

Part C – Decision Under Appeal

On July 28, 2022 the Ministry of Social Development and Poverty Reduction (the “Ministry”) determined that the Appellant was not eligible for a health supplement that would provide transportation necessary to meet a direct and imminent life-threatening health need.

The Ministry established that:

- the Appellant faced a direct and imminent life-threatening health need,
- the Appellant had no resources available,
- a health supplement for transportation would meet the need,
- the request for transportation met the regulatory requirement as the least expensive appropriate mode of transportation, and
- the Appellant’s net income was less than \$42,000.

The Ministry rejection was based upon the Appellant not satisfying *Employment and Assistance Regulation* section 76(1)(c) by not being entitled under *Medical and Health Care Services Regulation* section 7.6 and 11(3). Respectively, the Appellant did not qualify under:

- the definition of “eligible person” which requires the Appellant to have lived in Canada 12 consecutive months before being eligible for supplemental services, and
- the requirement that the Appellant be an “eligible person” with an adjusted net income of less than \$42,000 to be eligible for supplemental services.

Part D – Relevant Legislation

Employment and Assistance Regulation (EA Regulation)

section 76, and

Schedule C, section 2(1)(f)

Medical and Health Care Services Regulation (MHCS Regulation)

section 7.6 definitions of “adjusted net income”, “eligible person”, and “supplemental services”

section 11, and

section 25.1

Please refer to the Schedule of Legislation at the end of this decision that contains relevant extracts.

Part E – Summary of Facts**Background on the Record**

On April 25, 2022 the Appellant repatriated to Canada and moved in with a parent. The Appellant had not resided in Canada for the previous 12 months and had not filed Canadian income taxes for 2020 or 2021.

On May 19, 2022 the Appellant applied for assistance as a sole applicant seeking help to pay for transportation and accommodation to attend outpatient cancer treatment in Vancouver due to a recent Leukemia diagnosis.

The Ministry stated that the Appellant's monthly income level precluded income assistance and disability assistance, so the Ministry would assess the Appellant's application under the Ministry's Life-Threatening Health Need criteria. The Appellant did not dispute this.

The Appellant provided a letter from the Leukemia/ Bone Marrow Transplant Program confirming that the Appellant's treatment is life-threatening and the Appellant's need for accommodation, meals, an escort, and transportation (not public, due to compromised immunity) to appointments and home.

On July 5, 2022 the Appellant's social worker advised the Ministry that the Medical Services Commission had waived the required 3-month residency requirement for Medical Services Plan coverage.

On that same day (July 5, 2022) the Ministry determined that the Appellant met all but one of the criteria for a health supplement for transportation under the Ministry's Life-Threatening Health Need criteria. The Ministry explained that it accepted that the Appellant has no resources, has net income less than \$42,000, and needs the requested health supplement to meet a direct and imminent life-threatening need. The ministry stated that confirmation that the Appellant was eligible for supplemental services under the *MHCS Regulation* was needed to approve her request. The Ministry determined that she did not meet the requirements under *EA Regulation* section 76(2)(c) because she was not an "eligible person" under the *MHCS Regulation* which requires that she qualify for supplemental services including having resided in Canada for the previous 12 months.

On July 12, 2022 the Appellant submitted a request for reconsideration. In part, the Appellant explained that she met the medical criteria and needed to be in Vancouver to receive treatment. She also explained her inability to afford lodging near the hospital, food, and transportation and that she was below the financial thresholds to qualify for coverage for transportation costs under Life Threatening Health Needs.

The Ministry noted that the request for reconsideration only disputed the Ministry's decision against providing a health supplement for transportation under *EA Regulation* section 76. Accordingly, the reconsideration decision only addressed that issue and not the decision to deny income assistance or disability assistance.

Reconsideration Decision

On July 28, 2022, under the heading of "Decision" the Ministry reiterated the previous acceptance that the Appellant met the criteria for a health supplement for transportation under the Ministry's Life-Threatening Health Need criteria. Specifically, the Ministry accepted that the Appellant met *EA Regulation* section 76 (a), (b), and (d) regarding, respectively: imminent life

threat, supplement necessity to meet need, and the least expensive mode of transport was sought to fulfill Schedule C, section 2(1) (f). The exception remained *EA Regulation* section 76(1)(c). The Ministry empathized with the Appellant's circumstances but stated that the legislation does not allow for discretion when assessing her eligibility and stated:

As you moved to Canada on April 25, 2022, you do not meet the definition of an "*eligible person*" under Section 7.6 of the MHCS Regulation because you have not lived in Canada for 12 consecutive months.

