

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated October 24, 2022, which denied the appellant's request for a health supplement for transportation to attend an appointment with a dentist because the reason for this travel is not a type of medical appointment covered under section 2(1)(f) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

Specifically, the ministry determined that the appellant is not attending any of these:

- A local medical practitioner or nurse practitioner.
- The nearest available "specialist" in a field of medicine or surgery in accordance with the bylaws made by the board of College of Physicians and Surgeons in BC (CPSBC). Dentists are not recognized as specialists under the CPSBC.
- The nearest suitable hospital for services covered by the Hospital Insurance Act. The dental work was done at a dental clinic and not at a hospital.

The ministry also denied overnight expenses as part of the travel cost sought. The ministry found it to be reasonable that the appellant did not have enough resources available to cover transportation costs to attend a dentist appointment for mileage and meals for one day.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 61.1, 62 and Schedule C section 1 and 2(1)(f)

Interpretation Act, section 29

Employment and Assistance Act, section 19.1

Administrative Tribunals Act, section 46.3

Part E – Summary of Facts

From the ministry file:

- The appellant has Person with Disability (PWD) designation and as a Continued Person is eligible for Medical Services Only (MSO).

In her request for medical transportation dated August 30, 2022, the appellant stated the following:

- Medical Appointment Information:

- Date/Time: October 17, 2022, at 12pm
- Location: Dental Centre in another city
- Specialist: dentists

- Travel Information:

- Departure: October 17, 2022, from her residence.
- Return: October 18, 2022
- Overnight accommodation required
- Mode of transportation: taxi

The dental centre reports the October 17th “first appointment starting at 12pm is for a

- routine cleaning, which is needed to be completed prior to having treatment done and
- right after she will go into the dentist chair to have fillings completed, which are needed as she has active decay that we do not want spreading any larger.”

In a letter dated September 2, 2022, a medical practitioner reports that the appellant

- “... suffers from diabetes and congestive heart failure and requires timely treatment for dental issues to prevent any further complications.
- She is significantly limited in her ability and must have enough room in a vehicle to be able to move her legs. She cannot stay seated for a prolonged period of time as this exacerbates her pain.
- She is not medically fit to climb stairs.
- The recommended mode of transportation would be taxi.”

In a letter dated August 31, 2022, the appellant’s social worker reports they are requesting taxi service from the appellant’s hometown to the dentists’ city return because

- neither a social services organization nor a bus service can accommodate the appellant due to health and safety reasons.
- The appellant’s contact in the community who had previously been able to help with rides is expecting to be away for two months in the fall and unable to assist.

In a letter dated October 13, 2022, the social worker reports they called

- the dental offices in the appellant’s hometown and the nearest other town who report they are both currently not able to accept new patients, and
- “the next available dentists are in [another city] which is a 250 km drive away.”

In her request for reconsideration dated October 13, 2022, the appellant reports:

- She has been permanently denied service by one social services organization, and another one is prohibitively expensive (over \$500 for a round trip to the dentists' city).
- Since the original request the appellant has found a neighbour who has agreed to take the day off from his paid employment to drive her to this medically necessary appointment. Overnight accommodation and taxi fare are no longer required; however, the appellant cannot cover the cost of mileage and meals for the date of the appointment.
- The doctor already provided the letter in the original request indicating why it is medically necessary.

In her Notice of Appeal dated November 2, 2022, the appellant writes:

"It is prejudiced, Discrimination, Human Right Violation Puts me at Risk - No dentists in [the local region] available. I am visually impaired - heavy impaired."

At the hearing the appellant repeated information she had previously given and added the following:

She had a hole in her tooth and had to see a dentist. There is only 1 dentist left in her area who has to service 25000 people. Had she left the cavity untreated she would have ended up in a hospital "pretty quick" with an infection. On October 17 she was in the dentist chair for cleaning and scaling, an injection, and the filling of her hole.

