

PART C – DECISION UNDER APPEAL

The decision under appeal is the Reconsideration Decision (RD) of the Ministry of Social Development and Poverty Reduction (the Ministry) dated June 30, 2020, which held that the Appellant was not eligible for a health supplement for transportation (Health Supplement) to attend an appointment with a Hair Transplant Specialist (HTS) because the Appellant's request does not meet the legislative criteria for a Health Supplement as set out in Schedule C Section 2(1)(f) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

Specifically, the Ministry found that, while meeting the definition of a "medical practitioner":

- The HTS is not recognized as a specialist in a field of medicine or surgery in accordance with the bylaws made by the College of Physicians and Surgeons of BC;
- The HTS's office is not considered a general hospital or rehabilitation hospital as defined in the Hospital Insurance Act Regulations, nor does it meet the definition of "hospital" as defined in the *Hospital Insurance Act*; and,
- Transportation to the appointment with the HTS will not enable the Appellant to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*.

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(a) and EAPWDR Schedule C, Sections 1 and 2

Employment and Assistance Act (EAA), Section 22(4)

PART E – SUMMARY OF FACTS

The Appellant is designated as a person with a disability (PWD) and a sole recipient of disability assistance.

The evidence before the Ministry at the time of the RD included:

- A Request for Reconsideration dated June 26, 2020, which included:
 - A two page hand-written note completed by the Appellant and dated June 26, 2020, in which the Appellant states that she had suffered a serious injury as the result of an animal attack over a decade ago, followed by reconstructive plastic surgery in 2012, and explaining why the hair transplant, the funding for which had been denied by the Medical Services Plan (MSP), was now required, and presenting arguments as to why the cost of transportation should be covered by the Ministry;
 - An MSP Request for Travel Assistance Form, signed by the Appellant and dated July 2, 2020, providing the name and practitioner number of the referring physician and the destination physician and the date of the Appellant's appointment with the destination physician;
 - A letter from a plastic surgeon in the Appellant's community dated April 8, 2019, in which the plastic surgeon states that the Appellant has been a patient since August 2011, providing a summary of the surgery performed on the Appellant since the injury and stating that the plastic surgeon supports the Appellant's application to have the planned hair transplant covered under the MSP;
 - A summary of the observations of the Appellant's General Practitioner (GP) regarding a visit the Appellant had with the GP on August 20, 2018 in which the GP describes the Appellant's medication and mental impairments, and stating that the Appellant "*requires referral to plastic surgery regarding hair transplantation*";
 - Page 2 of 4 of an undated psychiatry consult preliminary report in which the psychiatrist summarizes his observations following a consultation with the Appellant on January 24, 2020 (the Psychiatric Consultation). He states that the Appellant says that "*she has been trying to get help for a decade*", it is very difficult for her to feel like she is living her life, "*she is pushing good people away*", and "*she does not really have a lot of emotional and social supports*";
 - A one page typed document addressed "To whom it may concern" completed by an acquaintance of the Appellant who has known the Appellant for 11 years describing the Appellant's injury and mental impairments;
 - A one page list of general post-operative instructions prepared by the HTS's office; and,
 - An e-mail from the HTS dated May 25, 2020, confirming the time and date of the proposed hair transplant surgery; and,

- A Ministry Request for Non-Medical Transportation Assistance Form completed by the Applicant and signed on June 8, 2020.

Additional Information Submitted after Reconsideration

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

In response to the section of the Notice of Appeal that asks "Tell us why you disagree with the Ministry's Reconsideration Decision?", the Appellant has written "*I will tell you in person*".