Section 11(3) of the MHCS Regulation says that for an "*eligible person*" to be eligible for supplemental services their adjusted net income must be less than \$42,000. While the Ministry is satisfied that your income is less than this amount, this section does not apply to you because you are not an "*eligible person*".

As a result, your request does not meet Section 76(1)(c) of the EA Regulation and therefore your request for coverage of a health supplement for transportation as a person facing direct and imminent life-threatening health need is denied.

[Italic and regular font as in original]

Reason for Appeal

On July 29, 2022 the Appellant appealed the reconsideration decision to this tribunal stating:

I qualify for the financial component of life threatening life needs as determined by MSP supplementary benefits, however, I cannot apply for MSP supplementary benefits due to other eligibility criteria. I qualify for all other LTHN criteria.

Appellant Submissions

The Appellant appeared with representation by her Bone Marrow Transplant Social Worker.

The Appellant described that the Leukemia/ Bone Marrow Transplant Program in Vancouver was the only place in BC where there is the required care, and that patients are required to live within a 45 minute drive of the clinic and travel to be seen 2-4 times a week as needed.

The Appellant's request for transportation assistance was currently from the Easter Seals Lodge in Vancouver. She currently lodges there and is expected to move to a Canadian Cancer Society lodge on September 1st which is similarly located close to the hospital. Both of these lodges charge a daily rate for accommodation. The appellant expressed that she cannot afford these accommodations, transportation and her existing financial obligations for her home in the BC interior.

The Appellant described providing supporting documents and proving that she fell under the \$42,000 income threshold.

She confirmed that she did not have 12 months residence in Canada yet but expressed not being able to understand being denied on that basis when the Ministry agreed that she fell below the financial threshold.

The representative expressed that she had been involved in about 30 cases like this one and this was the only one where the Ministry did not exercise discretion. It was also unique in that coverage was denied based upon not qualifying under Medical Services Commission rules

[*MHCS Regulation*], yet the patient was granted Medical Service Plan coverage and fell below the financial threshold.

Ministry Position

At the hearing the Ministry stated that *EA Regulation* section 76 incorporated and expanded the requirements under *MHCS Regulation*. This meant that the Appellant has to be qualified as an "eligible person" (as defined in *MHCS Regulation* section 7.6) which required the Appellant to be eligible for supplemental services and a resident in Canada for the previous 12 months.

The Ministry stated that *EA Regulation* section 76(2)(b) incorporated and expanded the definition of "eligible person" to apply to anyone applying under section 76(1) while invoking the requirement under *MHCS Regulation* section 7.6.

That definition states:

"eligible person" means a beneficiary who satisfies the commission that the beneficiary

- (a) has, for the 12 consecutive months immediately prior to the date on which the beneficiary's determination of eligibility for supplemental services first takes effect under section 11, made the beneficiary's home in Canada and been a citizen of Canada or lawfully admitted to Canada for permanent residence,

...

The Ministry stated that there was no discretion and that to fulfill the requirements of *EA Regulation* section 76(1)(c) meant meeting and satisfying the Medical Services Commission of eligibility for supplemental services including the prior residency requirements. Because the Appellant had not met the residency requirements it was insufficient that the Appellant's adjusted net income does not exceed the \$42,000 limit.

Part F – Reasons for Panel Decision

For this appeal the Panel is required to determine whether the Reconsideration Decision is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the Appellant. The Panel may rescind the Ministry decision only if either ground is found by the Panel.

The key to the Reconsideration Decision, and to this decision, is application of *EA Regulation* section 76(1)(c) and the applicability to the Appellant of the definition of “eligible person” within the *MHCS Regulation*. The decision applies principles of statutory interpretation.

