

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated September 29, 2020, which denied the appellant's request for a supplement to cover the cost of transportation to an appointment with a registered nurse at a clinic in a different community.

The ministry found that the request for a health supplement did not meet the legislated requirement of Schedule C, Section 2(1)(f) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) because:

- The appellant did not attend an office in the local area of a medical or nurse practitioner [Section 2(1)(f)(i)];
- The registered nurse is not a specialist in a field of medicine or surgery and the appellant was not referred by a local medical or nurse practitioner; [Section 2(1)(f)(ii)];
- The appellant attended at a clinic and not in a general or rehabilitation hospital [Section 2(1)(f)(iii) and (iv)]; and,
- The appellant did not utilize the least expensive appropriate mode of transportation.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 62 and Schedule C, Sections 1 and 2(1)(f)

Interpretation Act, Section 29

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 the reconsideration decision included:

- 1) Treatment Outline dated September 3, 2020 by a ND [Naturopathic Doctor], including a recommendation for a medical test to be conducted at a named clinic;
- 2) Request for Local or Non-Local Medical Transportation Assistance dated September 14, 2020 in which the appellant requested travel by vehicle from the appellant's community to another community for an appointment for a medical test to be completed at a named clinic on September 15, 2020; and,
- 3) Request for Reconsideration dated September 17, 2020 in which the appellant wrote:
 - The appellant would like these two medical requests for reconsideration.
 - The appellant has been dealing with ongoing health issues and the appellant's family doctor was doing nothing. As a result of the doctor's neglect, the appellant now has a health condition.
 - The appellant is not asking for payment for the appointments, but just for the cost of travel to get to these appointments when needed.
 - This is already devastating to the appellant and if the family doctor was thorough with all the information the appellant gave to him, the appellant would have had answers months ago.
 - The appellant is filing a complaint with the College of Physicians and Surgeons and this is why the appellant found someone to listen and help instead of ignoring the appellant.
 - The appellant's health has suffered and the appellant thinks it is only fair that the appellant receives a medical test referral from the ND.

Additional Information

In the Notice of Appeal dated October 3, 2020, the appellant wrote that:

- The appellant feels this medical test helps assess a major health issue that the appellant's family doctor has ignored for over eight months. The medical test is very important to the appellant's health.
- Just because the ND is not registered as a doctor does not mean that she uses a different name. When the appellant could not get medical care from the appellant's family doctor, the appellant had to go somewhere else.
- The appellant has submitted a complaint to the College. The appellant has many health issues that the doctor has avoided and put the appellant's health at risk.
- Not attending this medical test puts the appellant's health at risk. It needed to be done.

Prior to the hearing, the appellant provided a copy of the Treatment Outline dated September 3, 2020 by a ND, which was included as part of the record of the ministry's decision.

The ministry relied on its reconsideration decision and did not provide an additional submission on the appeal.

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The panel considered that there was no additional information for which a determination of admissibility was required under Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of transportation to an appointment with a registered nurse at a clinic in a different community because the requirements of Section 2(1)(f) of Schedule C of the EAPWDR had not been met, was a reasonable application of the legislation in the circumstances of the appellant, or was reasonably supported by the evidence.

Please refer to the Schedule at the end of this decision for the full text of Section 62 and Sections 1 and 2(1)(f) of Schedule C of the EAPWDR, and Section 29 of the *Interpretation Act*.

Section 2(1)(f)(i) of Schedule C of the EAPWDR

Section 2(1)(f)(i) of Schedule C of the EAPWDR states that the ministry may provide a health supplement for the least expensive appropriate mode of transportation to the office, in the local area, of a medical practitioner or nurse practitioner. In the appellant's Request for Local or Non-Local Medical Transportation Assistance dated September 14, 2020, the appellant requested travel by vehicle from the appellant's community to another community for an appointment for a medical test to be completed at a named clinic on September 15, 2020.

