

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the "Ministry") reconsideration decision of February 5, 2019 (the "Reconsideration Decision"), which denied the Appellant:

1. a supplement for non-local transportation to and from a surgery in the United States (the "Surgery") on the basis that the Appellant had not satisfied the criteria in section 2(1)(f) of Schedule C to the *Employment and Assistance for Persons with Disabilities Regulation* ("EAPWDR");
2. a health supplement under section 69 of the EAPWDR on the basis that the Appellant had not demonstrated a direct and imminent life threatening need" for the non-local transportation supplement in respect of the Surgery; and
3. a loan for cost of the Surgery on the basis that the Ministry had no statutory authority to loan money to a recipient for the cost of or a deposit for a medical procedure.

PART D – RELEVANT LEGISLATION

Sections 56(2), 56.1, 62, and 69 of the EAPWDR
Section 2(1)(f) of Schedule C to the EAPWDR
Section 26 of the *Employment and Assistance for Persons with Disabilities Act* ("EAPWDA")
Sections 1 of the *Hospital Insurance Act* ("HIA")
Section 1.1 of the *Hospital Insurance Regulation* ("HIR")
Sections 1 and 5 of the *Hospital Act* ("HA")

PART E – SUMMARY OF FACTS

The Appellant is a sole recipient of disability assistance.

The information before the Ministry at the time of the Reconsideration Decision included the following:

- an e-mail chain between October 9, 2018 and October 30, 2018 (the “E-mails”) involving the Appellant, the Appellant’s social worker, the office manager of a surgeon in the United States to whom the Appellant had been referred for the Surgery, and a representative of the Ministry of Health (“MOH”) in which:
 - the office manager for the U.S. surgeon advised the Appellant that the surgeon could not bill the federal government for the Surgery as it had no contract with the hospital where the Surgery was to be performed and that the Appellant would be required to pay the full cost of the Surgery by the date of the Surgery, including a 50% deposit for the cost at the time of booking; and
 - the representative of the Ministry of Health advised that the Medicare Protection Act only provided for payment of an out of country service *after the service was received* (emphasis added);
- a letter from the Appellant’s social worker, dated November 23, 2018, in which the social worker advised that:
 - the Appellant had undergone a related procedure (the “Related Surgery”) with a doctor in another province on September 24, 2018 who had referred the Appellant to the U.S. surgeon as there were no surgeons in Canada who could perform the Surgery;
 - the Appellant would require assistance to cover the cost of the Surgery and non-medical expenses related to the Surgery including, but not limited to, food, travel, and accommodations while in the United States for the Surgery; and
 - the MOH had confirmed approval of funding for the Surgery;
- the Appellant’s “Request for Non-Local Medical Transportation Assistance”, which was undated and unsigned and contained no information other than the Appellant’s name and contact information;
- a letter from the Ministry to the Appellant, dated December 20, 2018, advising that the Appellant’s request for funds to cover the cost of a deposit for the Surgery was denied and that once the Appellant had scheduled the Surgery, the Appellant should contact the Ministry to request non-local medical transportation funds to travel to the United States for the Surgery;
- the Appellant’s Request for Reconsideration, dated January 14, 2019 (the “RFR”), which included:
 - a hand written note from the Appellant, which stated that:
 - the Appellant was not seeking a loan for the deposit for the Surgery but a loan for the entire cost of the Surgery;
 - the MOH had approved funding for the Surgery;
 - the Ministry would be reimbursed once the Surgery was complete; and
 - the Appellant could not book a date for the Surgery until a 50% deposit was paid and that Surgery would not be performed until the balance was paid;
 - a typed letter from the Appellant reiterating what was in the handwritten note in the RFR and confirming that the Appellant did not have financial means to pay for the Surgery without assistance from the Ministry;
 - a letter from the Appellant’s social worker, dated January 11, 2019, which described the Appellant as “encountering a systemic barrier between two provincial Ministries”, one of which (the MOH) had confirmed funding for the Surgery; and

- the E-mails

In the Notice of Appeal, dated February 25, 2019, the Appellant stated that:

- the Appellant had been involved in a human rights tribunal case related to the Surgery which was previously settled;
- the matter was aggravated now and would need to be settled in court if a solution for ensuring the continuity of the Appellant's health care could not be coordinated.

