

APPEAL NUMBER
2021-0169

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of August 13, 2021 (the “Reconsideration Decision”), in which the Ministry determined that the Appellant was not eligible for a health supplement in respect of accommodation at a motel to attend two doctor’s appointments. The Ministry was not satisfied that the motel accommodation was the least expensive appropriate mode of transportation to the appointment, as required by section 2(1)(f) of the *Employment and Assistance for Persons with Disability Regulation* (“EAPWDR”).

PART D – RELEVANT LEGISLATION

EAPWDR- sections 62 and 69, Schedule C- sections 1 and 2(1)

PART E – SUMMARY OF FACTS

The Appellant is a recipient of disability assistance who resides in a rural community. The Appellant was referred to appointments on June 24, 2021 and July 13, 2021 with a doctor located in another community which required the Appellant to take a ferry and incur other transportation costs to attend. On the first visit to the doctor the Appellant stayed two nights at the motel: the night of June 23 and the night of June 24 before returning to the Appellant's home on June 25. For the second visit to the doctor the Appellant stayed at the motel only one night. On both occasions, the Appellant took taxis to and from the ferry terminal to the doctor's office. Although, the Ministry initially denied coverage for both the taxi costs and the motel, the Ministry approved the taxi fares in the Reconsideration after receiving information from both the Appellant's family doctor and the doctor with whom the Appellant had the out of town appointment.

The information before the Ministry at the time of the Reconsideration Decision included the following:

- an appointment referral for the Appellant's June 24, 2021 appointment at 10:30 a.m.;
- taxi receipts from June 25, 2021 from the motel at which the Appellant stayed to the departure ferry terminal and from the arrival ferry terminal to the Appellant's home;
- a Request for Non-Local Medical Transportation Assistance form, dated July 6, 2021 (the "Request"), setting out the request for approval for the Appellant to travel by taxi to the July 13, 2021 appointment and be accommodated in a motel;
- the Appellant's Request for Reconsideration, dated ("RFR"), which included:
 - an appointment referral for the Appellant's July 13, 2021 appointment at 10:30 a.m.;
 - a taxi receipt for July 12, 2021 in the amount of \$39.60;
 - a \$102.35 invoice from the motel, indicating a check-in date of July 12, 2021 and a check-out date of July 13, 2021;
 - a letter of referral from the Appellant's family doctor, setting out that the Appellant suffers from post traumatic stress disorder, anxiety, panic, and depression, as well as a number of physical ailments;
 - a letter from the doctor who the Appellant had seen at the out of town appointment, confirming that the medical services that the doctor provided were not available in the Appellant's community, that the care being provided was essential to the Appellant's health and well-being, and that the doctor was certified and trained to provide the specific care that the Appellant required.

In the Appellant's Notice of Appeal, the Appellant described the Reconsideration Decision as biased and unfair.

At the hearing of the appeal, the Appellant described having a history of health issues and, in particular, issues related to mental health as a result of the medical issues with which the Appellant was dealing which has resulted in the Appellant being stigmatized somewhat, particularly in the community in which the Appellant resides which is not very diverse.

The Appellant described having been in receipt of disability benefits for several years and attempting to self-educate regarding the Appellant's health needs. The Appellant noted that the lack of services available locally made self-education difficult, however.

When the Appellant approached the family doctor about those health issues, the family doctor referred the Appellant to a doctor in a different community as the family doctor did not have the capacity to

address the health issues facing the Appellant.

The Appellant's first appointment, scheduled for June 24, 2021 was one which the Appellant was eager to attend although the Appellant was also anxious about the appointment. After being referred by the family doctor, the Appellant made arrangements for travel to and from the appointment and for accommodations while out of town.

Although the Appellant's home is located 30 kilometres or so from the doctor's office, the trip does require a ferry ride. The Appellant's home community was described by the Appellant as a popular tourist destination, causing the community's population to swell during the summertime. The Appellant described having concern about using transit to get to the departure ferry terminal due to limited bus service and anxiety about having to take transit from the destination ferry terminal to the motel, particularly as the Appellant was not functioning well prior to the June 24, 2021 appointment.

The Appellant was also concerned about overbooking on the ferry and, for this reason, booked a stay in a motel for the night before the appointment. The Appellant described looking for the least expensive motel in the community in which the appointment was to take place and ended up paying approximately \$100.00 for that stay. The Appellant stayed a second night at the motel due to needing to regroup after the appointment. The Appellant described trembling before the appointments and experiencing other physical manifestations of anxiety.

The Appellant said to the panel that the doctor with whom the appointment took place is a specialist. However, it appears that, despite the doctor's qualifications, the doctor has not yet registered as a specialist with the College of Physicians and Surgeons.

The Appellant described that the Ministry had questioned the authenticity of documents submitted by the Appellant and that there was no basis for having done so. The Appellant described getting the runaround from Ministry staff and getting a different answer about the availability and eligibility of transportation supplements from different employees of the Ministry that the Appellant asked.

The Appellant had complaints about the level of training by Ministry employees in dealing with health issues like the Appellant's. The Appellant described the rules regarding assistance with transportation as confusing and was concerned about being able to travel to future appointments and the extent to which expenses for future appointments will or won't be covered.

In effect, the Appellant described being made to feel like a number.

The Appellant acknowledged to the panel that for most people, the trip to the doctor's office and the return trip home could have been undertaken in one day, subject to the availability of space on the ferries. However, given the Appellant's anxiety and mental health issues, the Appellant described needing extra travel time and overnight accommodation, particularly during the summer tourist season, when being able to get a taxi to the departure ferry terminal and being able to get on a ferry at all increased the likelihood of an issue with travel, heightening the Appellant's anxiety.

