

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated July 7, 2022 in which the ministry found that the appellant was not eligible for a health supplement for medical transportation under the Employment and Assistance for Persons with Disabilities Regulation (“EAWDR”). The ministry found that the appellant’s request for transportation to attend an appointment at an orthopedic supplier in another community (“Community B”) did not meet the legislative criteria under section 2 of Schedule C because the appellant was not attending the office of a local medical practitioner; and the orthopedic supplier is not recognized as a specialist or a hospital as defined in the legislation.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act - EAPWDA - section 5

Employment and Assistance for Persons with Disabilities Regulation - EAWDR - section 62 and Schedule C sections 1 and 2

The full text of the legislation can be found in the *Appendix* at the end of this decision.

Part E – Summary of Facts

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's record of decision which indicates:

- The appellant is designated as a Person with Disabilities ("PWD") and receives disability assistance ("DA").
- On May 5, 2022, the ministry approved funding for a "custom right articulated ankle foot orthosis" to be provided by an orthopedic supplier in Community B.
- On June 2, 2022, the appellant requested a transportation supplement to attend an appointment with the orthopedic supplier.
- On June 7, 2022, the ministry denied the request as not meeting the legislative requirements for medical transportation.
- On June 21, 2022, the appellant submitted a Request for Reconsideration ("RFR").
- On July 21, 2022, the ministry completed the review of the RFR and found the appellant ineligible for transportation to the orthopedic supplier.

2. A *Request for Non-Local Medical Transportation Assistance*, signed by the appellant on June 2, 2022 and stamped by a doctor in the appellant's home community to confirm referral to the orthopedic supplier. On the form, the appellant provided the supplier's address, and under Specialist name, she wrote the first name of her contact at the orthopedic supplier. The appellant indicated that treatment with the supplier is ongoing, and she requires vehicle mileage for day trips to Community B.

3. A ministry *Purchase Authorization* (undated) for a one-time ankle-foot orthosis with "right custom articulating" for a total cost of \$1,761.00.

4. An RFR signed by the appellant on June 7, 2022. The RFR includes a hand-written submission in which the appellant says that the ministry partially covered the cost of the brace, but not the mileage to pick it up and have it cast. The appellant states that she cannot get this custom leg brace in her home community.

Additional evidence (appellant)

The appellant filed a *Notice of Appeal*, received by the Tribunal on July 12, 2022. The appellant provides a hand-written statement confirming that the ministry covered the cost of the brace but not the transportation to have it cast and picked up.

In response to questions at the hearing, the appellant explained that:

- she still paid \$439 for the brace because the ministry funding paid part of the cost;
- each trip to the orthopedic supplier costs approximately \$130 - \$145;
- the type of brace she needs is not available in her home community. The orthopedic supplier in Community B is the closest place that has it.
- she has had a brace from the supplier for 20 years and has to get a new one every couple of years. This was her first request for a transportation supplement from the ministry because she did not have PWD [designation] when she needed the brace in the past.
- when she orders a new brace, she has to make the initial trip to the supplier for consultation, followed by additional trips to "get it cast, pick it up, and get any alterations done."
- the supplier used to deliver to the appellant's home community but does not do so anymore.

- she has not been able to schedule appointments with the supplier on the same day as another medical appointment in Community B because she does not see her neurologist regularly.

The ministry had no objections to the appellant's additional evidence and the panel finds it is background information in support of the request for transportation to the orthopedic supplier. The panel admits the information under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal

The ministry provided argument at the hearing and did not submit any new evidence.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably concluded that the appellant was not eligible for a health supplement for medical transportation under the EAPWDR. Was the ministry's determination that the request for transportation does not meet the legislative criteria in section 2 of Schedule C reasonably supported by the evidence or a reasonable application of the legislation?

Arguments

The appellant's position is that "the mileage to have the brace cast and picked up should be covered [by the ministry]" because she was "allowed to get the brace" and cannot understand why transportation to have it cast and picked up is not covered as well. The appellant is wondering, "why does the ministry fund the brace if it is not made by a qualified specialist [as defined in the legislation]?"

The ministry's position is that it "operates under legislation" and an appointment with the orthopedic supplier does not meet the EAPWDR criteria for medical transportation. The ministry acknowledges how important the appointment is for the appellant. At the hearing the ministry explained that it funded the brace under separate legislation that covers medical equipment. The ministry explained that medical transportation is not included under medical equipment but has its own requirements under section 2 of EAPWDR Schedule C.

