

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated January 30, 2019 in which the ministry found that the appellant was not eligible for a health supplement for medical transportation under the Employment and Assistance for Persons with Disabilities Regulation ("EAWDR"). The ministry found that the appellant's request for transportation to attend an appointment for pain treatment in another community ("Community B") does not meet the legislative criteria because the physician in Community B is not recognized as a specialist as required by sections 1 and 2 of Schedule C.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act - EAPWDA - section 5

Employment and Assistance for Persons with Disabilities Regulation - EAWDR - section 62 and Schedule C sections 1 and 2

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's record of decision which indicates:

- The ministry advised the appellant on January 4, 2019 that she was not eligible for a health supplement for transportation to attend an appointment Community B with a medical practitioner ("Dr. T."). On January 23, 2019, the appellant submitted a Request for Reconsideration ("RFR") with a referral note from her general practitioner ("GP", "Dr. S."). On January 30, 2019, the ministry completed its review of the RFR.
- The appellant is a single person in receipt of disability assistance.
- On January 3, 2019, the appellant submitted a note from Dr. S, confirming an appointment with Dr. T. on January 8, 2019.
- In assessing the appellant's request for the supplement, the ministry found that the appellant was seeking transportation "outside (her) local area" under subsection 2(1)(f)(ii) of EAPWDR Schedule C.

2. A prescription pad note from Dr. S. dated January 9, 2019, confirming that the appellant is seeing Dr. T. in Community B. The note states that Dr. T. is an "interventional pain specialist" and the appellant has to travel to Community B on a regular basis as the service is not provided in her home community.

3. A prescription pad note from Dr. S. dated December 20, 2018, confirming that the appellant has an appointment with Dr. T. on January 8, 2019 and the service is not provided in the appellant's home community.

4. An RFR signed by the appellant on January 17, 2019.

Additional information

The appellant filed a *Notice of Appeal*, received by the Tribunal on February 13, 2019. In an attached submission dated February 7, 2019, the appellant provides her argument and explains her situation as follows:

- She has pinched nerves in her lower back and right shoulder. She also has osteoarthritis. Dr. S. has done all he can to alleviate her pain "with cortisone shots". There are no pain relievers that suppress nerve pain so the appellant has to have cortisone shots every three months, and more often if she has a fall.
- The hospital in the appellant's home community does not provide cortisone shots, nor is there an available pain specialist in her home community. Dr. T. is familiar with her situation and has an ultrasound machine in his office so he can see the problem and provide immediate treatment. There is no one with this technology in the appellant's home community.
- The appellant has an appointment with Dr. T. on March 6, 2019 and due to her recent move and higher rent she has not been able to pay the outstanding cost of her last trip to see Dr. T.

The appellant also submitted a copy of Dr. T.'s business card which indicates that he practices "pain medicine."

The ministry had no objections to the additional information but "cannot comment on the accuracy of the information"; in particular, that no specialized pain treatment is available in the appellant's home community. The panel finds that the supplemental information is in support of the information and records that were before the minister at the reconsideration. While the appellant's medical conditions were not before the minister, the ministry had no objections to admitting the information and the panel finds the new information provides additional detail in support of the appellant's request for medical transportation to Community B. The panel admits the submission under section 22(4) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister when the decision being appealed was made.

The appellant did not attend the hearing. Upon confirming that she was notified of the date and time, the panel considered the appeal in a party's absence as it is authorized to do under section 86(b) of the *Employment and Assistance Regulation*. The ministry provided argument at the hearing and did not submit any new evidence.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry reasonably concluded that the appellant was not eligible for a health supplement for medical transportation under the EAPWDR. Was the ministry's determination that the request for transportation does not meet the legislative criteria in sections 1 and 2 of Schedule C reasonably supported by the evidence or a reasonable application of the legislation?

The ministry based the reconsideration decision on the following legislation:

Pursuant to the EAPWDA:

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Pursuant to the EAPWDR:

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,

Schedule C

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*.

