

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (the “ministry”) dated April 19, 2024. The ministry found that the appellant was not eligible for a health supplement for medical transportation.

The ministry denied the appellant’s request for reimbursement of transportation costs to attend a March 4, 2024 appointment at an orthotics clinic in another community (“community B”) for several reasons:

- Travel was not required to attend the local office of a nurse practitioner or medical practitioner;
- Travel was not required to go to the office of the nearest available specialist who is a medical practitioner recognized by the College of Physicians and Surgeons of British Columbia as a specialist in a field of medicine or surgery; and
- Travel was not to attend the nearest suitable hospital or rehabilitation hospital to receive a benefit under the *Medicare Protection Act* or a hospital service under the *Hospital Insurance Act*.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act, Section 5

Employment and Assistance Act, Section 22 (4)

Employment and Assistance for Persons with Disabilities Regulation (the “Regulation”), Sections 55, 62, Schedule C, Section 2

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 appellant is a recipient of disability assistance.

The hearing was held in person on June 3, 2024, with the appellant and two panel members in attendance, and the ministry and the third panel member attending by videoconference.

The information before the ministry at the time of the Reconsideration Decision included:

Documents

- March 4, 2024 medical note from community B orthotics clinic confirming the March 4, 2024 appointment;
- March 5, 2024 Request for Non-Local Medical Transportation Assistance form seeking travel by vehicle to community B; and
- April 3, 2024 Request for Reconsideration with additional four pages—handwritten—with explanation:
 - The appellant had an amputation in the Spring of 2022; he has been on a journey of pain and healing since then;
 - The orthotic he has had from 2022 now causes him constant pain; he was told to make an appointment with the orthotic clinic in community B to get a new replacement;
 - It is very difficult to get an appointment with a specialist;
 - He called the ministry to get advice about what to do and was hung up on after waiting on hold for two hours;
 - He had to borrow money and find a driver for the trip;
 - He cannot afford the trip and he has never spent anything on travel;
 - He found out after the trip that it was not covered because the provider was not a member of the College of Physicians and Surgeons; and
 - The ministry did not tell him and they “dropped the ball”.

Additional Information submitted after Reconsideration

In his Notice of Appeal—Reasons, the appellant stated, “You failed to provide me answers to my questions by making me not only wait for 1 ½ hours on hold but you hung up”.

New evidence presented at the hearing

Appellant

At the hearing, the appellant said that the trip to the clinic in community B cost him \$120-\$150, which he could not afford. He also stated that the cost of the new orthotic was approved by the ministry but the related travel costs for assessments and fittings were not. All other evidence submitted by the appellant was reflected in materials previously provided to the ministry and sent with his appeal.

Ministry

At the hearing, the ministry representative provided further information about available options to a ministry client when seeking clarification or approvals as the appellant did for a health supplement for travel. The ministry representative advised:

- The provincial call centre is open until 8pm;
- There is a “call back” feature when contacting the call centre meaning a client can choose to have the ministry call them back rather than wait on hold;
- Call volume is particularly high leading to longer wait times;
- It is not known why the appellant’s call was dropped;
- There is an after hours emergency contact line available;
- Questions and answers can be addressed in person at the local Service BC office; and
- Further information is available online.

Admissibility of New Evidence

Neither the appellant nor the ministry objected to each other’s oral evidence presented at the hearing.

The new evidence shared by the appellant clarifies the expenses he incurred as a result of his medical needs. The new evidence offered by the ministry gives additional background and information about available ministry resources and options to respond to client questions and concerns. 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 was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. Specifically, was the ministry reasonable in denying the appellant transportation costs to attend a March 4, 2024 appointment at an orthotic clinic in community B?

