

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated September 18, 2019, which denied the appellant's request for a health supplement for transportation to attend an appointment with an audiologist in another city because the appellant did not meet all of the legislative criteria set out in section 2(1)(f) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

Specifically, the appellant is not attending the local office of a medical practitioner, nor is the appellant going to the nearest suitable hospital or rehabilitation hospital to receive a benefit under the Medicare Protection Act or a general hospital service under the Hospital Insurance Act; additionally, the appellant is not going to the office of the nearest available specialist in the field of medicine and surgery.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 5  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 62 and  
Schedule C section 1 and 2(1)(f)

**PART E – SUMMARY OF FACTS**

The appellant is a recipient of disability assistance.

In a letter dated August 13, 2019, the appellant's audiologist confirmed that on August 28, 2019 the appellant had an appointment in another city. [In the Request for Reconsideration the appellant wrote that this appointment was rescheduled.]

In a letter dated September 4, 2019 the audiologist confirmed that on September 13, 2019 the appellant had an appointment in the other city. The audiologist writes: "This is a specialized test that is only done in certain centres." [At the hearing the appellant confirmed that the test was performed on September 13, 2019].

In the Request for Reconsideration dated September 5, 2019 the appellant provided the following information: The appointment is for a special type of hearing aid which only a few places offer. This hearing aid is "not in your ear which is why the need for an operation". The appellant reports that ear infections can be avoided by this type of hearing aid. The appellant was referred to the closest and only hearing centre that provides these specialized hearing aids.

In the Notice of Appeal dated October 10, 2019, the appellant states that the requested special hearing test is not offered at a hospital; it is only offered at the above mentioned hearing centre to determine whether this hearing aid will work in the appellant's case.

At the hearing the appellant reported that the specialized hearing test was performed on September 13, 2019 in another city. The appellant's GP had referred the appellant to this audiologist. The appellant explained that this test has to take place before the medical specialist can perform the surgery. This specialist is located yet in another city and is the only one who performs this surgery. They are now waiting for an appointment with this specialist. The appellant reported further that a long time ago the appellant's GP was dealing with the appellant's recurring ear infections which were caused by a conventional hearing aid. The appellant emphasized that the legislation does not consider special hearing problems - this is wrong and unfair to hearing impaired people.

The ministry presented their reconsideration decision and, after being asked how clients apply for a supplement for medical transportation, responded that their request is often accompanied by a letter from a health professional.

Admissibility of new evidence

The panel admitted the appellant's Notice of Appeal and testimony at the hearing pursuant section 22(4) of the *Employment and Assistance Act* as this information corroborates information that was before the ministry at reconsideration; it confirms the appellant's background and visit to an audiologist in another city and adds further details of the appellant's hearing condition.

**PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the ministry's denial of the appellant's request for a medical travel supplement under section 2(1)(f) of Schedule C of the EAPWDR to cover costs of travel to visit the office of an audiologist in another city is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

More specifically, was the ministry reasonable when it determined that the appellant is not attending the local office of a medical practitioner, or the nearest suitable hospital or rehabilitation hospital to receive a benefit under the Medicare Protection Act or a general hospital service under the Hospital Insurance Act? In addition, was the ministry reasonable when it determined that the appellant is not going to the office of the nearest available specialist in the field of medicine and surgery?

**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.

**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:

**"audiologist"** means an audiologist registered with the College of Speech and Hearing Health Professionals of British Columbia established under the *Health Professions Act*;

**"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.

### Appellant's Position

The appellant argues that the ministry should approve the request for a supplement for medical travel because the required hearing test and special hearing aid are only available at an audiologist in another city. The appellant needs this type of hearing aid to avoid ear infections. It is wrong and unfair to hearing impaired people that the legislation does not consider special hearing problems.

