

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) December 24, 2019 reconsideration decision denying the appellant’s request for a health supplement for medical transportation to attend an appointment with a physician. 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 had not been met. Specifically, the ministry determined that the appellant had not been referred to a specialist as required by the legislation.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR):

- Sections 62, 69 and Schedule C, Sections 1, 2(f)

Health Professions Act, Section 19 (1) (k.3) and (k.4)

PART E – SUMMARY OF FACTS

The appellant is a sole recipient of disability assistance (“PWD”).

The evidence before the ministry at reconsideration included:

- appellant’s request for non-local medical transportation assistance dated November 22, 2019;
- November 22, 2019 letter from the appellant’s family doctor (“the GP”) confirming that the appellant has an appointment scheduled with Dr. W on December 13, 2019;
- appellant’s request for reconsideration submitted to the ministry on December 11, 2019 with the following attachments:
 - December 10, 2019 from the GP stating that the appellant needs to see a pain specialized diagnostic and interventional equipment not available in the appellant’s town or in the nearest larger community;
 - December 10, 2019 letter from a chiropractor noting that the appellant’s ongoing neck/hand/wrist pain would benefit from treatment with injections under ultrasound.

EVIDENCE RECEIVED AFTER RECONSIDERATION**Documentary**

At the hearing the appellant submitted the following documents in support of the appeal:

1. Invoice dated December 13, 2019 seeking payment of \$40 for a round trip to attend an appointment with Dr. W;
2. January 21, 2020 letter from the office of Dr. W confirming the appellant’s appointment on February 5, 2020.

Oral

The relevant oral testimony provided by the appellant at the hearing included:

- prior to submitting the November 22, 2019 request for a transportation supplement the appellant spoke to a ministry office employee who told the appellant that there was a 95% likelihood that the medical travel supplement would be granted;
- in 2012 the ministry approved a medical travel supplement for the appellant to travel to and from an appointment with Dr. W;
- lower arm/wrist pain experienced by the appellant is excruciating. The cortisone shot delivered by Dr. W relieved the pain somewhat for 3-4 weeks, but the pain has now returned and the appellant needs to return to Dr. W for further pain relief. Surgery may be required in future.
- The GP does not have the equipment or expertise for proper placement of cortisone injections;
- The GP told the appellant that there is no doctor closer than Dr. W who can treat the appellant’s pain.

Admission of New Information

The ministry did not object to admission of the information provided by the appellant at the hearing. The panel admitted all of the documents and oral evidence at the hearing under EAA Section 22(4) except Document 2, which refers to a future medical appointment that is not relevant to this appeal. Document 1 and the appellant’s oral testimony were admitted by the panel because the information was relevant to the issue under appeal and the panel determined that it was reasonably required for a full and fair disclosure of the decision under appeal.

The ministry relied on the reconsideration decision.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry reconsideration decision of December 24, 2019 denying the appellant's request for a health supplement for medical transportation to attend an appointment with a physician 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 had not been met. Specifically, the ministry determined that the appellant had not been referred to a specialist as required by the legislation.

Relevant legislation:

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**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.

The appellant argues that:

1. Dr. W is the nearest available pain specialist; and
2. Prior approval was given for a medical transportation supplement to the office of Dr. W.

The ministry's position is that the appellant's request for transportation does not meet the legislative criteria because Dr. W is not a "specialist" in a field of medicine in accordance with the bylaws made by the board of the College of Physicians and Surgeons of British Columbia ("the College"), as required by the legislation.

Panel Decision

1. Denial of Medical Transportation Supplement under EAPWDR Section 2 (1) (f)

The legislative criteria upon which the ministry must rely when considering an application for medical transportation assistance is set out in EAPWDR Section 2(1) (f). The subsection clearly states that the applicant must use the least expensive mode of travel to one of the following:

- i. a local medical practitioner or nurse practitioner;
- ii. **the nearest available specialist if referred by a local medical practitioner** (emphasis added);
- iii. the nearest general or rehabilitation hospital;
- iv. the nearest hospital as define in Section 1 of the Hospital Insurance Act.

A “specialist” is defined in Section 1 of EAPWDR Schedule C as a specialist in a field of medicine or surgery in accordance with the bylaws found the Subsections 19 (k.3) and (k.4) of the *Health Professions Act* of British Columbia. Subsection 19 (k.3) states that the College may make bylaws “to provide for the recognition of registrants as specialists in a field of the health profession”. Subsection (k.4) states that the College’s bylaws “may specify the manner by which registrants may hold themselves out as specialists in a field recognized under a bylaw made under paragraph (k.3)”.

Dr. W’s letterhead states: “[*doctor’s name*] M.D. Pain Management”. Dr. W does not describe himself as a specialist. A search of the physician registry of the College identifies Dr. W as a family practitioner. Dr. W is not included in the list of pain medicine specialists registered with the College, all of whom practice in the Lower Mainland region of the province. The panel therefore finds that that the ministry reasonably determined that the appellant is ineligible for a health supplement for medical transportation assistance because the doctor to whom the appellant was referred is not a specialist within the meaning of the legislation.

2. Previous Ministry Approval of Similar Requests

Each request for a supplement is considered individually by the ministry. The ministry examines the details included in the request and applies them to the applicable legislation in order to determine eligibility. The ministry does not have the discretion to approve the appellant’s November 22, 2019 request because a similar application from the appellant was approved in the past.

Conclusion

The panel sympathizes with the appellant’s predicament. The appellant is asking for transportation assistance for treatment by a physician in another community who, in the GP’s opinion, is the nearest pain management physician with the necessary diagnostic and interventional equipment to treat the appellant’s pain. The appellant requested a travel supplement for “gas money” in the amount of \$40. To comply with the legislative criteria set out in EAPWDR Section 2 (1) (f) (ii) the appellant will be required to travel to a pain medicine specialist in the Lower Mainland, incurring total costs that likely will exceed \$500.

However, as stated in Heading 1 [above] the panel concludes that the ministry’s determination that the appellant is ineligible for a non-local medical transportation supplement because the legislative criteria were not met is a reasonable application of the applicable legislation in the appellant’s circumstances, and confirms the decision. The appellant is not successful in the appeal.

APPEAL NUMBER

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

Joan Bubbs

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/Jan/22

PRINT NAME

Jeanne Byron

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/Jan/22

PRINT NAME

Mel Donhauser

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/Jan/22