric, not cognitive. She now suffers from depression and anxiety, in part due to the lack of support and being denied a subsidy so that she can attend and obtain her desired rehabilitation

- that because of the trip to the out-of-province city and her meeting with the specialist, her local physician, after speaking with the out-of-province specialist, has now managed to refer to a neurological program at a hospital in her home city
- that her original QEEG about 16 years ago had established a baseline and that about four years ago she suffered a head injury in another car crash and has not recovered from it
- her GP thought that another QEEG to compare with the baseline obtained from the original one would assist in planning her rehabilitation
- neither of her physicians in her home city were aware that the QEEG procedure was not available in the out-of-province city
- that her travelling to the out-of-province city meeting with the specialist only to then find out that the QEEG program was not available was a lack of communication between the specialist and the ministry because the specialist refused to speak with the ministry due to privacy concerns the ministry would not speak with the specialist for similar reasons
- That she did attend her appointment with the specialist out-of-province as scheduled by her local physician's staff and the specialist did offer additional medication treatment, which she declined
- that she did not originally did not buy a return ticket as she did not know how long it would take for the QEEG to be administered and that the first time it took three days
- that after she attended the specialist out-of-province she stayed in another city, not far from the city where she met with the out-of-province specialist, with a friend for 17 days, until she could obtain a ticket on a new, low-cost, airline to be able to fly home as cheaply as possible.
- that she paid no money for accommodation, or food or other expenses while staying with the friend
- she had little money with which to pay for her transportation unless she went without food and other necessities of life

Ministry's Position Regarding the Appellant's Additional Written and Oral Evidence

The ministry did not object to the admission of the Appellant's additional evidence.

Panel Finding – Appellant's Additional Evidence

Pursuant to section 22(4) the panel finds that the Appellant's additional written and additional oral evidence is admissible, as it supports the Appellant's position before the ministry at reconsideration that her local physician believed he had scheduled an appointment with the out-of-province specialist for the purpose of repeating her previous QEEG, and is therefore in support of evidence that was before the Ministry at the time of reconsideration.

PART F – Reasons for Panel Decision

Issue

The issue is whether the Ministry of Social Development and Social Innovation's (the Ministry) reconsideration decision made under the *Employment and Assistance for Persons with Disabilities Act* section 5 and the *Employment and Assistance for Persons with Disabilities Regulation*, Schedule C section 2(f) and dated February 17, 2017, that denied the appellant's request for a supplement to cover the cost of transportation and accommodation to an out-of-province medical facility for a medical investigation, because the ministry was not satisfied that the out of province specialist was the nearest available specialist for the services desired and was not satisfied that the Appellant did not have the resources available to cover the cost, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

Relevant Legislation

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

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.

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

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)
- (c)

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C section 2(f)

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)
 - (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).....
 - (iv).....

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.

Hospital Insurance Act

Hospital services outside British Columbia

24 Subject to this Act and the regulations, the minister must pay for hospital services rendered outside British Columbia to beneficiaries by

- (a) hospitals, and
- (b) other institutions

approved by the minister.

General Scheme of the Legislation

The general scheme of the legislation is that the minister may provide a health supplement in the form of transportation allowance to a person who has Persons with Disability status to enable that person to travel to the nearest available specialist, if the person has been referred by a physician in the person's home city, the transportation is to enable the person to receive a benefit for a general hospital service under the *Hospital Insurance Act*, and there are no resources available to the person's family unit cover the cost.

Analysis

Authority to Provide a Supplement - EAPWDA section 5

This section is the enabling section, allowing the minister to provide a supplement, provided the applicant qualifies pursuant to the *EAPWDR*.

Applicant for a Supplement Must be a Person with Disabilities - EAPWDR section 62

This section allows the minister to provide a supplement to someone who has Persons with Disability status.

The panel notes that the determination at reconsideration that the Appellant a Person with Disabilities was not in issue at this appeal.

EAPWDR Schedule C section 2(f)(ii) – Travel to the Nearest Specialist on Referral by a Local Physician

This section allows for a travel supplement out of the Appellant's local area to the office of the nearest available medical specialist so long as the Appellant has been referred to that specialist by a local medical practitioner (or nurse practitioner), provided that the transportation is to enable the Appellant to receive a benefit under either the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, and that the Appellant has no resources available to cover the cost.

Appellant's Position

The Appellant's position was that she had been referred by her family physician, a local medical practitioner, to the out-of-province specialist, and that specialist was the nearest available specialist who could perform a QEEG examination. The hospital in the out-of-province city where the specialist practiced was the nearest place where the procedure could be done and was the only place to compare past and present symptoms. The QEEG procedure was not available in British Columbia. Her position was that because the out-of-province examination had been arranged by a local physician, she had every reason to believe the QEEG a procedure was available in a hospital in the specialist's city, as it had been when the procedure was performed on her in the out-of-province hospital several years ago. No one told her, until she arrived at the specialist's office, that the out-of-province hospital had closed the neurophysiological centre a few years ago. Further, her position was that she had arranged the least expensive appropriate mode of transportation, in that she obtained airfare at sale prices, arranged moderate-cost hotel accommodations, and spent no more than was necessary for food and transportation.

