

Part C – Decision Under Appeal

The decision under appeal is the the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“the Ministry”) dated August 11, 2023. The Ministry found that the Appellant was not eligible for a health supplement for medical transportation under the Employment and Assistance for Persons with Disabilities Regulation (the “Regulation”).

The Ministry denied the Appellant’s request for assistance with transportation costs to attend a non-local medical appointment. The Ministry denied the Appellant’s request for reimbursement of transportation costs to attend a July 28, 2023 appointment at a sleep clinic in another community (“community B”) because it was not the nearest suitable hospital and most economical option available to enable the Appellant to receive required medical services.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act, Section 5
Employment and Assistance for Persons with Disabilities Act, Section 22 (4)
Employment and Assistance for Persons with Disabilities Regulation, Section 62
Employment and Assistance for Persons with Disabilities Regulations Schedule C, Sections 1 and 2 (1) (f)

The full wording of this legislation is set out in the Schedule of Legislation at the end of this decision.

Part E – Summary of Facts

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

Documents

- June 5, 2023 letter from community B sleep clinic confirming July 28, 2023 appointment
- June 30, 2023 Request for Non-Local Medical Transportation Assistance seeking air travel to community B
- July 25, 2023 Email from the hotel confirming a reservation—medical confirmation
- July 26, 2023 Request for Reconsideration where the Appellant indicates that she has waited eight months for the appointment; it is absolutely needed as follow up to her brain surgery, and the appointment was requested at community B because it was a year-long wait at her home hospital. The Appellant further notes that she no longer requires a flight; she has secured a ride but now requires reimbursement for fuel and hotel
- August 1, 2023 letter from the sleep clinic doctor stating travel, and coverage for the stay and travel, is required
- August 8, 2023 letter from the Appellant's neurologist indicating the Appellant requires a sleep study which is a medically necessary test. The test will investigate and treat possible obstructive sleep apnea which if present may worsen the seizure control

Ministry Records

- July 11/2023, the Appellant spoke to a Ministry worker who requested a doctor's letter to confirm that there was not a sleep study clinic available in her home community, why a flight would be required for a destination only two hours away, and why transportation by vehicle could not be arranged
- July 21/2023, the Appellant contacted the Ministry stating she had been unable to make contact with her neurologist to get the requested letter
- July 25/2023, the Ministry contacted the sleep clinic in the Appellant's home community and was advised by a booking clerk that there is only a two-week waiting period to get into the sleep clinic, and if there was an emergency a patient could get into the clinic the same day
- July 26, 2023, the Ministry contacted the Appellant directly and advised her that her request to travel to community B for the sleep study was denied as it was determined she would have access to the same service in her home community. Her request was also denied as she was not seeking treatment to the nearest suitable general hospital or rehab hospital and is not the most economical option

Additional Information submitted after Reconsideration

In her Notice of Appeal—Reasons, the Appellant stated, "The original worker misquoted what [the home hospital] Booking told her about availability and I can bring a more detailed letter from my Neurologist attesting to this".

Prior to the hearing, the Appellant provided two additional submissions to the Tribunal:

- August 3, 2023 letter from the Appellant's neurologist indicating that the Appellant requires a sleep study; the test is urgent, it needs to be done in community B, and is a medically necessary test. The test will investigate and treat possible obstructive sleep apnea which if present may worsen the Appellant's seizure control

The Panel recognizes that at Reconsideration, the Ministry states relying on an **August 8, 2023** letter and stated only that it confirmed the sleep study was medically necessary to assess possible obstructive sleep apnea which, if present, would worsen seizure control.

However, the August 8, 2023 letter was not included in the Appeal Record. The Panel notes that the stated elements of the August 8, 2023 letter relied on by the Ministry are also contained in the **August 3, 2023** letter submitted by the Appellant as new evidence.

Although there is some question from the Panel that the letters are one and the same and reflect a transcription error, as the August 8, 2023 letter was not included in the Appeal Record, it was not possible to compare it with the August 3, 2023 letter. In any event, the August 3, 2023 letter was accepted as new evidence.

