

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated August 17, 2017, which denied the appellant's request for a supplement to cover the cost of transportation to an office of a dentist and an optometrist. 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 Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) because:

- Neither a dentist nor an optometrist is a specialist in a field of medicine or surgery [Section 2(f)(ii); and,
- There is no information that the dentist or the optometrist is located in the nearest suitable hospital and that the appellant would receive a benefit under the *Medicare Protection Act* or the *Hospital Insurance Act* [Section 2(f)(iii)(iv)(v)].

The ministry also found that the appellant does not require a remedy under Section 69 of the EAPWDR.

## PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 62 and 69, and Schedule C, Sections 1 and 2(1)(f)

*Interpretation Act*, Section 29

## PART E – Summary of Facts

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

- 1) Letter dated April 13, 2016 in which a registered nurse and lung transplant coordinator in another province wrote that the appellant is required by the clinic to have yearly dental and optometrist check-ups. Due to the complex nature of have a lung transplant, they requested that he keeps his current dentist and optometrist for these appointments to ensure continuity of care;
- 2) Request for Non-Local Medical Transportation Assistance dated June 30, 2017 in which the appellant requested travel by car from his city to another city for an appointment with a specialist identified as his dentist , with the referral from the lung transplant clinic in another province;
- 3) Letter dated June 30, 2017 in which the appellant’s medical practitioner wrote that the appellant needs accommodation in another community for medical appointments on July 6 and 7, 2017;
- 4) Letter that appears to be dated July 27, 2017 in which the appellant’s medical practitioner wrote that the appellant is a “medically fragile man;”
- 5) Letter dated June 30, 2017 in which the appellant’s dentist wrote that the appellant has a dental appointment on Friday, July 7, 2017; and,
- 6) Request for Reconsideration dated August 3, 2017 with letter dated August 1, 2017 in which the registered nurse and lung transplant coordinator wrote:
  - The appellant is required by their clinic to have a yearly check-up.
  - Due to the complex nature of having a lung transplant, they would appreciate that he keeps his current dentist for these appointments to ensure continuity of care.
  - It is imperative that he see a dentist yearly, as well as have any issues that may arise treated in a timely manner, as there is a substantial risk of infection due to his immunosuppression.
  - These infections could potentially be life-threatening.

In his Request for Reconsideration the appellant wrote:

- He has had a double lung transplant 3 years ago and, out of the 14 people he met, only 4 are left living.
- He has included the letter he received August 1, 2017 from the lung transplant clinic explaining the importance of his request.
- He got nocardia, which is a disease that can kill him because of bad gums and not getting them looked at. Two years ago, he spent 2 months in hospital under quarantine because of it.

### **Additional Information**

In his Notice of Appeal dated September 4, 2017, the appellant wrote that he disagrees with the ministry’s reconsideration decision because this is a “life and death” situation. He wrote that he once spent 3 months in hospital because of a nocardia virus that went through his gums.

At the hearing, the appellant stated that:

- Lung transplants are the more challenging organ transplants and, of the 14 in his group, only 4 of them are still living and 2 of them are in “rough shape.” It is rare for a person with a lung transplant to live more than 5 years. There are some who have lived 25 years but this is very rare.
- The lung transplant clinic wanted him to move to the province where they are situated but he does not know anyone there. His family, including most of his relatives, lives in his community in British Columbia.

- The lung transplant clinic sent letters to all the medical professionals to explain how to take care of him. His immune system is suppressed and he has had skin cancer twice this year. He has to be very careful and stay fully clothed at all times.
- If he does not get to the dentist on a regular basis, an infection can develop on his gums, pus bubbles form and can have an effect on his vital organs.
- He was quarantined for 3 months in the hospital when his gums and teeth were not properly cared for. He feels lucky that the infection went to his hip and did not go to his brain or other vital organ.
- He has been going to the dentist in the other community for close to 30 years and the whole family goes to him. He has provided good care and accommodates appointments.
- His dentist has to pull out otherwise healthy teeth if they become the least bit wobbly so that infection cannot develop. He has pulled out 6 healthy teeth so far.
- His gums, teeth and bones are “not good” and he gets infections easily.
- He can get infection from the dust blowing around or even from ordinary water. He got the nocardia infection through his mouth and teeth. He has to make sure to look after his gums and teeth.
- He did not have an appointment with an optometrist.
- He has had problems with the local hospital because they do not understand the seriousness of his condition. They also do not have the CT scan machine and other equipment. The local hospital usually sends him to the hospital in the other community. Once, the local hospital underestimated the seriousness of an infection in his appendix and he ended up having to be rushed to a hospital in a major city in another province.
- His transplant doctor has asked him to let him know if he has to go to the local hospital and his doctor will make sure that an air ambulance is available to take him to a bigger hospital
- He has been approved for funding to make the same trip to the other community for appointments for 5 years and he does not understand why this year suddenly the ministry denied his request.
- He does not just need ongoing, regular appointments, as set out in the August 1, 2017 letter, but any issues that arise must be treated in a “timely” manner.

