

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated April 19, 2023, in which the ministry found the appellant was not eligible for a health supplement for medical transportation under the Employment and Assistance for Persons with Disabilities Regulation (“Regulation”) because he did not meet the eligibility requirements.

The ministry found that the appellant was not eligible for transportation to a hospital under section 67 of the Regulation because he is not a “qualifying person” in receipt of ministry benefits. The ministry found the appellant was not eligible for transportation as a life-threatening health need under section 76 of the Regulation because his income exceeds the limits set out in the Regulation.

Part D – Relevant Legislation

The ministry based the reconsideration decision on the following legislation:

Employment and Assistance Act - section 4

Employment and Assistance Regulation - sections 66.1, 67, 76, and Schedule C

Medical and Health Care Services Regulation (*Medicare Protection Act*) - section 7.6

The full text is available in the Schedule after the decision.

Part E – Summary of Facts

The information the ministry had at the time of the reconsideration decision included:

1. The record of decision indicating that:

- On February 6, 2023, the appellant applied for assistance, indicating a life-threatening health need for medical transportation to attend a hospital in another community for hemo-dialysis treatment. The appellant said he had pension income of \$3,688.57 per month (\$774.73 Canada Pension Plan + \$2,913.84 private pension). The appellant submitted a letter from his doctor in support of the treatment and necessary travel.
- On March 20, 2023, the ministry determined the appellant was ineligible for assistance because his monthly income exceeded the rates for both income assistance and disability assistance. The ministry denied the request for a health supplement for medical transportation because the appellant's annual income exceeded the adjusted income threshold of \$42,000 for a life-threatening health need.

The ministry said that the appellant's tax and income information indicate that he exceeds the life-threatening health need annual income threshold of \$42,000 by \$2,262.84. The ministry notes that the appellant had not yet filed his taxes for 2022, but his monthly income of \$3,688.57 x 12 months equals an annual income of \$44,262.84 for 2022.

- On March 14, 2023, the ministry emailed its Policy and Procedures Implementation Management branch, requesting approval for an exemption so that the appellant could meet the income test threshold for medical transportation.
- On March 20, 2023, the ministry's Executive denied the request for an exemption as the appellant's 2023 income would still be above the maximum allowed under the Regulation. The appellant requested a reconsideration.
- On April 6, 2023, the ministry received the appellant's *Request for Reconsideration*. A social worker provided a letter explaining the appellant's situation including his inability to afford the transportation costs for life-sustaining therapy.
- On April 19, 2023, the ministry completed its review and found that the eligibility requirements for the medical transportation supplement were not met.

2. A *Request for Reconsideration* signed by the appellant on March 31, 2023, with attached letter from a hospital social worker dated April 6, 2023. In addition to argument for the reconsideration the letter provides the following information:

- The appellant has end-stage renal disease and requires hemo-dialysis as a life-sustaining therapy. The appellant requires dialysis 3-times per week to replace the

function of his kidneys and prolong his life. The dialysis takes place at the hospital Renal unit, and without it the appellant's medical condition would immediately deteriorate.

- The appellant is unable to drive. Between February 6-March 3, 2023, the appellant made 8 trips to the hospital using a combination of paid and volunteer transportation services. The paid service invoiced the appellant \$1,091.51. This was reduced by \$808.50 when the appellant was able to access the volunteer service. The volunteer service could only offer the appellant 3 weeks of transportation as they are donation-based.
- As of April 1, 2023, the paid transportation service will no longer provide the appellant's medical transportation as it was not affordable or sustainable long-term. The appellant's original request was for the ministry to fund that service. The cost was approximately \$2,772 (+tax) per month, or \$33,264 (+tax) per year, "which leaves him approximately \$10,500/year or \$875/month, and this does not include his monthly expenses, only his medical transportation."
- The appellant must now use a local taxi service to/from his dialysis appointments. The cost of the taxi is approximately \$6,600/month for 3 trips per week. Annually, the appellant's transportation cost for the taxi is estimated to be \$79,200.
- The appellant is expected to require dialysis indefinitely as he will be dialysis-dependent for the rest of his life.

3. The appellant's 2021 tax *Notice of Assessment*, showing a total income of \$51,826.

4. A letter from a doctor (kidney care clinic), dated January 31, 2023, requesting medical travel assistance for the appellant's ongoing, life-threatening renal disease. The letter confirms that the appellant's condition would deteriorate immediately without hemodialysis treatment.

