

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD), dated July 18, 2022, which found that the Appellant was not entitled to a health supplement for transportation to attend an appointment with an optometrist (the Optometrist).

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 5

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

Interpretation Act, Section 29

Hospital Act, Section 1

Hospital Insurance Act, Section 1

Hospital Insurance Act Regulation, Section 1.1

The relevant legislation is provided in the Appendix

Part E – Summary of Facts

The Appellant is a sole recipient of Disability Assistance (DA).

According to the information provided by the Ministry and included in the RD:

- On June 16, 2022, the Appellant was advised that she was not eligible for a medical transportation supplement;
- On June 30, 2022, the Appellant submitted a Request for Reconsideration (RFR); and,
- On July 18, 2022, the Ministry completed its review of the Appellant’s RFR, confirming its original decision and thereby denying her request.

The evidence before the Ministry at reconsideration included the Appellant’s RFR, dated June 30, 2022, which included:

- Under “Reason for RFR”, the Appellant has written:

“I requested the transport “gas” to go to have eyeglasses updated. I was no longer able to focus and to see. Basic sight had decreased to the point of not being able to navigate or to read. I had three appointments due to eyesight ... I had only claimed or asked to claim for the actual eye exams to replace and upgrade eyeglasses. Didn’t ask or claim for additional tests required for eye care. I also have another test to be completed for glaucoma in the future as examination was not available on the third visit.

I struggle to pay for basic food and basic shelter since cancer diagnosis in 2019. I frequently go without for a period of time as no extra funds available. The \$70 exam was a problem already. I went to both eye specialists in my area, one was \$150. I attended the \$70 specialist after talking to disability office.

I require new glasses to see. I had no extra funds especially after paying the cost of exams myself”;

- A one-page Referral Form, dated April 14, 2022, in the name of the Appellant and signed by a physician. The letterhead on the Referral Form is for an Optometrist’s clinic in the nearest sizable community (the Community). The Referral Form is not addressed to anyone, and under “Reason for Referral”, the Physician has written “*(Patient) with (history) of decline in vision after (chemotherapy). (Please) evaluate and treat.*”; and,
- A one-page Ministry “Request for Local or Non-local Medical Transportation Assistance” form dated June 15, 2022 (the Request Form), completed in the name of the Appellant by an Optometrist in the Community. Attached to the Request Form is an appointment card indicating a next appointment on May 27, 2022.

Additional Information

In the Notice of Appeal (NOA) dated July 25, 2022, the Appellant said that she doesn't have enough money to pay for her eye exam and gas, and that she was told that the cost of gas to travel to her appointment would be paid for.

On August 4, 2022, the Appellant provided a submission (the Submission). The Submission comprised:

- A bank transaction history inquiry, dated July 27, 2022 (the Bank Inquiry) showing a current balance of \$1,661.96, an available balance of \$2,161.96, and six bank transactions between July 12, 2022 and July 27, 2022. Also included on the Bank Inquiry are hand-written notes; and
- A bank account statement for the month of May 2022 (the Bank Statement) showing two deposits and seven withdrawals, and including hand-written notes.

Evidence Presented at the Hearing

At the hearing, the Appellant said she has been battling cancer for two years and that she was suffering from anxiety. She said that she saw her family doctor at the end of April 2022 because she was experiencing severe headaches, double vision, and that she was often feeling nauseous and losing her balance. Her family doctor told her that her cancer might be affecting her vision and recommended an eye exam.

The Appellant explained that she lives in a remote community that is 120 km from the nearest town of any size (the Community), and that she had to travel to the Community to use many necessary services, including her doctor's office and the closest Ministry and "eye doctor" offices. On May 2, 2022, the Appellant travelled to the Community to shop for supplies and stopped by one of the two optometrist's office in the Community on the way. She said that the optometrist's office told her that an eye exam would cost \$150. She then went to the other optometrist's office in the Community and was quoted a fee of \$70 for the same eye exam service.

On or about May 8, 2022, the Appellant called the Ministry to ask about coverage for her eye exam and related costs. She said that the Ministry told her to book an appointment with the lower priced optometrist and that "*her mileage would be covered*". She booked an appointment at the optometrist's office with the Optometrist for May 27, 2022. Since then she has had to return for a second test and has a third test booked. She explained that her appointments were delayed because the Optometrist wasn't there every day and that her extended health benefits plan would only cover an eye exam fee once every month.