On its face *EA Regulation* section 76(1)(c) is a formula for an income test. Assigning “A” and “B” to the values this section requires that:

“the adjusted net income of any person in the family unit, other than a dependent child” (“A”)

is to not be greater than

“the amount set out in section 11 (3) of the Medical and Health Care Services Regulation” (“B”), (which is set at \$42,000).

EA Regulation section 76(2)(a) directs that the source number “A” (the Appellant’s “adjusted net income”) has the same meaning as that term in *MHCS Regulation* section 7.6 which states:

“adjusted net income”, in relation to an eligible person, means the net income of the eligible person adjusted ... [by various inclusions and deductions]

Notable in that definition is the term “eligible person” that applies to the Applicant because *EA Regulation* section 76(2)(b) states that:

a reference in section 7.6 of the Medical and Health Care Services Regulation to an “eligible person” is to be read as a reference to a person in the family unit, other than a dependent child

That defines “eligible person” for the purposes within the “adjusted net income” making it refer to the Appellant and allowing calculation of the Appellant’s “adjusted net income”. The Ministry accepted that the Appellant’s net income was less than \$42,000 and there is no evidence that it is any greater if calculated as “adjusted net income”. Expressing *EA Regulation* section 76(1)(c) as a formula, applied to the Appellant, the question is answered whether A is less than B:

A is <\$42,000

B must not be >\$42,000

Answer: Yes, A is < B

By that formula the Appellant satisfies the disputed *EA Regulation* section 76(1)(c).

In short, the *EA Regulation* section 76(1)(c) set an income test. The Appellant’s adjusted net income must not exceed the amount in *MHCS Regulation* section 11(3). “Adjusted net income” has the meaning in section 7.6 *MHCS Regulation*. 76(c) says, to “read ... eligible person” in that section as applying to the Appellant as “a person in the family unit”.

The Ministry’s position is different than that, applying a definition of “eligible person” resulting in need to be eligible for “supplemental services” under the *MHCS Regulation* and to have a date

of when application was made for them. Analysis using principles of statutory interpretation does not support that position.

The Ministry stated that “confirmation that [the Appellant is] eligible for supplemental services under the Medical and Health Care Services Regulation was needed to approve [her] request” (see Appendix A -Reconsideration Decision, 3rd to 4th bullet) for a transportation health supplement necessary to meet a direct and imminent life-threatening health need. From this it is clear that the issue between the parties is that the Ministry applied *EA Regulation* section 76(2)(b) as not applied as discussed above but my invoking the definition of “eligible person” in *MHCS Regulation* section 7.6 which, itself, embeds a further eligibility requirement. The definition states:

"eligible person" means a beneficiary who satisfies the commission that the beneficiary

- (a) has, for the 12 consecutive months immediately prior to the date on which the beneficiary's determination of eligibility for supplemental services first takes effect under section 11, made the beneficiary's home in Canada and been a citizen of Canada or lawfully admitted to Canada for permanent residence,

[underlining added]

In turn the same section defines “supplemental services” as follows:

"supplemental services" means the services referred to under section 25.1

That *MHCS Regulation* section 25.1 refers only to “acupuncture, chiropractic, massage, naturopathic, physical therapy or non-surgical podiatric service”.

There is no evidence that the Appellant applied for such services or has an identified date from which to count back 12 months as a determination of eligibility for supplemental services without an application and other steps (by Medical Services Commission and documents from the applicant) under the *MHCS Regulation* including section 11 through 11(3). *EA Regulation* section 76 does not expressly or impliedly require such an application, and given what those services are - supplemental, non-physician and non-surgical services - it would be illogical for them to be required to be sought by a person facing a direct and imminent life threatening health need who seeks a health supplement for transportation. There is no logical basis to consider that the *EA Regulation* section 76(2)(b) requires the Appellant to conform to the *MHCS Regulation* definition of “eligible person”. This is even more apparent when noting that the formula, above, is fulfilled by reading “eligible person” as referring to the Appellant within “adjusted net income”, alone, without invoking the definition of “eligible person” from elsewhere in *MHCS Regulation* section 7.6. The same applies to any requirement that the Appellant be an “eligible person” in order to determine that *MHCS Regulation* section 11(3) sets a \$42,000 limit.