The letter says the appellant will begin dialysis at the hospital on February 2, 2023. The appellant will be closely followed by the nephrology team and Renal unit staff. The appellant's condition is progressive, prolonged, and severe, and he will need to attend regular follow-up appointments with the hospital team and other specialists to manage his condition and treatment plan.

The letter states that the appellant may require short notice or unplanned travel due to the complex nature of his condition. The appellant has been using a costly transportation service as the volunteer service is unable to accommodate his transport. The appellant has no family or friends to sustainably support his transportation needs.

5. The appellant's bank statements (9 pages) showing account activity from October 2022 - January 2023, including pension deposits, bill payments, line of credit balance, and other transactions.

Additional submissions - written hearing

With the consent of both parties, the appeal proceeded as a written hearing. Neither party submitted additional evidence requiring an admissibility finding by the panel. Subsequent to the reconsideration decision, the appellant filed his *Notice of Appeal* with a typed statement that the panel accepts as argument. In an email to the Tribunal, the ministry states that the reconsideration summary is the ministry's submission on appeal.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably determined that the appellant was not eligible for health supplement for medical transportation under the Regulation because he did not meet the eligibility requirements. Was the ministry reasonable to find that the appellant was not eligible for transportation to a hospital because he is not a “qualifying person” in receipt of ministry benefits? Was the ministry reasonable to find that the appellant was not eligible for transportation as a life-threatening health need because his income exceeds the limits set out in the Regulation?

Analysis

Section 4 of the *Employment and Assistance Act* authorizes the minister to provide income assistance or a supplement to a person or family that meets the specific eligibility requirements under the legislation.

Section 67(1) of the Regulation allows the minister to provide general health supplements that are described in Schedule C, if a person receiving income assistance is a “qualifying person” under the Regulation.

A “qualifying person” is defined in section 66.1 of the Regulation as someone who receives assistance from the ministry through other programs, either *Persons with Persistent Multiple Barriers* to employment, or people receiving special care (in a care facility, for example).

Under Schedule C of the Regulation (section 2(1)(f)), a person who is receiving assistance as a *Person with Persistent Multiple Barriers* or as a person receiving special care, may be assisted with medical transportation if several other requirements are met:

- the transportation must be to the office of a local medical/nurse practitioner; the nearest available specialist; or to the nearest suitable hospital.
- there are no resources in the family unit to cover the costs of the transportation; and
- the transportation is for services covered under provincial Medicare or hospital insurance legislation.

Section 76 of the Regulation provides another way to qualify for a medical transportation supplement, where the person is not eligible under section 67. The minister must be satisfied that:

- the person faces a direct and imminent life-threatening health need and has no resources available to meet the need.

- the health supplement is necessary to meet the need.
- the “adjusted net income” of the family unit does not exceed \$42,000 as set out in the Medical and Health Care Services Regulation; and
- the requirements for medical transportation under Schedule C (section 2(1)(f)) are met.

Section 7.6 of the Medical and Health Care Services Regulation says that “adjusted net income” means the person’s annual net income with additions for a spouse (if applicable) and deductions for the spouse and any dependent children.

Arguments - Appellant

The appellant’s position on appeal is that he needs support from the ministry to be able to commute to another community for hospital dialysis. The appellant’s social worker notes that the cost of the medical transportation has increased by \$3,828 per month because the appellant must travel by taxi.

The social worker argues that the appellant could not afford the private transportation service he was using (approximately \$2,772 per month). Now the situation is more dire with the taxi costing approximately \$6,600 per month; the appellant cannot afford to pay for this transportation long term. The appellant hopes that a health supplement will be approved given the change in the mode and the cost of the transportation.

Arguments - Ministry

The ministry’s position is that the appellant is not eligible for medical transportation as a general health supplement under section 67(1) of the Regulation. The ministry argues that this is a reasonable application of the legislation because the appellant is not a “qualifying person” who receives income assistance as a *Person with Persistent Multiple Barriers* to employment or a person in special care facility.

The ministry argues that the appellant is not eligible for the supplement as a life-threatening health need under section 76 of the Regulation because his annual income exceeds the \$42,000 threshold as set out in subsection 76(1)(c) of the Regulation. The ministry argues that the appellant’s income for 2022 (\$44,262.84) exceeds the \$42,000 limit by \$2,262.84.