- Hotel invoice and credit card receipt with total amount of \$201.84 for August 4, 2023 arrival and August 5, 2023 departure

Evidence presented at the hearing

Appellant

At the hearing, the Appellant shared the following:

- The neurologist is primarily based outside both the Appellant's home community and community B although the neurologist does have infrequent hospital privileges in the Appellant's home community;
- The Appellant has previously attended many out-of-town neurologist appointments and has required air travel; there has never been an issue with her receiving transportation assistance to cover flight and related travel costs and so she proceeded in the same way for the sleep clinic appointment;
- The neurologist's referral to the sleep clinic was made in January 2023; at the time of the referral, the neurologist had inquired about wait time for clinic appointments and was advised the wait would be eight months to one year in the Appellant's home community or six to eight months in community B; from this information, the neurologist made the referral to the sleep clinic in community B;
- The Appellant originally had an appointment at the sleep clinic on July 14, 2023 but due to staffing issues, the appointment was rescheduled for July 28, 2023;
- After being told by the Ministry that her request for transportation assistance for a flight to community B was denied, the Appellant had to scramble to make alternate travel arrangements to attend the July 28, 2023 appointment. Ultimately, the Appellant secured different travel plans for which she required transportation assistance reimbursement

for—her mom, who agreed to drive her, but her mom would require overnight hotel accommodation given clinic requirements for the Appellant to stay overnight for her sleep study;

- The Appellant was only advised of the denial of her request for the revised transportation assistance at the very last minute on July 26, 2023. The Appellant says the Ministry worker insisted that no transportation assistance could be provided for the Appellant's appointment in community B given the information it had that an appointment in the home community could occur within a few weeks or even immediately if urgent. The Appellant says she attempted to explain the misunderstanding about how quickly an appointment could be made and as she had done previously, appealed to the Ministry worker to follow up again with the home community clinic to confirm the Appellant's information as to appointment wait times; the Ministry worker(s) refused to do so and were firm about the denial for transportation assistance;
- Clinic appointment wait times confirmed by the Ministry on July 25, 2023 and noted as immediately or within a few weeks in her home community were for *new referrals/new requisitions* only and submitted *at that point in time*; the Appellant's referral was made in January 2023, was already in progress and not a new referral or requisition and resulted in the July 2023 appointment;
- As a result of findings from the July 28, 2023 sleep study, the Appellant was required to return to the clinic a week later for further investigation and she was also seeking reimbursement of those transportation expenses;
- For the sake of her health and the stability of her condition, the Appellant cannot have delays in assessment and treatment—she must attend appointments as scheduled.

Ministry

In reply to questions from the panel, the Ministry noted:

- Additional documentation including medical notes are relied on to support applicants' requests for non-local medical appointment transportation assistance; the information needs to be in-depth and among other things, ideally indicate the location, necessity, and urgency for the non-local appointment;
- Depending on the circumstances and the information provided by applicants, it is Ministry practice and process to verify medical appointment details for non-local requests especially when the service is available in the home community;
- The Appellant's completed Request for Non-Local Medical Transportation Assistance form confirms the Appellant's agreement that the Ministry may check medical appointment details related to the request;
- The Ministry had no record of having sought further clarification directly from the Appellant's neurologist about the non-local clinic referral request;
- The Ministry had no record of making additional follow up inquiries with the sleep clinic in the Appellant's home community regarding appointment wait times or about any differences in effect between current/new referrals or previous/existing referrals;

- The Ministry process with transportation assistance requests includes confirming eligibility and then if eligible, providing assistance for the least expensive mode of transportation; generally, vehicle travel is the least expensive option and would include more than just by personal vehicle—other available community resources would be taken into account such as volunteer driver services or bus services.

Admissibility of New Evidence

The Ministry did not object to the admissibility of the Appellant's additional documents submitted prior to the hearing or to the Appellant's oral evidence presented at the hearing.

Similarly, the Appellant did not object to the admissibility of the Ministry's oral evidence presented at the hearing.

The additional evidence provided by the Appellant provides further clarification about the Appellant's needs and experiences in seeking transportation assistance, and the additional steps taken to meet Ministry requests. The additional evidence offered by the Ministry gives additional background and information about Ministry processes to determine eligibility and gives some explanation about its requirements and requests of the Appellant. The panel admitted this information as new evidence; it was determined to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal, pursuant to section 22(4) of the Employment and Assistance Act.