She has contacted bc211 numerous times in the past but did not find transportation to the dentists' city. Sometimes people help her out privately with transportation. Both the appellant and the advocate reported that only people who can afford expensive medical transportation have access to the health services they need. The advocate reported that the ministry has paid for overnight stays for similar cases in the past.

The ministry's website is misleading - it is too general and makes clients believe they have access to medical transportation when in certain cases they have not.

The legislation is unreasonable and outdated. It is unreasonable that just because dentists are not registered as "medical practitioners" clients cannot access their services. Her dental centre could possibly be considered a hospital as there are nurses and services like hospitals. The appellant suggested that the panel make a recommendation for a change of the legislation.

The appellant has multiple medical conditions that will require treatment. She will have to travel far because the treatments and health care services she needs are not available in her city and the health care professionals are leaving the area. On top of her multiple medical issues, she experiences anxiety each time she is faced with the extensive preparation for a medical trip; her dogs need to be boarded, medical appointments and transportation must be arranged and

synchronized. For these reasons she is in the process of moving away; she is currently searching for an accommodation that will allow her reasonable access to medical services.

The ministry presented their reconsideration decision and answered questions: To a question from the appellant the ministry answered that to initiate a change of legislation it is necessary to approach the minister. To a question by the panel whether there were any ministry resources for medical transportation available in the appellant's specific circumstances the ministry answered "no". About a determination of transportation for a life-threatening health need the ministry stated that the physician must be explicit about how the life of the patient is in danger. In its decision the ministry considered the scope of the medical evidence; a life-threatening health need was considered but not explicitly addressed. The ministry gave the example of cancer patients undergoing chemotherapy whose transportation to a dentist had been approved in the past.

At the conclusion of the hearing the appellant asked whether she can access the panel's notes. She appeared to request receipt of notes taken by the panel and the ministry representative. The Chair advised that the appellant's, advocate's, and ministry's testimonies will be represented in the written decision. The appellant was informed that, if she was seeking documents, there is a Freedom of Information and Protection of Privacy available by written application. It is noted here that the Tribunal's website has its Privacy and Freedom of Information Policy, and the appellant may call or email the Tribunal and the Tribunal will assist her. It is also noted that personal notes of panelists are excluded by law appropriately left out of discussion for the hearing matter.

Admissibility of new evidence

The panel finds that the information provided by the appellant, the advocate and the ministry at the hearing is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as it contributes to the panel's understanding of the circumstances surrounding the appellant's request for medical transportation to a dentist's appointment. The panel therefore admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's denial of the appellant's request for a medical travel supplement under section 2(1)(f) of Schedule C of the EAPWDR to cover costs of travel to visit the office of a dentist is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

Appellant's Position

The appellant argues that the ministry should have approved her request for a supplement for medical travel because the dentist office she was attending is the closest available one. She had contacted bc211 numerous times, but they could not help her find transportation to the dentist.

Had she left the cavity untreated she would have ended up in a hospital "pretty quick" with an infection. The dentist notes that the appellant's active decay should not be allowed to spread any further, and the appellant's medical practitioner confirms that timely treatment of the appellant's dental issues is required to prevent any further complications as she suffers from diabetes and congestive heart failure.

The appellant argues further that she is being discriminated against - only people who can afford expensive medical transportation have access to the health services they need. This, she says, is a Human Rights violation and has put her at risk.

The appellant also argues that the legislation is unreasonable and outdated. It is unreasonable that just because dentists are not registered as "medical practitioners", patients cannot access their services. Also, her dental centre could possibly be considered a hospital as there are nurses and services similar to hospitals.

Ministry's Position

The ministry determined that the appellant's dental appointment is not a type of appointment that may be covered by the medical transportation supplement because

- The travel costs were not required to see a local medical practitioner or nurse practitioner.
- The travel was not required to see the nearest available "specialist" in a field of medicine or surgery in accordance with the bylaws made by the board of College of Physicians and Surgeons in BC. Dentists are not recognized as specialists under the CPSBC.
- The travel was not required for an appointment at the nearest suitable hospital for services covered by the Hospital Insurance Act. The dental work was done at a dental clinic and not in a hospital.

