

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction of (the “ministry”) October 17, 2017 reconsideration decision denying the appellant’s request for a health supplement for a medical transportation supplement to attend an appointment with an orthotist because the ministry determined that the eligibility requirements set out in Schedule C, Section 2(1) (f) of the Employment and Assistance for Persons with Disabilities Regulation had not been met. Specifically, the ministry determined that the appellant had not been referred to a specialist as required by the legislation.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR):  
- Sections 62, 69 and Schedule C, Section 2(f)

Employment and Assistance Regulation (EAR), Section 80

## **PART E – SUMMARY OF FACTS**

The appellant is a sole recipient with Persons with Disabilities (PWD) designation.

The evidence before the ministry at reconsideration included:

- August 21, 2017 letter from the appellant's family doctor noting that the appellant has an appointment at an orthotics clinic on September 8<sup>th</sup> in the nearest available city for fitting and casting of new knee braces, and will require an escort for all medical trips;
- appellant's August 23, 2017 request for non-local medical transportation assistance;
- appellant's August 31, 2017 letter to the ministry explaining that in the past she has always received approval from the ministry for non-local travel assistance to more distant cities, at greater expense to the ministry. Attached to the letter were the following documents:
  - Aug 5, 2010 request for non-local transportation assistance to an orthotist in another city within the province and attached physician's referral;
  - September 3, 2010 letter from the appellant's family doctor referring her to an orthopaedic surgeon in another province;
  - August 22, 2010 request for non-local transportation assistance to and from the other province;
- appellant's request for reconsideration received by the ministry on October 2, 2017 with attachment from the appellant, summarized as follows:
  - she requires custom-made knee braces in order to walk;
  - as her condition deteriorates she falls more frequently, and due to her condition she is not able to use crutches, canes, walker or wheelchair;
  - she has received approval of her request for medical transportation assistance at least 10 times since 1995;
  - she attended her September 8, 2017 orthotic appointment using borrowed funds;
  - she is required to see a certified orthotist in order to receive ministry funding for custom-made knee braces;
  - she has no additional funds to pay for travel.

### **EVIDENCE RECEIVED AFTER RECONSIDERATION**

On October 30, 2017 the appellant filed a Notice of Appeal with attached 3-page document citing her reasons for appeal. Most of the reasons constituted argument which will be considered in Part F of this decision. Additional information includes:

- orthotist named in August 27, 2017 request is closest to her home;
- excerpt from her doctor's letter detailing the physical limitations imposed by her medical condition and the need for bilateral custom-made knee braces.

During the appeal hearing the appellant stated that without new knee braces she is far more likely to fall and to sustain a life-threatening injury.

The panel considered the information tendered by the appellant with her Notice of Appeal and her oral evidence at the hearing and admitted it under EAA Section 22(4) as evidence in support of the information that was before the ministry at reconsideration because it clarified the need to see an orthotist for custom-made knee braces and noted that the request for transportation was to the nearest available certified orthotist.

The ministry relied on the reconsideration decision.

## PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry reconsideration decision of October 17, 2017 denying the appellant's request for a health supplement for a medical transportation supplement to attend an appointment with an orthotist because the ministry determined that the eligibility requirements in Schedule C, Section 2(1) (f) of the Employment and Assistance for Persons with Disabilities Regulation had not been met. Specifically, the ministry determined that the appellant had not been referred to a specialist as required by the legislation.

Relevant legislation:

### EAPWDR:

#### General health supplements

**62** (1) Subject to subsections (1.1) and (1.2), the minister may provide any health supplement set out in section 2 [*general health supplements*] [*medical equipment and devices*] of Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who is

- (a) a recipient of disability assistance,

#### 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).

### Schedule C

#### 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
  - (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.

### EAR:

#### Time limit for reconsidering decision

**80** The minister must reconsider a decision referred to in section 17 (1) of the Act, and mail a written determination on the reconsideration to the person who delivered the request under section 79 (1) [*how a request to reconsider a decision is made*],

- (a) within 10 business days after receiving the request, or
- (b) if the minister considers it necessary in the circumstances and the person consents, within 20 business days after receiving the request.

