

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) January 2, 2019 reconsideration decision denying the appellant’s request for reimbursement of \$1,000 for local medical transportation costs incurred between October 17, 2016 and October 28, 2019 because the ministry determined that the eligibility requirements had not been met as set out in:

- section 26 of the Employment and Assistance Regulation (EAR) and section 23 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) [effective date of eligibility];
- Schedule C section 2(1)(f) of both EAR and EAPWDR [medical transportation]; and
- section 76 of the EAR and Section 69 of the EAPWDR [life threatening health need].

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – sections 23, 62, 69 and Schedule C, section 2(1)(f)

Employment and Assistance Regulation (EAR) – sections 26, 66.1, 67 and 76 and Schedule C section 2(1)(f)

Employment and Assistance Act (EAA) - section 19.1(e) and (f), and section 24

Administrative Tribunals Act (ATA) - sections 44 and 46.3

PART E – SUMMARY OF FACTS

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the EAA.

The appellant was a recipient of regular income assistance from May 2016 to October 2017 and has been a recipient of disability assistance since November 2017.

The evidence before the ministry at reconsideration included:

- The appellant's request for reconsideration form which included the following comments:
 - "the policy of not permitting retroactive local medical transportation claims is discriminatory against my person due to my debilitating spine injury pain condition which limits my productivity to 5% of the normal amount of activities of daily living that able bodied people can engage in"
 - "this policy violated the Canadian Charter of Rights and Freedoms re disability discrimination"
- a letter dated December 5, 2019 from the appellant to the ministry claiming \$1,000 for retroactive local medical transportation from October 17, 2016 to October 28, 2019 for trips to numerous medical appointments to doctor and specialists, to many pharmacies for prescriptions, and to a courier company to pick up medical supplies. The appellant writes that it is impossible to arrange for this benefit prior to each medical transportation outing due to the debilitating pain condition and the large volume of medically necessary trips.
- A letter dated November 19, 2019 from Health Insurance BC to the appellant indicating that enclosed were Medical Service Plan (MSP) records.
- Eight pages from MSP, which show the appellant's medical claims history from October 17, 2016 to October 28, 2019.
- Four pages, from two pharmacies, that list the appellant's prescriptions and the dates they were issued, from January 2016 to September 2018.
- A medical transportation initiation request form dated December 6, 2019 in which the appellant indicates that the appointments are located at unspecified various BC locations from 2016 to 2019.

On the Notice of Appeal form dated January 10, 2020 the appellant wrote:

- It is discriminatory to expect a person with physical disability to be able to complete administrative requirements in a timely manner.
- I have debilitating spine injury pain, chronic fatigue syndrome and a severe foot injury.
- It is impressive that I even get to claiming for local medical transportation (retroactively) for my many medical appointments that will continue for life, well beyond the frequency of the average person.

In the written submission the appellant wrote:

- I complete 5% of a person's general activities of daily living.
- Because time doesn't stand still for me to catch up on completing everyday tasks, I simply cannot engage in the vast majority of them.
- It is discriminatory for the ministry to expect me to conform to all its time constraints and orders of operations in claiming all categories of benefits.
- This is discriminating against a person due to the spine injury pain physical disability.

The ministry's submission for the written hearing will be the reconsideration summary provided in the Record of Ministry Decision.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry reconsideration decision of January 2, 2019 which denied the appellant's request for reimbursement of \$1,000 for local medical transportation costs incurred between October 17, 2016 and October 28, 2019 because the ministry determined that the eligibility requirements had not been met as set out in:

- section 26 of the Employment and Assistance Regulation (EAR) and section 23 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) [effective date of eligibility];
- Schedule C section 2(1)(f) of both EAR and EAPWDR [medical transportation]; and
- section 76 of the EAR and Section 69 of the EAPWDR [life threatening health need]

The relevant legislation is:

EAPWDR:

Effective date of eligibility

Section 23

(5) Subject to subsection (6), a family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

(6) Subsection (5) does not apply to assistance in respect of moving costs as defined in section 55.

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,

...

Health supplement for persons facing direct and imminent life threatening health need

69 (1) 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) the adjusted net income of any person in the family unit, other than a dependent child, does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation, 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).