Legislation - requirements

Section 5 of the EAPWDA authorizes the minister to provide a health supplement to a family unit that meets the eligibility requirements under the Regulations. Under section 62 of the EAPWDR, the minister can provide the health supplements set out in section 2 of Schedule C to or for a family unit in receipt of disability assistance where specific requirements are met. The appellant is a recipient of disability assistance and the specific eligibility requirements for medical transportation are set out in sections 1 and 2 of EAPWDR Schedule C. The panel finds that the ministry's interpretation of the general eligibility sections was reasonable.

Regarding the specific eligibility criteria, the ministry may fund medical transportation if the request meets the requirements set out in subsections 2(1)(f)(i) to 2(1)(f)(iv) of Schedule C as well as other provisions under section 2(1) that are not at issue in this appeal. For example, the ministry was satisfied that the appellant did not have resources available to cover the cost of the transportation.

The specifics of the request usually determine which subsection applies in the person's circumstances but in this case the ministry assessed the appellant's request against all of them. The ministry found that the appellant was not eligible for medical transportation because the orthopedic clinic in Community B is not:

- the office of a local medical practitioner as set out in subsection 2(1)(f)(i); or
- the office of the nearest available specialist in a field of medicine or surgery as set out in subsection 2(1)(f)(ii); or
- the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or section 1(e) of the *Hospital Insurance Act*, and as set out in subsections 2(1)(f)(iii) and 2(1)(f)(iv) of EAPWDR Schedule C.

Regarding subsection 2(1)(f)(ii), "specialist" is defined in section 1 of Schedule C and means a medical practitioner who is "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 of British Columbia. While the appellant wrote the name of her contact at the orthopedic supplier in the application form under “specialist”, the ministry said at the hearing that it is familiar with the orthopedic supplier in Community B, and their staff are not registered as specialists with the College of Physicians and Surgeons of BC. The panel accepts the ministry’s explanation about the supplier given the ministry’s experience with the same company.

Panel’s decision

The panel finds that the ministry reasonably concluded the appellant is not eligible for a medical transportation supplement under subsections 2(1)(f)(i) to (iv) of EAPWDR Schedule C because the orthopedic clinic is not a specialist in accordance with section 1 of the Schedule. Under subsection 2(1)(f)(ii), the minister does not have the discretion to provide transportation to the office of a “specialist” who is not registered as such.

The panel finds that the ministry reasonably determined that the orthopedic supplier is not a local medical practitioner as the supplier is located in Community B. In the panel’s view the distance between the appellant’s community and Community B is sufficient to make it not “local.” The orthopedic supplier also does not meet the definition of a hospital under subsections 2(1)(f)(iii) and (iv) of Schedule C.

The appellant raised an interesting question about why the ministry can fund a brace provided by a supplier who does not meet the definition of “specialist” under the medical transportation provisions. The appellant emphasized that while the funding criteria for the brace was satisfied, the ministry denied funding to pick up the brace and have it cast. The panel understands the appellant’s dilemma that without funding for transportation, she may not be able to access the brace that the ministry approved.

The panel is sympathetic to the appellant’s argument but finds that a potential lack of congruity in the legislation is outside the scope of this appeal which concerns the ministry’s application of EAPWDR section 2(1) *General Health Supplements*. The panel does not have the authority to change the legislation to address the potential disconnect between the eligibility requirements for health supplements and the criteria for medical transportation. As the ministry explained, eligibility for medical equipment such as the appellant’s brace is assessed under separate legislative criteria, and not the medical transportation provisions in section 2(1) of EAPWDR Schedule C.

Conclusion

The panel confirms the reconsideration decision as a reasonable application of the legislation in the circumstances of the appellant. To be eligible for a medical transportation supplement, the appointment needs to be with a local medical practitioner, a specialist registered with the College of Physicians and Surgeons of BC, or at a hospital. These eligibility criteria in section 2(1) of Schedule C were not met because the appellant’s appointment was with an orthopedic supplier. The appellant is not successful on appeal.

Appendix

Pursuant to the EAPWDA:

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.

Pursuant to the EAPWDR:

General health supplements

62 (1) Subject to subsections 1.1 and 1.2, 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,

Schedule C

Health Supplements

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

(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.

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

Margaret Koren

Signature of Chair

Date (Year/Month/Day)

2022/08/04

Print Name

Sameer Kajani

Signature of Member

Date (Year/Month/Day)

2022/08/02

Print Name

Julie Iuvancigh

Signature of Member

Date (Year/Month/Day)

2022/07/30