### Ministry's Position

The ministry found that the appellant's request for medical transportation does not meet the following legislative criteria set out in Schedule C Section 2(1)(f) of the EAPWDR: The appellant was not attending the local office of a medical practitioner as the appellant's appointment was in another city, nor was the appellant going to the nearest suitable hospital or rehabilitation hospital to receive a benefit under the Medicare Protection Act or a general hospital service under the Hospital Insurance Act; the appellant is attending the office of an audiologist office in another city. Additionally, the appellant is not going to the office of the nearest available specialist in the field of medicine and surgery. While "specialist" is defined in Schedule C section 1 of the EAPWD as 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*, an audiologist is registered with the College of Speech and Hearing Health Professionals of British Columbia established under the *Health Professions Act*.

### Panel Decision

In order to be eligible for a travel supplement under Schedule C, section 2(1)(f) of the EAPWDR, an individual must demonstrate that they meet all three criteria:

1. the transportation must be the least expensive mode of transportation;
2. the visit must be for one of the types of medical appointments contemplated by the legislation;  
and
3. there must be no resources available to the person's family unit to meet the cost.

The panel notes that in its decision the ministry addressed criterion number 2 (types of medical appointments).

The panel agrees with the ministry that a visit to another city implies travelling to a destination outside one's local area. Consequently, the panel finds that the ministry reasonably concluded that the appellant was not visiting, in the local area, a medical practitioner or nurse practitioner as set out in section 2(1)(f)(i).

"Specialist" is defined in Schedule C section 1 of the EAPWD as 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. The panel finds that the audiologist does not fit this definition because according to section 1 the term "audiologist" refers to an individual registered with the College of Speech and Hearing Health Professionals of British Columbia. Consequently, the audiologist cannot be considered as a specialist in the field of medicine and surgery as required by section 2(1)(f)(ii). While the

appellant argues that the required testing by the audiologist is essential and only available in another city the panel finds the ministry was reasonable in its determination that the appellant is not going to the office of the nearest available specialist in the field of medicine and surgery as set out in section 2(1)(f)(ii).

Section 2(1)(f)(iii) refers to 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 [HIA] Regulations*." Section 1.1 of the HIA Regulations reads: "general hospital" means a hospital or a portion of a hospital as defined under ... the definition of "hospitals" 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 ... the definition of "hospitals" in the Act, the prime function of which is to provide facilities for the active treatment of persons requiring rehabilitative care and services". The panel finds that the audiologist's office does not fit the definitions of "general hospital" or "rehabilitation hospital" in section 1.1 of the HIA Regulations as there is no evidence that the audiologist's office is providing treatment for an acute phase of an illness or disability, or rehabilitative care and services. Consequently, the panel finds that the ministry reasonably determined that the appellant was not going to the nearest suitable general hospital or rehabilitation hospital as set out in section 2(1)(f)(iii).

Section 2(1)(f)(iv) refers to 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*." The definition of hospital as it is found in this section refers to section 1 of the *Hospital Act* which reads: "hospital ... 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 generally provided in a private hospital." The panel finds that the audiologist's office does not fit the definition of "hospital" in section 1 of the *Hospital Insurance Act* and section 1 of the *Hospital Act* because there is no evidence that the audiologist's office is operated primarily for the reception and treatment of persons suffering from the acute phase of illness or disability, convalescing from or being rehabilitated after acute illness or injury, or requiring extended care at a higher level than generally provided in a private hospital. Consequently, the panel finds that the ministry was reasonable when it determined that the appellant was not going to the nearest suitable hospital to receive a service under the *Hospital Insurance Act* as set out in section 2(1)(f)(iv).

The panel notes that the relevant legislation leaves no room for ministry discretion or exceptions in special circumstances. The EAPWDR makes no provision for a supplement for medical transportation for a patient who is referred to the office of an audiologist by a medical practitioner.

Based on the foregoing the panel finds that the ministry's decision denying the appellant's request for medical transportation assistance to visit the office of an audiologist in another city was a reasonable application of the legislation in the circumstances of the appellant. The appellant is not successful on appeal.

**PARTG-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)  and Section 24(1)(b)

and

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

**PARTH-SIGNATURES**

PRINT NAME

Inge Morrissey

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/11/01

PRINT NAME

Angie Blake

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/11/01

Donald Stedeford

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/11/01