

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated October 24, 2017, which denied the appellant's request for a supplement to cover the cost of medical transportation under Section 2(1)(f) of Schedule C of the Employment and Assistance Regulation (EAR). The ministry found that the appellant was not eligible for the health supplement as a qualifying person under Section 67 of the EAR and the eligibility criteria for a life-threatening health need under Section 76 of the EAR were not met.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance Regulation (EAR), Sections 66.1, 67 and 76

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

- 1) Consultation Report dated September 5, 2017 which indicated “nonspecific predominant myofascial neck pain with no strong radicular features” and “essentially normal study,” with “strongly recommended” enrollment in the self-management pain program, and reference to the appellant speaking to his lawyer to see about assistance for the cost of travel to the program;
- 2) Request for Non-Local Medical Transportation Assistance form dated October 3, 2017 requesting travel on October 16, 17, 18, 23, 24, 25, 30, 31, and November 1, 2017. The appellant indicated that he cannot contribute to the cost of the medical transportation, that he has considered family/friends to assist with the cost, and he has not considered volunteer agencies, with the note “none in city”;
- 3) Letter dated October 3, 2017 in which a physician wrote that the appellant “requires to attend a Pain Education Course” at the hospital in another community that was advised to him by his pain specialist for his chronic disabling pain condition. The course is a 3-week course, 3 times a week for a total of 9 sessions;
- 4) Prescription Form dated October 6, 2017, in which the physician wrote that he “certifies” that the appellant needs travel assistance to attend treatments at the hospital pain clinic for 10 sessions; and,
- 5) Request for Reconsideration dated October 10, 2017.

In his Request for Reconsideration the appellant wrote:

- Person with Multiple Barriers (PPMB) is discrimination against people with disabilities. He has applied four times for PWD [Persons With Disabilities] designation.
- He mailed a doctor-assisted suicide request with his fourth disability application, he has made arrangements to end his life but his doctor wanted him to do the pain program first, and he believes this shows it is life threatening.
- There is no advocacy or assistance available.
- He has already tried doing travel assistance but they say it is not covered even though it is billed and paid for by MSP [Medical Services Plan].
- He plans on doctor-assisted death and just needs two witnesses to sign the request and he has asked the ministry to help get it signed.
- The hospital wants him to go to the program.
- The pain specialist at the hospital wants him to go to the program and signed a prescription saying he needs it.

### ***Additional Information***

In his Notice of Appeal dated November 7, 2017, the appellant wrote that he disagrees with the ministry's reconsideration decision because he was told when the ministry had the PPMB status already sent in before the medical request, it would be approved. He believes that the ministry deliberately delayed the PPMB approval until after the request was denied. The ministry also never sent him the denial. He contacted the ministry regarding the matter. The ministry claimed to have sent it, but they never did, then the ministry said he could not appeal.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Letter to the appellant dated October 26, 2017 in which the ministry advised that the appellant had been approved for the PPMB category, making him eligible for additional coverage that will be reviewed within two years; and,
- 2) Written submission received November 29, 2017, in which the appellant wrote:
  - On October 3, 2017, he contacted the ministry about a pain “treatment” program, not a “course,” which falls under hospital care service as the hospital and his pain specialist doctor considers it treatment.
  - He was told by the ministry that it would be covered since he applied for PPMB status prior to the request for medical transportation being made. He was told by the ministry to use the rent money for the month to pay for treatment and the ministry would reimburse him.
  - He currently has PPMB status as it was approved on October 25, 2017.
  - The dates for treatment were October 16, 17, 18, 23, 24, 25, 30, 31, and November 1, 2017 and the ministry did not tell him he was denied until he contacted the ministry and was told it was too late for an appeal.
  - The ministry denied his medical request then approved his PPMB application right after, and did so to directly cause him harm. The ministry “sat on the application,” denied the transportation, then approved the application for PPMB right after. The ministry knew that his application for PPMB would have been approved as it was looked at by a supervisor, it just was not done yet because it takes 3 months.
  - He was forced to borrow money, which has to be repaid and is now late. The total mileage was 1,107 km, plus \$37.96 per day for the ferry, plus \$8.47 for parking each day. It cost him an extra \$9.99 for 3 days as an extra person went over to drive him because he was unable, \$167.48 for gas and \$280 for car insurance to be able to go to the appointment.
  - He believes there is a direct and imminent health risk because: the ministry is not a doctor, the ministry does not know his medical condition, and medical records are private and there is no legal reason why he has to release them to the ministry. He asked the ministry to help him with a doctor-assisted death request as he needed two witnesses to sign off so he could get it.
  - He was seriously injured in a car accident and the ministry thinks ICBC or someone else should pay for things.