SUBMISSIONS**Position of the Appellant**

The appellant argues that he did everything he could to get his questions answered; the Monday appointment came up with short notice on a (late) Thursday afternoon and his attempts to connect directly with the ministry were not successful. He telephoned the ministry, was on hold for 90 minutes, and then he was hung up on. The appellant says that he has been dealing with his medical issues for many years and has attended many appointments that have been covered by the ministry. He notes that he has never asked for money for travel from the ministry but the financial implications of his medical care needs mean the expense puts him a hardship situation.

The appellant further argues that the transportation costs should be covered because the local orthotic provider told him he must go to community B to get a replacement orthotic; the local provider was unable to provide what the appellant needed and that he must go to the community B clinic. He says the need was supported by a medical note from his doctor. In addition, the care he received at the community B clinic was from a "specialist in their field".

Finally, the appellant says that he tried his best and wonders how he was expected to know whether the care provider at the community B clinic is a specialist with the College of Physicians and Surgeons or not. He has had to deal with a lot in the last two years and the current orthotic causes him significant pain so he must have a new one. His need is urgent, "things happened fast", and he had to go to the community B clinic appointment at short notice to avoid a wait that would be too long and cause him to endure continued pain. The appellant says the ministry "dropped the ball" and their actions to hang up on him and to deny him the travel expense are unacceptable; the ministry should cover the appellant's travel expense.

Position of the Ministry

At hearing, the ministry representative said that according to the legislation, it was unable to cover the appellant's travel expenses for several reasons:

- The appellant was not seeing a specialist registered with the College of Physicians and Surgeons;
- The clinic the appellant visited in community B is not a (local) hospital or rehab hospital; and
- The orthotist at the community B clinic is not a specialist registered with the College of Physicians and Surgeons or the nearest available specialist—there is a designated specialist in the appellant's home community.

The ministry also noted that requests for a health supplement for travel usually require pre-approval and the appellant asked after the fact. The appellant had several options to get his questions answered in advance of making the trip and incurring the expense. Finally, the ministry said that medical transportation requests make up a very high volume of work and considering this, the appellant's attempts to make his request on a Friday before a Monday appointment is not a lot of time.

Analysis

The ministry may fund medical transportation if the request meets the requirements set out in the legislation. According to the Regulation, to be eligible for a health supplement for travel assistance to a non-local medical appointment, an applicant must demonstrate that they have no resources to cover the costs (per Section 55, ss 3 (b) of the Regulation), and per subsections 2(1)(f)(i) to 2(1)(f)(vi) of Schedule C of the Regulation, show that transportation is required to:

- Go to an office, in the local area, of a medical practitioner or nurse practitioner;
- Go to 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;
- Go to the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations; or
- Go to the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*, provided that 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*.

At the hearing, the ministry noted that the appellant did not receive prior approval for the travel (which is required per Section 55, ss 3 (b) of the Regulation), while the appellant said he received short notice of the appointment, he tried to get preapproval and waited on hold between 90 minutes and two hours but was hung up on before he could get answers.

The panel will consider the reasonableness of the ministry's Reconsideration Decision which found that the appellant was not eligible for medical transportation as he was not:

- Going to the local office of a medical or nurse practitioner;
- Going to the office of the nearest available specialist who is medical practitioner recognized as a specialist in a field of medicine or surgery. He attended the clinic of a Certified Prosthetist not registered with the College of Physicians and Surgeons of BC; and
- Going to the nearest suitable hospital or rehabilitation hospital to enable him to receive a benefit under the *Medicare Protection Act* or a hospital service under the *Hospital Insurance Act*.

Panel Decision

Preapproval

Sections 55(3)(b) and 55(3.1) of the Regulation say that a person must get the pre-approval of the ministry before incurring transportation costs, unless exceptional circumstances exist. However, as his failure to have his transportation costs pre-approved was not a reason given in the Reconsideration Decision for denying the appellant's request, the panel makes no findings about this criterion having been met or not.

Whether appointment was at the local office of (i) a nurse practitioner or medical practitioner, or the office of the nearest available (ii) specialist?

