

APPEAL NUMBER
2021-0127

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated June 3, 2021 which held that the appellant was not eligible for reimbursement for an eye exam nor eligible for eye glasses, because the request failed to meet the legislative criteria set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The ministry held that the appellant is requesting reimbursement for an eye exam that is covered under the *Medical Protection Act* (through MSP), and that the appellant is therefore not eligible for an eye examination supplement as per *Section 62.2(3)* of the *EAPWD Regulation*.

The ministry also held that that while a change in prescription could mean the appellant may be eligible for new eyewear at this time, incorrect fee codes had been processed by PBC and the appellant has not identified an optical clinic that is willing to process the new prescription and provide the eyewear, therefore the request for coverage of eyewear does not meet the legislated eligibility criteria as set out in the *EAPWD Regulation, Schedule C, Section 1*.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 62.1 and 62.2, and Schedule C, sections 1, 2.1, and 2.2.

PART E – SUMMARY OF FACTS

The evidence before the minister at reconsideration included the following:

- Background information from ministry files stating that on April 13, 2021, the appellant had contacted the ministry explaining that the appellant had seen an optometrist for some tests and was unexpectedly charged for the visit.
- Online Pacific Blue Cross (PBC) tabulated history indicates that a claim was processed for fee code 60601 (Optometrist eye exam) for services performed on April 9, 2021. The amount claimed was \$131.08 and another carrier (MSP) paid \$47.08. PBC determined the appellant was not eligible, explaining: *'We are unable to provide reimbursement for this expense. It is not a covered benefit under your plan'*.
- Online PBC Preauthorization (claims not processed) for the same date (April 9, 2021) outlined 4 other fee codes for various glasses. These claims were accessed by the ministry on 27 May 2021. For fee code 60432 (Right replacement lens), PBC approved a partial amount up to \$62.65. For three other codes, 60332, 60302 and 60320, the PBC rejected the claims and PBC outlined the reasons for ineligibility, which included;
 - *There is already an approved or under review pre-determination for multi-focal glasses. In order to consider the pre-determination for distance or reading glasses the original pre-determination needs to be reversed,*
 - *Add ons only eligible on the same day of the purchase of valid lens or complete set of glasses.*
- PBC Claims History indicates the appellant was last approved funding for glasses in February 2019.
- The appellant has MSO (medical services only) designation but had PWD (Persons With Disabilities) designation at the time of being switched to MSO.
- On May 31, 2021, the ministry contacted the optometrist's office and spoke to a staff member who explained:
 - The appellant visited their office on April 9, 2021 for an eye exam. The optometrist indicated the appellant has cataracts and offered a referral to an ophthalmologist for further treatment/assessment. The ministry asked if the eye exam revealed a change in prescription significant enough to meet the definition of *'change in refractive status'* (defined in *Schedule C of the EAPWD Regulation* – outlined below). Although the staff member agreed that it does, the optometrist recommended that the appellant see an ophthalmologist to determine a course of action with the cataracts so that the appropriate prescription (after cataract assessment/treatment) could be determined.
 - The appellant was asked to pay the remaining amount owing for the eye exam (not covered by MSP) but insisted that the appellant should not be charged and did not pay the remaining amount. This amount is still currently outstanding to their office.
 - The appellant requested new eyewear to be provided according to the new prescription despite the recommendation to wait to see the ophthalmologist. The appellant then contacted an advocate who demanded that certain fee codes be submitted to PBC as a pre-determination claim for review so that a request for reconsideration could be submitted. As requested, the staff processed those requested fee codes through PBC with the results shown above (the April 9, 2021 Online PBC Preauthorization).
 - When the ministry asked about the fee codes submitted to PBC for the eyewear, the staff member reviewed them and determined they are the wrong codes. Staff wasn't sure

why/how the wrong fee codes were entered as another staff member had completed that task but indicated that they were just entering the codes the advocate had requested.