Prior to the hearing, the ministry provided a letter dated December 14, 2017 as the ministry's submission on the appeal. The ministry wrote that the ministry reviewed the additional information from the appellant and noted the appellant's Request for Medical Transportation was dated October 24, 2017 while the letter confirming his PPMB designation was dated October 26, 2017. The ministry wrote that the reconsideration decision is dated October 24, 2017, which is prior to the appellant's PPMB application being adjudicated and the ministry relies on the information in the request for reconsideration in regard to that decision. The ministry wrote that with the PPMB status going forward, the appellant's requests for medical transportation may be considered under Section 2(1)(f) of Schedule C of the EAR.

***Admissibility of Additional Information***

The panel considered the appellant's Notice of Appeal and written submission as well as the ministry's letter dated December 14, 2017 as argument.

The panel considered the letter from the ministry dated October 26, 2017, which advised that the appellant had been approved for the PPMB status, as not 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* and, therefore as not admissible on the appeal. The information and records at reconsideration indicated that the appellant had not been approved for PPMB status and the information in the letter supports a contrary conclusion.

## **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 medical transportation as the appellant was not eligible as a qualifying person under Section 67 of the EAR and the eligibility criteria for a life-threatening health need under Section 76 of the EAR were not met, was a reasonable application of the applicable legislation in the circumstances of the appellant, or was reasonably supported by the evidence.

Section 67 of the EAR provides in part:

### **General health supplements**

- 67 (1) 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 income assistance, if
    - (i) the family unit includes a qualifying person, or
    - (ii) the health supplement is provided to or for a person in the family unit who is under 19 years of age,
  - (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
    - (i) is a continued person under section 66.3 (1) or (2) [access to medical services only], or
    - (ii) is a continued person under section 66.4 (1) [access to transitional health services] and was, on the person's continuation date, a qualifying person or part of a family unit that then included a qualifying person, or
    - (iii) is a continued person under section 66.4 (2). . . .

Section 66.1 of the EAR provides a definition as follows:

### **Definitions**

66.1 In this Division: . . .

"qualifying person" means a person who

- (a) has persistent multiple barriers to employment, or
- (b) is a recipient of income assistance who is described in section 8 (1) [people receiving special care] of Schedule A.

Section 76 of the EAR provides as follows:

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

76 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) a person in the family unit is eligible to receive 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).

***Section 67 of the EAR***

In the reconsideration decision, the ministry considered Section 67 of the EAR, which stipulates that the ministry may provide a health supplement set out in Section 2 of Schedule C, including medical transportation, for a family unit in receipt of income assistance if the family unit includes a qualifying person. In considering a “qualifying person,” the ministry referred to the definition in Section 66.1 of the EAR, which “means a person who has persistent multiple barriers to employment [PPMB] or a person in receipt of income assistance receiving special care in a care facility.” The appellant does not dispute that he did not have the status as a PPMB at the time of the reconsideration decision dated October 24, 2017, and the evidence does not suggest that he is receiving special care. While the appellant argued in his written submissions that he had applied for PPMB prior to his submitting his request for medical transportation on October 3, 2017 and that the ministry delayed considering his PPMB application until after the reconsideration decision and did so to directly cause him harm, that the ministry “sat on the application,” these are allegations with no evidence of delay by the ministry, or any reason for the ministry to intentionally delay considering the appellant’s PPMB application. The ministry wrote in its submission on the appeal that with the PPMB status, the appellant’s future requests for medical transportation may be considered under Section 2(1)(f) of Schedule C of the EAR. The panel finds that the ministry’s conclusion that Section 67 of the EAR did not apply at the time the application was considered was reasonable.

