

APPEAL NUMBER  
2020-00130

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated April 29, 2020 which held that the appellant was not entitled to medical transportation supplements to travel to and from appointments to have monthly blood work completed, that the appellant was not entitled to monthly transportation supplements for meals, and that the appellant was not entitled to a medical transportation supplement for the period prior to when the appellant applied for the supplement.

Not under this appeal, but part of the reconsideration decision, was the ministry's determination that the appellant was entitled to a medical transportation supplement for March 2020 and that the appellant was entitled to \$46.25 as a monthly medical transportation supplement.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Act Reg. (EAPWDR), sections 62 and Schedule C.

## **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 Employment and Assistance Act.

The evidence before the ministry at the time of reconsideration consisted of the following:

1. The appellant was a recipient of disability assistance;
2. On March 11, 2020, the appellant submitted a Request for Medical Transportation Assistance form for specialist appointments that were stated as being “ongoing lifelong”;
3. On March 12, 2020, the ministry requested that the appellant complete section 3 of the HR3320 form for medical transportation health supplements and provide further details regarding medical appointment dates;
4. On March 30, 2020 the appellant provided the ministry with a list of appointments and a letter from the appellant’s GP regarding the appellants inability to use public transportation;
5. On March 31, 2020 the ministry approved ongoing monthly medical transportation health supplements for the period April 2020 to April 2021 based on four monthly trips of 6.4km per trip;
6. On April 3, 2020 the appellant requested the ministry recalculate the supplement based on five trips per month (instead of four) and that the per trip distance be based on 10km (90% of the time) and 40km (10% of the time);
7. On April 3, 2020 the appellant requested the ministry provide monthly medical transportation health supplements for January to March 2020;
8. On April 3, 2020 the appellant requested medical transportation supplement for meals;
9. On April 28, 2020 the ministry requested the appellant provide the address where the appellant was parking so that the ministry could determine the distance of each trip;
10. In response to the April 28, 2020 enquiry the appellant responded that they were residing in their car and therefore the starting position for each trip varied with where the vehicle was parked prior to the appointment and that 90% of the appointments were with his family doctor (at a fixed address) and 10% were in another area of the municipality. The appellant also stated they travelled an average of 130kms every two months or 65km each month.
11. On reconsideration the ministry determined the appellant was entitled to a supplement for 105kms per month, which is 40kms more than the appellant requested.

## **PART F – REASONS FOR PANEL DECISION**

The issue at appeal is whether the ministry's decision that the appellant was not entitled to medical transportation supplements to travel to and from appointments to have monthly blood work completed, that the appellant was not entitled to monthly transportation supplements for meals, and that the appellant was not entitled to a medical transportation supplement for the period prior to when the appellant applied for the supplement was reasonably supported by the evidence or a reasonable application of the enactment in the appellant's circumstance.

The panel notes that on reconsideration the ministry accepted the appellants statement of the distance that they travelled for medical appointments and increased the monthly supplement accordingly. The ministry also confirmed that the appellant was entitled to a further supplement of \$5 per medical visit for parking. Furthermore, the ministry provided the appellant with monthly medical transportation health supplements for the month of March because the appellant applied for the benefits in March 2020.

On appeal, the appellant stated they drive 1.25 times per month to pick up medical wound dressing supplies and requested the panel "add this corresponding amount to my current ongoing monthly transportation amount." The Panel did not act on this request. The Panel's jurisdiction is limited to determining whether the Ministry's reconsideration decision was reasonably supported by the evidence or a reasonable application of the applicable enactment. As this request did not form a part of the reconsideration decision under appeal, the Panel has determined that it does not have jurisdiction to consider it.

Therefore, the issues at dispute on appeal can be summarized as:

1. Is there an entitlement for a medical transportation supplement to attend for blood tests (as opposed to attending a medical practitioner, specialist or a hospital);
2. Is there an entitlement for a supplement for meals that are necessarily incidental to the appellant's requirement to travel for medical services; and
3. Is there an entitlement to receive any benefits for the period prior to March 2020.

### **Issue 1: Entitlement for Medical Transportation Supplement for Blood Tests**

#### ***The Relevant Legislation***

EAPWDR, section 62, permits the ministry to provide a general health supplement as set out in Schedule C to the EAPWDR.

EAPWDR, Schedule C, section 2(f) states that the following health supplements may be paid for by the minister:

*(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's Position***

The appellant in their submission on May 4, 2020 asserts that the ministry does pay for trips for blood work and points to a copy of a message sent to the appellant by the ministry on March 12, 2020 stating: "With Ongoing Medical Transportation requests the Ministry also requires a list of appointment dates/time and with what Dr. or medical service ie: Xray, Bloodwork".