- The staff member said the appellant filed a complaint against the optometrist and therefore they do not expect the appellant to return to their office or expect that the appellant would choose to purchase eyewear from their office. However, staff explained that even if this happened, the appellant would not be welcome as a patient nor as a customer, and they will not sell the appellant eyewear. (The staff member also notes that the appellant still has an amount outstanding to their office for the remainder of the eye exam).
- A typed letter from the appellant to the ministry regarding the appeal stating;
 - That the appellant has travelled at own expense for every optometrist visit over several years, paying for own transportation, meals, and cost to board 2 dogs which is a hardship,
 - That the appellant had glasses paid for in the past and was told by the clinic at last visit that these were covered, and
 - that the appellant had paid a cash difference of what money the appellant had on person at time before leaving the clinic,
- A typed letter from a medical practitioner's office that confirmed a fall in November 2020 with injuries to hip and knee that required an unknown length of stay in hospital,
- A discharge note from Island Health dated October 2020 that indicated a four day stay in hospital due to 'functional deterioration'.

The ministry stated in the reconsideration decision that the appellant is a recipient of disability assistance, and is eligible for optical and eye exam supplements under section 62.1, 62.2, and Schedule C sections 1, 2.1, and 2.2 of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation. The minister also acknowledged that the change in prescription could mean the appellant is eligible for new eyewear at this time.

Included in the reconsideration decision was a brochure on Optical supplements for Optometrists. This document provides the "*schedule of fee allowances – optical, dated 1 April 2005*" and provides information for consultants. The ministry references this document in the reconsideration decision. On the second page of the document it states that "*if ministry clients have questions, they should be referred to their local ministry office*". The panel notes this document bears the name of Ministry of Social Development and Social Innovation and the code numbers differ from that in the current online ministry brochure and fee schedule for optometrists and ophthalmologists, issued under the current name of the ministry ("Ministry of Social Development and Poverty Reduction").

The hearing was held as a teleconference. At the hearing several events caused a delay in process. One panel member had trouble joining the call which delayed the start of the hearing and one panel member suffered a power failure which necessitated joining with another phone.

The appellant was accompanied by a hospital social worker as a support person to assist with reading documents and confirming telephone discussions.

With the permission of the appellant and panel the ministry had a trainee person join the hearing by phone as an observer.

Additional information

Subsequent to the reconsideration decision the appellant filed a Notice of Appeal with a hand-written statement that said;

- *“I feel they have ignored evidence and other facts, and the hardship imposed on me and further evidence has come forward”.*

At the hearing, the appellant filed a new document that had not been received by the Tribunal. The appellant explained that it had just been received recently before the hearing and consisted of a copy of the invoice from the optometrist. The document was read into the record by the appellant’s support worker, a hospital support worker from the local Health authority, and summarised as;

- The document is an invoice number 442-0032161 dated 0904-2021 from the office of the Optometrist visited by the appellant,
- received from the optometrist’s office as a result of a request by the appellant,
- contained descriptions of two pairs of single lens glasses, with lens costs, showing savings from a ‘lifestyle’ package, for a total of \$279.99,
- less an amount of benefit of \$274.40 for a balance of \$5.79,
- a tendered amount of cash on 0909-2021 of \$10.00 with a cash refund of \$4.41, and
- an invoice outstanding balance of \$0.00 (zero).

Admissibility of new information

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.

The ministry did not raise any objections to the panel admitting the appellant’s documents into evidence but noted that the reconsideration decision was based on the information the ministry had at the time. The panel admits the new information under section 22(4) of the Employment and Assistance Act (“EAA”) as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The documents include information on new evidence referred to on the Notice of Appeal and the actual events of the visitation to the optometrist by the appellant and also to monies paid by the appellant. The panel finds that this information is relevant because it addresses the ministry’s finding that the appellant was not eligible for assistance for not having an optical clinic that is willing to process the new prescription and provide the eyewear.

The ministry relied on the reconsideration record and did not submit any new documentary evidence. However, both parties provided additional evidence as well as argument in their oral submissions.

Oral submissions

Appellant

The appellant stated that this was the first time visiting this clinic and had gone to it as it is closer to the appellant's home.

Over a number of years, the appellant has visited optometrists in businesses using the same name and thought it was part of a chain and would have access to personal medical files. This is not the case as the business is run by independent owners.