The ministry relied on its reconsideration decision, as summarized at the hearing. In response to a question, the ministry stated that there is no information available regarding the appellant’s file and whether, or on what bases, the previous requests for medical transportation have been approved. The ministry stated that the appellant is not eligible under Section 69 of the EAPWDR as his dentist appointment is considered part of a routine yearly check-up and the appellant is not facing a direct and imminent life-threatening need.

***Admissibility of Additional Information***

The panel considered the appellant’s oral testimony, which included information about the lung transplant clinic oversight of his other medical professionals and his previous approvals of a supplement for medical transportation, as relating to the subject medical transportation request and, therefore, being in support of information and records that were before the ministry at reconsideration pursuant to Section 22(4) of the *Employment and Assistance Act* (EAA).

## 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 dentist and an optometrist 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 Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), and found that the appellant did not require a remedy under Section 69 of the EAPWDR, was a reasonable application of the applicable legislation in the circumstances of the appellant, or was reasonably supported by the evidence.

Section 62 of the EAPWDR provides:

### **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 under 19 years of age, 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.

Section 69 of the EAPWDR provides as follows:

### **Health supplement for persons facing direct and imminent life threatening health need**

- 69 The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that
- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
  - (b) the health supplement is necessary to meet that need,
  - (c) the person's family unit is receiving premium assistance under the *Medicare Protection Act*, and
  - (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
    - (i) paragraph (a) or (f) of section (2) (1);
    - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

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 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.

Section 1 of Schedule C of the EAPWDR provides:

### **Health Supplements**

#### **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 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."

#### *Section 2(1)(f) of Schedule C of the EAPWDR*

Section 2(1)(f)(ii) of Schedule C of the EAPWDR stipulates that the ministry may provide a health supplement for the least expensive appropriate mode of transportation to 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 or nurse practitioner. In the Request for Non-Local Medical Transportation Assistance dated June 30, 2017, the appellant requested travel by car from his city to another city for an appointment with a specialist identified as being with his dentist, as had been referred by the lung transplant clinic in another province. At the hearing, the appellant stated that he did not have an appointment with an optometrist at that time. The appellant argued that, as confirmed in the letter from the lung transplant clinic, it is medically imperative that he see a dentist every year and that he be treated in a timely manner for any issues that may arise as there is a substantial risk of infection due to his immunosuppression. The registered nurse also wrote that the lung transplant clinic would appreciate that the appellant keeps his current dentist for these appointments to ensure continuity of care. While the lung transplant clinic has confirmed the importance of the appellant's appointment with his dentist, the requirement in Section 2(1)(f)(ii) of Schedule C of the EAPWDR is that the requested travel is specifically to the office of the nearest available specialist in a field of medicine or surgery.

In the reconsideration decision, the ministry found that the appellant's transportation supplement request did not meet the legislative requirement in Schedule C, section 2(1)(f) because a dentist or optometrist is not a specialist recognized by the College of Physicians and Surgeons of BC. Section 1 of Schedule C of the EAPWDR defines "specialist" as 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* and "medical practitioner," in turn, is 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 entitled under the *Health Professions Act* to practice medicine and to use the title "medical practitioner." The panel considered these definitions and finds that a dentist, who is a registrant of the College of Dental Surgeons of BC, and an optometrist, who is a registrant of the College of Optometrists of BC, and is not a medical practitioner, is not included as a "specialist" and there is no discretion provided to the ministry in the definitions to determine otherwise. The appellant stated that he has received funding from the ministry for the past 5 years for travel to his dentist appointments, but the panel has no further information before it regarding the authority by which these requests were approved by the ministry. The panel finds that the ministry's conclusion, that the appellant's request did not meet the requirements of Section 2(1)(f)(ii) of Schedule C of the EAPWDR as the proposed travel was not to the office of the nearest available specialist in a field of medicine or surgery, was reasonable.

The appellant did not dispute that the dentist is not located in a general or rehabilitation hospital, as required by Section 2(f)(iii)(iv)(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 EAPWDR as the requested travel was not to the nearest suitable hospital to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*.

#### *Section 69 of the EAPWDR*

The ministry stated at the hearing that the appellant is not eligible under Section 69 of the EAPWDR as his dentist appointment is considered part of a routine yearly check-up and the appellant is not facing a direct and imminent life-threatening need. The appellant's evidence is that his is an unique situation as he is a lung transplant recipient and the lung transplant clinic has confirmed that there is a substantial risk of infection due to his immunosuppression and that infections in his gums could potentially be life-threatening. However, the ministry wrote in the reconsideration decision that the appellant, as a recipient of disability assistance, is entitled to receive health supplements pursuant to Section 62 of the EAPWDR. As Section 69 provides a remedy for those persons in a family unit who are not otherwise eligible for health supplements, the panel finds that this "life-threatening" remedy is not applicable to the appellant. Therefore, the panel finds that the ministry's reconsideration decision, which concluded that Section 69 of the EAPWDR does not apply to the appellant, was reasonable.

#### *Conclusion*

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a supplement to cover the cost of transportation to an office of a dentist and an optometrist as the request for a health supplement did not meet the legislated requirement of Schedule C, Section 2(1)(f) of the EAPWDR, and the appellant did not require a remedy under Section 69 of the EAPWDR, was a reasonable application of the applicable enactment in the appellant's circumstances and confirms the decision. Therefore, the appellant is not successful in his appeal.