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.

EAR:**Effective date of eligibility**

26

(1) Except as provided in subsection (2), (2.01), (2.1), (3.01) or (3.1), a family unit is not eligible for income assistance or supplements in respect of a period that occurred before the date the minister determines the family unit is eligible for the income assistance or supplements, as applicable.

....

(5) Subject to subsection (6), a family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

(6) Subsection (5) does not apply to assistance in respect of moving costs as defined in section 55.

Definitions

66.1

"qualifying person" means a person who

- (a) has persistent multiple barriers to employment, or
- (b) is a recipient of income assistance who is described in section 8 (1) [*people receiving special care*] of Schedule A.

General health supplements

67 (1) 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 income assistance, if
 - (i) the family unit includes a qualifying person, or
 - (ii) the health supplement is provided to or for a person in the family unit who is under 19 years of age,
- (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
 - (i) is a continued person under section 66.3 (1) or (2) [*access to medical services only*], or
 - (ii) is a continued person under section 66.4 (1) [*access to transitional health services*] and was, on the person's continuation date, a qualifying person or part of a family unit that then included a qualifying person, or
 - (iii) is a continued person under section 66.4 (2).

Health supplement for persons facing direct and imminent life threatening health need

76 (1) 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) the adjusted net income of any person in the family unit, other than a dependent child, does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation, 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).

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 67 [*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.

EAA

19.1 The following provisions of the Administrative Tribunals Act apply to the tribunal:

- (e) section 44 [*tribunal without jurisdiction over constitutional questions*];
- (f) section 46.3 [*tribunal without jurisdiction to apply the Human Rights Code*];

24 (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

- (a) reasonably supported by the evidence, or
- (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

ATA:

44 (1) The tribunal does not have jurisdiction over constitutional questions.

46.3 (1) The tribunal does not have jurisdiction to apply the *Human Rights Code*.

The appellant's position is that it is impossible to arrange for this supplement prior to each medical transportation outing because of the debilitating pain condition (activity limiting disability) and relative to the large volume of medically essential trips. The appellant also argues that it is discriminatory of the ministry to expect them to

conform to all the time constraints in claiming a benefit when a person has a spine injury pain physical disability.

The ministry's position is that the legislation clearly states that there must be prior approval before issuing a medical transportation supplement, which the appellant did not have. The ministry states that in December 2019 the appellant requested \$1,000 to pay for numerous trips to appointments and pharmacies for the period October 2016 to October 2019 however there had not been prior approval sought, as is required. The ministry also states that, with prior approval, EAPWDR allows them to issue a medical transportation supplement in certain circumstances, such as to attend the nearest physician or specialist, or to attend a hospital, but travel to a pharmacy is not covered nor did the appellant have prior approval. The ministry also notes that the appellant received Persons With Disabilities (PWD) designation in November 2017 at which time the appellant began receiving disability assistance and for the period of time prior to that, the appellant received regular Income Assistance (IA). The ministry argues that persons on IA, who do not meet the requirements of EAR section 67, may only receive a medical transportation supplement if there was a life-threatening health need and that, in the appellant's circumstance, there is insufficient evidence to establish that this criterion had been met. The ministry also notes that their decision was made in regard to the request for the backdated assistance and that they were unable to include a review of any challenge that the appellant may have under the Charter of Rights and Freedoms.

Panel Decision

The panel notes that the appellant had been in receipt of IA from May 2016 to October 2017 and then disability assistance from November 2017 to current, so will be considering both regulations as it relates to the appellant's request for a backdated medical transportation supplement. The ministry denied the appellant's request for this supplement based on EAR and EAPWDR. The panel's responsibility is to determine whether the ministry decision under appeal is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. By section 19.1(e) and (f) of the EAA, which references sections 44 and 46.3 of the ATA, the panel does not have jurisdiction over constitutional questions or to apply the *Human Rights Code*, so it is not permitted to conduct a review of any challenge under the *Charter of Rights and Freedoms*, of discrimination as raised by the appellant.