The appellant does not dispute that the appointment at the community B clinic was not local and was not with a nurse practitioner or medical practitioner. He was clear that the appointment was with an orthotist that had the required skill and experience to provide him with the orthotic he needed.

Regarding subsection 2(1)(f)(ii), "specialist" is defined in section 1 of Schedule C and means a medical practitioner who is "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". As above, the appellant agreed that the care provider is an orthotist, not a medical practitioner. As such, the orthotist could not be recognized as a specialist. As well, although the appellant provided a medical note from the orthotist at clinic B noted as a "Certified Prosthetist", there is no indication from the orthotist that they hold College of Physicians and Surgeons of BC designation.

Given all the above, the panel finds that the ministry was reasonable in determining that the appellant was not travelling to community B for an appointment with a nurse practitioner, medical practitioner, or a specialist as required by, and defined in the legislation.

Whether appointment was at the nearest suitable hospital or rehabilitation hospital?

The panel finds that the ministry was reasonable when it determined that the appellant was not eligible for a health supplement for travel because his orthotist appointment in community B was not the nearest suitable hospital or rehab hospital to enable him to receive a benefit under the *Medicare Protection Act* or a hospital service under the *Hospital Insurance Act*.

The appellant confirmed that his medical appointment in community B was at an orthopedic services *clinic* and not a hospital or rehab hospital. As well, there was no evidence that the orthopedic services clinic is defined as a hospital or rehab hospital per section 1.1 of the Hospital Insurance Act Regulations. While previously in hospital in community B, the appellant received his original orthotic from the hospital's specialist. However, the appellant was not aware returning there for his replacement might be possible nor was there any evidence presented to suggest that it was possible. Further, at the hearing the appellant did not disagree with the ministry's information that there is an option of receiving services from a specialist in his home community. Also, in his Request for Reconsideration, the appellant noted, "It is very hard to get an appointment with a specialist". In the result, the panel finds that the ministry was reasonable in deciding that the clinic appointment in community B was not with a specialist at the nearest suitable hospital or rehab hospital.

Conclusion

The panel finds that the ministry was reasonable when, consistent with the legislated requirements, it denied the appellant's transportation costs to attend a March 4, 2024 appointment at an orthotic clinic in community B. The panel confirms the Reconsideration Decision as a reasonable application of the legislation in the circumstances of the appellant. The eligibility criteria in section 2(1) of Schedule C of the Regulation were not met because the appellant's appointment was with an orthotist at an orthopedic services clinic. The panel confirms the Reconsideration Decision and the appellant is not successful with his appeal.

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.

EMPLOYMENT AND ASSISTANCE ACT

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

Supplements for moving, transportation and living costs

55 (1) In this section:

"living cost" means the cost of accommodation and meals;

"moving cost" means the cost of

(a) moving a family unit and the family unit's personal effects from one place to another, and

(b) storing the family unit's personal effects while the family unit is moving if the minister is satisfied that storing the personal effects is necessary to preserve the personal effects;

"transportation cost" means the cost of travelling from one place to another.

(3) A family unit is eligible for a supplement under this section only if

(a) there are no resources available to the family unit to cover the costs for which the supplement may be provided, and

(b) subject to subsection (3.1), a recipient in the family unit receives the minister's approval before incurring those costs.

(3.1) A supplement may be provided even if the family unit did not receive the minister's approval before incurring the costs if the minister is satisfied that exceptional circumstances exist.

(4) A supplement may be provided under this section only to assist with

(a) in the case of a supplement under subsection (2) (a) to (e), the least expensive appropriate moving costs, and

(b) in the case of a supplement under subsection (2) (f) or (g), the least expensive appropriate transportation costs and the least expensive appropriate living costs.

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 2024-0178

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)
2024/06/17

Print Name
Robert Kelly

Signature of Member

Date (Year/Month/Day)
2024/06/17

Print Name
Simon Clews

Signature of Member

Date (Year/Month/Day)
2024/06/17