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.

Analysis and panel's decision

Section 5 of the EAPWDA authorizes the minister to provide a health supplement to a family unit that meets the eligibility requirements under the Regulations. Under section 62 of the EAPWDR, the minister has the discretion to provide the health supplements set out in section 2 of Schedule C to or for a family unit in receipt of disability assistance. The appellant is a recipient of disability assistance and may therefore be eligible for medical transportation under section 2(1)(f) of Schedule C if her request meets specific eligibility requirements set out in clauses (i) to (vi). The specifics of the request determine which clause applies in the person's circumstances.

The ministry assessed the appellant's request for a transportation supplement under subsection 2(1)(f)(ii) of Schedule C. This subsection authorizes the minister to pay for the least expensive appropriate mode of transportation to or from 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*. The ministry is not disputing that the appellant has been referred to Dr. T. for pain treatment but argues that Dr. T. is not a "specialist" as defined in section 1 of Schedule C which indicates that a specialist is a medical practitioner who is *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*. The ministry notes that Dr. T. is not registered as a specialist with the College of Physicians and Surgeons of BC and argues that Dr. T. is therefore not considered a specialist under the EAPWDR.

The appellant argues that she does not have the option for severe pain relief in her home community as confirmed by Dr. S. in his notes of January 9, 2019 and December 20, 2018. These notes state that the appellant "is seeing Dr. T. in Community B since the service is not provided in (appellant's home community)". The appellant states that there is no pain specialist in her home community, that cortisone injections are not available at her local hospital, and that the technology employed by Dr. T. ("ultrasound machine in his office") is not available in her home community. The appellant argues that the legislation does not take into consideration the shortage of pain specialists in her home community and Dr. T. should be accepted as a specialist because Dr. S. has referred her there and Dr. T.'s business card "speaks for itself" with the words "pain medicine."

The panel considered whether the ministry reasonably applied the legislation by assessing the appellant's request under subsection 2(1)(f)(ii), rather than 2(1)(f)(i) Of Schedule C. Under clause (i), the minister may provide the least expensive appropriate mode of transportation to or from *an office, in the local area, of a medical practitioner or nurse practitioner*. Therefore, under subsection 2(1)(f)(i), the ministry may provide transportation to the office of medical practitioner who is not registered as a specialist with the BC College of Physicians and Surgeons as long as the office is located within the requestor's local area.

However, the record indicates that the appellant was requesting a transportation supplement to attend the office of a medical practitioner whom she considers to be a specialist. The appellant indicates that she is already seeing a regular physician (Dr. S.) but he has done all he can for her and she requires pain treatment from Dr. T. who uses specialized technology that is not available in her home community. As well, Dr. S. refers to Dr. T. as an "interventional pain specialist" and Dr. T.'s business card indicates that he practices pain medicine.

As the appellant was requesting transportation to attend an appointment with a "pain specialist", the panel finds that the ministry reasonably considered the appellant's request under subsection 2(i)(f)(ii) of EAPWDR Schedule C. The panel finds that the ministry reasonably concluded the appellant is not eligible for a medical transportation supplement under subsection 2(1)(f)(ii) because Dr. T. is not a specialist in accordance with section 1 of Schedule C. The appellant argues that Dr. T. should be considered a pain specialist under a less restrictive reading of the Regulations but under subsection 2(1)(f)(ii), the minister does not have the discretion to provide transportation to the office of a "specialist" who is not registered as such.

Conclusion

In order to be eligible for a medical transportation supplement to the office of the nearest available specialist, the criteria in subsection 2(1)(f)(ii) of Schedule C must be met. As Dr. T. is not a specialist as defined in the Regulation, the panel finds that the ministry reasonably applied the legislation in the circumstances of the appellant. The panel confirms the reconsideration decision and the appellant is not successful on appeal.

PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME Margaret Koren	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/03/07

PRINT NAME Vivienne Chin	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/03/07
PRINT NAME David Roberts	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/03/07