### ***The Ministry's Position***

The ministry states that attendance at a commercial laboratory diagnostic company for bloodwork does not come within any of the permitted locations in Schedule C, section 2(f). The ministry states that the commercial laboratory diagnostic company is not an office of a medical practitioner (section i), is not the office of a specialist (section ii), is not a general hospital or rehabilitation hospital (section iii and iv).

### ***The Panel's Decision***

The panel notes that the authority of the ministry to provide a benefit is limited to those permitted by the EAPWDR. Although the appellant was required to attend the laboratory diagnostic company for bloodwork by their medical practitioner, that company does not come within the specified locations in EAPWDR, Schedule C, Section 2(f).

Consequently, the panel finds that the ministry's determination that the appellant was not entitled to a Medical Transportation Supplement for transportation to or from that laboratory is reasonably supported by the evidence and a reasonable application of the enactment in the appellant's circumstance.

## **Issue 2: Entitlement for Meals during Transportation**

### ***The Relevant Legislation***

The ministry's states that its authority to provide a supplement for meals is necessarily incidental to the authority to provide a supplement for transportation under Schedule C, section 2(f). That is, there is a supplement available for meals if those meals are part of the cost of transportation, for example if a meal was served on an airplane.

### ***The Appellant's Position***

The appellant requested a supplement of \$40.00 as compensation for meals that they miss "from community meals due to appointments and travel."

### ***The Ministry's Position***

The ministry's position is that money for food is provided as part of the monthly support allowance; it is only provided as part of travel costs under extraordinary circumstances, for example if the person traveled overnight and were not admitted to a hospital. The appellant is not entitled to include the cost of meals because the transportation is to a local medical appointment, where the individual is not required to stay overnight.

### ***The Panel's Decision***

The panel notes that there is no legislative authority to provide a supplement for meals that must be purchased at the office of a medical practitioner, the office of a specialist or a general or rehabilitation hospital and consequently any entitlement to a supplement must be connected to the transportation to or from those locations. The information before the panel indicates that the basis for the appellant's request is not that they need to purchase meals while travelling, but that because of medical appointments they are unable to avail themselves of two community meals per month. The panel finds that this is not sufficiently connected to the requirement to travel to a location specified in Schedule C, section 2(f) to satisfy the requirement that it is necessarily incidental to the transportation.

Consequently, the panel finds the ministry's determination that the appellant was not entitled to a supplement for meals during transportation is reasonably supported by the evidence and a reasonable application of the

enactment in the appellant's circumstance.

### **Issue 3: Entitlement to a Transportation Supplement Prior to March 2020**

#### ***The Relevant Legislation***

EAPWDR, section 23(5) states:

*(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.*

#### ***The Appellant's Position***

On reconsideration, the appellant requested "commencement of this benefit retroactive to PWD benefit date October 25, 2017. The appellant also requested "retroactive ongoing local medical transportation supplement retroactively since my inception onto PWD benefits, effective May 2016. This pattern of medical visits has been consistent for my past 20 years. Note, recently provided the MSDPR with a MSP claims history illustrating my great number of medical appointments over the past 3+ years."

On appeal, the appellant stated "it is quite unreasonable – but also discriminatory – for the MSDPR to deny my request for retroactive ongoing monthly local transportation benefits...because the MSDPR cannot reasonably expect me to adhere to its administrative rules of filing a SR for each and every medical visit, 10 days in advance and then get the doctor's office to verify attendance in written form...I am a pain disabled person with approaching a 5% completion rate of accomplishing tasks of activities of daily living".

#### ***The Ministry's Position***

The ministry's position is that the appellant submitted their request for a Medical Transportation Supplement on March 30, 2020 and the legislation states the appellant is only eligible for the assistance that is incurred after the calendar month in which the assistance is requested. The ministry provided the supplement for the month of March 2020 going forward, which is the limit of its legal authority.

#### ***The Panel's Position***

The panel notes that the reconsideration decision refers to a prior decision by the Employment and Assistance Appeal Tribunal regarding the appellant's entitlement for health supplements between 2016 and 2019.

The panel finds that section EAPWDR section 23(5) is clear. A family unit is not eligible for "retroactive" assistance. The panel is sympathetic to the appellant's situation and the potential administrative burden they face. The panel does note, however, that the appellant has been provided with a forward-looking entitlement until April 2021. The panel determines that the appellant requested the transportation supplement under appeal when they completed the form HR3320 in March 2020.

Consequently, the panel finds the ministry's determination that the appellant was not entitled to a transportation supplement prior to March 2020 is reasonably supported by the evidence and a reasonable application of the enactment in the appellant's circumstance.

#### ***Conclusion***

The panel finds the ministry decision dated April 29, 2020 is reasonably supported by the evidence and a reasonable application of the enactment in the appellant's circumstance.

The panel confirms the ministry's reconsideration decision and the appellant is not successful on 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

Trevor Morley

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020 Jul 19

PRINT NAME

Janet Ward

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 Jul 20

PRINT NAME

Wesley Nelson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 Jul 20