Eligibility for Health Supplements

EAR section 67 sets out that the ministry may issue a health supplement to family units in receipt of income assistance providing the service is for a dependent child or if the family unit includes is a "qualifying person" or is a continued person (medical services only). EAR section 66.1 defines a qualifying person as being a person who has persistent multiple barriers or is in a special care facility. EAR section 67 is not relevant in this circumstance as the appellant was in receipt of IA and was not one of the persons described.

EAPWDR section 62 sets out that the ministry may pay a health supplement set out in Schedule C to a person in receipt of disability assistance (the requirements for the supplement described in Schedule C must also be met). The appellant was designated as PWD in November 2017.

Eligibility for Medical Transportation Supplement

Schedule C Section 2(f) sets out that the ministry may issue medical transportation supplements, providing that a number of eligibility criteria are met, including that the appointments are to attend a medical practitioner, nurse practitioner, specialist or hospital, and provided that they are to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*. The appellant requested reimbursement for transportation expenses to attend a significant list of MSP appointments, pharmacies and from a courier service during a three-year period, however, the panel found no evidence that there had been prior contact with the ministry during that time frame to determine whether any of the appointments met the eligibility criteria, as is required by this legislation.

The records provided by the appellant in support of the request for Medical Transportation do not show any specific transportation, locations for pick up and destination, receipt or costs for transportation of the appellant. The

requested reimbursement of \$1,000 is merely an estimate. The panel also notes that there are no provisions to cover costs of travel to pick up prescriptions from pharmacies or for delivery of them. The appellant has not shown that such delivery is a benefit under the *Medicare Protection Act* or how in some other way they might be properly covered by any legislative provision.

Effective Date of Eligibility

EAR Section 26(1) EAR states that a family unit is not eligible for income assistance or supplements in respect of a period that occurred before the date the minister determines the family unit is eligible for the income assistance or supplements, as applicable. Further, EAR section 26(5) and EAPWDR section 23(5) both state that a family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested. In December 2019 the appellant requested reimbursement of \$1,000 for an estimate of costs that they had incurred to travel to numerous medical appointments, pharmacies, and from a courier company to pick up medical supplies, during the period October 2016 to October 2019. The panel notes that the appellant did receive a medical transportation supplement from the ministry for mileage and parking in July and August 2019 to attend daily IV therapy at a hospital, and in their decision the ministry wrote that a transportation allowance is currently being issued to the appellant.

In considering the appellant's argument, which was, "because of my disability and the volume of appointments that I could not possibly obtain advance approval", the panel notes that there is no evidence that the appellant had attempted to request a medical transportation supplement during the three-year period prior to July 2019. The legislation clearly states that a supplement may not be paid for a period that occurred before the date the minister determines the eligibility for it, and, in the appellant's circumstance, no eligibility determination had been made in advance of the appointments. Therefore, the panel finds that the ministry was reasonable in their decision that the requirements of EAR section 26, EAPWDR section 23, and Schedule C section 2(f) had not been met.

Eligibility for a Life Threatening Health Need

EAR section 76 sets out that the ministry may issue a medical transportation supplement to recipients of IA if the person faces a direct and imminent life-threatening need and there are no resources available with which to meet that need. The panel found no evidence in the appeal record to indicate that the appellant had approached the ministry in October 2016, nor during the next three years, so that the ministry could determine whether the appointments met the life-threatening criteria, and if so, whether other resources were available to the appellant. The panel found no evidence in the appeal record to confirm whether the appointments were of a life-threatening nature. The appellant submitted a list of all the MSP appointments that had been attended between October 2016 and October 2019, which the panel considers as evidence that the appellant had, at each relevant time, used other available resources to get to those appointments. The panel finds that the ministry was reasonable in their decision that the requirements of EAR section 76 had not been met.

Conclusion

For the reasons above, the panel concludes that the ministry's determination that the appellant is ineligible for reimbursement of \$1,000 for local medical transportation costs is reasonably supported by the evidence and is a reasonable application of the applicable legislation in the appellant's circumstances. The panel confirms the decision. The appellant is not successful in this appeal.

APPEAL NUMBER
2020-00012

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)

2020 March 3

PRINT NAME

Kent Ashby

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 March 3

PRINT NAME

Linda Pierre

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 March 3