

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision of November 29, 2023, which found the appellant is ineligible for assistance with medical transportation costs to a nearby non-local town (Town 2) for October 19, 2023. The ministry found that the transportation was not for any of the reasons set out in the legislation. Specifically, the appellant's appointments were not;

- With a medical or nurse practitioner in the appellant's local area,
- With the nearest available specialist who is a medical practitioner, recognized as a specialist in a field of medicine or surgery, or
- To the nearest suitable hospital.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the Act), section 5,

Employment and Assistance for Persons with Disabilities Regulation (the Regulation), sections 5, 62, and Schedule C, section 2 and section 2(1)(f).

Employment and Assistance Act (the Act), Section 22(4).

Interpretation Act, Section 29

Medical and Health Care Services Regulation, section 19.

Medicare Protection Act, section 1

Hospital Insurance Act, section 5.

The relevant legislation is provided in the Appendix.

Part E – Summary of Facts

The evidence before the minister at reconsideration included the following:

The appellant has the PWD designation and is in receipt of disability assistance. He lives in a rural area (hometown). His family consists of himself and five dependent children.

- On October 11, 2023, the appellant submitted a Request for Non-Local Medical Transportation for two of his children (child 1 and child 2) to attend an appointment on October 19, 2023, at a Dental Clinic (clinic) in Town 2.
- Referral letter from the family's general practitioner (GP) to a Doctor of Dental Surgery (the Dental Surgeon) at the Town 2 clinic dated September 21, 2023, asking for them to consider assessing child 2.
- Letter from a pediatric medical practitioner dated November 1, 2023, noting that child 2 is autistic and a developmentally complex child who needs specialized sedation or anesthesia for dental work. They referred to the Dental Surgeon in Town 2 so that child 2 can get the care they need which is not available in either the hometown or closer to home.
- Letter from the GP to the Dental Surgeon dated November 6, 2023, thanking them for accepting the referral for child 2 and advising that the appellant is hoping to have child 2 seen for dental procedures under sedation and is also hoping to have some bloodwork done while child 2 was sedated, and
- A written submission by the appellant stating that the Dental Surgeon was referred to his children. Both children have autism, and one has Down syndrome as well. This dentist has experience with special needs children and has access to the local Hospital in Town 2 for procedures. If they are unable to do dental work in the clinic for child 2, they have an upcoming appointment and all further appointments at the hospital in Town 2. Child 2 has to be put under anesthetic to receive dental work, x-rays, cleaning, fillings as well. The GP has requested lab work as child 2 has been unable to get it done.

On 7 December 2023, the appellant filed a notice of appeal, stating that he does not agree with the decision of denial. He states this is for his children's health and safety and well being.

Hearing

The hearing was held by telephone.

Appellant

At the hearing the appellant recounted the information previously provided in the request for reconsideration and expanded on the reason for appeal given in the notice of appeal.

The appellant added that there have been no dental services available in his hometown for over 14 months.

As both children for whom the dental visit was made suffer from autism, with one child also having Down's syndrome, previous dentists in town had barred them from visitation as they were deemed uncontrollable (the children were not able to be examined or treated due to their response to the dentist).

Going to a dentist is a difficult experience for the children, they are unruly, giggle a lot, do not speak much, and end up having to sit on the appellant's knee to be controlled during the examination. This had not been successful, with an inability for any previous dentist to get inside the children's mouths.

One of the children has now had successful x-rays taken, indicating six cavities. It was not possible to obtain x-rays for the other child.

One of the two children was a premature baby, who had weak baby teeth that broke off at the gum line and has suffered with medical issues since birth. The appellant states that poor dental hygiene will further impact medical concerns.

This serious health concern is recognised in that it was a pediatrician who referred the two special needs children to the dental specialist in Town 2.

This has been and continues to be a very anxious time for the appellant and the whole family. In discussions with ministry personnel the appellant states that he had been told that any visits to "Doctors" would be covered; however, he has only recently found out that the planned October 2023 visit to a dentist was apparently not covered. The appellant cannot understand how a referral to the dental specialist by a pediatrician cannot be supported with a travel supplement.