The Appellant also provided the Tribunal with a six page submission on July 21, 2020 (the July 21 Submission). The July 21 Submission included:

- A one page email dated July 21, 2020 and written by a childhood friend of the Appellant indicating that the friend was deeply saddened to learn that funding for the hair transplant had been denied and that they disagreed with the Ministry's decision. The email also provided information about the impact that the animal attack had had on the Appellant's life and wellbeing;
- A one page document titled "Response to Application for Pre-Authorization of Payment Surgery for Alteration of Appearance" on Health Insurance BC (HIBC) letterhead, dated August 13, 2019, identifying the Appellant as the patient and indicating that the surgery was "*Approved under miscellaneous fee item 06999 in equity with fee item 61351 at 100% x 1 and at 50% x 2 per Medical Advisors*" (the First Application Response);
- A one page document titled "Response to Application for Pre-Authorization of Payment Surgery for Alteration of Appearance" on Health Insurance BC letterhead, dated May 11, 2020, identifying the Appellant as the patient and indicating that the surgery was "*Not Approved – not a benefit per preamble D9 2 5*" (the Second Application Response); and
- Page 1 of 2 of a billing summary from a hotel in the same community as the HTS's office providing the Appellant's name and address, referring to a booking for a hotel room for 3 nights from July 2, 2020 to July 5, 2020, and showing room charges at the provincial government rate, an additional charge for a "third adult", and parking and related taxes for July 2, 2020 and July 3, 2020.

At the hearing the Appellant stated that there were many reasons why she thought the Ministry decision was unreasonable and why she had appealed the Ministry's RD. She stated that just last week was the anniversary of the animal attack which caused the terrible injury, and that she has suffered ever since.

The Appellant said that her need for plastic surgery and hair transplants as a result of the attack are no different from the needs of someone who requires breast cancer surgery or other serious surgery. She wanted to know why she had been discriminated against, and she expressed frustration with the fact that her applications for financial assistance from the Ministry and the MSP have been denied and in some cases approved and then subsequently denied.

The Appellant said that she suffers from post-traumatic stress disorder and depression and that she has been hospitalized three times. She stated that the constant denials of financial assistance to help her deal with the consequences of her injuries makes her feel like she is not appreciated.

The Appellant also explained that there were multiple witnesses to the attack, that she has had to put up with people making inappropriate comments and that she lacks skills in social interaction, including having had difficulties in maintaining a close relationship with her partner.

She stated that she had provided all of the references from her doctor and the plastic surgeon who had prescribed the hair transplants and she didn't know why she had to fight so hard for assistance.

In response to questions from the Panel the Appellant stated that she had eventually been able to have the Ministry of Health cover some of her transportation costs to attend the hair transplant surgery appointments at the HTS's office, but that the Ministry of Health had only covered three nights of accommodation, and, because a few more days were required to complete the transplants, she didn't have all the transplant work done due to the fact that she did not have the resources for the additional night's accommodation and would have had to sleep in the car.

The Appellant also stated that she was insulted by a Ministry staff member's suggestion that she stay at the Salvation Army while in the HTS's community for the hair transplants. The Ministry explained that it will sometimes suggest that a client approach the Salvation Army not because they expect the client to stay in a shelter but because the Salvation Army will sometimes provide assistance to people who need financial help with accommodation.

At the hearing, the Ministry relied on its RD and stated and stressed that the legislation hinges on two things: the service must be provided by a medical practitioner and it must be covered by MSP.

In response to a question from the Panel, the Ministry stated that, while it could not speak with certainty about programs offered by other ministries, the Travel Assistance Program (TAP) provided by the Ministry of Health will sometimes cover transportation costs associated with required medical procedures but does not cover accommodation. In response to another question from the Panel the Ministry said that it was not aware of any other government programs that might provide funding for the Appellant and that an individual's family doctor would have the best source of information about what services, funding and supports were available in the community.

The Panel considered the one page email from the Appellant's childhood friend, the First Application Response, and the Second Application Response contained in the July 21, 2020 submission to be evidence that is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal and as a result admitted that additional information in accordance with Section 22(4) of the EAA. However, the Panel notes that neither the First Application Response nor the Second Application Response are Ministry documents and that the First Application Response makes reference to "*miscellaneous fee item 06999*" and the Second Application Response refers to "*preamble D9 2 5*", neither of which are out of context references to other ministry forms, legislation or policy. Therefore the Panel is unable to assign any weight to the evidence. The Panel further notes that the information in the hotel billing summary relates to accommodation costs which do not form part of the costs for which the Appellant sought coverage from the Ministry and that, as a result, the information is not required "*for a full and fair disclosure of all matters relating to the decision under appeal*". The Panel finds that the other two documents included in the Appellant's July 21, 2020 Submission (the Psychiatric Consultation and a copy of the first page of a letter from the Ministry to the Appellant dated January 7, 2020 indicating that

the Ministry had denied the Appellant's application for designation as a PWD) both formed part of the Ministry record at reconsideration and were therefore not new evidence.