MHCS Regulation section 11(3) does not required an “eligible person” in order to determine that amount. Specifically, the *EA Regulation* section 76(1)(c) reference for part “B” of the formula is only to “the amount set out in section 11(3)” of the *MHCS Regulation*. While that section 11(3) contains a conditional statement addressing “eligibility for supplemental services” the conditions are irrelevant for the purposes of determining the clearly stated “amount set out” in it.

In response to a query at the hearing the Ministry agreed that it was fair to say that the subject of *EA Regulation* section 76(1)(c) is “the adjusted net income”. Nothing in *EA Regulation* section 76(2) changes it from an income test to a wider eligibility test that embeds a requirement that

the Appellant also be an “eligible person” under *MHCS Regulation* sections 7.6 or 11(3) with or without also applying for “supplemental services”. Had the legislators intended this they could have required that an applicant also apply for “supplemental services” or specified that reference to those services was to be interpreted as a reference to “health supplements”. They could also have used the same mechanism set out in *EA Regulation* section 77.03 allowing for provision of health supplements to “a person ... who is eligible for supplementary services under ... [the *MHCS Regulation*], or ... determined to be eligible for supplementary services under section 11 of that regulation”. They did not do so and indeed the mechanism and the express nature of that tying together of eligibility for receipt of health supplement and supplementary services is strong evidence to support that the legislators did not intend it in respect of *EA Regulation* section 76(1)(c).

Equally, had the legislators intended that “eligible person” (within the designated income test) have the same meaning as in *MHCS Regulation* section 7.6 it could have done so with text appropriate to include an applicant under *EA Regulation* section 76(1)(c). The legislators did not do so, but instead made the reference to “eligible person” in the income test apply to the applicant under *EA Regulation* section 76(1)(c) for comparison to the \$42,000 limit from *MHCS Regulation* 11(3). The Panel finds no support for the Ministry’s position that rather than “adjusted net income” being modified to include the applicant, the applicant must fit within the *MHCS Regulation* definition of “eligible person” in order to be included within “adjusted net income”.

For all the reasons above the Panel finds the Ministry’s application of the legislation to be unreasonable in the circumstances of the Appellant.

The Panel’s reasoning and decision is supported by the opening words of *EA Regulation* section 76(1) stating that the Minister may provide certain health supplements “to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation”. Further, the purpose of the legislation is to provide help, and by section 76, particularly for those facing a direct and imminent life threatening health need. To the extent that a person may consider there to be ambiguity in the text of legislation it is not reasonable to apply the ambiguity in conflict with that purpose and thereby deny a benefit meant to address a life saving need.

Conclusion

The Panel finds that “adjusted net income” under *MHCS Regulation* section 7.6 is to be applied (in the current matter) to the Appellant (as a person in the family unit, other than a dependent child) for the purpose of determining the Appellant’s family unit adjusted net income under *EA Regulation* section 76(1)(c). The Panel finds it unreasonable to apply *EA Regulation* section 76(2) as having the effect of imposing a requirement that an applicant under *EA Regulation* section 76(1)(c) be eligible person under the *MHCS Regulation*.

This Panel finds the Reconsideration Decision was not a reasonable application of the legislation in the circumstances of the Appellant. The decision of the Ministry is rescinded.

The Appellant is successful on appeal.

Schedule of Legislation

Employment and Assistance Regulation:

Health supplement for persons facing direct and imminent life threatening health need

76 (1) The Minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [general health supplements] and 3 [medical equipment and devices] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the Minister is satisfied that

- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
- (b) the health supplement is necessary to meet that need,
- (c) the adjusted net income of any person in the family unit, other than a dependent child, does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation, and,
- (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
 - (i) paragraph (a) or (f) of section (2) (1);
 - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

(2) For the purposes of subsection (1) (c),

- (a) "adjusted net income" has the same meaning as in section 7.6 of the Medical and Health Care Services Regulation, and
- (b) a reference in section 7.6 of the Medical and Health Care Services Regulation to an "eligible person" is to be read as a reference to a person in the family unit, other than a dependent child

Schedule C – 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

- ...
- (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.