### ***Section 76 of the EAR- Life-threatening health need***

The ministry also reasonably proceeded to consider Section 76 of the EAR, which provides a remedy for those persons in a family unit who are not otherwise eligible for health supplements under the EAR, if the person meets the other requirements of the section. One of the requirements of Section 76 of the EAR is that the ministry must be satisfied that the person faces a direct and imminent life-threatening need and the health supplement is necessary to meet that need. The ministry considered the information from the medical professionals regarding the appellant's need for the medical transportation, including the letter dated October 3, 2017 in which a physician wrote that the appellant "requires to attend a Pain Education Course" at the hospital that was advised to him by his pain specialist, as well as the prescription dated October 6, 2017, in which the pain specialist physician wrote that he "certifies" that the appellant needs travel assistance to attend treatments at the hospital pain clinic. The ministry acknowledged that both of the medical practitioners support the appellant's need to attend the pain education/treatment sessions, but wrote that neither medical practitioner provides any indication that the appellant's life is at risk. The Consultation Report dated September 5, 2017 indicated an "essentially normal study" and also "strongly recommended" enrollment in the self-management pain program, but did not report any risk to the appellant's life if he did not attend.

The appellant argued in his Request for Reconsideration that he has made arrangements to end his life but his doctor wanted him to do the pain program first, and he believes this shows his need for medical transportation is life threatening. The medical practitioners did not refer to the appellant's arrangements to end his life or to any referral to a mental health specialist, such as a psychiatrist, to address any mental health concerns affecting the appellant's safety in any of the documents submitted, and the panel finds that the ministry reasonably required verification by a medical or nurse practitioner that, without the supplement, the appellant's life is at risk.

In his written submission, the appellant argued that he believes there is a direct and imminent health risk because: the ministry is not a doctor, the ministry does not know his medical condition, and medical records are private and there is no legal reason why he has to release them to the ministry. The panel acknowledges that the ministry is not necessarily a doctor and may not be aware of the appellant's medical condition and, therefore, the ministry must rely on information provided by the medical professionals who are aware of the appellant's situation. In order to request the supplement, there must be supporting medical documentation provided that is sufficient to satisfy the ministry that the appellant faces a direct and imminent life-threatening need and that the health supplement is necessary to meet that need. The panel finds that the ministry reasonably concluded that there was not sufficient information provided to establish that the appellant faces a direct and imminent life-threatening need and that the medical transportation is necessary to meet that need.

### ***Section 76 of the EAR- No Resources***

Another requirement of Section 76 of the EAR is that the ministry must be satisfied that there are no resources available to the person's family unit with which to meet the need for a health supplement. In the reconsideration decision, the ministry wrote that there is information in the Consultation Report dated September 5, 2017 that the appellant would speak to his lawyer to see about assistance for the cost of travel to the pain program, and there was no further information to establish that the appellant had made efforts to access this resource to help with the cost of the medical transportation. In his Request for Reconsideration, the appellant wrote that he has already tried doing travel assistance but they say it is not covered even though it is billed and paid for by MSP; however, the appellant did not reference a request of his lawyer, as suggested to his physician. In his written submission on the appeal, the appellant wrote that he was seriously injured in a car accident and the ministry thinks ICBC or someone else should pay for things, but the appellant does not provide further information about having made a request of ICBC for assistance with the cost of the medical transportation and this request having been denied. The panel finds that the ministry's conclusion that there was insufficient information to establish that there are no resources available to the appellant to meet the need was reasonable and, therefore, all of the requirements of Section 76 had not been met.

### ***Conclusion***

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a supplement to cover the cost of medical transportation as the appellant was not eligible as a qualifying person under Section 67 of the EAR and the eligibility criteria for a direct and imminent life-threatening health need under Section 76 of the EAR were not met, 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.