Part F – Reasons for Panel Decision

The issue on appeal is whether per the Regulation, the Ministry's reconsideration decision denying the Appellant transportation costs to attend a July 28, 2023 appointment at a sleep clinic in another community ("community B") because it was not the nearest suitable hospital or least expensive transportation to enable the Appellant to receive required medical services, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

ARGUMENTS**Position of the Appellant**

The Appellant argues that she did everything she could to respond to the Ministry's requests and meet their expectations; the requirement to attend the sleep clinic outside her home community was set by her specialist and was based on her neurologist's knowledge of the Appellant's urgent need for the test and the relevant wait times. At the time of referral, appointment wait times in her home community were eight months to one year while in community B the wait times were six to eight months—from that, the neurologist determined that the Appellant needed a referral to the sleep clinic in community B. The Appellant also says that the Ministry does not have the right to determine where a medical appointment is scheduled. The Appellant points out that the August 3, 2023 medical note confirms the neurologist's requirement for the non-local appointment and provides the requested details to support transportation assistance for the sleep study clinic appointment: it's a medically necessary test; it's urgent; and needs to be done in community B.

Finally, the Appellant also argues that the Ministry misunderstood the information about appointment scheduling and wait times at her home community clinic. The information that an appointment could be obtained either immediately or within two weeks, was for new referrals only. The Appellant's referral was already made and in progress—she'd been waiting for an appointment since January 2023 when the referral was originally made; to have an appointment in her home community she would be required to get a new requisition from her neurologist, which was not reasonable and would require longer waits. The Appellant explained all of this to the Ministry worker(s) and asked them to follow up with the home clinic to clarify, which they did not do but should have.

Position of the Ministry

At hearing, the Ministry relied on the reasons stated in its reconsideration decision. The Ministry acknowledged the new August 3, 2023 letter from the Appellant's neurologist, as well as the Appellant's self-report of having waited a long time for this follow-up including that the Appellant was referred to community B as it was quicker.

However, the Ministry stated that the August 3, 2023 letter would need to be more in depth and did not contain necessary information required to support granting the transportation assistance request. The Ministry argued that the neurologist did not confirm that the overnight sleep study was medically necessary to be done in community B or that there was not an available option to have the study done in the Appellant's local area. Further, based on the information that there would not be a long wait and a person could get into the home sleep clinic quickly if necessary, the Ministry was unable to conclude that the Appellant was required to travel to community B for the sleep study. Furthermore, the Ministry could not conclude that the sleep study in community B was the most economical option for the Appellant to receive the required medical services.

Analysis

The Ministry may fund medical transportation if the request meets the requirements set out in subsections 2(1)(f)(i) to 2(1)(f)(iv) of Schedule C as well as other provisions under section 2(1) that are not at issue in this appeal. For example, the Ministry was satisfied that the appellant did not have resources available to cover the cost of the transportation.

To be eligible for a health supplement for travel assistance to a non-local medical appointment, an applicant must demonstrate, among other criteria, that transportation is required to the nearest suitable hospital and is the least expensive appropriate mode of transportation to or from the hospital. The Ministry determined that the sleep clinic in community B was not the nearest suitable hospital and that it also could not conclude that the mode of transportation was the least expensive appropriate way. However, the Panel finds that the Ministry was not reasonable in determining that the Appellant was not required to travel to community B for a medical appointment and did not require medical transportation assistance to attend the sleep clinic study in community B.

The legislation requires that attendance at a medical appointment requiring transportation assistance be at "the nearest suitable hospital". The August 3, 2023 neurologist's letter states in part, "The sleep study needs to be done in [community B] as it is urgent and the waiting time is too long at the [home community] sleep lab. Therefore, she needs to travel to [community B] for this test". The neurologist's medical note has clearly indicated that the study has been prescribed by her and is required to occur at the clinic located in community B. On that basis, the medical appointment at the sleep clinic in community B *is* the nearest suitable hospital. Based on this, the Panel determines that the Ministry was not reasonable in concluding that the sleep clinic in community B was not the nearest suitable hospital.