Upon trying to recover the cost of gas to travel to her appointments with the Optometrist, the Appellant was told that the cost of transportation would not be covered. The Appellant said at the hearing she didn't understand why; she had been told by the Ministry that the cost of a visit to the nearest "eye doctor" would be covered. In addressing the Appellant's confusion, the

Ministry explained at the hearing that an optometrist is not a “medical practitioner” as defined in the legislation, and that the Ministry may only reimburse DA recipients for transportation costs that are for visits to a medical practitioner. The Ministry said that regarding eye care, the only medical professionals who would qualify are eye specialists who are registered members of the College of Physicians and Surgeons of British Columbia, such as an Ophthalmologist. The Appellant said that her family doctor had told her that the nearest Ophthalmologist was in a large community many hundred kilometers away from her home.

The Appellant explained that she could not afford the cost of having to drive to her eye exams in the Community, especially because the Ministry had reduced her DA benefits by \$109 per month for several months. In addition, she was not comfortable having to drive herself to the appointment due to her headaches and dizziness. As a result, the Appellant's sister had had to drive to the Appellant's home from another community several hundred kilometers away to take the Appellant to one of her eye exam appointments.

Regarding the transaction on her Bank Statement and Bank Inquiry that were included in the Appellant submission, the Appellant explained that at Easter this year her mother had given her an Easter gift of \$45 and an additional \$64 for her birthday. She had reported this to the Ministry in her monthly report, and the Ministry had deducted \$109 from her DA benefit because of her mother's gift. The Ministry also made the same deduction in each of the next two months. When she initially contacted the Ministry about the deductions, she was told that it was to offset Canada Pension Plan benefits. On further investigation, the Ministry told her that they had deducted the initial \$109 by mistake, as the deduction had been made to offset her mother's gift, which was not something that should have affected her benefit amount. The Ministry also acknowledged that the amount was deducted twice more in error over the following two months. Two credits to the Bank Statement, showing as separate bank deposits on July 19, 2022, were a correction made by the Ministry for the erroneous deductions made in May and June 2022, and the Appellant said that she had been told that the third error would be corrected by another \$109 deposit that she would receive in August 2022.

In response to a question from the Panel, the Appellant said that the physician who signed the Referral Form was her family doctor. The Appellant said that her family doctor had a supply of referral forms for both of the optometrist's offices in the Community, and at her request the family doctor had used the one for the office that provided \$70 eye exams.

In response to another question from the Panel about whether she had asked the Ministry if the cost of a visit to an *optometrist* would be covered, the Appellant said that when she initially contacted the Ministry to ask about coverage for an eye exam she had told the Ministry that she had to make an appointment with an *eye doctor* in the Community and had been assured that the transportation costs would be covered. She said the Ministry had not asked her whether the appointment was with an optician, an optometrist or an ophthalmologist.

At the hearing, the Ministry relied on its RD. The Ministry also explained that clients are encouraged to submit a Request Form before they incur any costs, to ensure that they will be covered, and that, upon submitting a Request Form, if a client is told that the cost would not be

covered, they can have transportation costs covered by combining a trip to an appointment with a health care provider who is not a medical practitioner with a trip to an appointment with a health care services provider who is a medical practitioner, such as an appointment with the Appellant's family doctor, for example. The Ministry also said that a Request Form could be submitted electronically. The Appellant said that she didn't have a computer and didn't know how to use one. She also said that the nearest Ministry office was in the Community, 240 km from her home, and restated that when she had called the Ministry initially she had been told that a trip to an eye doctor would be covered.

Admissibility of New Evidence

Section 22(4) of the Employment and Assistance Act (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 the requirements set out in the legislation and on all admissible evidence.

The Panel determined that there was no new evidence in the NOA.

The new evidence contained in the Appellant Submission is information regarding the Appellant's financial circumstances for the month of May 2022 and for two weeks in July 2022. This information shows two July deposits from the Ministry, each in the amount of \$109, which the Ministry agreed at the hearing were to reimburse the Appellant for previous erroneous deductions to her monthly DA benefit amount. The Panel admits this evidence as it is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal.

The Panel assigns little weight to the new information confirming the three \$109 deductions made by the Ministry in error because the Ministry has already determined that the Appellant did not have the available resources to pay for the cost of travel and has reimbursed the Appellant for these errors. In addition, the erroneous deductions are not the subject of this appeal.

Part F – Reasons for Panel Decision

The issued in this appeal is whether the RD, which found that the Appellant was not entitled to a health supplement for transportation to attend an appointment with the Optometrist was a reasonable application of the applicable legislation in the circumstances of the Appellant. In other words, was it reasonable for the Ministry to find that the Appellant was not entitled to be reimbursed for the cost of gas to travel to and from an appointment with the Optometrist?