The Appellant indicated that overnight accommodation in a motel might not be necessary for appointments scheduled outside of the summer tourist season.

At the hearing, the Ministry's representative advised that, in the Ministry's view, overnight accommodation was not justified by the travel time from the Appellant's home to the doctor's office and that the Appellant could have traveled to the appointment and returned home on the same day. In effect, the position of the Ministry is that traveling ahead of time to the appointment was not the least expensive

method of travel for a person in the Appellant's circumstances. The Ministry's representative did confirm that the Ministry was ultimately satisfied that travel to and from the ferry terminals by taxi was justified due to the Appellant's anxiety and mental health issues.

The Ministry's representative advised that Ministry case workers do take into account many of the issues raised by the Appellant when making decisions about approving or not approving travel costs. The Ministry's Representative also said that there is some discretion as to what questions can be asked when it comes to these decisions but that Ministry workers aren't provided with any specific policies or procedures in respect of the approval of travel and what constitutes the least expensive appropriate method of travel.

The panel admits the oral evidence given at the hearing as evidence that is not part of the record and which the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the Ministry was reasonable in determining that the Appellant was not eligible for a health supplement in respect of accommodation at a motel for three nights to attend two doctor's appointments outside of the Appellant's community, on June 24, 2021 and July 13, 2021, respectively, because the Ministry was not satisfied that the motel accommodation was the least expensive appropriate mode of transportation to the appointment, as required by section 2(1)(f) of the EAPWDR.

Legislation

Section 24 of the Employment and Assistance Act ("EAA") requires panels to consider whether a Ministry decision is:

- reasonably supported by the evidence, or
- a reasonable application of the applicable enactment *in the circumstances of the person appealing the decision*.

Section 62 of the EAPWDR authorizes the Ministry to provide health supplements generally and describes the basic eligibility criteria:

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 2(1)(f) of Schedule C to the EAPWDR sets out that transportation costs to and from appointments is a form of health supplement available to recipients of disability assistance and describes the eligibility criteria:

(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.

Panel Decision

The Appellant meets the basic eligibility criteria for a health supplement, set out in section 62 of the EAPWDR. With respect to the specific eligibility criteria for a transportation supplement, set out in section 2(1)(f) of Schedule C to the EAPWDR, the Ministry accepted that the Appellant had attended at the “local” office of a medical practitioner or nurse practitioner, in satisfaction of section 2(1)(f) of Schedule C to the EAPWDR but not that the Appellant’s doctor was a specialist, as the term is defined in section 1 of Schedule C to the EAPWDR.

In accepting that the Appellant qualified for reimbursement of taxi receipts to and from the ferry terminal to the doctor’s office, for both appointments, the Ministry accepted that those expenses were appropriate in order for the Appellant to attend at “an office, in the local area, of a medical practitioner or nurse practitioner.” In effect, the Reconsideration Decision, acknowledged that the Appellant’s trip was “local”, notwithstanding that it involved a travel distance of 30 kilometres to a different community than that in which the Appellant resided and required a ferry trip.

The real issue in this appeal is whether overnight motel stays were appropriate in the Appellant’s circumstances, notwithstanding that this was determined to be a “local” trip by the Ministry in the Reconsideration Decision.

The panel finds that at least two significant factors exist to support a conclusion that a motel stay was appropriate in the Appellant’s circumstances.

First, both the June 24, 2021 and July 13, 2021 appointments were at 10:30 in the morning. In the Reconsideration Decision, the Ministry references the ferry schedule from the Appellant’s community. There appear to be just three ferries (and possibly a fourth) that left early enough to get the Appellant to the scheduled appointments at 10:30 a.m. The first of these was at 6:00 a.m. The Appellant noted that during the summer, the ferries to and from the Appellant’s community are often overbooked and crowded, heightening the risk that there would be delays and/or limited space, increasing the risk that the Appellant would either not be able to board the earlier ferries or would be boarding a ferry that was running behind schedule. Any delays in the ferry schedule or in the Appellant’s boarding of a ferry on the day of the appointments had the potential for the Appellant to miss the appointments.

Second, the evidence of the doctor and the Appellant’s family doctor is that the Appellant suffers from a number of mental health issues, including anxiety, panic, and depression. The Appellant described the manifestations of these issues to include trembling, severe anxiety, and being unable to concentrate. These are issues that also had the potential to cause the Appellant to miss one or both of the appointments if they impacted the Appellant’s ability to navigate an unfamiliar geographic location to get to the doctor’s office, given the highly sensitive and emotional nature of the doctor appointments.

In effect, notwithstanding that the Ministry determined that the trip to the appointments was local, this was not a typical “local” trip in that it required ground transportation from the Appellant’s home community to the departure ferry terminal, a properly timed ferry trip, and ground transportation from the

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arrival ferry terminal to the doctor's office following the ferry trip. The trip home from the appointments required the same travel arrangements in reverse.

In view of these factors, the panel finds that the Ministry's determination that the Appellant did not require motel accommodations before the appointments on June 24, 2021 and July 13, 2021 and after the appointment on June 24, 2021, was not a reasonable application of section 2(1)(f) of Schedule C to the EAPWDR in the circumstances of the Appellant and the panel rescinds the Reconsideration Decision.

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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)

Section 24(2)(a) or Section 24(2)(b)

Part H–Signatures

Print Name

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2021/09/22

Print Name

David Handelman

Signature of Member

Date (Year/Month/Day)

2021/09/22

Print Name

Emily C. Drown, Tribunal Chair for Elaine Jeffery

Signature of Member

Date (Year/Month/Day)

2021/09/22