

**Part C – Decision Under Appeal**

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated January 13, 2022, in which the ministry denied the appellant’s request for a health supplement under section 62 and Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) for transportation costs to attend an appointment with a specialist in another city. The ministry was not satisfied that the specialist was the nearest available specialist in the field, or that a 2-night stay in a hotel, as the appellant requested, was the least expensive appropriate mode of transportation.

**Part D – Relevant Legislation**

EAPWDR sections 5 and 62, and Schedule C, sections 1 and 2(1)(f)(ii)

## **Part E – Summary of Facts**

The appellant is in receipt of benefits under the Employment and Assistance for Persons with Disabilities Act (“EAPWDA”).

The ministry did not attend the hearing.

### **Evidence Before the Ministry at Reconsideration:**

The appellant has lived in Community #1 since his current assistance file was opened in March 2020.

On December 13, 2021, the appellant submitted a request for assistance with transportation costs to attend an appointment with a rheumatologist in Community #2 at 11:30 a.m. on December 16, 2021. The appellant asked for mileage, a meal allowance, and 2 nights accommodation at a hotel, which the appellant had booked for the nights of December 15 and 16, 2021. The hotel was booked at the provincial government rate of \$139 per night plus tax, for a total cost of \$325.71. The trip would involve some public transportation each way, for which there would be no charge.

The rheumatologist has been treating the appellant for over 20 years.

The appellant’s general practitioner is in Community #3, which is adjacent to Community #1. The rheumatologist has office addresses in both Community #2 and Community #3.

The ministry has approved 2 prior requests from the appellant for assistance with transportation costs to attend appointments with the rheumatologist in Community #2, covering a one-night stay in a hotel, mileage and meal allowance for the appellant and an escort, in October and November 2021. Those appointments were at 10:00 a.m. and 9:45 a.m. respectively. The ministry has no record of any other requests to see the rheumatologist since the appellant’s file was re-opened in March 2020.

In a letter dated September 5, 2017, the rheumatologist stated that the appellant “requires long term management for Psoriatic Arthritis. I have been his rheumatologist for the past 15 years and know him well and would recommend that I continue to be his attending rheumatologist. He is on a complex array of immune modulatory medications.” The letterhead indicates that at that time the rheumatologist was a clinical assistant professor at a post-secondary institution in Community #3. The letter was copied to the appellant’s family doctor and another rheumatologist in Community #3, and a dermatologist in another community (which is adjacent to Communities #1 and #3). At the time the letter was written, in 2017, the appellant was living in Community #4.

The College of Physicians and Surgeons of BC (“CPCBC”) lists 39 practising rheumatologists in Community #3 and 5 practising rheumatologists in Community #1.

### **Appellant’s Evidence at the Hearing:**

The appellant said that he has 3 types of arthritis: rheumatoid arthritis, osteoarthritis and psoriatic arthritis. He said that he sees the rheumatologist every 3 to 4 months, the ministry approves his transportation expenses every time, and he is exempted from the rule about needing to see the closest doctor.

In response to questions from the panel, the appellant stated that it is not advisable for him to travel to Community #2 on the same day as his appointment. He said that “there is a note on file” to that effect from his general practitioner, but the appellant has misplaced the note and the general practitioner has retired. He said that his medical condition can make it hard for him to be mobile early in the morning, in time to take early public transportation to Community #2. As a result, he would try to get appointments later in the day. He said that he could not return to Community #1 on the same day because he would be exhausted after the appointment. He said that the ministry has approved 2-night stays for medical appointments with the rheumatologist in the past.

The appellant advised that the rheumatologist moved from Community #3 to Community #2, 8 to 10 years ago, and that he has tried to see the rheumatologist in their office in Community #3, but the rheumatologist does not see patients there, other than for clinical studies.

The appellant said that he has not tried to get a referral to a rheumatologist closer to where he lives because he does not want to change doctors.

The appellant confirmed that he did attend the appointment in Community #2 on December 16, 2021.

The panel determined that the additional evidence about the appellant’s medical condition, his attendance at the appointment and his efforts to find a rheumatologist in a location closer to his home to be admissible under s.22(4) of the Employment and Assistance Act (“EAA”) because it provides further details about the need to travel to Community #2 to consult the rheumatologist, and is therefore reasonably required for the full and fair disclosure of all matters relating to the decision under appeal.

## Part F – Reasons for Panel Decision

The issue to be decided is whether the ministry was reasonable in its decision to deny the appellant a health supplement for transportation expenses to attend an appointment with a rheumatologist in another city.

### Legislation:

Under EAPWDR section 62 and Schedule C, the ministry may provide a health supplement for the least expensive mode of transportation to or from the office of the nearest available specialist in a field of medicine if the person is referred to the specialist by a local medical practitioner.