The appellant advised at hearing that he was in fact able to take the two children to see the dental specialist in October, however the ministry did not provide any transportation costs. Following this visit to the dental specialist, a subsequent hospital visit for oral surgery for one of the children had been scheduled for 31 November 2023.

Due to sickness this surgery has been rescheduled for March 2024. In answer to questions the appellant advises that the ministry has approved a travel supplement for this trip to the hospital in Town 2. The child has also been approved for reimbursement of a portion of the cost of the dental work required, partially under a separate 'keep a smile' program.

Although being approved for funding for this upcoming visit to the hospital the appellant needs to clarify if he is eligible for funding for the October visit and for subsequent future dental visits at the clinic in Town 2. He feels it is unreasonable for the ministry to not fund these trips which will be needed every 6 to 9 months or so as the specialist requires. The children require dentist visits.

The appellant stressed that he is not asking for hotel rooms and meals, even when the appointments are early in the morning, he is simply asking for a transportation supplement to cover the travel.

Ministry

The ministry relied upon the reconsideration decision, as summarized at the hearing.

At the hearing, the ministry also stated the appellant's children would be eligible for a transportation supplement under several scenarios, similar to a person with disabilities. These include local visits to medical and nurse practitioners, out of town visits to specialists and to a hospital.

In this case as the visit is to a dentist's clinic support cannot be provided, as the dentist is not a specialist who is a medical practitioner recognized as a specialist in a field of medicine or surgery, and that is a requirement of the legislation. If the work is conducted at a hospital defined in the Regulation, then it would be covered for a transportation supplement.

In answer to questions the ministry advised that coverage for actual dental treatments is available under a number of potential sources, including the provincial medical services plan and through other opportunities such as the 'Healthy Kids Program' for low-income families as well as the save or keep a smile program. However these programs do not cover travel costs. Coverage costs may vary in dollar or percentage values.

The ministry clarified that although the dental specialist is not accepted under the legislation, any work that is done under his privileges as a dental surgeon at the local hospital in town 2 would satisfy the legislative requirements for a transportation supplement.

The ministry stated that it is not whether the pediatrician submits a referral but who actually provides the service, and the location that defines whether coverage is available for transportation.

Admissibility of new information

In this case both the appellant, and the ministry provided oral testimony in support of their positions.

The panel admits the oral testimony under section 22(4) of the Employment and Assistance Act (“EAA”) as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's decision that the appellant is ineligible for assistance with medical transportation costs for the trip to town 2. In particular, was the ministry reasonable in finding that the appellant's appointments were not;

- With a medical or nurse practitioner in the appellant's local area,
- With the nearest available specialist who is a medical practitioner, recognized as a specialist in a field of medicine or surgery, or
- To the nearest suitable hospital.

The relevant legislation is provided in Appendix A.

Appellant Position

The appellant argues that his two special needs children's health can be affected by poor oral hygiene, that they cannot be seen by regular dentists and there are none in his local town. It is imperative that they be seen by the dental surgeon specialist in Town 2.

As he had been previously advised by the ministry that he would receive a transportation supplement if the children were to see a doctor, he states the dentist is a doctor and feels as a dental surgeon he qualifies as a specialist.

The children have been referred to the dental surgeon by the children's pediatrician who is a medical practitioner, and the children will need to see the dental specialist every six to nine months in an ongoing basis.

The appellant argues that the ministry should therefore provide a transportation supplement.

Ministry Position

The ministry states that the appellant is a Person with Disabilities, in receipt of disability assistance; as such, is eligible for general health supplements which includes access to the medical transportation supplement.

The ministry argues the appellant, in going to the Town 2 Dental Clinic does not meet the requirements set out in the Regulation for the following reasons:

- The appellant is not going to the local office of a medical or nurse practitioner.
- he is not going to the office of the nearest available specialist who is a medical practitioner recognized as a specialist in a field of medicine or surgery as he is attending the clinic of a Doctor of Dental Surgery recognized under the BC College of Oral Health Professionals.
- the appellant and his children are not going to the nearest suitable hospital or rehabilitation hospital to enable them to receive a benefit under the *Medicare Protection Act* or a hospital service under the *Hospital Insurance Act*. He and the children are attending the clinic of a Doctor of Dental Surgery for the children to receive dental work that is not a benefit under the *Medicare Protection Act* or a service under the *Hospital Insurance Act*.

