

**Part C – Decision Under Appeal**

The decision under appeal is the reconsideration decision (the “Reconsideration Decision”), dated April 21, 2023, of the Ministry of Social Development and Poverty Reduction (the “Ministry”) which determined that the Appellant was ineligible for a supplement for medical transportation because the transportation being sought was not to any of the locations set out in section 2(1)(f) of Schedule C to the *Employment and Assistance for Persons with Disabilities Regulation* (“the Regulation”).

**Part D – Relevant Legislation**

The Regulation- section 62, Schedule C, sections 1 and 2(1)(f)  
*Hospital Insurance Act*- section 1  
*Hospital Insurance Act Regulations* - section 1.1

The above-described legislation is reproduced at the end of Part F of this decision.

**Part E – Summary of Facts**

The Appellant is a recipient of disability assistance.

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

- a note, dated March 10, 2023, from the doctor (the “Doctor”) to whom the Appellant was referred for addiction treatment, setting out the Appellant’s treatment plan;
- an appointment slip in respect of the Appellant’s appointment with the Doctor on March 10, 2023;
- the Ministry’s Medical Transportation Information Checklist;
- the Appellant’s Request for Local or Non-Local Medical Transportation Assistance (the “Request”) for the March 10, 2023 appointment with the Doctor; and
- the Appellant’s Request for Reconsideration, dated March 31, 2023, which included:
  - a letter from the Doctor, dated March 17, 2023, in which the Doctor set out the Doctor’s credentials, specifically in respect of addictions medicine;
  - a letter from the Doctor, dated March 31, 2023, in which the Doctor wrote that the Appellant was attending her office under her direct supervision and that her office was the nearest available for the Appellant to receive the treatment; and
  - a list of the Appellant’s appointments at the Doctor’s office for the month of April 2023.

The Appellant filed the Notice of Appeal on May 20, 2023. With the Notice of Appeal were the following new documents:

- a lengthier letter from the Doctor, dated May 19, 2023, in which the Doctor wrote that she was a specialist in family medicine and a college certified addictions specialist, as designated by the College of Physicians of Canada; and
- a printout of the Doctor’s information from the College of Physicians and Surgeons of British Columbia (“CPSBC”) indicating that the doctor’s practice type is “family practice”.

Subsequent to the filing of the Notice of Appeal, both the Appellant and the Ministry provided submissions to the tribunal.

The Appellant’s submission (the “Appellant Submission”) included:

- a letter, dated May 31, 2023, from another addictions doctor who had treated the Appellant in February 2023 during a hospitalization. The letter confirmed that the Doctor's office was the only office in the Appellant's area capable of providing the treatment that the Appellant needed and that without the treatment, the Appellant was at increased risk of harm, including hospitalization and a potentially fatal overdose. The letter also noted the Appellant's motivation to engage in treatment; and
- a letter, dated June 6, 2023 (the "June 6 Letter"), from a nurse at the health authority in which the Appellant resides, confirming that the Opioid Agonist Treatment ("OAT") clinic in the Appellant's community does not offer the program which was recommended for the Appellant and that there are no plans for it to be offered in the near future at that clinic. The June 6 Letter also attached maps showing that the distance to the clinic at which the Doctor worked was approximately 30 kilometres from the Appellant's home community.

The Ministry submission (the "Ministry Submission") consisted of a letter, dated June 14, 2023, in which the Ministry noted that it had reviewed the new information provided by the Appellant and that it maintained its position that the Doctor was not a specialist, as contemplated by section 1 of Schedule C to the Regulation but that, due to the remoteness of the Appellant's home community, it would consider the Doctor's office to be within the Appellant's local area.

Both the Appellant Submission and the Ministry Submission contain information and, in the case of the Ministry Submission, argument that specifically addresses the criteria for transportation supplements, as set out in section 2(1)(f) of Schedule C to the Regulation. In the result, the panel admits both the Appellant Submission and the Ministry Submission as evidence that is not part of the record but which the panel considers to be reasonably required for a full and fair disclosure of all matters related to this appeal.