The appellant felt the consultation was conducted poorly, in a very small office, with inexperienced staff and in taking over two and a half hours to calculate the invoice caused the appellant significant physical discomfort due to her ongoing medical conditions, including Lupus and congenital heart failure.

The appellant advised the office staff to only provide what is allowed by the ministry, as has been done in the past.

During the very long time waiting for the billing procedure, the appellant contacted a ministry representative by cell phone from the optometrist's office to move the process forward. The appellant, apparently at the request of the ministry, handed the cellphone to the office staff, who took the phone out of the appellant's hearing.

The appellant testified to have paid a sum of \$5.59 for glasses and was then advised that a bill was also due for the eye care exam. Having no monies to pay this bill the appellant left the office with an assurance that the glasses would be sent to her and a letter provided to the appellant that could be used in support of a request for payment by the ministry.

The appellant states to not having received the glasses, some three months after the visit, and to not having received the promised letter of support. The appellant further stated that there is now apparently no intention of the optometrist sending the glasses until this outstanding bill, is paid.

The appellant advised that income is \$1600 per month and with rent and living costs it leaves only \$100 per month to live on.

The appellant advised that although the optometrist was closer to home, it still required transportation and other costs, including special diabetic meals and care for pets, that cause financial hardship to the point where monthly expenses exceed monthly income. She also has

incurred additional costs due to two stays in hospital since October 2020 who feels these trips are “burying me” in debt and affecting the ability to pay for prescription drugs.

In questions of the appellant by the ministry, the appellant confirmed that PBC and the appellant had paid for the glasses, but they were being withheld by the optometrist.

In response to questions by the panel, the appellant advised the outstanding amount for the office visit is \$114.00, that the appellant did not provide any PBC codes to the optometrist staff, that in previous consultations the amounts paid by the appellant were in the range of \$5 to \$15, payable as one sum and had never been charged multiple bills in the past.

In response to questions as to whether the appellant had contacted the ministry following receipt of the reconsideration decision, the appellant confirmed to calling and speaking with a ministry representative who advised that the optometrist is not allowed to withhold delivery of the glasses if payment had been made.

The appellant responded to a question regarding potential payment of the outstanding eye exam that no monies are available to settle the bill. The appellant was confused as to the amount of monies owing as the optometrist states it is \$114 and the ministry shows it as \$84 (after the MSP payment is deducted). The appellant advised that a request was made, prior to the hearing, to the optometrist for a receipt for the eye care exam as well the glasses; however, only a receipt for glasses was provided.

Ministry

The ministry relied upon the reconsideration decision.

The ministry explained that there were two issues. That is the conduct of an eye exam and the request for provision of replacement glasses. The appellant is over 65 years of age and therefore covered for ‘medical services only’ (MSO).

The first issue is that information shown in the decision clearly shows that MSP had paid the maximum legislated amount of \$47.08 for the eye exam. The bill was for \$131.08 and this has left an amount owing of \$84. In cases where the MSP does not pay the supplement then the ministry can provide a supplement of about the same amount, approximately \$47. In this case the MSP had indeed paid the amount to the optometrist and therefore PBC, on behalf of the ministry, has no way of offering any further supplement.

The second issue is the ministry was not aware of any failure to issue approved glasses, the information in the reconsideration decision showing that eligibility was denied by PBC and that the appellant had been recommended to contact another clinic to obtain services.

In response to a question from the appellant as to whether the ministry has a copy of the invoice for \$114, the ministry stated they did not, the only information on amounts is contained within the reconsideration decision. As to why the optometrist was asking for \$114 the ministry replied

that the appellant would have to discuss that with the optometrist, that some charge variable amounts.

In response to questions from the panel referring to the tables of amounts paid and codes requested, as to whether the ministry paid \$272.40 the ministry stated that the invoice provided by the appellant confirmed PBC has clearly paid and this is a “big puzzle”.

In response to questions about apparent next steps by the ministry, they explained that they are not involved in the process, that PBC is contracted to provide the services and the appellant should take this up with PBC.

The ministry stated it will not contact the optometrist to address the situation.