As per the limits set by Schedule C section 2(1)(f), the ministry may only assist with travel costs for dental appointments if they are completed in a hospital and covered by the Hospital Insurance Act.

Panel Decision

To be eligible for a travel supplement under Schedule C, section 2(1)(f) of the EAPWDR, an individual must, among other criteria, demonstrate that the visit is for one of the types of medical appointments contemplated by the legislation. The ministry had determined that the appellant's dentist appointment was not neither of those.

The panel finds that the ministry reasonably determined that the appellant was not visiting a medical practitioner or nurse practitioner as set out in section 2(1)(f)(i). The applicable definitions of "medical practitioner" and "nurse practitioner" are set out in section 29 of the Interpretation Act: "'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". The panel finds the ministry reasonably determined that a "dentist" is not a medical practitioner or nurse practitioner.

While the appellant's physician reports that the appellant requires timely treatment for dental issues to prevent further complications of her medical conditions, the panel finds the ministry was reasonable in its determination that a dentist is not considered a "specialist". Specifically, the ministry reasonably determined that the appellant was not visiting a specialist in the field of medicine and surgery as set out in section 2(1)(f)(ii). A "Specialist" is defined in Schedule C section 1 of the EAPWDR 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. The panel finds that a dentist does not fit this definition because according to section 1 of Schedule C the term "dentist" refers to an individual registered with the College of Dental Surgeons of British Columbia continued under the *Health Professions Act*.

Section 2(1)(f)(iii) and (iv) refer to transportation to or from the nearest suitable hospital. The panel finds that the ministry reasonably determined that the dental work was not done at a hospital. While it can be expected that a dental centre has nurses or other medical staff the panel finds that there is insufficient evidence that the appellant's dental centre can be considered a hospital.

Based on the foregoing the panel finds that the ministry's decision denying the appellant's request for medical transportation assistance to visit a dentist was a reasonable application of the legislation in the circumstances of the appellant.

While the appellant argues that it is unreasonable that - just because dentists are not registered as "medical practitioners" - patients cannot access their services, the panel notes that the relevant legislation leaves no room for ministry discretion.

While the appellant argues that the ministry's denial amounts to a Human Rights violation, the panel notes that a decision about a Human Rights violation is outside the panel's jurisdiction.

Conclusion

The panel acknowledges the appellant would have benefited from a supplement for transportation to attend a dentist appointment. However, the panel finds the ministry was reasonable when it determined that the appellant was not eligible for this supplement under to section 2(1)(f) of Schedule C of the EAPWAR. The ministry's reconsideration decision is confirmed, and the appellant is not successful on appeal.

Legislation

Employment and Assistance for Persons with Disabilities Regulation

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...

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

Health Supplements Definitions

1 In this Schedule:

"dentist" means a dentist registered with the College of Dental Surgeons of British Columbia continued 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"

Employment and Assistance Act

Application of the Administrative Tribunals Act

19.1 The following provisions of the *Administrative Tribunals Act* apply to the tribunal:

(f) section 46.3 [*tribunal without jurisdiction to apply the Human Rights Code*];

Administrative Tribunals Act

Tribunal without jurisdiction to apply the Human Rights Code

46.3 (1) The tribunal does not have jurisdiction to apply the *Human Rights Code*.

(2) Subsection (1) applies to all applications made before, on or after the date that the subsection applies to a tribunal.

APPEAL NUMBER 2022-0267

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

Inge Morrissey

Signature of Chair

Date (Year/Month/Day)

2022/11/29

Print Name

Kent Ashby

Signature of Member

Date (Year/Month/Day)

2022/11/29

Print Name

Bob Fenske

Signature of Member

Date (Year/Month/Day)

2022/11/29