

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "ministry's") reconsideration decision dated June 6, 2019, which held that the appellant was ineligible to receive a medical transportation supplement under the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*, section 62 and Schedule C, section 2(f) for an appointment with an occupational therapist to make adjustments to his wheelchair.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation, s. 62 and schedule C, ss. 1 and 2(f)
Hospital Insurance Act Regulations, s. 1.1
Hospital Insurance Act, s. 1

PART E – SUMMARY OF FACTS**Information before the Ministry at Reconsideration**

The ministry had the following documents before it at reconsideration:

- Request for Reconsideration dated May 29, 2019, attaching the following:
 - Letter to the ministry from an occupational therapist from the Lower Mainland (the “OT”), dated May 23, 2019, noting the appellant’s history of pressure injuries and that additional funding was requested and approved for modifications to the appellant’s seating, and that these adjustments would decrease his pain and reduce his risk of pressure injuries. The OT explained that the adjustments could not be completed at the outreach clinic in the appellant’s community in March 2019 and the only way for him to get these adjustments before October 2019 was to travel to the Lower Mainland; and
 - Letter to the ministry from another occupational therapist from the appellant’s community, dated May 23, 2019, indicating the OT from the Lower Mainland is a specialist in complex seating; that the challenges in the appellant’s seating were causing him pain; and that it was not appropriate for him to wait 7 months to have adjustments that would relieve his pain and independence, comfort and reduce his risk of injury;
- Request for Local or Non-local Medical Transportation Assistance signed by the appellant on April 3, 2019;
- Letter to the ministry from the appellant’s medical doctor, dated April 1, 2019, indicating that the appellant has multiple sclerosis (MS) and is wheelchair bound;
- Letter to the ministry from the appellant, dated April 3, 2019, stating the appellant cannot take public transportation; that he needs the care of a full-time aid; and that he has an aid who can drive him to his appointment on May 2, 2019 in a wheelchair accessible vehicle.

Submissions and Evidence on Appeal

In his notice of appeal, the appellant writes, “The Ministry approved my new wheelchair, as well as the adjustments. All the adjustments were not able to be done in my home. Due to imence [sic] pain & discomfort I was not able to wait 6 months for them to come back to [my community]. Without these adjustments I would possibly be bed ridden. I am only [redacted] years old, live on my own [with] care staff for my ADLs.” In written submissions, he further explains that waiting for the adjustments would have created “extreme discomfort/pain and skin breakdown.” He noted that he attempted to cut expenses for the trip to the Lower Mainland by having his care aide share a hotel room with him and get a discount on the room. He attached an invoice for the hotel room.

The ministry relied on its reconsideration decision.

Panel’s Ruling on New Evidence

The panel admitted the appellant’s invoice for his hotel stay as new evidence “in support of” the information and records that were before the ministry at the time the reconsideration decision was made as per section 22(4)(b) of the *Employment and Assistance Act (EAA)*. The invoice corroborates information that was before the ministry on reconsideration that the appellant stayed in a hotel overnight in order to attend the May 2 appointment.

The Panel’s Findings of Fact

The appellant receives disability assistance from the Ministry. He has MS and is bed or wheelchair bound. He spends approximately 10 hours per day in his electric wheelchair and requires an aide to assist him with daily living activities. The appellant has experienced skin breakdowns and pain as a result of his seating arrangement. The appellant’s community is approximately a 6-hour drive from the Lower Mainland.

In March 2019, the OT travelled to the appellant’s community and made adjustments to his wheelchair. However, the OT was not able to complete the adjustments needed at that time. As the OT would not be back in the appellant’s community for another 7 months, she recommended that he attend at her office in the Lower Mainland, where the adjustments could be completed. The appellant sought approval from the ministry to cover his transportation costs by vehicle, including one night in a hotel, to attend an appointment at the OT’s Lower Mainland

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office on May 2, 2019 (the "May 2 appointment"). The ministry denied his request on May 1, 2019. The appellant attended the May 2 appointment. The appellant then sought reconsideration of the ministry's decision. The ministry denied the appellant's request for reconsideration on June 6, 2019.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision of June 6, 2019—which held that the appellant was ineligible to receive a medical transportation supplement under the *EAPWDR*, section 62 and Schedule C, section 2(f) for an appointment with an occupational therapist to make adjustments to his wheelchair, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The relevant statutory provisions are as follows:

Employment and Assistance for Persons with Disabilities Regulation**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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4; am. B.C. Reg. 161/2017, App. 2, s. 2.]

