

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (Ministry) reconsideration decision dated July 6, 2022, in which the Ministry determined that the appellant was not eligible for reimbursement of transportation costs to and from medical appointments for the period of October 2021 to April 7, 2022.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act section 5
Employment and Assistance for Persons with Disabilities Regulation sections 61.01, 61.1, 62, 69 & Schedule C section 2
Employment and Assistance Act (EAA) – Section 22

Part E – Summary of Facts

The appellant is an adult who has been designated as a Person with Disabilities (PWD). She was previously a recipient of disability assistance but has not received such assistance since 2011.

In December 2021 the appellant contacted the Ministry seeking coverage for transportation costs to and from medical appointments relating to her cancer treatment. The Ministry provided information about the process and referred her to advocates who might assist.

In April 2022 the appellant contacted the Ministry again in relation to funding for transportation to and from medical appointments. The appellant provided a letter from a medical practitioner confirming her diagnosis and associated need for escorted transportation to medical appointments in other cities.

On May 3, 2022, the Ministry approved coverage for transportation to and from medical appointments from that date and refused coverage for transportation to and from medical appointment that occurred prior to May 3, 2022.

On June 13, 2022, the appellant requested reconsideration of the decision denying her coverage prior to May 3, 2022. This request was accompanied by:

- a letter from the appellant explaining her circumstances;
- a letter from the appellant's advocate;
- a letter from the appellant's GP confirming her life threatening diagnosis; and
- a letter from a specialist in another city confirming appointments.

On July 6, 2022, the Ministry issued its reconsideration decision. At reconsideration, the Ministry found the appellant was not eligible for reimbursement of transportation costs to and from medical appointments for the period of October 2021 to April 7, 2022. This is the decision being appealed.

Notice of Appeal

In the Notice of Appeal dated July 18, 2022 the appellant explained that she had to borrow money because she did not have funds to cover her travel and that her appointments were necessary to save her life.

Appeal Submissions

In her appeal submission, prepared by an advocate on the appellant's behalf, the appellant argued that she did not and does not have access to resources and that the Ministry has made several errors in relation to her income and expenses. She argued that her financial situation is unchanged from 2019 when the Ministry approved her request for medical transportation costs. She further stated that she has a life-threatening health need. Appended to this appeal submission are several statements, receipts and invoices relating to the appellant's financial situation, including items relating to medical transportation and accommodation costs, medical appointments and prescriptions.

The Ministry relied on the reconsideration decision.

Admissibility

The panel finds that the information provided by the appellant on appeal is relevant and reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The panel notes that the information provided by the appellant and her advocate on appeal is largely in the nature of

elaboration about her financial situation and reiteration of the seriousness of her medical condition. The panel notes that the Ministry did not object to, or otherwise address the information in the appellant's appeal submission. The Ministry's submission contained a statement that it would rely on the reconsideration decision. The panel finds the appeal submissions of both the appellant and the Ministry are admissible in accordance with section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's determination, that the appellant was not eligible for coverage of the transportation requested, is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

Legislation

The applicable legislation is provided in Appendix A

Analysis

On appeal, the panel must, in accordance with section 24 of the EAA, determine whether the decision under appeal is reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. The applicable enactment in this appeal is the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The Ministry determined at reconsideration that the appellant is not eligible for general health supplements under section 62 of the EAPWDR because she is not in receipt of disability assistance and is not a "continued person" and, instead, considered the appellant's request for transportation costs arising prior to May 3, 2022, as a life-threatening health need under section 69 of the EAPWDR. The panel notes that the appellant has not argued that she is eligible for general health supplements under section 62 of the EAPWDR and there is no evidence before the panel to suggest that this may be the case. As such, the panel finds the Ministry's decision that the appellant is not eligible for general health supplements under section 62 of the EAPWDR is both reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant.

The Ministry determined that the appellant had satisfied some, but not all, of the legislated criteria set out in section 69. The panel notes that section 69 contemplates coverage for medical transportation, equipment/devices and some medical supplies as described in EAPWDR Schedule C. The two criteria at issue in this appeal are: a direct and imminent life-threatening health need, as set out at section 69(a), and resources available to the family unit, as set out at section 69(a) and schedule C section 2(f)(vi). At reconsideration, the Ministry found the appellant had not satisfied two required criteria, namely that she was not facing a direct and imminent life threatening health need to attend a past appointment and that she had no resources available to meet the cost. The panel finds the Ministry's reconsideration decision, as written, is not reasonable, in that it is neither reasonably supported by the evidence nor a reasonable application of the legislation in the circumstances of the appellant with respect to the two criteria the Ministry found the Appellant had not satisfied.

The panel finds that the medical evidence provided by the appellant describes an extremely serious, life-threatening medical condition for which she was required to attend several medical appointments on an urgent basis in a different province. At the time of the travel for which she seeks coverage - as well as at the time of her application for coverage, her application for reconsideration and this appeal - the appellant has been facing, and continues to face, a direct and imminent life-threatening health need. The panel notes that there may be provisions in the EAPWR that prevent the Ministry from granting coverage for past expenses relating to a direct and imminent life-threatening health need; however, the Ministry has failed to mention, discuss or provide any analysis in this regard in the reconsideration decision. As such, the panel finds the Ministry's conclusion that the appellant was not facing a direct and imminent life-threatening health need is not reasonably supported by the evidence and not a reasonable application of the legislation in the circumstances of the appellant.

