

APPEAL NUMBER
2020-00223

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated Sept 4, 2020 which held that the appellant was not eligible for a health supplement for transportation to receive non-local medical treatment.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disability Regulation (EAPWDR), section 62(1)(a)
EAPWDR Schedule C, sections 1, 2(1)(f)
Medicare Protection Act, section 1
Medical and Health Care Services Regulation, sections 17 and 25.1

PART E – SUMMARY OF FACTS

The appellant did not participate in the hearing. The panel confirmed that the appellant had been provided with the Notice of Hearing and waited 15 minutes from the scheduled start time before proceeding.

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

1. The appellant is a sole recipient of disability assistance;
2. On July 23rd 2020, the appellant received non-local medical treatments (the “Treatments”) from a massage therapist and an acupuncturist;
3. On July 22 and July 24, 2020, the appellant travelled to another community to receive the Treatments;
4. On August 12, 2020, the appellant provided the ministry with a Request for Non-Local Medical Transportation Assistance;
5. The individuals that provided the appellant with the Treatments were not specialists as defined by the BC College of Physicians and Surgeons;
6. The location where the appellant received the Treatments was a private clinic that was not connected to a hospital; and
7. The Treatments provided the appellant with “a little bit of pain relief” and other treatments, including medication, that the appellant received were not effective.

PART F – REASONS FOR PANEL DECISION

The issue at appeal is whether the ministry's decision that the appellant was not eligible for a health supplement for transportation to receive non-local medical treatments was reasonably supported by the evidence or a reasonable application of the enactment in the appellant's circumstance.

The Relevant Legislation

EAPWDR, section 62 authorizes the minister to provide certain health supplements as described in Schedule C of the regulation.

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,
- (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 is a continued person.

The portions of Schedule C that are relevant are:

Definitions

1 "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.

Medicare Protection Act

1 In this Act:

"benefits" means

- (a) medically required services rendered by a medical practitioner who is enrolled under section 13, unless the services are determined under section 5 by the commission not to be benefits,
- (b) required services prescribed as benefits under section 51 and rendered by a health care practitioner who is enrolled under section 13, or
- (c) unless determined by the commission under section 5 not to be benefits, medically required services performed
 - (i) in an approved diagnostic facility, and
 - (ii) by or under the supervision of an enrolled medical practitioner who is acting
 - (A) on request of a person in a prescribed category of persons, or
 - (B) in accordance with protocols approved by the commission;

Medical and Health Care Services Regulation

Definition of health care practitioner

17 The following health care professions and occupations are prescribed for the purposes of paragraph (b) of the definition of "health care practitioner" in section 1 of the Act:

- (a) physical therapy;
- (b) massage therapy;
- (c) naturopathic medicine;
- (d) midwifery;
- (e) acupuncture.

Supplemental services

25.1 (1) Subject to section 27, an acupuncture, chiropractic, massage, naturopathic, physical therapy or non-surgical podiatric service is a benefit if the service is

- (a) listed in a payment schedule for supplemental services,
- (b) rendered in British Columbia to a beneficiary who
 - (i) is eligible for supplemental services under section 10, or
 - (ii) has been determined under section 11 to be eligible for supplemental services,

(c) rendered by an enrolled health care practitioner, and

(d) described in an adequate clinical record.

(2) Subject to subsection (1), acupuncture, chiropractic, massage, naturopathic, physical therapy and non-surgical podiatric services are benefits up to a combined maximum of 10 visits during each calendar year.

The Appellant's Position

The appellant in the Notice of Appeal stated: "Trigger Point Injections are the only beneficial treatment for Fibromyalgia so I cannot walk and not be bed ridden."

On reconsideration, the appellant stated that they are in pain every day and sometimes require the assistance of a cane. That medication had not been effective for pain relief and Trigger Point Injections provide "a little bit of pain relief".

The appellant identified the individuals that provided the Treatments as an "RMT" (registered massage therapist) and as a "R.AC" (registered acupuncturist) and provided the name and location of the business where the Treatments were received.

The Ministry's Position

On the appeal, the ministry relied on the reconsideration decision.

The ministry stated that massage therapists and acupuncturists are not specialists as defined in the EAPWDR and therefore Schedule C(2)(f)(ii) did not apply.

The ministry stated that the private clinic where the appellant received the Treatments was not the nearest suitable hospital as contemplated in the EAPDWR and therefore Schedule C(2)(f)(iii) did not apply. The ministry noted that there were similar services offered in the community where the appellant lives.

The Panel's Decision

The panel notes that Section 2(1)(f) of Schedule C to the EAPWDR provides four situations where a person can receive a health supplement for the least expensive mode of transportation "to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*."

Benefits under the *Medicare Protection Act* are defined as: a medically required service provided by a medical practitioner; a service prescribed as a benefit by the *Act* provided by a health care practitioner that is enrolled by the commission; or medically required services performed in an approved diagnostic facility. A health care practitioner is defined (in the *Act* and in the Regulation) to include a chiropractor, dentist, optometrist, podiatrist, physical therapist, massage therapist, naturopathic doctor, midwife, or acupuncturist. The appellant did not provide sufficient information to establish whether the Treatments were "a benefit under the *Medicare Protection Act*" as required by Section 2(1)(f) of Schedule C to the EAPWDR. However, even if the Treatments were a benefit under the *Medicare Protection Act*, the panel has determined that none of the four situations described in Section 2(1)(f) of Schedule C to the EAPWDR apply to this appeal.

Situation 1 of Schedule C to the EAPWR is where the transportation is to the office, in the local area, of a medical practitioner or nurse practitioner. This situation does not apply to this appeal, as the appellant did not travel to an office in the local area.

Situation 2 of Schedule C to the EAPWR is where the transportation is to the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to that specialist by a local medical practitioner or nurse practitioner. This situation does not apply to this appeal because the individuals that provided

the treatment do not come within the definition of specialist in the EAPWDR because they are not recognized as a specialist in a field of medicine or surgery by the College of Physicians and Surgeons of British Columbia.

Situation 3 is where the transportation is to the nearest suitable general hospital or rehabilitation hospital. That situation does not apply to this appeal because the appellant did not travel to a general or rehabilitation hospital.

Situation 4 is where the transportation is to the nearest suitable establishment that has been designated as a diagnostic and treatment centre and provides outpatient benefits. That situation does not apply to this appeal because the appellant did not travel to a designated diagnostic and treatment centre.

Conclusion

The panel finds that the appellant is not eligible for the benefit of a health supplement for transportation to receive non-local medical treatments under the EAPWDR because none of the situations identified in EAPWDR Schedule C, Section 2(1)(f) apply to this situation. Therefore, the ministry's decision that the appellant was not eligible for a health supplement for transportation to receive non-local medical treatments was reasonably supported by the evidence and a reasonable application of the enactment in the appellant's circumstances.

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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)

PRINT NAME

Susan Ferguson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Joseph Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)