The Ministry also indicated if there is a question about the nearest suitable hospital and eligibility for non-local travel, it would also rely on supporting documentation including medical note(s) to confirm the need. The Ministry says it would expect that the medical note would,

among other things, identify the required location, the necessity, and the urgency for the non-local appointment. At Reconsideration, the Ministry summarized the August 8, 2023 letter as indicating only that it confirmed that the sleep study was medically necessary. As it is not included in the Appeal Record, it is unclear whether there is another letter dated August 8, 2023 with such limited information. However, the neurologist's August 3, 2023 letter does indicate, "[the Appellant] requires a sleep study to investigate and treat possible obstructive sleep apnea, which, if present, may worsen her seizure control. She requires transportation to [community B] from [home community] for her sleep study...[and] this is a medically necessary test. The sleep study needs to be done in [community B] as it is urgent..."

Accordingly, the Appellant's neurologist *did* provide a note supporting the need for the non-local medical appointment containing relevant information:

- The required location: community B
- The necessity: sleep study required to investigate and treat possible obstructive sleep apnea, which, if present, may worsen her seizure control; this is a medically necessary test
- The urgency: if obstructive sleep apnea is present, it may worsen her seizure control; it is urgent

Given the neurologist's clear expectations noted above and confirmation that the sleep study was necessary, urgent, and to occur at the clinic in community B, the sleep clinic in community B remains the nearest suitable hospital. As such, the Panel finds that the Ministry was not reasonable in determining that the sleep clinic in community B was not the nearest suitable hospital.

Finally, the Ministry stated that the clinic in community B was not the nearest suitable hospital because the same appointment could have been quickly secured at the clinic in the Appellant's home community. On the evidence, it is the Panel's view that this is not a reasonable conclusion to make; at Reconsideration the Ministry acknowledged the Appellant had been waiting a long time—nine months—for the study. In addition, the Appellant stated that prior to being denied assistance, she was questioned several times about attending the sleep study clinic in her home community and that she had attempted to explain to several Ministry representatives that the wait time was too long in her home community—*at the time* of making the referral, her neurologist chose the soonest available location. Despite the Appellant's appeals to the Ministry to do so, the Ministry neglected to take the opportunity to clarify the discrepancy in information it had between the home clinic's booking clerk and the Appellant as to current *and prior* appointment wait times. In the July 27, 2023 conversation with the Appellant, the Ministry took the July 25, 2023 information from the home clinic's booking clerk as an accurate representation of both current status, and the status at the time the Appellant's referral was originally made in January 2023. However, the evidence supports that medical necessity and urgency were balanced with wait time considerations; ultimately the referral was made to the location with the shortest wait times. The neurologist's January 2023 referral was made specifically to community B based on information available at the time and later supported by the neurologist's August 3,

2023 letter, which clearly states, “The sleep study needs to be done in [community B]...the waiting time is too long at the [home community] sleep lab”. In addition, the Ministry failed to take into account that an appointment at the home clinic would require a new referral by a physician—whether the Appellant’s neurologist or another doctor; the process of first securing an appointment to obtain a new referral and then forwarding to the home clinic, would add additional, unnecessary wait time and prevent the Appellant’s attendance at an appointment already scheduled in the immediacy. For these reasons, the Panel concludes that the Ministry was not reasonable in determining that the Appellant was not required to travel to community B for the sleep study and for deciding that travelling by vehicle to the sleep study in community B was not the most economical option for the Appellant to receive the required medical services.

Conclusion

Based on the information above including the August 3, 2023 neurologist’s medical note confirming the sleep clinic test was medically necessary, urgent, and was required to occur in community B, the Panel rescinds the Ministry’s decision. This means the Appellant is successful with her appeal. The matter is returned to the Ministry for a decision as to amount.

Relevant Legislation

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.

Panels of the tribunal to conduct appeals

22 (4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

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.

Schedule C

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.

APPEAL NUMBER 2023-0259

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

Carmen Pickering

Signature of Chair

Date (Year/Month/Day)

2023/09/22

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)

2023/09/17

Print Name

Erin Rennison

Signature of Member

Date (Year