At the hearing of the Appeal, the Appellant provided a thorough and extensive history of the events related to the Surgery and the Appellant's request for a loan, as well as the Appellant's request for a transportation supplement. In particular, the Appellant advised that:

- a human rights complaint had been filed several years ago in respect of the MOH's failure to provide coverage for the Related Surgery and the Surgery, coverage for which had been originally denied by the MOH on the basis that it was "cosmetic";
- at an early settlement meeting in the human rights complaint process, the MOH agreed to fund both the Related Surgery and the Surgery;
- both the Related Surgery and the Surgery were originally supposed to be performed in another province by doctors who had agreed to receive payment after the completion of the procedures, as per the terms upon which the MOH would cover costs for out of province medical procedures;
- during a consultation with the surgeon who was to perform the Related Surgery, it was determined that the technique used by the surgeon who was to perform the Surgery offered only a 50% chance of success and, in the result, the Appellant was referred to the U.S.-based surgeon, who insisted on pre-payment of the entire cost of the Surgery;
- the Related Surgery was performed outside of British Columbia in September, 2018 and the Ministry had paid a transportation supplement in respect of the Appellant's travel expenses;
- the Appellant has been unable to secure a bank loan to cover the cost of the Surgery, which is why a loan was requested from the Ministry;
- the Appellant has been looking to find a surgeon who can or would perform the Surgery without seeking payment up front but, to date, has been unable to locate anyone;
- the Appellant has consulted with her MLA regarding this matter and was advised that the struggles she is having in securing up-front funding for the Surgery are the result of a gap in the legislation;
- the difficulties she has been having obtaining funding for both the cost of the Surgery and the related costs for transportation to and from the Surgery are the result of discrimination on the basis of disability and gender; and
- the Appellant had consulted the Attorney General regarding this matter but did not receive a response.

The Appellant also submitted that the nature of the Surgery is such that not having it done puts the Appellant's health in direct and imminent danger as failure to have the Surgery could make the Appellant susceptible to discrimination and potentially violence.

The Appellant also made submissions that the Ministry does have the authority to make loans to recipients of disability assistance and pointed to the fact that the Appellant had received a loan in respect of her security deposit for an apartment rental.

At the hearing, the Ministry representative relied on the Reconsideration Decision and advised, when asked, that the Ministry will provide loans to recipients of disability assistance but stated that he

understood that the authority for doing so was a policy decision and not necessarily a statutory authority. The Ministry representative was unable to confirm whether the Appellant had received a non-local medical transportation supplement in respect of her travel outside of British Columbia for the Related Surgery.

The panel admits the evidence given by the Appellant and the Ministry representative at the hearing as oral testimony in support of information that was before the Ministry at the time of the Reconsideration Decision, pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry reasonably determined that the Appellant was ineligible for:

1. a supplement for non-local transportation to the Surgery on the basis that the Appellant had not satisfied the criteria in section 2(1)(f) of Schedule C to the EAPWDR;
2. a health supplement under section 69 of the EAPWDR on the basis that the Appellant had not demonstrated a direct and imminent life threatening need” for the non-local transportation supplement in respect of the Surgery; and
3. a loan for cost of the Surgery on the basis that the Ministry had no statutory authority to loan money to a recipient for the cost of or a deposit for a medical procedure.

Legislative Framework

Section 62 of the EAPWDR authorizes the Ministry to provide health supplements set out in sections 2 and 3 of Schedule C 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,
- (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 is a continued person.

The supplement sought by the Appellant, for non-local transportation to and from medical procedures is provided for in section 2(1)(f) of Schedule C to the EAPWDR:

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.

Section 1 of the HIA defines a "hospital" as follows:

"hospital" means, except in sections 24 and 29 (2) (a),

- (a) a hospital as defined by section 1 of the *Hospital Act* that has been designated under this Act by the Lieutenant Governor in Council as a hospital required to provide the general hospital services provided under this Act,
- (b) a private hospital as defined by section 5 of the *Hospital Act* with which the government has entered into an agreement requiring the hospital to provide the general hospital services provided under this Act,
- (c) a hospital owned and operated by Canada that has been designated under this Act a "federal hospital",
- (d) an agency or establishment that
 - (i) provides a service to hospitals or a health service and
 - (ii) has been designated as a hospital facility by the Lieutenant Governor in Council, or
- (e) an establishment in which outpatient services are available that has been designated a diagnostic and treatment centre by the Lieutenant Governor in Council for providing outpatient benefits to beneficiaries in accordance with this Act and the regulations;