The panel also finds that the appellant's family unit did not have resources available to meet the cost of transportation to and from medical appointments. The appellant stated, both at reconsideration and in

her appeal submission that she does not have, and did not have, resources to cover transportation costs to and from her medical appointments. In her appeal submission, the appellant specified that she has had to borrow money for medical travel because she did not have funds to cover these expenses, which she states are necessary to save her life. The Ministry concluded at reconsideration that the appellant had not demonstrated that there were no resources available because the expenses were in the past and had already been paid. The panel finds this conclusion to be an unreasonable application of the legislation in the appellant's circumstances. The panel finds that borrowing money, using credit, or acquiring debt to meet an urgent life-saving expense is not equivalent to having available resources in the form of money, grants or donations. Rather, borrowing requires repayment once resources become available and the panel finds that reliance on borrowing from others to meet urgent costs is reflective of a lack of resources available to the appellant. The panel accepts that the appellant is expected to repay more than \$7000 to others from whom she borrowed to meet her medical transportation costs. The panel, therefore, finds that the appellant did not have resources available to meet her transportation expenses prior to May 3, 2022.

Conclusion

The panel finds that the Ministry's reconsideration decision was not reasonably supported by the evidence and not a reasonable application of the legislation in the circumstances of the appellant. The panel rescinds the Ministry's reconsideration decision. The appellant is successful on appeal.

Appendix A

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

Definitions

61.01 In this Division: "continued person" means

- (a) a main continued person under section 61.1 (1), or
- (b) a dependent continued person under section 61.1 (2);

Access to medical services only

61.1 (1) Subject to subsection (4), a person is a main continued person if

- (a) the person was
 - (i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for disability assistance, and
 - (ii) a person with disabilities on that date,
- (b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance, and
- (c) in the case that the family unit referred to in paragraph (a)(i) was a family unit identified in subsection (3) (g), the agreement referred to in subsection (3) (g) is in force.

(2) Subject to subsection (6), a person is a dependent continued person if
(a) the person was a dependant of a main continued person under subsection (1) on the main continued person's continuation date and is currently a dependant of the main continued person, or
(b) the person is a dependant of a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (b), (c), (d), (e), (f) or (g).

(3) A family unit is identified for the purposes of subsection (1)
(a) if the family unit, while in receipt of disability assistance, ceases to be eligible for disability assistance (a) on a date the family unit includes a person aged 65 or older,
(b) as a result of a person in the family unit receiving an award of compensation under the Criminal Injury Compensation Act or an award of benefits under the Crime Victim Assistance Act,
(c) as a result of a person in the family unit receiving a payment under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,
(d) as a result of a person in the family unit receiving employment income,
(e) as a result of a person in the family unit receiving a pension or other payment under the Canada Pension Plan (Canada),
(f) as a result of a person in the family unit receiving money or value that is maintenance under a maintenance order or a maintenance agreement or other agreement, or
(g) as a result of a person in the family unit receiving financial assistance provided through an agreement under section 12.3 of the Child, Family and Community Service Act.

(4) Subject to subsection (5), a person's status as a main continued person under subsection (1) is suspended for a calendar month if
(a) the person fails to meet an applicable income test under subsection (7) in the calendar month and in each of the immediately preceding 12 calendar months, and
(b) the person's continuation date is before those immediately preceding 12 calendar months.

(5) Subsection (4) does not apply to a person who is a main continued person under subsection (1) as a result of having been part of a family unit described in subsection (3) (c) or (g).

(6) A person's status as a dependent continued person under subsection (2) of a main continued person under subsection (1) is suspended if the main continued person's status is suspended under subsection (4).

(7) For the purposes of subsection (4), 19/07/2022 Page 512 of 44
(a) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (a), (b), (d) or (f) meets the income test for a calendar month if,
(i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and
(ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the adjusted net income of the main continued person does not exceed the amount set out in section 11(3) of the Medical and Health Care Services Regulation, and
(b) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (e) meets the income test for a calendar month if,
(i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main continued person or another person in the family unit receives a pension or other payment under the Canada Pension Plan (Canada).

(7.1) For the purposes of subsection (7)(a)(ii),

(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 the main continued person.

(8) Despite this Division, a person is not eligible, as a main continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the person's continuation date occurs.

(9) Despite this Division, a person is not eligible, as a dependent continued person under subsection (2) of a main continued person under subsection (1), to receive a health supplement under this Division for a calendar month in which the main continued person's continuation date occurs.

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 a dependent child, 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.

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

69 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 person's family unit is receiving premium assistance under the Medicare Protection Act, 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).

SCHEDULE C

Health Supplements Definitions 1 In this Schedule: 19/07/2022 Page 613 of 44

"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

Jennifer Smith

Signature of Chair

Date (Year/Month/Day)

2022/November/4

Print Name

Glenn Prior

Signature of Member

Date (Year/Month/Day)

2022/November/4

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2022/November/4