The ministry further stated the suggestion for the appellant to visit another clinic is now invalid as it seems fees have already been paid for the glasses. The original suggestion was based upon the belief that no approval had been provided by PBC. The ministry stated the new evidence shows PBC had paid for glasses. The ministry stated that the appellant and advocate need to get the optometrist to release the glasses.

The appellant advised that they had in fact contacted PBC who would not discuss or provide invoices with the appellant, rather needed to speak to a ministry specialist. This call was confirmed by the support person, as the person who made the call.

In answer to a question as to whether the appellant can go to another clinic and get a reversal of the code approval and be fitted for new glasses the ministry said no, this would not now be possible.

In response to a question about whether transportation costs would be available the ministry confirmed that this is possible under a MSO file and the appellant can apply for a supplement.

Admissibility of oral testimony

Aside from argument, neither party raised any objections to the other’s information. The appellant provided additional evidence about the billing of the eye exam and the provision of glasses and lenses and the process the appellant had gone through with the ministry in applying for assistance. The ministry explained the application process for PBC preauthorization.

The testimony speaks to the ministry’s process for determining there was insufficient information to confirm the appellant’s eligibility for assistance. The testimony also includes additional information on the appellant’s current circumstances. The oral testimony is therefore relevant to whether there is enough evidence to determine if the appellant is eligible for assistance. The panel admits all the testimony under section 22(4) of the EAA as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The panel notes that the appellant has provided oral testimony only of an outstanding amount of \$114 claimed by the optometrist, while the ministry documents an eye exam amount of \$131.08

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submitted to PBC for coverage. Documents show a partial payment by PBC of \$47.08 leaving an outstanding amount of \$84.00. The panel finds the actual amount owing for the eye exam to be \$84.00.

The panel notes the testimony of the appellant regarding the invoice from the optometrist and finds the appellant did pay an amount of \$5.79 as the outstanding portion of a demand for payment for new glasses, and therefore the panel also finds the optometrist has in fact sold the appellant eyewear.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision which held that the appellant was not eligible for an eye examination supplement as per Section 62.2(3) of the EAPWD Regulation, and that the appellant's request for coverage of eyewear does not meet the legislated eligibility criteria as set out in the EAPWD Regulation, Schedule C, Section 1 was reasonable.

In particular, was the ministry reasonable in determining that payment for an eye exam was available through MSP and therefore the appellant was not eligible for an eye examination supplement as per Section 62.2(3) of the EAPWD Regulation.

Further, was the ministry's determination that the appellant is not eligible for glasses as "basic eyewear" or as "pre-authorized eyewear" at this time reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The relevant legislation is provided in Appendix A.

A. Eye Exam

Appellant Position

The appellant argues to not paying more than \$5 - \$15 in the past for an eye exam and that those previous amounts were presented in a single invoice for eye exam along with the provision of services. In this case, a different optometrist's office has demanded an unexpected fee, totalling \$114, for which the appellant has no resources to pay.

The appellant seeks reimbursement for this expense.

Ministry Position

The ministry argues that service providers may charge variable amounts for eye exams, and although legislation outlines ministry eye examination supplements of \$44.83 every 24 months, the minister may only provide this supplement if payment for this service is not available under the *Medicare Protection Act*. As payment for the appellant's eye exam was available through MSP the appellant is not eligible for an eye examination supplement.

Panel Finding

Schedule C, section 2.2 of the EAPWD Regulation allows for an amount of \$44.83 to be paid for an eye exam provided by an optometrist, however *Section 62.2(3) of the EAPWD Regulation* explains that a supplement from the minister may only be provided if payment for this service is not available under the *Medicare Protection Act (MPA)*.

The appellant underwent an eye exam and prescription procedure on 9 April 2021 and was charged a fee for this service. The panel found that \$47.08 was paid pursuant to the MPA, with an amount still owing of \$84.

As payment for the appellant's eye exam was available and paid under the MPA, the panel finds the ministry reasonably determined that the appellant is not eligible for an eye examination supplement.

B. Basic Eyewear and Repairs

Appellant Position

The appellant argues that the optometrist provided a quote for two pairs of glasses and was paid for them by the appellant and the Ministry. Further, the optometrist was to send the glasses to the appellant, who has yet to receive them.