Panel Decision

Relevant legislation is contained in the Employment and Assistance for Persons with Disabilities Regulation (the Regulation) section 62 which states that the minister may provide any health supplement set out in section 2 of Schedule C to or for a person in receipt of disability assistance.

Schedule C, section 2 states that the health supplements must be the least expensive appropriate mode of transportation to or from;

- an office, in the local area, of a medical practitioner or nurse practitioner,
- 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,
- the nearest suitable general hospital,

provided that

- The transportation is to receive a benefit under the *Medicare Protection Act*, and
- There are no resources available to the person's family unit.

Schedule C, section 1, of the Regulation states that a "**dentist**" means a dentist registered with the British Columbia College of Oral Health Professionals. A "**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*.

Although the Medicare Protection Act provides definitions of a "**health care practitioner**" to mean a person entitled to practise as a dentist, and a "**practitioner**" to mean a medical practitioner, or a health care practitioner; the panel notes it must go to Section 29 of the Interpretation Act to find a definition of a "**medical practitioner**". It is defined as a registrant of the College of Physicians and Surgeons of British Columbia entitled to practise medicine and to use the title "medical practitioner".

The panel notes the difficulty expressed by the appellant in finding a dentist in his hometown and notes that 'local area' is not defined in the legislation. The ministry has not commented on the aspect of lowest cost or defined the local area as it pertains to the appellant and the panel will not comment further on this aspect.

The panel has found no dispute between the parties as to the schedule of events, dates or timings related to the proposed visit to Town 2 for child 1 and child 2 to see the dental surgeon, and that the dental surgeon may well be considered a specialist in his field.

The panel also found that the children have been referred by a medical practitioner to the dental surgeon as a specialist in his field of dental surgery.

What is in dispute in the circumstances of the appellant is the status of the dental surgeon as it relates to the definitions of medical practitioner and/or specialist contained in the legislation.

The panel notes no evidence to suggest the dental surgeon is in fact a registrant of the College of Physicians and Surgeons of British Columbia or a medical practitioner defined in legislation, 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 therefore finds the dental surgeon does not meet the legislative definitions for either a 'medical practitioner' under section 29 of the Interpretation Act or a 'specialist' under section 1 of Schedule C of the Regulation.

Based on the evidence the panel finds the ministry was reasonable in its determination that the children are not going to,

- an office, in the local area, of a medical practitioner, or

- the office of the nearest available specialist in a field of medicine or surgery by referral of a local medical practitioner.

The panel notes the ministry's comment that in future if the children are required to attend the Town 2 hospital for services, the appellant would be able to request assistance with a health supplement for transportation as the request would meet the legislative requirement because they would be attending the nearest suitable hospital to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*.

This appeal however relates to the request for a visit to the clinic of the dental surgeon in October 2023 for a transportation supplement. The panel finds the clinic of the dental surgeon does not meet the definition of a hospital under paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*, and therefore finds the ministry was reasonable in finding the appellant was not going to the nearest suitable hospital or rehabilitation hospital to enable the children to receive a benefit under the *Medicare Protection Act* or a hospital service under the *Hospital Insurance Act*.

Because the transportation is not to one of the above locations, the appeal is not successful. However, the panel feels it important to comment on the ministry's statement in its reconsideration decision that the appellant is attending the Dental Surgeon's clinic to receive dental work that is not covered under the Medical Services Act. Given the apparent transportation supplement approval for the scheduled hospital treatment in March 2024 the panel is concerned that this statement may be confusing to the appellant, especially given the testimony by the appellant on seeking support for the dental payments through the Healthy Kids or Keep a Smile groups.

The panel suggests the appellant may wish to discuss with the dental surgeon and/or the ministry what services may or may not be covered under the upcoming or future hospital visits.