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

The issue in this appeal is whether the Ministry reasonably determined the Appellant was ineligible for a supplement for medical transportation because the transportation being sought was not to any of the locations set out in section 2(1)(f) of Schedule C to the Regulation.

*Panel Decision*

Basic eligibility for general health supplements for recipients of disability assistance is governed by section 62 of the Regulation. The Ministry determined that the Appellant met the basic eligibility requirements set out in section 62 of the Regulation.

Eligibility for a transportation supplement specifically, is governed by section 2(1)(f) of Schedule C to the Regulation which requires that the mode of transportation be the least expensive to or from one of the following locations, specifically listed under section 2(1)(f) in sub-paragraphs (i) through (iv):

- (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*.

In addition to the foregoing, the transportation sought must be for the purpose of the recipient receiving a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act* and there must be no other resources available to the recipient's family unit to cover the cost of the transportation. The Ministry likewise determined that the Appellant had met these two requirements.

The Ministry determined that the transportation sought by the Appellant was not to or from any of the locations set out in sub-paragraphs (i) through (iv) of section 2(1)(f) of Schedule C to the Regulation.

With respect to sub-paragraph (iv) of section 2(1)(f) of Schedule C to the Regulation, section 1 of the *Hospital Insurance Act* defines a hospital as follows:

- (a) a hospital as defined by section 1 of the *Hospital Act* that has been designated under this Act by the Lieutenant Governor in Council as a hospital required to provide the general hospital services provided under this Act,
- (b) a private hospital as defined by section 5 of the *Hospital Act* with which the government has entered into an agreement requiring the hospital to provide the general hospital services provided under this Act,
- (c) a hospital owned and operated by Canada that has been designated under this Act a "federal hospital",
- (d) an agency or establishment that
  - (i) provides a service to hospitals or a health service and
  - (ii) has been designated as a hospital facility by the Lieutenant Governor in Council,
 or
- (e) an establishment in which outpatient services are available that has been designated a diagnostic and treatment centre by the Lieutenant Governor in Council for providing outpatient benefits to beneficiaries in accordance with this Act and the regulations;

As the appointment for which the Appellant was seeking a transportation supplement is at an OAT clinic, the panel determines that the Ministry reasonably determined that the Appellant had not satisfied section 2(1)(f)(iv) of Schedule C to the Regulation as an OAT clinic is not a hospital as defined in the *Hospital Insurance Act*.

Likewise, sub-paragraph (iii) of section 2(1)(f) of Schedule C to the Regulation requires that a transportation supplement be for travel to or from a "general hospital" or "rehabilitation hospital" as defined by the *Hospital Insurance Act* Regulations. Those terms are defined in the *Hospital Insurance Act* Regulations as follows:

**"general hospital"** means a hospital or a portion of a hospital as defined under paragraph (a) or (c) of the definition of "hospital" in the Act, the prime function of which is to provide services and treatment for persons suffering from the acute phase of illness or disability;

**"rehabilitation hospital"** means a hospital or a portion of a hospital as defined under paragraph (a) or (c) of the definition of "hospital" in the Act, the prime function of which is to provide facilities for the active treatment of persons requiring rehabilitative care and services;

Again, the OAT clinic at which the Doctor practices does not satisfy either of these definitions and the panel finds that the Ministry reasonably determined that the Appellant had not satisfied section 2(1)(f)(iii) of Schedule C to the Regulation.

Sub-paragraph (ii) of section 2(1)(f) of Schedule C to the Regulation authorizes the Ministry to pay a transportation supplement for a visit to the office of the nearest specialist to whom an applicant has been referred. The Ministry's denial of the Appellant's request for a transportation supplement under this ground is that the Doctor is not a "specialist" as contemplated by the definitions set out in section 1 of Schedule C to the Regulation.