The appellant seeks a responsible agency or jurisdiction to secure delivery of the glasses that have been paid for.

The appellant has not been able to discuss any invoicing with PBC as it will only talk to the Ministry or the optometrist.

Ministry Position

The ministry argues in the reconsideration decision that the appellant is not eligible for basic eyewear as no glasses were provided and that no pre-authorization was provided by PBC. While the change in the appellant's prescription meets the definition of a 'change in refractive status' as defined in legislation, it is also noted that the appellant is only eligible for basic eyewear and repairs if they are provided by an optometrist, ophthalmologist or optician. The ministry argues that currently the ministry is not aware of an optometrist that is willing to work with the appellant.

Further, in the reconsideration decision the ministry argues the fee codes submitted to, and considered by, PBC were not correct, so a first-level decision of eligibility for the eyewear (with the correct fee codes) has not yet been reviewed by PBC.

At the hearing, the ministry argued that if in fact eyewear has been approved and paid for, the appellant cannot now go to another clinic to be fitted for new glasses. It is the responsibility of the appellant to deal with the optometrist and/or PBC to resolve the issue.

Section 62.1 of the EAPWD Regulation provides that the minister may provide any health supplement set out in section 2.1 of Schedule C. That section provides that basic eyewear and repairs, and pre-authorized eyewear and repairs may be provided as optical supplements.

Basic eyewear and repairs mean, in the case of the appellant, the least expensive single-vision or bifocal lenses and frames that are provided by an optometrist, every three years. New lenses may be provided at any time if an optometrist confirms a "change in refractive status" in either eye that meets prescribed definition set out in *Schedule C of the EAPWD Regulation*.

The ministry has stated that although the appellant was last provided with glasses in 2019, the new prescription would allow for basic eyewear and repairs if provided by an optometrist, ophthalmologist or optician.

The panel notes that the appellant's type-written 12 May 2021 letter submitted with the reconsideration request stated that at the latest visit to the optometrist confirmation of coverage was provided, and that the appellant paid the difference in cash before leaving the office. The panel notes the letter does not provide the actual amount paid but during oral testimony the appellant provided evidence that the total amount was \$279.99, coverage was \$274.40 and the amount paid in cash by the appellant was \$5.59.

The panel does not see any specific comment on the appellant's letter in the reconsideration decision and no comments concerning the appellant's claim to have paid fees at the clinic in cash. The panel notes that the ministry reconsideration decision states they considered all documents submitted with the appellant's application and Request for Reconsideration in making their decision, and the panel finds that there was clearly an oversight on the part of the ministry. this oversight unacceptable.

The panel notes the ministry acceptance of the new evidence provided by the appellant, the optometrist invoice no. 442-0032161, that showed a total cost for provision of glasses, the coverage provided by PBC and the amount paid by the appellant in cash, which supports the claim made by the appellant in writing. The panel has found that the optometrist has sold the appellant eyewear.

The panel notes that absent any specific legislation, using a third party agency and a fee schedule for optometrists, such as included in the reconsideration decision, may be a reasonable manner in which to meet the legislated requirement of 'least expensive and appropriate'. However, although effectively amounting to ministry policy, unless it is referred to in the legislation such a policy is not binding upon the panel. The panel further notes the schedule provided in the reconsideration materials is out of date and therefore not compelling.

The panel also notes the appellant's testimony that it was a ministry representative that had a telephone discussion with the optometrist staff on 9 April 2021 and finds any discussion of codes was between them, and the appellant was not involved in these discussions. Moreover, the appellant has been told by PBC that it won't discuss invoices with the appellant.

This current fee schedule states that *"If Ministry clients or parents of children covered through the Healthy Kids Program have questions related to their coverage, they should be referred to the Ministry's Toll-free Information Line at 1-866-866-0800"*.

