

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“Ministry”) dated January 19, 2024, in which the Ministry denied a health supplement for transportation before December 7, 2024, the date the Ministry determined that the Appellant was eligible to receive the supplement.

Part D – Relevant Legislation

Employment and Assistance Act (“Act”), sections 10, 22(4) and 26
Employment and Assistance Regulation (“Regulation”), section 76
Medical and Health Care Services Regulation, section 11

Full text of the legislation is provided in the Schedule of Legislation at the end of the Reasons.

Part E – Summary of Facts

The hearing took place in person, with the Ministry attending by telephone. The Appellant did not attend but was represented by her adult child's partner, who acted as the Appellant's advocate.

Evidence Before the Ministry at Reconsideration:

The Appellant underwent a liver transplant on October 21, 2023. On October 30, 2023, the Ministry received an application from the Appellant, asking for a health supplement for a life-threatening health need. The Appellant asked for a supplement for transportation from her community to the city where she received the transplant, and where she would have to remain during her recovery. She asked for the supplement to cover flight, accommodation, parking, and mileage, starting on October 20, 2023 when she travelled for the transplant.

When the Ministry received the application, they asked the Appellant to provide the following documents to confirm information about income and assets:

- Signed application forms HR0080 and HR0080B
- Identification and Social Insurance Number verification
- Bank profile and 60 day statements
- 2022 tax assessment and pension tax slips
- Property tax and utility bills
- Pension and investment statements
- Medical note confirming life-threatening health need.

On November 15 and 20, 2023, the Appellant provided some of the documents, but on November 20, 2023, the Ministry noted that the following documents were still outstanding:

- Social Insurance Number verification
- Property tax and utility bills
- Confirmation of investments.

The Appellant provided the remaining documents on December 7, 2023. On December 7, 2023, the Ministry determined that the Appellant was eligible to receive the health supplement. The Ministry provided the Appellant with funds to cover eligible medical transportation expenses from December 7, 2023 onwards but denied the Appellant's request for payment of medical transportation expenses incurred before December 7, 2023 (the flight to the city where the transplant took place, and accommodation in that city from October 20 to December 7, 2023).

In the Request for Reconsideration, the Appellant stated:

- She only became aware of the health supplement for medical transportation a few days after the liver transplant.

- Her adult children had to find the necessary documents because at that point she was in hospital, many hours away from her home.
- It took some time to collect the documents from a tax preparation company, and to find pension information for her deceased spouse.
- She could not postpone the transplant, or the related transportation and accommodation expenses, while they located the documents.

Additional Evidence:

Appellant:

At the hearing, the Appellant provided the following written evidence:

- Letter from the Appellant's family doctor, dated February 21, 2024, stating:
 - The Appellant had severe, recurrent hepatic encephalopathy due to liver cirrhosis.
 - The Appellant was listed for a liver transplant on August 31, 2023 and underwent the transplant on October 22, 2023.
 - In the year before the transplant, the Appellant was hospitalized three times for hepatic encephalopathy, and was weak and confused.
 - As a result, the Appellant was not able to perform "instrumental activities of daily living".
 - The Appellant's spouse had passed away three years before, and the Appellant did not have any support to organize her financial affairs until her adult child became her Power of Attorney the day before the transplant.
 - The Appellant needed an adult to stay with her in the city where the transplant took place, for several months after the transplant.
 - The Appellant was not able to help her adult child gather the required documentation because her cognitive functioning was diminished, she was confused and would not have been able to locate the documents.
- Printout of a page from the website of a financial institution, explaining that there would be limited, or unavailable, online and in-branch service between October 10th and 17th, 2023.

At the hearing, the Appellant's advocate and her adult child both provided oral testimony as witnesses. The Appellant's advocate stated:

- Another family member received an email on August 11, 2023, about the application process for a health supplement for medical transportation.