At the reconsideration, the ministry accepted that the rheumatologist is a specialist as defined in EAPWDR Schedule C, section 1. The ministry also accepted that the appellant was referred to the rheumatologist by a local medical practitioner. However, the ministry was not satisfied that the rheumatologist was the nearest available medical specialist in that field of medicine. Nor was the ministry satisfied that the transportation costs requested were the least expensive mode of transportation to and from the appointment.

### Appellant's Position:

The appellant says that the rheumatologist in Community #2 has been his treating specialist for over 20 years, and he does not want to change doctors. Further, he says the rheumatologist recommends that he continue with this specialist because of his complex arthritic condition. The appellant relies on the September 5, 2017 letter as evidence of this recommendation.

The appellant also points out that the ministry has paid for him to travel from Community #1 to Community #2 for appointments with this rheumatologist in the past, most recently in October and November 2021. He says that he cannot travel to and from Community #2 in one day, as the ministry suggests, because he cannot always mobilize early in the morning due to his arthritic condition, and after the appointment he is exhausted. Therefore, he maintains that he needs to stay in Community #2 the night before and the night after his appointment.

### Ministry Position:

In the reconsideration decision the ministry notes that there are many rheumatologists practising in Communities #1 and #3, and the surrounding area. The ministry is not satisfied that the appellant could not be treated by one of those specialists. The ministry maintains that the letter from the rheumatologist in September 2017 is not recent enough to establish that the rheumatologist is the nearest available specialist in that field to meet the appellant's need for treatment now.

The ministry also notes that the rheumatologist has an office address in Community #1, which is closer to where the appellant lives. The ministry questions why the appellant cannot see the rheumatologist at the nearer office.

The ministry acknowledges that it approved transportation costs for appointments with the rheumatologist in Community #2 in October and November 2021. However, the ministry says that does not change the requirements in the legislation that the rheumatologist must be the nearest available specialist, and that, even if the nearest available specialist is in another community, the transportation costs requested must be the most economical option.

The ministry notes that, even if the rheumatologist in Community #2 was the nearest available specialist, the appellant could travel from his home to Community #2 and back the same day, for an 11:30 a.m. appointment. Therefore, a 2-night hotel stay and meal allowance should not be necessary and are not the most economical option.

Therefore, the ministry maintains that the transportation costs to see the rheumatologist in Community #2 do not meet the criteria for a health supplement for transportation to a medical appointment.

Panel Decision:

The panel understands the appellant's wish to continue with the rheumatologist who has been treating him for over 20 years. However, the information provided does not show that the rheumatologist in Community #2 is the nearest available specialist.

The appellant acknowledges that he has not tried to find a rheumatologist with an office closer to where he lives. The panel notes that in 2017, when the rheumatologist recommended the appellant continue in his care, the appellant lived in Community #4, which is reasonably close to Community #2. At that time, it may have been reasonable for the appellant to continue to see that rheumatologist in Community #2. However, the appellant now lives in Community #1, and near Community #3. Given that there are 44 rheumatologists listed as practising in Communities #1 and #3, it is reasonable for the ministry to require current evidence that none of those specialists are available and able to provide appropriate treatment.

Further, the panel finds that, even if the rheumatologist in Community #2 was the nearest available specialist, the transportation costs requested by the appellant, which include 2 nights stay in a hotel and meal allowance, are not "the least expensive available mode of transportation" that is permitted as a health supplement under EAPWDR Schedule C section 2(1)(f). The panel accepts the appellant's evidence that it is not possible to see the rheumatologist at their office address in Community #3. However, the panel finds that it would be reasonable to expect the appellant to travel from Community #1 to Community #2 and back in one day, for an appointment at 11:30 a.m., or to make a later appointment if necessary.

The panel notes that the ministry has paid transportation costs for the appellant to travel to medical appointments with the rheumatologist, including a 1-night stay in a hotel in Community #2, in October and November 2021. The panel did not have an opportunity to ask the ministry why it paid for those costs, when it now says that the same or similar costs do not meet the legislated criteria. However, the issue for the panel to decide is whether this request, in December 2021, meets the legislated criteria for a health supplement. The panel has found that it does not meet the criteria.

Therefore, the panel finds that the ministry's decision that the appellant's request for transportation costs of 2 night's hotel stay, mileage and meal allowance for the appellant and an escort was not eligible as a health supplement under EAPWDR, section 62 and Schedule C, was a reasonable application of the legislation in the appellant's circumstances.

The appellant is not successful in the appeal.

**Legislation:**

**Employment and Assistance for Persons with Disabilities Act**

**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.

**Employment and Assistance for Persons with Disabilities Regulation**

**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.

**Schedule C**

**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
- (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

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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  
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)  
2022/02/17

Print Name  
John Pickford

Signature of Member

Date (Year/Month/Day)  
2022/02/17

Print Name  
Katherine Wellburn

Signature of Member

Date (Year/Month/Day)  
2022/02/17