

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision dated August 21, 2018 where the Ministry denied the Appellant’s request for non-local medical transportation by reason that the appellant did not meet all of the criteria in s.2(1)(f) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”). Specifically, the Appellant was not visiting a specialist pursuant to s.2(1)(f)(ii) Schedule C EAPWDR and as defined in Section 1 of Schedule C EAPWDR. The Ministry determined that the Appellant’s travel requirement also did not fit into any of the remaining criteria set out in s.2(1)(f) EAPWDR.

PART D – RELEVANT LEGISLATION

Sections 1, 2, 2(1)f Schedule C Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) s.24 Employment and Assistance Act (“EAA”)

PART E – SUMMARY OF FACTS

The information before the Ministry at reconsideration was the following:

- The Appellant is four-year-old and is the dependant of his grandmother who is in receipt of disability assistance. The Appellant is eligible for general health supplements under Schedule C, Section 2 EAPWDR.
- On July 19, 2018 the appellant's grandmother and representative (the "Representative") submitted a request for non-local medical transportation for the Appellant to visit a Child Development Centre ("CDC") to attend a variety of appointments.
- The appointments were with an optometrist, speech therapist, occupational therapist and physical therapist.
- The Representative and the Appellant would be travelling by vehicle, did not require overnight accommodation, and the Appellant required the Representative as an escort.
- The optometrist, speech therapist, occupational therapist, and physical therapist resources that the Appellant sought were not available locally and no bus transportation was available.
- The Appellant and the Representative would be required to travel to the CDC twice in order to attend all the scheduled appointments.

The Appellant's request for reconsideration provides the following information from the Representative:

- Concern that she was not informed of the reconsideration decision or the legislation the Ministry was relying on in making their decision.
- Confirmation that the Appellant could not access the appointments locally and that she could not take a bus to the appointments.
- Confirmation that her doctor was supportive of the appointments.

The documentary evidence available at reconsideration was the following:

- Request for non-local medical transportation assistance form dated July 13, 2018 and signed by the Representative stating the dates and times to meet with an occupational therapist, physical therapist, speech therapist and optometrist.
- Prescription form dated July 13, 2018 from the Appellant's doctor showing appointment dates, times and locations that the Appellant requires for occupational therapy, physical therapy, speech therapy, and optometry.
- Prescription form dated August 3, 2018 from the Appellant's doctor stating that the Appellant requires travel to attend the appointments.
- Letter dated August 7, 2018 from a Supported Child Development Consultant stating that the appellant was seen by physio, occupational and speech therapists on June 5, 2018 in his home community.
- Speech language pathology discharge notice sent August 1, 2018 indicating the Appellant was discharged from speech language pathology.

The notice of appeal ("NOA") filled in by the Representative states:

- the Ministry's definition of a specialist should be reviewed as the people the appellant saw should not have their expertise discounted simply because they cannot be registered with the College of Physicians and Surgeons.

At the hearing the Appellant's Representative and her Advocate stated:

- the Appellant requires the medical care.
- On December 17, 2017 the Appellant's Representative took custody of him and the Appellant struggles with many issues.
- The closest place for the Appellant to receive this kind of medical attention is three hours away.

At the hearing the Ministry relied on their reconsideration decision.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's decision to deny the appellant non-local medical transportation by reason that the appellant did not meet all the criteria in s.2(1)(f) of Schedule C EAPWDR is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant. Specifically, was it reasonable for the Ministry to determine that the Appellant's travel requirement did not fit into s.2(1)(f)(ii) Schedule C EAPWDR or any of the remaining criteria set out in s.2(1)(f)(i) – (iv) Schedule C EAPWDR?

The legislation provides:

Schedule C

Section 1 - EAPWDR

"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.

General health supplements – EAPWDR

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 67 [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 panel finds:

The Ministry determined that the Appellant's need for travel did not fit into s.2(1)(f)(ii) Schedule C EAPWDR by reason that the Appellant required non-local medical transportation to visit health professionals who were not specialists defined in the EAPWDR. By virtue of the definition in s.1 Schedule C EAPWDR, the specialist must be a specialist that can be registered with the College of Physicians and Surgeons of BC. None of the specialists that the Appellant needed to see had the ability to be registered with the College of Physicians and Surgeons of BC. Therefore the panel finds that it was reasonable for the Ministry to determine that the Appellant did not meet the travel requirements in s.2(1)(f)(ii) Schedule C EAPWDR.

The Ministry did not thoroughly review in detail sections s.2(1)(f)(i), (iii), or (iv) Schedule C EAPWDR in their reconsideration decision. With respect to these sections, the reconsideration decision only states "in addition, your request does not fit into any of the remainder, eligible categories for medical transportation to and from an office, in

the local area, of a medical practitioner or nurse practitioner, the nearest suitable general hospital or rehabilitation hospital or the nearest suitable hospital as defined in paragraph (e) of the definition of hospital in section 1 of the Hospital Insurance Act.” This kind of reasoning by the Ministry is not only difficult to follow, but it is also inadequate.

With respect to s.2(1)(f)(i) the reasons do not tell the Appellant why or how the Ministry determined this is not “transportation ... of a medical practitioner or nurse practitioner.” What is the legislation that excludes the types of professionals the Appellant’s wanted to see as medical practitioners or nurse practitioners? The reasons do not guide the Appellant on how the Ministry came to its conclusion about if these practitioners were in fact medical practitioners or nurse practitioners.

With respect to s.2(1)(f)(iii) the reasons do not tell the Appellant why the CDC is not a facility as defined in section 1.1 of the Hospital Insurance Act Regulations.

With respect to s.2(1)(f)(iv) the reasons do not tell the appellant why the CDC is not a hospital as defined in paragraph (e) of the definition of hospital in section 1 of the Hospital Insurance Act. Paragraph (e) for instance refers to designations made by the Lieutenant Governor in Council in accordance with the act and regulations, but the Ministry does not review those regulations or orders in council to determine if the CDC does or does not qualify as a hospital pursuant to the act, regulations, or orders-in-council, as the case may be.

Pursuant to s.24(1)(b) EAA, the panel must determine if the decision being appealed is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. Without substantive reasons from the Ministry, the panel cannot conduct a reasonableness analysis. The best the panel could do at this point, is conduct their own analysis of the legislation and come up with their own decision. The panel finds that they do not have the authority to do that under the EAA. The panel’s authority is to determine if the Ministry’s interpretation of their own legislation is a reasonable interpretation. In this case, the Ministry failed to adequately interpret their legislation and so the panel must find that unreasonable.

Given the inadequacy of the reasons and the lack of the interpretation of the legislation conducted by the Ministry, the panel finds that this was not a reasonable application of the legislation in the circumstances of the Appellant. The panel therefore rescinds the decision of the Ministry.

PART G - ORDER

THE PANEL DECISION IS: (Check one)

UNANIMOUS

BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION

RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H - SIGNATURES

PRINT NAME

MEGHAN WALLACE (by telephone)

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/11/26

PRINT NAME

WENDY MARTEN

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/11/26

PRINT NAME

KIM READ

DATE (YEAR/MONTH/DAY)

2018/11/26