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.

Hospital Insurance Act Regulations BC Reg. 25/61 as amended**Definitions**

1.1 In these regulations, unless the context otherwise requires:

"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;

Hospital Insurance Act, RSBC, c. 204**Definitions**

1 In this Act:

"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;

Analysis

The appellant's position is that he ought to be eligible for a medical transportation supplement because attending the appointment in the Lower Mainland was the only way he could obtain the needed adjustments to his wheelchair to avoid extreme pain, discomfort, and risk of injury.

The ministry's position is that the appellant's request does not meet all the legislative requirements of the *EAPWDR*, Schedule C, s. 2(f), and therefore he is ineligible for a medical transportation supplement.

In its reconsideration decision, the ministry correctly determines that the appellant, as a person in receipt of disability assistance, is eligible to receive general health supplements under the *EAPWDR*, Schedule C, s. 2(f). The *EAPWDR*, Schedule C, s. 2(f) then sets out what the ministry may fund as a medical transportation supplement. The ministry may only make a supplement to fund the least expensive mode of transportation to or from 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

- (iv) 1.1 of the Hospital Insurance Act Regulations; or
the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the Hospital Insurance Act.

The ministry has no discretion under *EAPWDR*, Schedule C, s. 2(f) to fund transportation to anywhere other than the four options set out above. The ministry's legislative authority is restricted to the options set out therein.

Here, the appellant seeks a supplement to travel to see an occupational therapist at her office outside the appellant's community. That travel does not fall into any of the four categories set out in *EAPWDR*, Schedule C, s. 2(f).

First, the OT's office is not in the appellant's local area so his travel cannot fall within Schedule C s. 2(f) (i).

Second, the OT is not a "specialist" as that term is defined in the Schedule C, s. 1, so the appellant's travel cannot fall within Schedule C s. 2(f)(ii). Further, even if the OT were a "specialist", the appellant does not have a letter from a medical practitioner or nurse practitioner referring him to the OT. The letter from the local OT is not a letter from a medical practitioner or nurse practitioner. And, while the appellant did have a letter from a medical practitioner (his medical doctor), that letter does not refer the appellant to a specialist—it merely states that the appellant is wheelchair bound and suffers from MS, and that the letter is intended to accompany his application for a transportation supplement.

Third, the OT's office is not a "general hospital or rehabilitation hospital" as defined under the *Hospital Insurance Act Regulations*, s. 1.1, so the appellant's travel cannot fall within Schedule C s. 2(f)(iii).

Finally, the OT's office is not a "hospital" as defined under the *Hospital Insurance Act*, s. 1, so the appellant's travel cannot fall within Schedule C s. 2(f) (iv).

Accordingly, the ministry has no legislative authority to pay a supplement for medical travel to the appellant for his May 2 appointment. Thus, the ministry's decision that the appellant was ineligible to receive a medical transportation supplement was a reasonable application of the legislation in the circumstances of the appellant.

Conclusion

The panel finds that the ministry's reconsideration decision that determined the appellant was ineligible to receive a medical transportation supplement under the *EAPWDR*, section 62 and Schedule C, section 2(f) for an appointment with an occupational therapist to make adjustments to his wheelchair was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the decision pursuant to section 24 of the *EAA* and the appellant is not successful in his appeal.

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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

Kathy Grant

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/08/07

PRINT NAME

Barbara Insley

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/08/07

PRINT NAME

Shirley Heafey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/08/07