Section 1 of the HA define "hospital" and "private hospital" as follows:

"hospital", except in Parts 2 and 2.1, means a non profit institution that has been designated as a hospital by the minister and is operated primarily for the reception and treatment of persons

- (a) suffering from the acute phase of illness or disability,
- (b) convalescing from or being rehabilitated after acute illness or injury, or
- (c) requiring extended care at a higher level than that generally provided in a private hospital licensed under Part 2;

Section 1.1 of the HIR defines "general hospital" and "rehabilitation hospital" as follows:

"general hospital" means a hospital or a portion of a hospital as defined under paragraph (a) or (c) of the definition of "hospital" in the Act, the prime function of which is to provide services and treatment for persons suffering from the acute phase of illness or disability;

...

"rehabilitation hospital" means a hospital or a portion of a hospital as defined under paragraph (a) or (c) of the definition of "hospital" in the Act, the prime function of which is to provide facilities for the active treatment of persons requiring rehabilitative care and services;

Where a recipient does not meet the criteria set out in Schedule C for a particular supplement, the Ministry may also provide that supplement on the basis of direct and imminent life threatening need under section 69 of the EAPWDR:

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) 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 26 of the EAPWDA authorizes the Lieutenant Governor in Council to make regulations, including in respect of the conditions upon which assistance and supplements may be provided including that such assistance or supplements be provided on a repayable basis:

Power to make regulations

26 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

...

(j) specifying conditions on which disability assistance, hardship assistance or a supplement may be provided, including a condition that the disability assistance, hardship assistance or supplement be provided on a repayable basis, and the consequences of failing to comply with those conditions;

More specifically, sections 56(2) and 56.1 of the EAPWDR authorize the Ministry to specifically advance funds to recipients to pay security deposits, as defined by the *Residential Tenancy Act*, and for amounts required by utility providers where the recipient enters into a written agreement to repay the amount of the supplement:

Supplement to pay a security deposit

56 (1) In this section:

"cooperative association" means a cooperative association as defined in the *Real Estate Development Marketing Act*;

"security deposit" means a security deposit as defined in the *Residential Tenancy Act*, or an amount required by a cooperative association to be paid by a recipient to the cooperative association for the same or a similar purpose as a security deposit under the *Residential Tenancy Act*.

(2) The minister may provide a security deposit to or for a family unit that is eligible for disability assistance or hardship assistance if

(a) the security deposit is necessary to enable the family unit to rent residential accommodation,

(b) the recipient agrees in writing to repay the amount paid under this section, and

(c) the security deposit does not exceed 50% of one month's rent for the residential accommodation.

(3) The minister may recover the amount of a security deposit provided under subsection (2) by deducting \$20 for each calendar month, or a greater amount with the consent of a recipient, from

disability assistance or hardship assistance provided to or for the family unit starting with the disability assistance or hardship assistance provided for the calendar month following the calendar month during which the security deposit is paid.

- (4) The minister must not provide more than 2 security deposits to or for a family unit unless
- (a) only one of the security deposits has not been recovered or repaid,
 - (b) the family unit requires up to one more security deposit to change rented residential accommodation
 - (i) because the recipient is separating from an abusive spouse, or
 - (ii) because the family unit's rented residential accommodation
 - (A) is being sold or demolished and a notice to vacate has been given, or
 - (B) has been condemned, or
 - (c) the minister is satisfied that the family unit is homeless or at imminent risk of becoming homeless.

(5) For the purposes of subsection (3), "**security deposit**" includes a security deposit provided on or after April 1, 2002 under the

- (a) Disability Benefits Program Regulation, B.C. Reg. 79/97,
- (b) Income Assistance Regulation, B.C. Reg. 75/97,
- (c) Youth Works Regulation, B.C. Reg. 77/97, or
- (d) Employment and Assistance Regulation.

(6) Repealed. [B.C. Reg. 193/2017, s. 5.]

...

Supplement to pay a utility security deposit

56.1 (1) In this section, "**utility security deposit**" means an amount required by a utility provider of electricity or natural gas services to secure payment for the provision of residential electricity or natural gas services to a family unit.

