

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction of (the “ministry”) December 21, 2017 reconsideration decision denying the appellant’s request for a health supplement for a medical transportation supplement to attend an appointment for an orthopaedic assessment 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 (EAPWDR) 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) – Section 62 and Schedule C, Sections 1 and 2(f)

PART E – SUMMARY OF FACTS

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

The evidence before the ministry at reconsideration included:

- the appellant's request for reconsideration in which he noted that he was extremely dissatisfied with the decision due to everything that he's had to endure since a freight train ran him over in 2009;
- a ministry HR2894 Orthoses Request and Justification form signed by a medical practitioner November 28, 2017 with the Assessment section signed by a certified pedorthist on December 4, 2017 with written notations: "partial ankle fusion – needs footwear (rocker) orthoses to reduce limp and improve function", "negative plastic cast for positive mold", "negative orthotic device", "orthotic device (none)" and "an alteration to footwear to restore degree of normal function";
- a Social Security Tribunal Decision dated July 26, 2017 regarding the appellant's Canada Pension Plan Disability designation;
- a ministry Request for Non-local Medical Transportation Assistance form dated November 9, 2017 in which the appellant requested funds for accommodation and transportation to travel to another community for an appointment with an orthotics office on November 14, 2017;
- a letter dated November 9, 2017 from the orthotics office confirming the appellant's appointment on November 14, 2017;
- a letter dated October 30, 2017 from the appellant's physician to the orthotics office which outlined the appellant's injury and seeking an opinion regarding a rocker shoe or similar prosthetic to improve mobility and limits progression of his OA;

On the Notice of Appeal form signed by the appellant on January 8, 2018 he wrote "I disagree, simply on basis, it is wrongful and despite all regulations given, it is counteractive for anyone attempting to get better/lead a qualify life despite handicap".

At the hearing, the appellant explained that he had been involved in an accident involving a train about 8 years ago and that he has only one arm and one leg that he has been receiving medical treatment for since then. The appellant explained that he lives in a community that does not have orthotics services so he has to travel to another community to receive needed services. The appellant argues that he submitted the necessary ministry form signed by his physician who referred him for orthotics and that he does requires orthotics which the ministry has paid for him in the past, so why would he not be eligible to receive funds for transportation costs for him to get to the orthotist. The appellant stated that over the years the ministry has paid for him to attend other doctor appointments outside the area, but has never paid for transportation costs to go to the orthotist. The appellant explained that he had received a settlement from the accident a number of years ago which he paid off his debts with and that he is only trying to find a way to live and support his child and that it is a struggle to move forward as these trips costs money and it puts a hardship on his family.

The ministry did not attend the hearing so the panel will reference the reconsideration decision as well as documents provided in the appeal record for their position.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry reconsideration decision of December 21, 2017 denying the appellant's request for a health supplement for a medical transportation supplement to attend an orthopaedic assessment appointment because the ministry determined that the eligibility requirements in Schedule C, Section 2(1) (f) of the EAPWDR had not been met. Specifically, the ministry determined that the appellant had not been referred to a specialist as required by the 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,

Schedule C Section 1, definitions

"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*.

Schedule C Section 2

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.

The appellant's position is that he is a person with a disability and he was referred by his physician for a consultation with a pedorthist who confirmed that he does need orthotics for his condition, which are not available to him in his home community, so he believes he should be eligible for assistance with transportation and accommodation costs to get him to the appointment in the other community to have the orthotics made for him.

The ministry's position is that the appellant is ineligible for a health supplement for medical transportation because he has not met any of the legislative criteria set out in Schedule C Section 2 (1) (f) (i-v) of EAPWDR. Specifically, they do not provide medical transportation funds to attend appointments with suppliers of orthotics because an orthotist or pedorthist are not recognized as specialists in a field of medicine or surgery by the Board of the College of Physicians and Surgeons of BC, as is required by the legislation.

Panel Decision

The authority for the ministry to provide a medical transportation supplement is provided in section 2(1)(f) of the EAPWDR. The subsection states that the applicant must use the least expensive mode of travel to one of the following:

- (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.

In the appellant's circumstance, his appointment was to a certified pedorthist not to a medical practitioner or nurse practitioner so subsection (i) does not apply, nor was he attending a general hospital or rehabilitation hospital so subsections (iii) and (iv) do not apply. The ministry established, and the panel agrees, that orthopaedic services are a benefit under the Medicare Protection Act and that there are no resources available for the appellant to cover the costs of transportation, so subsections (v) and (vi) have been met.

The panel will focus on subsection (ii), to the office of the nearest available specialist in a field of medicine or surgery if that person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner, as the appellant considers the pedorthist to be a specialist and his physician referred him. Upon reviewing the definition of a specialist as defined by Schedule C section 1 of the EAPWDR, the panel notes that the definition refers to 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*. The panel finds that although a pedorthist may be considered a specialist in their practise, they are not a medical practitioner as they cannot be registered with the College of Physicians as Surgeons of BC. The panel finds the ministry was reasonable in their decision that the appellant was not eligible for a medical transportation supplement because the appointment to which the appellant had been referred was not to a "specialist" as required by subsection (ii).

Conclusion

The panel sympathizes with the appellant's predicament. The ministry provided him with a form that notes if custom orthoses are required, a referral to a pedorthist should be made, yet a supplement for transportation costs to that appointment cannot be issued. However, for the reasons 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 his appeal.