

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision, dated April 12, 2023 (the “Reconsideration Decision”), of the Ministry of Social Development and Poverty Reduction (the “Ministry”), which determined that the Appellant was not eligible for a supplement in respect of transportation and accommodation for a visit to an oral surgeon outside of the Appellant’s home community.

The Ministry determined that the Appellant was not eligible for the supplement under section 2(1)(f) of Schedule C to the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) because:

- The appointment was with an oral surgeon (the “Oral Surgeon”) who is not a specialist, as defined in section 1 of Schedule C to the EAPWDR
- The appointment was not with a medical or nurse practitioner at an office in the local area of the Appellant; and
- The clinic at which the Oral Surgeon practised is not the nearest general or rehabilitation hospital which permitted the Appellant to receive a benefit under the *Medicare Protection Act* or a service under the *Hospital Insurance Act*.

Part D – Relevant Legislation

EAPWDR- sections 62 and 69 and Schedule C- sections 1 and 2.

A full text of the above legislation appears at the end of Part F of this decision.

Part E – Summary of Facts

The Appellant is designated as a person with disabilities (“PWD”) and is a “continued person”, as defined by section 66.1 of the EAPWDR, who is eligible for medical services only.

The information before the Ministry at the time of the Reconsideration Decision included the following:

- An e-mail, dated March 8, 2023, confirming the Appellant’s appointment with the Oral Surgeon;
- A printout from Google Maps, showing the route from the Appellant’s residence to the Oral Surgeon’s office and the distance of the trip;
- Reservation information for a hotel in the community where the Oral Surgeon’s office is located;
- Letter from the Appellant to the Ministry, dated March 9, 2023, requesting a subsidy for a hotel stay in and a trip to the community where the Oral Surgeon’s office is located;
- The Appellant’s Request for Non-Local Medical Transportation Assistance, dated March 9, 2023 (the “Supplement Request”); and
- The Appellant’s Request for Reconsideration, dated March 26, 2023, in which the Appellant noted that:
 - The trip had been arranged through a cancer clinic;
 - The procedures at the Oral Surgeon’s office required conscious sedation, necessitating an attendant to pick the Appellant up after the procedure; and
 - The Appellant had previously had adverse reactions to conscious sedation and the local clinic’s services were limited, requiring an overnight stay in the community where the Oral Surgeon’s office is located.

In the Appellant’s Notice of Appeal, dated April 18, 2023, the Appellant set out that:

- The original denial of travel cited an outdated regulation;
- The procedure for which the Appellant had traveled was covered by MSP; and
- The procedure was done under conscious sedation.

The Appellant also provided a submission, dated May 12, 2023, which included:

- An e-mail stating the following:

- In February, 2020, the Appellant underwent a tonsillectomy with subsequent biopsy;
 - The biopsy revealed possible head/neck cancer;
 - The Appellant attended at 30+ radiation treatments in a different community from where he resided;
 - The Appellant's GP recommended the extraction of all of the Appellant's teeth;
 - The Appellant had the extractions done on March 29, 2023;
 - The Appellant had previously filed a service request to cover mileage, meals, and accommodations;
 - After the extractions were performed, the Appellant's request was denied;
 - The Appellant filed for reconsideration on the basis that the Oral Surgeon, although not registered with the College of Physicians and Surgeons (the "College"), is a member in good standing of the BC College of Oral Health Professionals;
 - The reconsideration request resulted in another denial; and
 - The Appellant went to see the Oral Surgeon because that was the appropriate specialist to see for the extractions and the regulations ought to be amended to include dental practitioners.
- A note from a dentist (the "Dentist") setting out that the procedures (the extraction of all of the Appellant's teeth) required conscious sedation, that the Appellant was at a higher risk of Osteonecrosis due to having a history of radiation to his head and neck, and that treatment with an oral surgeon was recommended to mitigate the risk.

At the hearing of the appeal, Ministry representative did not object to the admissibility of the Submission.

At the hearing of the appeal, the Appellant stated that the comparison between the Oral Surgeon and a doctor registered with the College is like comparing apples to oranges and that the Oral Surgeon is a professional recognized under the *Health Act*. The Appellant noted that doctors registered with the College don't perform teeth extractions.

The Appellant stated that the extraction of his teeth was done under a general anaesthetic and was arranged by an individual at a local cancer clinic. The Appellant stated that the extraction was not routine. Ultimately, the Appellant stated that it was unreasonable for the EAPWDR to restrict supplements for transportation and accommodation to only procedures performed by doctors. In this case, the Appellant was required to attend at the office of the Oral Surgeon due to the nature of the procedure and the heightened risk of adverse health consequences due to the Appellant's state of health and the lack of

available facilities to deal with any adverse consequence in the Appellant's home community.

At the hearing of the appeal, the Ministry representative noted that the Oral Surgeon does not meet the definition of specialist under section 1 of Schedule C to the EAPWDR. The Ministry representative also stated that the evidence before it did not indicate a need for the Appellant to stay overnight, outside of his home community.