Due to these inconsistencies and errors the panel finds the ministry was incorrect in its determination that a clinic was not prepared to work with the appellant, that the appellant did not provide the codes for submission and that the ministry was incorrect in its determination of wrong codes being used as the reconsideration decision clearly shows the tabulated data as "previously approved or under review" with accompanying "PreD ID" numbers given in the left column, and an invoice has been issued by the optometrist and paid through coverage and by

the appellant. The panel finds the appellant was eligible for basic eyewear, and therefore that the ministry was not reasonable when it found the appellant was not eligible for basic eyewear.

The result is that the panel rescinds the ministry's decision on this point. The panel notes that the effect of this rescind is something that appears to have already taken place – the glasses to have been largely paid for by PBC.

The panel notes that the appellant has stated that the optometrist will not release the glasses until the outstanding balance for the eye exam is paid. The appellant has also stated that PBC will not speak with the appellant. The ministry has stated that it will not speak with PBC or the optometrist about releasing the glasses. The result appears to be that the appellant is left to deal with an optometrist who is, in the panel's view, unreasonably withholding the glasses and who has stated that the appellant is not welcome as a customer. Given the age of the appellant and the appellant's disabilities, the panel would encourage the ministry to assist the appellant in this issue. If not by getting directly involved, then perhaps by helping to facilitate contact between the appellant and an advocate.

The panel encourages the ministry to assist in the resolution of the delivery of the pre-paid eyewear.

C. Pre-authorized Eyewear and Repairs

Appellant Position

The appellant argues that the optometrist provided a quote for two pairs of glasses and was paid for them by the appellant and the ministry. Further the optometrist was to send the glasses to the appellant, who has yet to receive them.

Ministry Position

The ministry argues in the reconsideration decision that the appellant is not eligible for pre-authorized eye wear. It states that the ministry *Schedule of Fee Allowances - Optometrist* (shown in the reconsideration decision on pages 6 and 7) sets out additional optical services and services considered "pre-authorized optical." It argues that these sections set out specialized items specifically, such as lens coatings, transition lenses, contact lenses, etc. In other words, "pre-authorized eyewear" does not include complete single vision glasses or complete bifocal glasses.

Panel Finding

Section 62.1 of the *EAPWD Regulation* provides that the minister may provide any health supplement set out in *section 2.1 of Schedule C*. That section provides that basic eyewear and repairs, and pre-authorized eyewear and repairs may be provided as optical supplements. The definition of *pre-authorized eyewear and repairs* in *section 1 of Schedule C* specifically states it does not include basic eyewear and repairs.

The panel has found that the fee schedule is not binding on the panel, appears to be out of date and is not compelling.

The panel has found that the eyewear provided is properly captured under *basic eyewear and repairs*. As mentioned, the definition for *pre-authorized eyewear and repairs* specifically excludes *basic eyewear and repairs*. As a result, the panel finds the ministry reasonably determined that the appellant is not eligible for *pre-authorized eyewear and repairs*.

D. Travel

Appellant Position

The appellant argues the requirement to travel to meet the optometrist (and other) appointments is imposing an undue hardship on a very small budget.

Ministry Position

The ministry did not comment upon hardship conditions or travel issues relating to the optometrist visit in the reconsideration decision. At hearing the ministry advised the appellant that transportation supplements are available depending on circumstances and that the appellant should apply.

Panel Finding

Schedule C, section 2(1)(f) of the *EAPWD Regulation* provides that a health supplement may be paid by the minister for the least expensive appropriate mode of transportation to or from an office in the local area of a medical practitioner, or the nearest available specialist in medicine or surgery, to receive a benefit under the medical protection act if certain other requirements are met.

The appellant provided a type written submittal dated 12 May 2021, detailing the recent trips to the optometrist and to hospital, to the ministry as part of the reconsideration request. The letter listed the types of expense incurred and was accompanied by hospital records.

The panel finds the letter submitted with the reconsideration request, constitutes a request by the appellant for a transportation supplement, although possibly incomplete in detail. The panel finds the ministry's failure to comment or provide a finding on the eligibility for these supplements in the reconsideration decision constitutes a denial of eligibility.

Upon review of the evidence provided by the appellant, the panel notes no cost breakdown or information on the availability of resources to the family unit for the date of 9 April 2021. Further, the panel notes insufficient information provided to confirm the qualification of the optometrist as a *medical practitioner* or *specialist*, as defined in the *EAPWDR*, and as required to be eligible for the supplement.