Ministry's Position

The ministry relied upon the reconsideration decision, but further argued that the Appellant never had a booked appointment in the out-of-province city, never obtained the treatment she sought and did

not have approval for the out-of-province travel.

The ministry's position was that it was not satisfied that the out-of-province specialist was the nearest available specialist for the services the Appellant received in the specialist's city, and was not satisfied that the Appellant did not have resources available to cover the cost. The ministry took the position that the appellant should have explored other options in her home city or the surrounding area but did not mention that the particular procedure, the QEEG examination, was not available anywhere else in Canada except in the specialist's city at the time the Appellant had attended for it several years ago, and that there were no other options to obtain the particular examination in the Appellant's home city or surrounding area because it was not offered anywhere else in Canada. Further, the ministry took the position that the appellant had not shown that she had no resources available with which to travel to the out-of-province city.

The ministry further submitted that ministry policy requires an applicant for a travel supplement to obtain prior approval, and that as the Appellant did not obtain prior approval, she was not eligible for the supplement. The ministry also submitted that the policy which requires prior approval has some flexibility in its application.

Panel Finding

Nearest Available Specialist and Referral by a Local Medical Practitioner

The panel notes that the policy provided in the appeal record by the ministry makes no reference at all to prior approval being required, the legislation does not require prior approval, and that the Appellant's evidence was that a ministry social worker advised her to attend the out-of-province appointment and submit the paperwork on her return.

The panel finds that the Appellant had been referred by her family physician, and a colleague, also a family physician, both local medical practitioners, to the specialist in the out-of-province city. The panel further finds that the out-of-province specialist was the nearest available specialist who could administer or deal with QEEG procedures. The panel finds that neither the Appellant nor the local physicians were aware that the QEEG procedure, formerly done in a hospital in the city were the specialist practices and which had been performed on the Appellant several years ago, was no longer available, and that the appointment made by the Appellant's family physician's office was made without knowledge of the unavailability of the QEEG procedure.

The panel finds that the ministry's determination at reconsideration that the out-of-province specialist was the nearest available specialist for the services sought by the Appellant was not reasonably supported by the evidence and was not a reasonable application of the applicable enactment, namely Schedule C section 2(f)(ii) *EAPWDR*, in the circumstances of the Appellant.

***EAPWDR* Schedule C section 2(1)(f)(v) - Hospital Service Rendered Outside BC**

This section requires that the transportation supplement must be to enable an applicant to receive a benefit under either the *Medicare Protection Act* or the *Hospital Insurance Act*.

Although there was no explicit finding in the reconsideration decision as to whether or not the QEEG procedure would be a benefit that the Appellant would be entitled to receive under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, the ministry agreed that

had the procedure been available and had the transportation supplement been approved, then the QEEG procedure would have been a benefit or general hospital service to which the Appellant was entitled.

There was therefore no issue as to whether or not the requirements of *EAPWDR* Schedule C, section 2(1)(f)(v) were met.

Employment and Assistance for Persons with Disabilities Regulation (*EAPWDR*), Schedule C section 2(f)(vi) – Resources Available

This section requires that the Appellant show that there are no resources available with which to cover the cost of travel, before the Ministry provides the supplement sought.

Appellant’s Position

In her original application “Request for Non-Local Medical Transportation Assistance” the Appellant clearly stated that she was not able to contribute to the cost of medical transportation, and that she had considered assistance from family, friends, and volunteer agencies, but no assistance was available. She had little money, went without food, and had to rely on a friend to provide her with food and accommodation for the time that she was out-of-province, except for the two nights in the city where she was supposed to have the QEEG procedure.

Ministry’s Position

The ministry relied upon the reconsideration decision.

Panel Finding

The panel notes that the reconsideration decision does not address whether or not the Appellant had resources available. The reconsideration decision simply says that it was not satisfied that the Appellant did not have the resources available to cover the cost. In her original application “Request for Non-Local Medical Transportation Assistance”, which was before the Ministry at reconsideration, the Appellant clearly stated that she was not able to contribute to the cost of medical transportation, and that she had considered assistance from family, friends, and volunteer agencies, but no assistance was available.

The panel finds that the determination at reconsideration that the Appellant had not satisfied the requirement that there were no resources available to cover the cost was not reasonably supported by the evidence and was not a reasonable application of the applicable enactment, namely Schedule C section 2(f)(vi) *EAPWDR*, in the circumstances of the Appellant.

Conclusion

The panel finds that the ministry’s reconsideration decision dated February 17, 2017, which determined that the Appellant was not entitled to a supplement for non-local medical transportation was not reasonably supported by the evidence and was not a reasonable application of the applicable enactments in the circumstances of the Appellant.

The panel rescinds the ministry’s decision and the Appellant is successful in her appeal.