- They gave the email to the Appellant, hoping that she would be able to begin to gather the necessary documents, but the Appellant was struggling to understand where to find the documents.
- When they saw that the Appellant was not able to collect the documents, her adult child began the process to get a Power of Attorney and made an appointment with a lawyer for that purpose on September 5, 2023.
- Once the adult child had Power of Attorney, they could start gathering the necessary documents; they did not have legal authority to access financial information before then.
- December 7, 2023 was the soonest they were able to locate and provide all the documents.
- The Appellant could not manage the technical challenges resulting from the merger of the financial institutions where she did her banking, which also made it more difficult for her adult child to get the documents they needed.
- The Appellant’s statement in the Request for Reconsideration about when she became aware of the health supplement for medical transportation is incorrect and is an example of her cognitive impairment. The Appellant was not aware, was confused, or did not remember, that they were told about the health supplement on August 11, 2023.

At the hearing, the Appellant’s adult child stated:

- The transplant came about much more quickly than they expected – they were notified that the Appellant was on the transplant list on August 31, 2023, and on October 19, 2023, they were told that there was a liver for her, and they had to fly out the next day.
- The August 11, 2023 email telling them about the availability of a health supplement for medical transportation went to another family member, who had it for three weeks, but was not able to deal with the application effectively because of difficult personal circumstances; after 3 weeks that family member forwarded the email to the adult child for handling.
- They needed the Power of Attorney because the Appellant’s cognitive abilities were declining; for example, she forgot her adult child’s name, and could not remember how to use the phone or the television remote.
- On August 18, 2023, they made an appointment with a lawyer on September 5, 2023, to arrange the Power of Attorney. The Power of Attorney was signed on the way to the airport on October 20, 2023, as they were travelling to the city where the transplant would take place.
- The Appellant “signed something” in the hospital and they were given a list of documents; from that point on, they were dealing with the hospital social worker, giving the social worker the documents as they received them.

Ministry:

At the hearing, the Ministry referred to file notes, and stated:

- The Appellant is not a recipient of income assistance or disability assistance.
- The Ministry opened its file on October 30, 2023, noting that the transplant took place on October 21, 2023.
- The Ministry needed the documents they requested, to determine eligibility based on the Appellant's income and assets.
- The Ministry does not have any record of any inquiry about whether other documents might have been sufficient to confirm eligibility.
- The hospital intake worker was an employee of the health authority where the Appellant was hospitalized. That employee would work in cooperation with the Ministry to complete the application while the Appellant was in hospital.
- The application was completed on paper, signed on October 26, 2023, and sent to the Ministry. The Ministry then send the list of required documents to the hospital social worker on October 30, 2023.

Admissibility of Additional Evidence:

Neither party objected to the admissibility of the additional evidence. The additional evidence of the Appellant's adult child and their partner provides further information about the application process, the Appellant's cognitive impairment, and the legal and logistical reasons why the Appellant's family could not provide the requested documents sooner. The additional evidence from the Ministry provides further information about the process for the Appellant's application and the reasons for requesting the documentation. The Panel finds that the additional information is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal, and therefore is admissible under section 22(4) of the Act.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's reconsideration decision dated January 19, 2024, denying a health supplement for medical transportation expenses incurred before December 7, 2023, was reasonably supported by the evidence, or was a reasonable application of the legislation in the Appellant's circumstances. The Ministry decided that the Appellant was eligible to receive the health supplement for transportation on December 7, 2023, but not for expenses incurred before that date.

Appellant's Position:

The Appellant's advocate maintains that the Appellant's transportation expenses should be covered because the life-threatening health need existed from October 20, 2023, and they were prevented from providing documents immediately due to circumstances beyond their control.

They explain that the Appellant was not able to gather and provide her own documents because of cognitive impairment, which has been confirmed by the Appellant's doctor. They needed a Power of Attorney so that a family member could get access to financial documents, and they point out that the transplant happened much sooner than anyone expected. The first person who received the email about the application on August 11, 2023 was too overwhelmed with their own life situation to deal with it. When it was sent to the Appellant's adult child, he moved immediately to make an appointment with a lawyer to get the Power of Attorney. Then they had one day's notice of the transplant and had to book the flight and travel immediately.