The panel admits the oral evidence given at the hearing of the appeal and the information contained in the submission filed by the Appellant as evidence that was not part of the record but which is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision***Issue on Appeal***

The issue in this appeal is whether the Ministry was reasonable in its determination that the Appellant was not eligible for a supplement for transportation and overnight accommodation under section 2(1)(f) of Schedule C to the EAPWDR because:

- The appointment was with the Oral Surgeon, who is not a specialist, as defined in section 1 of Schedule C to the EAPWDR;
- The appointment was not with a medical or nurse practitioner at an office in the local area of the Appellant; and
-
- The clinic at which the Oral Surgeon practised is not the nearest general or rehabilitation hospital which permitted the Appellant to receive a benefit under the *Medicare Protection Act* or a service under the *Hospital Insurance Act*.

Panel Reasons

The Appellant is a “continued person”, receiving medical services only benefits under the EAPWDR and, as such, meets the basic eligibility criteria for general health supplements set out in section 62 of the EAPWDR.

To be eligible for the specific supplements provided for in Schedule C to the EAPWDR, the Appellant must meet the specific requirements set out in the applicable sections.

The section that is applicable to the Appellant’s request for a supplement for transportation and accommodation is section 2(1)(f) of Schedule C to the EAPWDR.

Section 2(1)(f) requires that an Appellant meet one of the following criteria:

- The appointment takes place at an office, in the local area, of a medical practitioner or nurse practitioner,
- The appointment takes place at 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;
- The appointment takes place at the nearest suitable general hospital or rehabilitation hospital, or

- The appointment takes place at the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*.

The procedure must also be one for which coverage is available under the Medicare Protection Act and there must be no other resources available to the family unit of the applicant for the supplement. The Ministry did not cite the Appellant's resources as a basis for denying the application for the supplement. Likewise, the Appellant's evidence was that the extractions were, in fact, covered by the Medical Services Plan. In the result, the Appellant satisfied the criteria set out in subsections (v) and (vi) of section 2(1)(f) of Schedule C to the EAPWDR.

With respect to the criteria set out in subsections (i) through (iv), the extractions were not performed in the Appellant's local area by a medical or nurse practitioner nor were they performed in the nearest suitable hospital or rehabilitation hospital. As such, the criteria set out in subsections (i), (iii), and (iv) of section 2(1)(f) of Schedule C to the EAPWDR were not satisfied.

With respect to subsection (ii), the Ministry took the position that there was insufficient evidence to satisfy it that the Appellant required travel and overnight accommodation in order to have the extractions done. However, the note from the Dentist outlines the risks of the procedure and the importance of the Appellant having access to the Oral Surgeon to mitigate the risks of the extractions. In the result, the panel finds that, having regard to the information in the Appellant's submission, the Ministry was not reasonable in its determination that there was insufficient evidence of the need for the Appellant to attend at the office of the Oral Surgeon and stay overnight in the community in which the Oral Surgeon practised. However, subsection (iii) of section 2(1)(f) of Schedule C also requires that the appointments take place at the office of a specialist to whom the applicant has been referred.

The term "specialist" has a specific meaning under section 1 of Schedule C to the EAPWDR and 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*."

The Appellant argues that the definition of specialist is overly narrow in that it excludes the Oral Surgeon. Whether the definition is overly narrow, however, is not a matter for the panel to decide. The Ministry is bound by the applicable legislation, and does not have any discretion to provide a supplement in respect of an appointment with an individual who is not a specialist, as defined in section 1 of Schedule C.

In the result, the panel finds that the Ministry reasonably determined that the Appellant had not satisfied the requirements of section 2(1)(f)(iii) of Schedule C to the EAPWDR and was not eligible for a supplement for transportation or accommodation in respect of the appointment for the extractions.

While section 69 of the EAPWDR authorizes the Ministry to provide a supplement in the case of a person facing a life-threatening need, an applicant for a supplement under this section of the EAPWDR must demonstrate that he or she is not otherwise eligible for the health supplement but satisfies the specific requirements set out for the specific supplement, as set out in Schedule C. In other words, an applicant under section 69 of the EAPWDR must show that he or she does not meet the basic eligibility requirements for a health supplement but would otherwise be eligible under the specific requirements set out in Schedule C and face a direct and imminent life-threatening need.

In the Appellant's case, whether the Appellant faced a direct and imminent life-threatening need was not addressed. However because the Appellant *is* eligible for health supplements generally, he is not eligible for a supplement under section 69 regardless of whether he otherwise met the criteria. In other words, section 69 is for circumstances where someone is not otherwise eligible for supplements set out in Schedule C, which is not the case for the Appellant.. The panel finds that the Ministry was reasonable in finding that the Appellant did not satisfy the requirements of section 69 of the EAPWDR.

In view of all of the foregoing, the Appellant is not successful in this appeal.

Applicable Legislation

EAPWDR, section 62

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.

EAPWDR, section 69

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

69 (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.

EAPWDR- Schedule C, section 1

Schedule C

Health Supplements

Definitions

1 In this Schedule:

....

"**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*.

EAPWDR- Schedule C, section 2

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.

2023-0107

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

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2023/05/31

Print Name

Bill Farr

Signature of Member

Date (Year/Month/Day)

2023/05/31

Print Name

Erin Rennison

Signature of Member

Date (Year/Month/Day)

2023/05/31