

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated March 17, 2020, which held that the appellant was not eligible for a health supplement for transportation to attend appointments for physiotherapy and fitting of custom foot orthotics. The ministry concluded that the legislation, section 2(1)(f) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (the Regulation), only provides a supplement to attend a local office of a medical or nurse practitioner, the nearest available specialist physician, or the nearest general or rehabilitation hospital to enable a person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*.

PART D – RELEVANT LEGISLATION

Section 62 and Schedule C, section 2(1)(f) of the Regulation

PART E – SUMMARY OF FACTS

Background Information

On February 24, 2020, the ministry received two “Request for Non-Local Medical Transportation Assistance” forms dated February 21, 2020, completed by the appellant. The appellant, a recipient of disability assistance, requested assistance with vehicle gas costs to attend a physiotherapy clinic for multiple appointments and to attend an orthopaedic service provider for fitting of custom foot orthotics. Both businesses are located within the appellant’s local community. The appellant also submitted written confirmation of the upcoming appointments from both service providers.

The ministry denied the request for medical transportation because the appointments were not in a hospital.

On March 3, 2020, the appellant submitted a Request for Reconsideration in which the appellant states:

- the doctor sent the appellant to a local physiotherapy office because there was a waiting time of 1 year for in-hospital physiotherapy; and
- it is important to keep the appointments because they help the appellant’s conditions.

On March 17, 2020, the ministry issued its reconsideration decision, again denying the appellant’s request.

Information provided on appeal and admissibility

The appellant’s Notice of Appeal dated March 21, 2020, was received by the tribunal on March 26, 2020. The appellant writes “I understand that physio (and orthotics) isn’t under regulations but there was such a long waiting list for hospital physio and injury pain couldn’t wait so family doctor sent me to physio nearby.” The appellant requests the application for funding be reconsidered based on these circumstances, noting that an exception to provide assistance with gas costs would really help.

At the hearing, the appellant stated that the ministry’s decision wasn’t unreasonable based on the legislation but that it didn’t take into account the extraordinary circumstances – the importance of receiving physiotherapy one to two times weekly as prescribed by the appellant’s doctor and the very long waiting times to receive physiotherapy at a hospital. The appellant stressed the importance of the ongoing physiotherapy appointments, stating that the orthotics appointments are not as important as there were only three appointments. The appellant also confirmed that the physiotherapy and orthotics appointments are within the appellant’s local community but that the ministry advised that the “Non-Local” form was the correct form.

With the consent of the appellant, a ministry observer attended the hearing.

At the hearing, the ministry reviewed the reconsideration decision and the requirements of section 2(1)(f) of Schedule C. In response to questions, the ministry stated that the legislation does not allow for any exceptions and that a physiotherapist is not a specialist as defined in the legislation.

In accordance with section 22(4) of the *Employment and Assistance Act* (EAA), the panel may consider evidence if the panel considers it “reasonably required for a full and fair disclosure of all matters related to the decision under appeal.” On this basis, the panel admitted the information in the appellant’s Notice of Appeal and information provided by the appellant and the ministry at the hearing, all of which directly relates to the appellant’s request for funding for medical transportation.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant a health supplement for medical transportation to attend physiotherapy and orthotics fitting appointments was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable in concluding that the transportation is not to a location for which section 2(1)(f) of the Regulation allows a supplement?

Panel Decision

The ministry's position is that while the appellant receives disability assistance, and therefore pursuant to section 62 may receive Schedule C health supplements, the specific requirements for a medical transportation supplement set out in section 2(1)(f) of Schedule C are not met. Specifically, that the appellant is not attending the local office of a medical or nurse practitioner, the office of the nearest available specialist or the nearest hospital to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*.

The appellant requests that an exception be made given the medical need to attend the appointments and because there is a long wait list to receive physiotherapy at a hospital.

Section 2(1)(f) of Schedule C sets out the only circumstances under which a supplement for the costs of medical transportation may be provided. These are going to or from:

- an office in the local area of a medical or nurse practitioner,
- the office of the nearest available specialist in a field of medicine or surgery, or
- the nearest suitable general hospital or rehabilitation hospital,

in order to receive a benefit or service under the *Medicare Protection Act* or the *Hospital Insurance Act*.

In the appellant's case, there is no dispute that the services for which the supplement is requested are not provided in any of those locations. While the need for the physiotherapy (and orthotics) is not any less because the health service is not provided in a hospital, the legislation doesn't allow for transportation assistance unless it is to one of the listed locations. Therefore, the panel concludes that the ministry was reasonable when determining that the appellant's request for a supplement for transportation to attend physiotherapy and orthotics fitting appointments does not meet the requirements of section 2(1)(f) of Schedule C of the Regulation.

Comment

It is apparent that the appellant had difficulty in understanding being ineligible for transportation assistance to receive healthcare services that were: (1) eligible for a supplement; and (2) directed by the appellant's physician. The panel makes no other observations concerning legislative intent and offers this as a courtesy to the parties.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for a health supplement for medical transportation was a reasonable application of the legislation, and therefore confirms the decision. The appellant is not successful on appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Regulation, B.C. Reg. 265/2002

General health supplements

62 (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 disability assistance....

Schedule C - General 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.

APPEAL NUMBER
2020-00096

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

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/04/20

PRINT NAME

Margarita Papenbrock

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/23

PRINT NAME

Michael Skinner

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/20