(2) The minister may provide a utility security deposit to or for a family unit that is eligible for disability assistance or hardship assistance, in an amount not to exceed the minimum amount required by the utility provider from a recipient, if

- (a) the utility security deposit is necessary to enable the family unit to obtain or continue to obtain the services of the utility, and
- (b) the recipient agrees in writing to repay the amount paid under this section.

(3) The minister may recover the amount of a utility security deposit provided under subsection (2) by deducting \$20 for each calendar month, or a greater amount with the consent of a recipient, from

disability assistance or hardship assistance provided to or for the family unit starting with the disability assistance or hardship assistance provided for the calendar month following the calendar month during which the utility security deposit is paid.

(4) Repealed. [B.C. Reg. 193/2017, s. 6.]

Appellant Position

The Appellant's position is that she qualifies for a supplement for non-local medical transportation, having had approval from the MOH for the Surgery and having had the MOH pay for the Related Surgery and the Ministry pay a supplement for the transportation to and from the Related Surgery. The Appellant also states that her health is in direct and imminent danger if the surgery is not performed due to the discrimination that she may face without the Surgery.

Finally, the Appellant points to the Ministry's ability to loan monies for damage deposits as evidence of the Ministry's authority to loan the funds required to pay for the Surgery.

Ministry Position

The position of the Ministry is that the Appellant does not meet any of the requirements of sub-sections (i) through (vi) or sub-section (v) of section 2(1)(f) of Schedule C to the EAPWDR, has not demonstrated a direct and imminent life threatening health need, and that the Ministry has no statutory authority to loan the Appellant the funds required to pay for the Surgery with a U.S.- based surgeon.

Panel Decision

Non-Local Medical Transportation Supplement

In order to be eligible for a supplement in respect of non-local transportation, the Appellant must meet any one or more of the criteria in sub-sections (i) through (iv) and the criteria in both of sub-sections (v) and (vi) of section 2(1)(f) of Schedule C to the EAPWDR.

Sub-section (i) authorizes a supplement for the least expensive mode of transportation to or from "an office, in the local area, of a medical practitioner or nurse practitioner." As the Surgery is to take place in the United States, sub-section (i) of section 2(1)(f) of Schedule C to the EAPWDR is inapplicable to the Appellant's circumstances. The panel finds that the Ministry was not unreasonable in determining that the Appellant had not met the criteria set out in section 2(1)(f)(i) of Schedule C to the EAPWDR.

Sub-section (ii) authorizes a supplement for the least expensive 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 evidence of the Appellant is that the U.S.-based surgeon is the "nearest available specialist" who can offer the Appellant the greatest chance of the Surgery being successful. The word "local medical practitioner" is not defined in the EAPDWR, unfortunately. The evidence given by the Appellant is that the doctor who made the referral to the U.S.-based surgeon for the Surgery was the out of province doctor who had performed the Related Surgery. In the absence of a referral from a B.C.-based medical practitioner, the panel finds that the Ministry was not unreasonable in determining that the Appellant had not met the criteria set out in section 2(1)(f)(ii) of Schedule C to the EAPWDR.

Sub-section (iii) authorizes a supplement for the least expensive mode of transportation to or from "the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations." The terms "general hospital" and "rehabilitation hospital" are defined under section 1.1 of the HIR and refer back to the definition of "hospital" under the HIA and, specifically, sub-sections (a) and (c) of the definition, which read as follows:

(a) a hospital as defined by section 1 of the Hospital Act that has been designated under this Act by the Lieutenant Governor in Council as a hospital required to provide the general hospital services provided under this Act,

...

(c) a hospital owned and operated by Canada that has been designated under this Act a "federal hospital"...

In determining that the Appellant did not meet the criteria set out in sub-section (iii) of section 2(1)(f) of Schedule C to the EAPWDR, the Ministry noted that there was no information before it that the U.S. location where the Surgery was to be performed had been designated under the HIA to provide hospital services under the HIA nor that it was a hospital owned and operated by Canada. There is insufficient evidence about the nature of the institution where the Surgery was to be performed for the panel to find that that the Ministry was unreasonable in determining that the Appellant had not met the criteria set out in section 2(1)(f)(iii) of Schedule C to the EAPWDR.