They ask the Ministry to provide the health supplement for transportation starting from the date the need arose, on October 20, 2023.

Ministry's Position:

The Ministry says that, while it is sympathetic to the Appellant's situation, it is bound by the legislation and does not have discretion to provide the health supplement for medical transportation for expenses incurred before the date the Ministry determines that the Appellant is eligible to receive the supplement. They maintain that they were not able to determine that the Appellant was eligible before they received the last of the requested documents, on December 7, 2023.

Panel Decision:

The Panel finds that the Ministry's reconsideration decision, determining that the Appellant was not eligible to receive the health supplement for transportation for expenses incurred before December 7, 2023, is a reasonable application of the legislation in the Appellant's circumstances.

The Ministry may provide a health supplement for medical transportation for a person facing a direct and imminent life-threatening health need if the Ministry is satisfied that the request meets the criteria in section 76 of the Regulation. Two of the criteria are:

- There are no resources available to the person's family unit with which to meet that need, and
- The adjusted net income of any person in the family unit does not exceed \$42,000.00 (the amount set out in section 11(3) of the Medical and Health Care Services Regulation).

The Ministry received the Appellant's application for the health supplement on October 30, 2023. To consider the application, the Ministry needed information about the Appellant's income and assets. The Ministry asked the Appellant to provide a number of documents to verify the information provided in support of the application, which it is authorized to do under section 10 of the Act. The Ministry approved the Appellant's application the day it received the last of the requested documents and provided the supplement from that day forward.

Under section 26(1) of the Regulation, a person is not eligible for a supplement in respect of a period before the date the Ministry determines that they are eligible to receive it. There are some exceptions, in section 26(2.01) to (4) of the Regulation, but none of the exceptions apply to the Appellant. The Ministry determined that the Appellant was eligible as soon as the Ministry received the last of the documents it requested, on December 7, 2023.

The Panel finds that the Ministry reasonably required the documents it asked the Appellant to provide, to verify income and asset levels that are part of the criteria for eligibility for the health supplement. While there might have been other, more easily accessible documents that could have been sufficient, it does not appear that anyone contacted the Ministry to ask. The Panel also finds that the Ministry acted promptly to determine eligibility once it received the documents. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant was eligible to receive the health supplement as of December 7, 2023, but not for the period before that date.

The Panel understands, and sympathizes with, the problems the Appellant and her family faced, in making the application and finding the documents the Ministry asked them to provide. The Appellant suffered from hepatic encephalopathy and could not help herself to make the application and gather supporting documents before she received the transplant notice. It took time for the family to get the Power of Attorney they needed to access her financial records, and the documents were difficult to locate. Then the transplant was scheduled more quickly than

anyone expected. However, the legislation does not give the Ministry any discretion to pay the supplement for a period before it has determined that the Appellant was eligible, no matter the reason for the delay in applying or the inability to provide verification of income and assets sooner.

Conclusion:

The Panel finds that the Ministry's reconsideration decision, in which it determined that the Appellant was not eligible to receive a health supplement for medical transportation costs in the period before December 7, 2023, was a reasonable application of the legislation in the Appellant's circumstances. The Panel confirms the reconsideration decision. The Appellant is not successful in the appeal.

Schedule of Legislation

Employment and Assistance Act

Information and verification

s. 10 (1) For the purposes of

- (a) determining whether a person wanting to apply for income assistance or hardship assistance is eligible to apply for it,
- (b) determining or auditing eligibility for income assistance, hardship assistance or a supplement,
- (c) assessing employability and skills for the purposes of an employment plan, or
- (d) assessing compliance with the conditions of an employment plan,

the minister may do one or more of the following:

- (e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;
- (f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient;
- (g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information the person, the applicant or the recipient supplied to the minister.