Summary

The panel has found the dental surgeon is not a medical practitioner or a specialist as defined by legislation. Further the appellant was not attending the local office of a medical practitioner, or the office of the nearest available specialist in a field of medicine or surgery and was not attending a hospital. Therefore, a transportation supplement is not available under the relevant legislation for the October 2023 visit.

Conclusion

Based on all available evidence the panel finds that the ministry's reconsideration decision is supported by the evidence and is a reasonable interpretation of the legislation in the circumstances of the appellant.

The ministry's reconsideration decision is confirmed.

The appellant is not successful on appeal.

Appendix A

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.

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*] of Schedule C to or for

(a) a family unit in receipt of disability assistance,

Schedule C

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.

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";

HOSPITAL INSURANCE ACT

Benefits

5 (1)Except as provided in subsection (2), the general hospital services provided under this Act are the following:

- (a)for beneficiaries requiring treatment for acute illness or injury, the public ward accommodation, necessary operating and case room facilities, diagnostic or

therapeutic X-ray procedures, anesthetics, prescriptions, drugs, dressings, cast materials and other services prescribed by regulation;

(b)for beneficiaries requiring active treatment for chronic illness or disability, the public ward accommodation, physiotherapy and occupational therapy, minor operating room and diagnostic X-ray services, prescriptions, drugs, dressings, cast materials and other services prescribed by regulation;

(c)for beneficiaries requiring treatment or diagnostic services as outpatients, the outpatient treatment or diagnostic services prescribed by regulation.

MEDICARE PROTECTION ACT

Definitions

1 In this Act:

"benefits" means

(a)medically required services rendered by a medical practitioner who is enrolled under section 13, unless the services are determined under section 5 by the commission not to be benefits,

(b)required services prescribed as benefits under section 51 and rendered by a health care practitioner who is enrolled under section 13, or

(c)unless determined by the commission under section 5 not to be benefits, medically required services performed

(i)in an approved diagnostic facility, and

(ii)by or under the supervision of an enrolled medical practitioner who is acting

(A)on request of a person in a prescribed category of persons, or

(B)in accordance with protocols approved by the commission;

"health care practitioner" means a person entitled to practise as

(a)a chiropractor, a dentist, an optometrist or a podiatrist in British Columbia under an enactment,

"practitioner" means

- (a) a medical practitioner, or
- (b) a health care practitioner
who is enrolled under section 13;

Medicare Protection Act

MEDICAL AND HEALTH CARE SERVICES REGULATION

Dental and orthodontic services

- 19** (1) Subject to section 27, a dental or orthodontic service is a benefit if the service is
- (a) related to the remedying of a disorder of the oral cavity or a functional component of mastication,
 - (b) listed in a payment schedule for dentists and described in subsection (2),
 - (c) rendered by an enrolled dentist, and
 - (d) described in an adequate clinical record.
- (2) The following are services for the purpose of subsection (1) (a) or (b):
- (a) an oral surgical procedure rendered to a beneficiary who
 - (i) has been properly admitted to a hospital, or
 - (ii) is a patient under the Day Care Services Program and for whom hospitalization is medically required for the safe and proper performance of the surgery;
 - (a.1) an oral surgical procedure rendered to a beneficiary
 - (i) who is a patient at a health facility that
 - (A) delivers services under an agreement with one or more regional health boards designated under the [Health Authorities Act](#) or with the Provincial Health Services Authority, and
 - (B) is accredited by the College of Physicians and Surgeons of British Columbia, and
 - (ii) in accordance with the agreement referred to in subparagraph (i) (A), if hospitalization is medically required for the safe and proper performance of the surgery and the health facility provides services in relation to the procedure that are equivalent to those that would be provided by a hospital;
 - (b) a medically required service rendered in association with, and followed by, an oral surgical procedure meeting the requirements of paragraph (a) or (a.1);
 - (c) a medically required service rendered by a specialist in oral medicine to a beneficiary with a severe systemic disease;

APPEAL NUMBER 2023-0380

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

Don Stedeford

Signature of Chair

Date (Year/Month/Day)

2024/01/07

Print Name

Richard Franklin

Signature of Member

Date (Year/Month/Day)

2024/01/07

Print Name

Joe Rodgers

Signature of Member

Date (Year/Month/Day)

2024/01/08