In the reconsideration decision, the ministry wrote that the clinic in a different community was not within the appellant's local area as there are health centres in two communities in closer proximity to the appellant's community and the appellant did not specify in which community the appellant's medical practitioner is located. The ministry also wrote that the medical test was performed by a registered nurse and not by a medical or nurse practitioner. The ministry contacted the clinic and was advised that the particular medical test required by the appellant is performed by registered nurses and not by medical practitioners or nurse practitioners.

In the Request for Reconsideration, the appellant wrote that the appellant has been dealing with ongoing health issues and the appellant's family doctor was doing nothing. As a result of the doctor's neglect, the appellant wrote, the appellant now has a health condition. The appellant wrote that the appellant is filing a complaint with the College of Physicians and Surgeons for the doctor's neglect and the appellant found someone else to listen and to help. In the Notice of Appeal, the appellant wrote that this medical test is very important to the appellant's health and when the appellant could not get medical care from the appellant's family doctor, the appellant had to go somewhere else. The appellant wrote that not attending this medical test put the appellant's health at risk and it needed to be done.

The appellant did not dispute the ministry's information that there are health centres in two communities in closer proximity to the appellant's community than the community in which the clinic is located. According to the ministry's information, the clinic is located approximately three times as far from the appellant's community than the two other health centres. While not setting out a concrete definition of what constitutes "local area," as it would depend on the particular area in question, the panel was satisfied that the ministry was reasonable in its conclusion that

the clinic that the appellant went to was not in the “local area” given the distance the appellant travelled.

Section 2(1)(f)(i) of Schedule C of the EAPWDR also requires that the travel be to an office of a medical practitioner or a nurse practitioner. The panel finds that, while emphasizing the urgency to have this medical test performed, the appellant did not dispute the ministry’s information that the medical test is performed by registered nurses in the clinic. Section 29 of the *Interpretation Act* defines “medical practitioner” to mean a registrant of the College of Physicians and Surgeons of B.C. entitled under the *Health Professions Act* to practise medicine and to use the title “medical practitioner,” and defines “nurse practitioner” to mean a person who is authorized under the bylaws of the College of Registered Nurses of B.C. to practise nursing as a nurse practitioner and to use the title “nurse practitioner.” As there was no evidence presented by the appellant to show that the clinic is an office of a medical practitioner or a nurse practitioner, as defined in the *Interpretation Act*, the panel finds that the ministry was reasonable to determine that this requirement of Section 2(1)(f)(i) of Schedule C of the EAPWDR had not been met.

Section 2(1)(f)(ii) of Schedule C of the EAPWDR

Section 2(1)(f)(ii) of Schedule C of the EAPWDR states that the ministry may provide a health supplement for the least expensive appropriate mode of transportation to 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 or nurse practitioner. In the Treatment Outline dated September 3, 2020 a ND recommended that the appellant have a medical test at a named clinic. In the reconsideration decision, the ministry found that the appellant’s transportation supplement request did not meet the legislative requirement of Section 2(1)(f) (ii) because the ND who made the referral to the clinic is not a medical practitioner or nurse practitioner. In the Notice of Appeal, the appellant wrote that just because the ND is not registered as a doctor does not mean that the ND uses a different name. The panel interpreted the appellant’s argument to be that, while not registered, the ND is a “doctor.” The appellant wrote that when the appellant could not get medical care from the appellant’s family doctor, the appellant had to go somewhere else.

As previously discussed, Section 29 of the *Interpretation Act* defines “medical practitioner” to mean a registrant of the College of Physicians and Surgeons of B.C. entitled under the *Health Professions Act* to practise medicine and to use the title “medical practitioner.” Although the appellant pointed out that a ND is called a “doctor,” the panel finds that a “naturopathic” doctor is regulated by the College of Naturopathic Physicians of B.C. and, as the appellant acknowledged, is not a registrant of the College of Physicians and Surgeons. Therefore, the panel finds that the ministry reasonably concluded that the appellant was not referred for the medical test by a local medical practitioner or nurse practitioner, as required by Section 2(1)(f)(ii) of Schedule C of the EAPWDR.