Sub-section (iv) authorizes a supplement for the least expensive mode of transportation to or from "the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the Hospital Insurance Act." There, the term "hospital" means "an establishment in which outpatient services are available that has been designated a diagnostic and treatment centre by the Lieutenant Governor in Council for providing outpatient benefits to beneficiaries in accordance with this Act and the regulations." As with subsection (iii) of section 2(1)(f) of Schedule C to the EAPWDR, there is insufficient evidence before the panel about whether the location for the Surgery meets the above definition and, as such the panel finds that the Ministry was reasonable in its determination that the Appellant had not met the criteria set out in section 2(1)(f)(iv) of Schedule C to the EAPWDR.

With respect to the criteria in subsection (v) of section 2(1)(f) of Schedule C to the EAPWDR, the Ministry held that the Appellant had not satisfied it that the Surgery was a benefit available to the Appellant under the *Medicare Protection Act* ("MPA") or general hospital service under the HIA on the basis that the MOH indicated that it *may* be a benefit under section 29 of the MPA and that because such a determination would only be made after the Surgery, the purpose of the supplement could not be said to be "to enable the Appellant to receive a benefit." It is in regards to subsection (v) of section 2(1)(f) of Schedule C to the EAPWDR where the Appellant's arguments about legislative gaps are perhaps most vividly illustrated.

Because the Surgery is an out of country service, whether it is a benefit or not under the MPA is something that can only be known to the Appellant and to the Ministry after the Surgery is done. In the result, it appears that any recipient of disability assistance who requires a service that is to be provided outside of Canada will, under subsection (v) be ineligible to apply for a supplement until *after* that service has been provided and has been determined to be a benefit under the MPA. However, as the legislation is written, the panel nevertheless finds that the Ministry determination that the Appellant had not met the criteria set out in section 2(1)(f)(v) of Schedule C to the EAPWDR was not unreasonable.

Imminent and Life Threatening Need

Section 69 of the EAPWDR provides for a supplement to be paid to a recipient who is otherwise ineligible where the recipient faces a direct and imminent life threatening need. Under subsection (a) of section 69 of the EAPWDR, a recipient must satisfy the Ministry that he or she faces a "direct and imminent life threatening need". While the Appellant submits that failure to obtain the Surgery could result in her being the victim of discrimination and/or violence, the panel finds that this the Appellant's submissions in this regard are largely speculative and insufficient to establish a direct and imminent life threatening health need. Additionally, the medical evidence that was before the Ministry at the time of the Reconsideration Decision does not address the extent to which a failure to obtain a transportation subsidy would pose a direct and imminent threat to the health of the Appellant.

Finally, subsection (d) of section 69 of the EAPWDR requires an applicant for a subsidy under this section to have otherwise met the criteria for a subsidy in section 2(1)(a) or (f) of Schedule C to the EAPWDR. In other words, the purpose of section 69 is to provide a supplement for recipients of disability assistance who meet the substantive requirements for the health supplements set out in Schedule C to the EAPWDR but who are otherwise ineligible for a supplement.

As the Appellant does not meet criteria under section 2(1)(f) of Schedule C to the EAPWDR, she is not eligible for a supplement under section 69 and the panel finds that the Ministry determination on that regard was reasonable.

Loan For the Cost of the Surgery

Section 26 of the EAPWDA permits the Lieutenant Governor in Council to make regulations which, effectively, allow the Ministry to make loans to recipients. Under the EAPWDR, there are two subject matters where such regulations have been passed. First, section 56 expressly authorizes the Ministry to make a "loan" in respect of a security deposit, as defined by the *Residential Tenancy Act* ("RTA"). It is this section to which the Appellant was referring when giving evidence about the Ministry having provided a loan regarding her security deposit. Likewise, section 56.1 the EAPWDR authorizes the Ministry to make a "loan" in respect of a utility security deposit. In the case of both a security deposit under the RTA and a utility security deposit, specific conditions must first be met and the recipient of disability assistance must enter into a written repayment agreement with the Ministry. However, other than these and specified advances described in sections 58, 58.1, 59, and 59.1 of the EAPWDR which pertain to monies for which a recipient is eligible but which is delayed, suspended or, cancelled for reasons beyond the recipient's control, the EAPWDR contains no other express provisions for "loans" or advances and, in the result, the panel finds that the Ministry's determination that it has no legislative authority to make a loan to the Appellant for the cost of the Surgery was a reasonable application of the relevant statutory provisions under the EAPWDA and EAPWDR.

In view of all of the foregoing, the Appellant is not successful in this appeal.

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

Adam Shee

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

PRINT NAME

Susanne Dahlin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Carlos Garcia

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/03/25