Position of the Parties

The Appellant's position is that she can't afford the cost of gas to drive to her eye exam appointments, largely as a result of deductions made to her DA benefit by the Ministry in error, and that the Ministry told her that the cost of transportation for visits to an eye doctor would be covered.

The Ministry's position is that, while it is satisfied that the Appellant's request was for the least expensive mode of transportation in order to receive a benefit under the *Medicare Protection Act*, and that the Appellant did not have the available resources, the request failed to meet any of the criteria under EAPWDR Section 2(1)(f)(i) through (iv), and as such the Appellant is not eligible for a health supplement for transportation to attend her eye exam appointments.

Panel Decision

EAPWDR Schedule C, Section 2(1)(f) says that a person who is receiving DA is eligible for reimbursement of the cost associated with the least expensive mode of transport if ***any one of*** the four following conditions are met:

- The DA recipient is travelling to or from a local area office of a medical practitioner or a nurse practitioner;
- The DA recipient is travelling to or from the office of the nearest available specialist in a field of medicine or surgery, if they have been referred to that specialist by a local medical practitioner or nurse practitioner;
- The DA recipient is travelling to or from the nearest suitable general hospital or rehabilitation hospital, as defined in Section 1.1 of the Hospital Insurance Act Regulations (HIAR); ***or***,
- The DA recipient is travelling to or from the nearest suitable hospital as defined the *Hospital Insurance Act* (HIA) Section 1(e).

Provided the DA recipient meets any one of the criteria listed above, two other conditions must be met for that person to be eligible for reimbursement of the cost of the least expensive transportation: the transportation must be to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, and there can be no resources available to the person's family unit to cover the cost of the transportation. In other words, even if the DA recipient is receiving a Medicare or general hospital service benefit and can't afford the cost of transportation, they will not qualify for

transportation cost reimbursement unless any one of the four above-listed conditions have also been met.

As to whether the Appellant was travelling to visit a local area office of a Medical Practitioner or a Nurse Practitioner

Section 29 of the *Interpretation Act* defines “*Medical Practitioner*” as someone registered by the College of Physicians and Surgeons of British Columbia to practise medicine and “*Nurse Practitioner*” as someone who is authorized under the bylaws of the British Columbia College of Nurses and Midwives to practise nursing.

In the RD, the Ministry said that the Optometrist is not a medical practitioner because the Optometrist is not registered as a physician with the BC College of Physicians and Surgeons. At the hearing, the Ministry explained that it was able to determine this by consulting with an online registry provided by the BC College of Physicians and Surgeons. No evidence was presented to suggest that the Optometrist was a nurse practitioner.

The Panel finds that the Ministry reasonably determined that this condition had not been met.

As to whether the Appellant was travelling to visit the nearest available specialist in a field of medicine or surgery because of a local Medical Practitioner’s referral

The Panel notes that the Referral Form is signed by the Appellant’s family physician, who is a Medical Practitioner, so there is a Medical Practitioner’s referral in this case. But is the referral to a specialist in the field of medicine or surgery?

EAPWDR Schedule C, Section 1 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 of British Columbia. Therefore to qualify as a specialist, the person must first qualify under the definition of “medical practitioner”. As noted above, the Optometrist does not meet the definition of medical practitioner.

The Panel finds that the Ministry reasonably determined that this condition had not been met.

As to whether the Appellant was travelling to visit the nearest suitable general hospital or rehabilitation hospital

Section 1.1 of the HIAR defines “*general hospital*” to mean a nonprofit institution that has been designated as a hospital where its primary purpose is to provide services and treatment for persons suffering from the acute phase of illness or disability, and a “*rehabilitation hospital*” to mean a nonprofit institution that has been designated as a hospital where its primary purpose is to provide facilities for the active treatment of persons requiring rehabilitative care and services.

In the RD, the Ministry said that the Optometrist’s clinic is not a general hospital or a rehabilitation hospital. At the hearing, the Ministry explained that it was able to determine this by consulting with an online registry of designated general and rehabilitation hospitals in BC.

No evidence was presented to suggest that the Optometrist's clinic is a nonprofit institution or that it provides any of the services set out in the definitions of a general hospital" or a rehabilitation hospital.

The Panel finds that the Ministry reasonably determined that this condition had not been met.

As to whether the Appellant was travelling to visit the nearest suitable hospital

Section 1 of the Hospital Insurance Act Regulations says that a "hospital" means a facility that has been designated as a hospital that provides general hospital services. As mentioned above, no evidence as been presented to suggest that the Optometrist's clinic fits the definition of a general hospital.