In the reconsideration decision, the ministry also wrote that the appellant’s transportation

supplement request did not meet the legislative requirement of Section 2(1)(f) (ii) because the medical test was performed by a registered nurse and the ministry found that a registered nurse is not a “specialist” recognized by the College of Physicians and Surgeons. The appellant did not dispute the ministry’s information that the medical test was conducted by a registered nurse but emphasized how important this test was to the appellant’s health. Section 1 of Schedule C of the EAPWDR defines “specialist” as 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. The panel finds that the ministry was reasonable to conclude that a registered nurse is not a “medical practitioner,” which is a title defined by the *Interpretation Act* (as previously discussed) and, therefore, the registered nurse does not fall within this definition of a specialist, as required by Section 2(1)(f)(ii) of Schedule C of the EAPWDR.

Section 2(1)(f)(iii) and (iv) of Schedule C of the EAPWDR

Sub-sections 2(1)(f)(iii) and (iv) of Schedule C of the EAPWDR set out that the ministry may provide a health supplement for the least expensive appropriate mode of transportation to the nearest suitable hospital, general hospital or rehabilitation hospital as those terms are defined in the *Hospital Insurance Act* and Hospital Insurance Act Regulation, respectively. In the reconsideration decision, the ministry wrote that the appellant did not attend the nearest suitable general hospital or rehabilitation hospital which would enable the appellant to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*. The ministry found that the medical test was scheduled at a clinic and not in a hospital. The appellant did not dispute that the clinic where the services were provided is not a hospital and the panel finds that the ministry reasonably concluded that the clinic at which the medical test was performed was not a hospital, general hospital or rehabilitation hospital and the requirements of sub-sections 2(1)(f)(iii) and (iv) of Schedule C had not been met.

Least Expensive Appropriate Mode of Transportation

In the reconsideration decision, the ministry wrote that the appellant did not utilize the least expensive appropriate mode of transportation as the ministry found that there are health centres in closer proximity to the appellant’s community and less gas would be required, at a reduced cost, to travel to these centres. While the ministry considered the closer proximity of the health centres in other communities, requiring less gas and, therefore, less cost to travel by personal vehicle from the appellant’s community, Section 2(1)(f) requires that the least expensive appropriate *mode* of transportation be used by the appellant to travel to the office where the services were provided and not to travel to alternative locations. The panel considered ‘mode of transportation’ as a term used to distinguish between different ways of transport: by air, water, and land transport, which might include road transport by bus, taxi, ride-sharing service, or personal vehicle, or off-road by railway. The ministry’s analysis was limited to a question of the proximity of health centres, with no review of the costs of travelling to the requested clinic via a personal vehicle as compared with the cost of other possible appropriate modes of transportation to the clinic, if any.

The panel finds that the ministry was unreasonable to conclude that travel to the request clinic by personal vehicle was not the least expensive appropriate mode of transportation based solely on the proximity of other health centres; however, the panel finds that the ministry was reasonable to conclude that the other requirements of Section 2(1)(f) of Schedule C of the EAPWDR had not been met.

Conclusion

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a supplement to cover the cost of transportation to an appointment with a registered nurse at a clinic in a different community because all of the requirements of Section 2(1)(f) of Schedule C of the EAPWDR were not met, was a reasonable application of the applicable enactment in the appellant's circumstances and confirms the decision. Therefore, the appellant is not successful in the appeal.

Schedule

Section 62 of the EAPWDR provides:

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,
 - (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.

Section 1 of Schedule C of the EAPWDR provides:

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*.

The requirements of Schedule C, Section 2(1)(f), which apply to transportation costs, are as follows:

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.

Section 29 of the *Interpretation Act* provides as follows:

Expressions defined

29 In an enactment:

"medical practitioner" means a registrant of the College of Physicians and Surgeons of British Columbia entitled under the *Health Professions Act* to practise medicine and to use the title "medical practitioner."

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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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020-11-12

PRINT NAME

Daniel Chow

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020-11-12

PRINT NAME

Nancy Eidsvik

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020-11-12