Due to the inability to confirm eligibility based on all of the available evidence, the panel finds the ministry was reasonable in its (unrecorded) decision that the appellant was not eligible for a health supplement for transportation.

The panel encourages the appellant to further discuss transportation supplements for medical appointments with the ministry.

Conclusion

Although the panel has found that the ministry reasonably determined that the appellant is not eligible for: an eye examination supplement, pre-authorized eyewear, or a health supplement for transportation, we have found that the ministry was not reasonable in its decision that the appellant is not eligible for basic eyewear and repairs. The panel notes that the result of this finding appears to have already taken place – namely, that the glasses be largely paid for by PBC.

The appellant is partially successful upon appeal and the panel rescinds the reconsideration decision.

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Appendix A

Schedule of Applicable Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

Optical supplements

62.1 *The minister may provide any health supplement set out in section 2.1 [optical supplements] of Schedule C to or for*

- (a) a family unit in receipt of disability assistance,*
- (b) a family unit in receipt of hardship assistance, 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.*

[en. B.C. Reg. 145/2015, Sch. 2, s. 4.]

Eye examination supplements

62.2 *(1) Subject to subsections (2) and (3), the minister may provide a health supplement under section 2.2 [eye examination supplements] of Schedule C to or for*

- (a) a family unit in receipt of disability assistance,*

(b) a family unit in receipt of hardship assistance, 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.

(2) A health supplement under subsection (1) may only be provided to or for a person once in any 24 calendar month period.

(3) A health supplement under subsection (1) may only be provided if payment for the service is not available under the [Medicare Protection Act](#).

[en. B.C. Reg. 145/2015, Sch. 2, s. 4.]

Schedule C

Definitions

1 *In this Schedule:*

"basic eyewear and repairs" means any of the following items that are provided by an optometrist, ophthalmologist or optician:

(a) for a child who has a new prescription, one pair of eye glasses per year consisting of the least expensive appropriate

(i) single-vision or bifocal lenses, and

(ii) frames;

(b) for any other person who has a new prescription, one pair of eye glasses every 3 years consisting of the least expensive appropriate

(i) single-vision or bifocal lenses, and

(ii) frames;

(c) for a child or other person,

(i) new lenses at any time if an optometrist, ophthalmologist or optician confirms a change in refractive status in either eye,

(ii) a case for new eye glasses or lenses, and

(iii) necessary repairs to lenses or frames that come within this definition;

"change in refractive status" means a change of not less than 0.5 dioptres to the spherical or cylinder lens, or a change in axis that equals or exceeds

(a) 20 degrees for a cylinder lens of 0.5 dioptres or less,

(b)10 degrees for a cylinder lens of more than 0.5 dioptres but not more than 1.0 dioptre, and

(c)3 degrees for a cylinder lens of more than 1.0 dioptre;

"eye examination" means a full diagnostic examination of a person's eyes by an optometrist or an ophthalmologist, that includes

(a) a determination of the refractive status of the eyes and of the presence of any observed abnormality in the person's visual system,

(b) any necessary tests connected to making determinations under paragraph (a), and

(c) the provision of a written prescription for lenses if necessary;

"pre-authorized eyewear and repairs" means eyewear and repairs provided by an optometrist, ophthalmologist or optician and for which pre-authorization is given by the minister, but does not include basic eyewear and repairs;

"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.

Optical supplements

2.1 *The following are the optical supplements that may be provided under section 62.1 [optical supplements] of this regulation:*

(a) basic eyewear and repairs;

(b) pre-authorized eyewear and repairs.

Eye examination supplements

2.2 *The minister may pay a health supplement under section 67.2 [eye examination supplements] of this regulation for an eye examination that,*

(a) if provided by an optometrist, is provided for a fee that does not exceed \$44.83,
or

(b) if provided by an ophthalmologist, is provided for a fee that does not exceed \$48.90.

APPEAL NUMBER
2021-0127

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

D. M. Stedeford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/07/19

PRINT NAME

A. Blake

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/07/19

PRINT NAME

J. Broocke

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/07/19