The Panel admits the new information in the Appellant's verbal testimony at the hearing regarding the costs associated with transportation from the Appellant's community to the location of the HTS's office for the hair transplant surgery (i.e. the information that some of those costs were ultimately covered by the MSP) as evidence that is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal and as a result admitted the new evidence in accordance with Section 22(4) of the EAA.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the Ministry's decision to deny the Appellant a Health Supplement 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 required transportation is not to a location or for services for which a Health Supplement may be provided under Section 2(1)(f) of Schedule 2 or under any other section of the EAPWDR?

The relevant legislation is as follows:

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 ...

EAPWDR Schedule C – 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.

EAA

Panels of the tribunal to conduct appeals

22(4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Panel Decision

EAPWDA Section 5 and EAPWDR Section 62 say that the Ministry may provide a transportation health supplement to a person with a PWD designation if that person qualifies for it. In the RD, the Ministry has acknowledged that the Appellant has been designated as a PWD and does not deny the transportation health supplement on the basis of not meeting the requirements of EAPWDR Section 62. The reasons for the Ministry's decision that the transportation health supplement as set out in the RD are that the criteria set out in EMPWDR Schedule C Section 2(1)(f) have not been met.

EMPWDR Schedule C Section 2(1)(f) says that transportation costs for a person with a PWD designation to and from the following locations may be paid:

- A medical practitioner's or a nurse practitioner's office in the PWD's community;
- The nearest office of a medical specialist or surgeon on referral from a medical practitioner or a nurse practitioner;
- The nearest suitable general hospital or rehabilitative hospital; **or**
- The nearest suitable hospital,

if the transportation is necessary for the applicant to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, **and** if the PWD does not have the resources available to cover the cost.

In the RD, the Ministry found that the Appellant was not travelling to a medical practitioner's or a nurse practitioner's office in her community, the nearest office of a medical specialist or surgeon on referral from a medical practitioner or a nurse practitioner, or the nearest suitable hospital. In addition, the Ministry determined that the Appellant was not receiving a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*.

The Panel notes that the available evidence shows that the HTS's office is in a community several miles from the Appellant's community (and therefore not in the Appellant's local area), that the HTS has confirmed that he is not a "specialist" as defined in EMPWDR Schedule C (1), and that the transplant surgery did not take place in the nearest suitable hospital. Therefore the Panel finds that the Ministry reasonably determined that the required transportation was not to any of the three locations specified in the legislation.

The Panel notes that the Ministry also determined that the Appellant was not receiving a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act* and did not address the Appellant's ability to pay the costs, but finds that these two requirements would only have to have been considered if the transportation was to one of the four locations specified in EAPWDR Schedule C Section 2(1)(f) (i) – (iv).

While the Panel is sympathetic and acknowledges the terrible consequences of the injury suffered by the Appellant, the Panel does not have the authority to overturn a Ministry decision made based on a reasonable interpretation of the legislative requirements and the evidence, and cannot provide any remedies other than those set out in the legislation.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the Panel finds that the Ministry's RD, which determined that the Appellant was not eligible for a Health Supplement to attend an appointment with the HTS, was reasonably supported by the evidence and was a reasonable application of the EAPWDA in the circumstances of the Appellant, and therefore confirms the decision. The Appellant's appeal, therefore, is not successful.

APPEAL NUMBER
2020-00174

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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/07/24

PRINT NAME

Vivienne Chin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/07/24

PRINT NAME

Robert McDowell

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/07/24