

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "ministry") March 7, 2019 reconsideration decision denying the appellant's request for a health supplement for transportation to attend an appointment with an Orthotist 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.

PART D – RELEVANT LEGISLATION

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 which included a two-page letter outlining the appellant's medical condition, and stating that:
 - she resides in an assisted living facility and that she must wear her orthotics in order to attend the dining room and other functions in order to maintain her residency;
 - she experiences severe pain after sitting upright for any length of time;
 - she is unable to use the usual public transportation such as taxi or Handidart but that she can use Medivan service;
 - her appointments with the Orthotics Agency are necessary for maintenance of her orthotics and other healthcare issues related to her feet, and occur approximately once every two months;
 - the Medivan service has enabled her to attend these appointments in a reclined position and without it she would be bedridden and/or hospitalized; and
 - her condition and position with it are unusual.
- A letter from the Orthotics Agency dated January 28, 2019, which confirmed that the appellant had an appointment with them on February 7, 2019 regarding various bracing and footwear options and that she would be seen by the Orthotist.

On the Notice of Appeal (NOA) form signed by the appellant on March 11, 2019, the appellant submitted a two-page statement noting several facts:

- The agency she attends is the only facility that is properly equipped and staffed to provide the specialized service, maintenance, repair, re-ordering or replacements of her orthotics and that meet the requirements of her disability.
- The appellant has a long-standing twenty-year professional medical relationship with this agency since her injury and that they have been servicing her orthotics and other required related services since then. The appellant wrote that this long-standing professional continuity is essential for her health and without it her health care would be greatly compromised.
- The appellant notes that the local specialist or doctor would merely refer her directly to the Orthotics Agency for this service as they do not provide it personally and that she continues to receive yearly referrals to the agency to maintain ongoing treatment there.
- The appellant is requesting an exemption due to the unusual and complex condition of her disability.

Also included with the NOA was a letter from a Certified Orthotist dated March 12, 2019, advocating on behalf of the appellant. The Orthotist confirms that:

- the appellant does not have the option to lie down for transit if her pain is excruciating on the appointment day;
- their agency has a long-standing history with the appellant;
- their agency is not a medical facility where the appellant receives medical services but questions what options does she have for being assessed, fitted and followed up for her basic mobility devices;
- the writer is a specialist who needs specialized equipment to provide service;
- the appellant's unique physical presentation limits her ability to use a wheelchair for transportation, yet the ministry is able to provide power chairs as a basic mobility for other clients, so is asking for an exemption as the appellant has no other options to receive basic mobility devices or repairs.

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 EAR. The panel will reference the appeal record for the appellant's position.

At the hearing, the ministry restated the Reconsideration Decision emphasizing that the appellant was denied a health supplement for transportation because she did not meet the legislative criteria set out in Schedule C Section

2 of the EAPWDR. The ministry argued that the appellant was not attending the local or nearest office of a medical practitioner or specialist as her appointment was to see an Orthotist and that the agency where the appointment was scheduled was at an Outpatient centre, not a hospital, so therefore the appellant was not going to the nearest suitable hospital to enable her to receive a benefit under the Medicare Protection Act or a general hospital service under the Hospital Insurance Act.

Admissibility of Additional Information

The panel admitted the appellant's written letter and the letter from the Orthotist, which were included with her Notice of Appeal, in accordance with section 22(4) of the Employment and Assistance Act (EAA) because the information was in support of the information that was before the ministry at reconsideration. The ministry had no objection to its admissibility.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry reconsideration decision of March 7 2019 denying the appellant's request for a health supplement for transportation to attend an appointment with an Orthotist, because the ministry determined that the eligibility requirements in Schedule C, Section 2(1) (f) of the EAPWDR had not been met.

The relevant legislation is as follows.

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, because of her unusual and severe medical condition, the only way she can attend appointments at the Orthotist Agency is to use Medivan services to transport her and that not going to the Agency to maintain and service her orthotics would mean she would be bedridden and/or hospitalized.

The ministry's position is that the appellant is ineligible for a health supplement for medical transportation because she has not met any of the legislative criteria set out in Schedule C Section 2 (1) (f) of EAPWDR. Specifically, they do not provide transportation funds to attend appointments with an Orthotist or Orthotics Agency because an Orthotist is not recognized as a specialist in a field of medicine or surgery by the Board of the College of Physicians and Surgeons of BC, and the Agency is not a hospital where the appellant would receive a benefit under the Medicare Protection Act or a general hospital service under the Hospital Insurance Act.

Panel Decision

The appellant has a medical condition that does not allow her to use the usual public transportation and she requires specialized transportation services, so she is requesting that an exemption be made in her circumstance due to the unusual and complex condition of her disability. The panel acknowledges the appellant's request and we are required to make our decision based on the relevant legislation pertaining to the request.

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 a family unit in receipt of disability assistance. The appellant is a recipient of disability assistance and may therefore be eligible for a health supplement for 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 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, her appointment was to a certified Orthotist located at an Orthotics Agency, not to a medical practitioner or nurse practitioner. The BC Interpretation Act defines medical practitioner as "a registrant of the College of Physicians and Surgeons of British Columbia entitled under the Health Professions Act to practise medicine and to use the title "medical practitioner". There is no evidence that the Orthotist is a medical practitioner or nurse practitioner so subsection (i) does not apply.

The appellant's Orthotist provided a letter that explained that, "rightly or wrongly, she considers herself a specialist who needs specialized equipment to provide service to her clients", however the panel considers her recognition to be implied, not confirmed, that she is a specialist because there was no evidence provided that demonstrates she fits the legislative definition of specialist. 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 an Orthotist may be considered a specialist in their practise, they are not a medical practitioner recognized as a specialist in their field as they are not registered with the College of Physicians and Surgeons of BC. The panel finds the ministry was reasonable in their decision that the appellant was not eligible for a health supplement for transportation because the appointment to which the appellant had been referred was not to a "specialist" as required by subsection (ii).

In regards to the appointment being at an Orthotics Agency, the panel notes that the Orthotist confirmed that the

Agency is not a medical facility where the appellant will be receiving medical services, so therefore finds the ministry was reasonable in their decision that the appellant was not eligible for a health supplement for transportation because the appointment to which the appellant had been referred was not to a nearest suitable hospital or rehabilitation hospital, as required by subsections (iii) and (iv) and because the appointment was not to a hospital to enable the appellant to receive a benefit under the Medicare Protection Act or a general hospital service under the Hospital Insurance Act as required by subsection (v).

The panel notes that the legislation is specific about when the ministry may issue a health supplement for transportation and, in the appellant's circumstance, an appointment to see an Orthotist does not meet the legislative requirements nor are there any exemptions permitted.

The panel finds that the ministry's decision that the appellant was not eligible for a health supplement for transportation under Schedule C section 2(1)(f) EAPWDR was supported by the evidence and was a reasonable application of the applicable legislation in the circumstances of the appellant. The panel confirms the ministry's decision in accordance with section 24(1)(b) and 24(2)(a) of the Employment and Assistance Act.

The appellant is not successful in her 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

Janet Ward

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019 April 3

PRINT NAME

Dawn Martin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 April 3

PRINT NAME

Rob Nijjar

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 April 3