The Panel finds that the Ministry reasonably determined that this condition had not been met.

* * * *

In the RD, the Ministry determined that the Appellant's request was for the least expensive mode of transportation in order to receive a benefit under the *Medicare Protection Act*, and that the Appellant did not have the available resources. Therefore, none of these requirements are at issue in this appeal. But at least one of the four conditions set out in EAPWDR Schedule C, Section 2(1)(i) through 2(1)(iv) must also apply, and as explained above, the Panel has found that the Ministry reasonably determined that none of these requirements have been met

The Panel very much sympathizes with the Appellant in this case. It is clear to the Panel that the Appellant tried to confirm coverage in advance and was apparently not given a completely accurate answer by the Ministry. It's also clear that someone living in a remote community, like the Appellant, might not have a reasonable opportunity to submit a Request Form electronically or visit a Ministry office for information or approval in advance.

The Panel notes that the medical credentials of eye care professionals are particularly confusing and that a Ministry client may not know that an optometrist, who is referred to as a doctor, is not a medical practitioner, whereas an ophthalmologist is. It would be of great benefit to Ministry clients enquiring about funding to receive clarification from the Ministry about what costs are covered and, in particular, how eligibility may depend on the qualifications of the eye care provider (optician, optometrist, or ophthalmologist).

Despite the unfortunate circumstances in this appeal, neither the Ministry nor the Employment and Assistance Appeal Tribunal has the discretion to approve funding for any health supplements that are outside the limits or conditions set out in the legislation. And under the governing legislation, a panel's authority is limited to determining whether the Ministry's RD was "*a reasonable application of the applicable enactment*".

Conclusion

Having considered all the evidence, the Panel finds the Ministry's RD to be a reasonable application of the applicable enactment in the circumstances of the Appellant. Accordingly, the Panel confirms the Ministry's decision and the Appellant is not successful in her appeal.

APPENDIX - 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 ... of Schedule C to or for
(a) a family unit in receipt of disability assistance ...

**SCHEDULE C
HEALTH SUPPLEMENTS**

Definitions

1 In this Schedule: ...

"**optometrist**" means an optometrist registered with the College of Optometrists of British Columbia established under the *Health Professions Act*; ...

"**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.

INTERPRETATION ACT

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"; ...

"**nurse practitioner**" means a person who is authorized under the bylaws of the British Columbia College of Nurses and Midwives to practise nursing as a nurse practitioner and to use the title "nurse practitioner" ...

HOSPITAL ACT

Definitions

1 In this Act:

"**hospital**" ... means a nonprofit institution that has been designated as a hospital by the minister and is operated primarily for the reception and treatment of persons

(a) suffering from the acute phase of illness or disability,

(b) convalescing from or being rehabilitated after acute illness or injury, or

(c) requiring extended care at a higher level than that generally provided in a private hospital licensed under Part 2;

HOSPITAL INSURANCE ACT

Definitions

1 In this Act:

"hospital" means ...

- (a) a hospital as defined by section 1 of the *Hospital Act* that has been designated under this Act by the Lieutenant Governor in Council as a hospital required to provide the general hospital services provided under this Act,
- (b) a private hospital as defined by section 5 of the *Hospital Act* with which the government has entered into an agreement requiring the hospital to provide the general hospital services provided under this Act,
- (c) a hospital owned and operated by Canada that has been designated under this Act a "federal hospital",
- (d) an agency or establishment that
 - (i) provides a service to hospitals or a health service and
 - (ii) has been designated as a hospital facility by the Lieutenant Governor in Council,or
- (e) an establishment in which outpatient services are available that has been designated a diagnostic and treatment centre by the Lieutenant Governor in Council for providing outpatient benefits to beneficiaries in accordance with this Act and the regulations ...

HOSPITAL INSURANCE ACT REGULATION

Definitions

1.1 In these regulations, unless the context otherwise requires: ...

"general hospital" means a hospital or a portion of a hospital as defined under paragraph (a) or (c) of the definition of "hospital" in the Act, the prime function of which is to provide services and treatment for persons suffering from the acute phase of illness or disability; ...

"rehabilitation hospital" means a hospital or a portion of a hospital as defined under paragraph (a) or (c) of the definition of "hospital" in the Act, the prime function of which is to provide facilities for the active treatment of persons requiring rehabilitative care and services;

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

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2022/08/19

Print Name

Patrick Cooper

Signature of Member

Date (Year/Month/Day)

2022/08/19

Print Name

Dawn Wattie

Signature of Member

Date (Year/Month/Day)

2022/08/19