The appellant argues that:

1. the ministry's denial of her request for transportation assistance to see an orthotist is a matter of policy, not legislation;
2. in the past the ministry has previously approved several requests for non-local medical transportation assistance;
3. because the ministry did not reconsider its original decision within the time limit specified in EAA Section 80 the ministry lost its right to deny her reconsideration request; and
4. without new braces her risk of falling and sustaining a life-threatening injury substantially increases.

The ministry's position is that the appellant is ineligible for a health supplement for medical transportation because she has not met any of the legislative criteria set out in EAPWDR Section 2 (1) (f) (i-v).

#### Panel Decision

The panel will deal with each of the appellant's arguments separately.

#### 1. Denial of Transportation Assistance to Orthotist is Policy, not Legislation

The appellant argues that the ministry is relying on a December 1, 2003 policy statement included in the reconsideration decision, which specifically notes that applicants are ineligible for medical transportation assistance to "orthotic appliance suppliers". This policy assists ministry staff and applicants by outlining some of the services which are to be considered ineligible. It does not supplant or alter the legislative criteria set out in EAPWDR Section 2(1) (f) upon which the ministry must rely when considering an application for medical transportation assistance. The subsection clearly states that the applicant must use the least expensive mode of travel to one of the following:

- i. a local medical practitioner or nurse practitioner;
- ii. the nearest available specialist if referred by her local medical practitioner;
- iii. the nearest general or rehabilitation hospital;
- iv. the nearest hospital as defined in Section 1 of the Hospital Insurance Act.

A certified orthotist is not a medical practitioner, nurse practitioner or specialist as defined by the legislation, and the appellant is not seeking assistance to travel to any kind of hospital. The panel therefore finds that the ministry reasonably determined that the appellant is not eligible for a health subsidy for medical transportation assistance.

#### 2. Previous Ministry Approval of Similar Requests

As stated by the ministry in the reconsideration decision each request for a supplement is considered individually by the ministry. The ministry examines the details included in the request and applies them to the applicable legislation in order to determine eligibility. The ministry does not have the discretion to approve an ineligible request on the basis of previous determinations.

The panel therefore finds that the ministry reasonably determined that the ministry is not required to approve the appellant's August 17, 2017 request because similar applications from the appellant were approved in the past.

#### 3. Reconsideration outside the Statutory Time Limit

Section 80 of the EAR stipulates that the ministry must reconsider and mail a ministry decision that denies assistance or a supplement within 10 business days of receiving a request for reconsideration unless the requestor consents. The ministry reconsidered the decision on October 17, 2017, which is 10 business days after the October 2<sup>nd</sup> date upon which it received the appellant's request for reconsideration. The evidence indicates that the reconsideration decision was not mailed until October 19<sup>th</sup> which is outside the statutory time limitation. However, there is no remedy in law available to the appellant to compel the ministry to reverse its reconsideration decision, and she has suffered no prejudice as a result. She was allowed to proceed with her appeal and have it adjudicated by the appeal tribunal within the time limits prescribed for an appeal.

#### 4. Imminent, Life Threatening Need under Section 69

In the Request for Reconsideration the ministry noted that the appellant is ineligible under EAPWDR Section 69 because she does not have an imminent life-threatening health need, but did not consider Section 69 in the reconsideration decision even though this section was included in the applicable legislation appended to the decision. Notwithstanding the ministry's omission, the appellant has provided written and oral evidence that she has been falling more frequently and that her falls can be life-threatening.

Section 69 allows for the provision of health supplements set out under sections 2(1)(a) and (f) and 3 of Schedule C where a life-threatening health need exists, the requirements of sections 2 or 3 applicable to the specific health supplement are met, and the applicant is not otherwise eligible for a health supplement under the EAPWDR. The appellant is eligible to receive health supplements under the EAPWDR but has not met the statutory criteria. Accordingly, the panel finds that the ministry has reasonably determined that she does not require a remedy under section 69 and that the appellant is not eligible for the requested items under section 69 of the EAPWDR.

#### Conclusion

The panel sympathizes with the appellant's predicament. She is asking for transportation assistance for a necessary medical service located in the nearest available city. Similar requests to cities much farther away have been approved by the ministry several times in the past 22 years. However, for the reasons cited in Headings 1-4 [above] the panel concludes that ministry's determination that the appellant is ineligible for a non-local medical transportation supplement is a reasonable application of the applicable legislation in the appellant's circumstances, and confirms the decision. The appellant is not successful in her appeal.