(2) The minister may direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for income assistance, hardship assistance or a supplement.

(3) Subsection (1) (e) to (g) applies with respect to a dependent youth for a purpose referred to in subsection (1) (c) or (d).

(4) If an applicant or a recipient fails to comply with a direction under this section, the minister may

- (a) reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or
- (b) declare the family unit ineligible for income assistance, hardship assistance or a supplement for the prescribed period.

(4.1) The Lieutenant Governor in Council may prescribe circumstances in which subsection (4) (a) or (b) does not apply.

(5) If a dependent youth fails to comply with a direction under this section, the minister may reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

Employment and Assistance Regulation

Effective date of eligibility

s. 26 (1) Except as provided in subsection (2), (2.01), (2.1), (3.01) or (3.1), a family unit is not eligible for income assistance or supplements in respect of a period that occurred before the date the minister determines the family unit is eligible for the income assistance or supplements, as applicable.

(2) A family unit becomes eligible

(a) for a support allowance under sections 2 and 3 of Schedule A on the income assistance application date,

(b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the income assistance application date, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission, and

(c) for income assistance under sections 6, 7 and 8 (2) (b) of Schedule A on the income assistance application date.

(d) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (f).]

(2.01) If the minister decides, on a request made under section 17 (1) [*reconsideration and appeal rights*] of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of

(a) the date the minister makes the decision on the request made under section 17 (1) of the Act, and

(b) the applicable of the dates referred to in section 80 of this regulation.

(2.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (2.01).

(3) If a family unit includes a person who qualifies as a person who has persistent multiple barriers to employment, the family unit becomes eligible to receive income assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month in which the minister determines that the person qualifies as a person who has persistent multiple barriers to employment.

(3.01) If the minister decides, on a request made under section 17 (1) of the Act, that a person qualifies as a person who has persistent multiple barriers to employment, the person's family unit becomes eligible to

receive income assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of

- (a) the date the minister makes the decision on the request made under section 17 (1) of the Act, and
- (b) the applicable of the dates referred to in section 80 of this regulation.

(3.1) If the tribunal rescinds a decision of the minister determining that a person does not qualify as a person who has persistent multiple barriers to employment, the person's family unit is eligible to receive income assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of the dates referred to in subsection (3.01).

(4) If a family unit that includes a person who qualifies as a person who has persistent multiple barriers to employment does not receive income assistance at the applicable rate under Schedule A from the date the family unit became eligible for it, the minister may backdate payment but only to whichever of the following results in the shorter payment period:

- (a) the date the family unit became eligible under subsection (3) or (3.1), as applicable, for the applicable rate;
- (b) 12 calendar months before the date of payment.

(5) Subject to subsection (6), a family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

(6) Subsection (5) does not apply to assistance in respect of moving costs as defined in section 57.

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

s. 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.

Medical and Health Care Services Regulation

Eligibility for supplemental services based on income

s. 11 (1) An applicant for supplemental services must

(a) submit to the commission an application in a form and manner specified by the commission, and

(b) include in the application any information, authorizations, declarations and verifications required by the commission.

(2) For the purposes of subsection (1) (b), the commission may require information, authorizations, declarations and verifications reasonably necessary

(a) to determine that the applicant is an eligible person, or

(b) to verify the net income or adjusted net income of the applicant.

(3) If the adjusted net income of an eligible person does not exceed \$42 000, the eligible person and, if applicable, the following persons, are eligible for supplemental services:

(a) if the eligible person has a qualifying spouse, the spouse;

(b) a child of the eligible person;

(c) if the eligible person supports a post-secondary student, the post-secondary student.

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
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)
2024/02/25

Print Name
Bill Haire

Signature of Member

Date (Year/Month/Day)
2024/02/25

Print Name
Robert Kelly

Signature of Member

Date (Year/Month/Day)