Medical and Health Care Services Regulation:**Part 3- Eligibility for Supplemental Services****Definitions****7.6** In this Part:

"adjusted net income", in relation to an eligible person, means the net income of the eligible person adjusted

(a) by the following additions, as applicable:

- (i) if the eligible person has a spouse, the net income of the spouse;
- (ii) if the eligible person is married to, or in a marriage-like relationship with, another person who is not a resident, the net income of the other person, and
- (iii) Repealed. [B.C. Reg. 223/2016, s. 5 (a).]

(b) by the following deductions, as applicable:

- (i) \$3 000 for a dependent spouse;
- (ii) \$3 000 for each of the eligible person and the eligible person's spouse who has attained the age of 65 years on or before December 31 of the current taxation year;
- (iii) \$3 000 for each dependent child who is a resident, minus 1/2 of the child care expense deduction the eligible person is entitled to claim under the *Income Tax Act* (Canada);
- (iv) \$3 000 for each family member who had a disability within the meaning of the *Income Tax Act* (Canada) during the immediately preceding taxation year;
- (v) the amount the eligible person or the eligible person's spouse received under section 4 of the *Universal Child Care Benefit Act* (Canada) in the immediately preceding taxation year;
- (vi) the amounts in respect of a registered disability savings plan the eligible person or the eligible person's spouse was required, by section 146.4 of the *Income Tax Act* (Canada), to include in computing income for the immediately preceding taxation year;
- (vii) \$3 000 for each post-secondary student who is supported by the eligible person;

"eligible person" means a beneficiary who satisfies the commission that the beneficiary

- (a) has, for the 12 consecutive months immediately prior to the date on which the beneficiary's determination of eligibility for supplemental services first takes effect under section 11, made the beneficiary's home in Canada and been a citizen of Canada or lawfully admitted to Canada for permanent residence,
- (b) is not a minor or a post-secondary student,
- (c) is not exempt from liability to pay income tax by reason of any other Act, and
- (d) is not a person
 - (i) for whom medical, surgical or obstetrical care or diagnostic services are provided under an agreement or arrangement that the care or services are paid for

by the government of British Columbia other than under the *Hospital Insurance Act*, or
(ii) for whose health and welfare care the government of Canada is responsible;

...

"**supplemental services**" means the services referred to under section 25.1.

...

Eligibility for supplemental services based on income

11 (1) An applicant for supplemental services must

- (a) submit to the commission an application in a form and manner specified by the commission, and
- (b) include in the application any information, authorizations, declarations and verifications required by the commission.

(2) For the purposes of subsection (1) (b), the commission may require information, authorizations, declarations and verifications reasonably necessary

- (a) to determine that the applicant is an eligible person, or
- (b) to verify the net income or adjusted net income of the applicant.

(3) If the adjusted net income of an eligible person does not exceed \$42 000, the eligible person and, if applicable, the following persons, are eligible for supplemental services:

- (a) if the eligible person has a qualifying spouse, the spouse;
- (b) a child of the eligible person;
- (c) if the eligible person supports a post-secondary student, the postsecondary student.

(4) Repealed. [B.C. Reg. 180/2019, App. 6, s. 6 (b).]

(5) Repealed. [B.C. Reg. 223/2016, s. 8.]

...

Supplemental services

25.1 (1) Subject to section 27, an acupuncture, chiropractic, massage, naturopathic, physical therapy or non-surgical podiatric service is a benefit if the service is

- (a) listed in a payment schedule for supplemental services,
- (b) rendered in British Columbia to a beneficiary who
 - (i) is eligible for supplemental services under section 10, or
 - (ii) has been determined under section 11 to be eligible for supplemental services,
- (c) rendered by an enrolled health care practitioner, and
- (d) described in an adequate clinical record.

(2) Subject to subsection (1), acupuncture, chiropractic, massage, naturopathic, physical therapy and non-surgical podiatric services are benefits up to a combined maximum of 10 visits during each calendar year.

Appeal Number: 2022-0176

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

Kent Ashby

Signature of Chair

Date (Year/Month/Day)

2022/08/26

Print Name

Jane Nielsen

Signature of Member

Date (Year/Month/Day)

2022/08/26

Print Name

Emily Drown

Signature of Member

Date (Year/Month/Day)

2022/08/26