The ministry expresses sympathy for the appellant’s circumstances, but notes that the legislation speaks to the income of the family unit and not the cost of the transportation. The ministry argues it has no discretion to approve a medical transportation supplement.

Panel's decision***Medical transportation as a general health supplement***

The panel finds that the ministry's decision to deny medical transportation as a health supplement under section 67(1) of the Regulation is a reasonable application of the legislation in the circumstances of the appellant. The appellant is not a "qualifying person" under the Regulation because he is not designated as a *Person with Persistent Multiple barriers* and he has not been admitted to a special care facility. Section 67 only applies to persons in receipt of income assistance under these programs.

As noted by the ministry, the appellant is not eligible for assistance because his annual income of \$51,826 (2021) and \$44,262.84 (2022) is above the ministry rates for income assistance and disability assistance. Therefore, the appellant's request for medical transportation cannot be considered under section 67 of the Regulation.

Medical transportation as a life-threatening health need

The panel finds that the ministry reasonably determined that the appellant is not eligible for a transportation supplement as a life-threatening health need under section 76 of the Regulation. To be eligible for medical transportation, the person must not only be facing a life-threatening health need and have no available resources to meet the need. There is also an income test which the appellant does not meet.

The evidence is that the appellant's total income for 2021 was \$51,826 as shown on his tax *Notice of Assessment*. The appellant has not filed his taxes for 2022, but the evidence is that he receives pension income of \$3,688.57 per month from his federal government and private plans. This equals an annual income of \$44,262.44.

Under subsection 76(1)(c) of the Regulation, the person's "adjusted net income" cannot exceed \$42,000. The only deductions that are allowed are for a spouse and dependent children. The information in the *Notice of Assessment* and appeal record does not indicate a spouse or any dependents.

While the ministry's income calculations are for the appellant's gross income, the Health Care Services Regulation (section 7.6) says that the income threshold of \$42,000 is based on net income. On the 2021 *Notice of Assessment*, the appellant had a net income of \$51,738 because the deduction from total income was only \$88. There is no evidence in

the ministry record, or additional submissions from the appellant, to indicate a higher tax deduction for 2023, which would bring the appellant's net income below \$42,000.

Given a net income above \$42,000, the ministry has no legal authority to provide a medical transportation supplement under the Regulation even where a life-threatening health need and inadequate financial resources are established. Accordingly, the ministry reasonably determined the appellant is not eligible for a health supplement to meet a direct and imminent life-threatening health need.

Conclusion

The panel finds that the ministry was reasonable to deny the appellant's request for medical transportation. The panel acknowledges that the appellant faces a very difficult situation in not having an affordable means of transportation for his life-saving dialysis treatment. The panel is sympathetic, but unfortunately the appellant is not eligible for a health supplement for transportation costs because he is not receiving income assistance under ministry programs such as *Persons with Persistent Multiple Barriers*, and he does not meet the income test under the Regulation.

The panel acknowledges that the appellant's transportation costs have increased substantially, but as noted by the ministry the cost of the transportation is not a factor that can be considered under the legislation. The panel confirms the reconsideration decision as a reasonable application of the legislation. The appellant is not successful with his appeal.

Schedule – Relevant Legislation

EAA

Income assistance and supplements

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

EAR

Division 5 — Health Supplements

Definitions

66.1 In this Division:

"**qualifying person**" means a person who

- (a)** has persistent multiple barriers to employment, or
- (b)** is a recipient of income assistance who is described in section 8 (2) (b) [*people in special care*] of Schedule A.

General health supplements

67 (1) 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 income assistance, if
 - (i)** the family unit includes a qualifying person, or
 - (ii)** the health supplement is provided to or for a person in the family unit who is under 19 years of age,

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 under section 67 [*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.

Medicare Protection Act

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

(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.

APPEAL NUMBER 2023-0118

Part G – Order

The panel decision is: (Check one) Unanimous By Majority

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name
Margaret Koren

Signature of Chair

Date (Year/Month/Day)
2023/05/30

Print Name
Susanne Dahlin

Signature of Member

Date (Year/Month/Day)
2023/05/30

Print Name
Kevin Ash

Signature of Member

Date (Year/Month/Day)
2023/05/30