In definitions section of Schedule C to the Regulation, "specialist" is defined as follows:

**"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*.

The Doctor's May 19, 2023 letter advised that she was certified as an addictions specialist by the College of Physicians of Canada. However, the Regulation requires that the Doctor be recognized as a specialist by the CPSBC, the regulatory body for physicians in the province of British Columbia. In noting this, the panel makes no finding on the Doctor's expertise insofar as addiction medicine is concerned and notes only that the definition of "specialist" in this section of the Regulation is a narrow one.

The requirement of section 2(1)(f)(ii) can only be satisfied if the Doctor has a specialty in addiction medicine that is recognized by the CPSBC and a referral is made to the "specialist" by a local medical practitioner or nurse practitioner. In this case, while a referral was made by a local medical practitioner, the Doctor does not appear to have any *specialty* recognized by the CPSBC and, instead, is recognized as having a *practice area* of "family medicine." In the result, the panel finds that the Ministry reasonably determined that the Appellant's request did not satisfy the requirement of section 2(1)(f)(ii) of the Regulation.

Finally, sub-paragraph (i) of section 2(1)(f) of Schedule C to the Regulation permits the Ministry to pay a transportation supplement for a visit to the office, in the local area, of a medical practitioner or nurse practitioner. In the Reconsideration Decision, the Ministry held that the Doctor, whose office is 29 kilometres away from the Appellant's home community, is not in the "local area" of the Appellant.

In the Ministry Submission, however, the Ministry advised that, because of the remoteness of the Appellant's community, the Doctor "could be considered to have an office in the Appellant's local area." The panel also notes the information contained in the Appellant Submission that the OAT clinic in the Appellant's community does not provide the specific treatment that has been recommended for the Appellant, As such, the Doctor appears to be the most local medical practitioner to the Appellant of any medical practitioner offering the treatment the Appellant requires. In view of the foregoing and the relatively short distance, to the Doctor's Office (approximately 29 kilometres), the panel finds that the Ministry was unreasonable in its determination that the Appellant's request for a transportation supplement did not meet the requirements of section 2(1)(f)(i) of Schedule C to the Regulation.

The appeal is successful and the panel rescinds the Reconsideration Decision.

**Relevant Legislation***Employment and Assistance for Persons with Disabilities Regulation*

## 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.

## Schedule C, sections 1 and 2(1)(f)

**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*.

**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.

## *Hospital Insurance Act*

### section 1

#### Definitions

**1** In this Act:

...

**"hospital"** means, except in sections 24 and 29 (2) (a),

- (a) a hospital as defined by section 1 of the *Hospital Act* that has been designated under this Act by the Lieutenant Governor in Council as a hospital required to provide the general hospital services provided under this Act,
- (b) a private hospital as defined by section 5 of the *Hospital Act* with which the government has entered into an agreement requiring the hospital to provide the general hospital services provided under this Act,
- (c) a hospital owned and operated by Canada that has been designated under this Act a "federal hospital",
- (d) an agency or establishment that
  - (i) provides a service to hospitals or a health service and
  - (ii) has been designated as a hospital facility by the Lieutenant Governor in Council, or
- (e) an establishment in which outpatient services are available that has been designated a diagnostic and treatment centre by the Lieutenant Governor in Council for providing outpatient benefits to beneficiaries in accordance with this Act and the regulations;

*Hospital Insurance Act Regulations*

## section 1.1

**Definitions**

**1.1** In these regulations, unless the context otherwise requires:

...

**"Act"** means the *Hospital Insurance Act*;

...

**"general hospital"** means a hospital or a portion of a hospital as defined under paragraph (a) or (c) of the definition of "hospital" in the Act, the prime function of which is to provide services and treatment for persons suffering from the acute phase of illness or disability;

...

**"rehabilitation hospital"** means a hospital or a portion of a hospital as defined under paragraph (a) or (c) of the definition of "hospital" in the Act, the prime function of which is to provide facilities for the active treatment of persons requiring rehabilitative care and services;

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**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/June/27

Print Name

Margaret Koren

Signature of Member

Date (Year/Month/Day)

2023/June/27

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2023/June/27