

### **Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision of June 10, 2024, which denied the request for a health supplement to pay for transportation costs for the Appellant’s daughter to attend appointments out of town with a family practitioner and a pediatrician on April 29 and May 1, 2024.

Specifically, the Ministry was unable to establish that the costs incurred to attend her daughter’s appointments represented the least expensive appropriate mode of transportation for her travel, and that the Appellant had no resources available to cover the costs for travel to these appointments.

### **Part D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Act* (the “Act”), section 5, 16.

*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*, Section 19.1, 22(4).

*Administrative Tribunals Act*, section 46.3 (1),

The relevant legislation is provided in the Appendix.

**Part E – Summary of Facts**

The hearing took place on July 30, 2024, as a video hearing.

The evidence before the minister at reconsideration included the following:

- On April 3, 2024, the Appellant had submitted a request for a health supplement to pay for transportation costs for her daughter to attend appointments in City A. She submitted the following documents:
  - A HR3320 Request for Local or Non-Local Medical Transportation Assistance form (signed on April 2, 2024) indicating the following:
    - The Appellant's daughter's appointments are scheduled for April 29, 2024, at 10:30 am and May 1, 2024, at 1 pm.
    - They are departing from their current address on April 26, 2024, and returning on May 2, 2024.
    - They require overnight accommodation during their travel and **require help** finding accommodation.
    - They will be travelling by personal vehicle and will need assistance with ferry costs.
  - A letter from the Appellant (dated April 2, 2024) explaining the following:
    - Her daughter has an appointment with a doctor on April 29, 2024, at 10:30 am for a much-needed medical appointment to review her current medications, her medical needs, and to get her bloodwork.
- On April 14, 2024, the Appellant submitted an email from a Rheumatology Clinic Clerk with a Children's Hospital showing her daughter has a rheumatology appointment on May 1 at 11 am in City B.
- In support of the Appellant's Request for Reconsideration, on May 27, 2024, the Appellant provided much information on the reason for the trip, details of her daughters' medical condition and submitted an updated HR3320 Request for Local or Non-Local Medical Transportation Assistance form indicating the following:
  - Her daughter's appointment with the doctor is scheduled for April 29, 2024 at 10:30 am.
  - They are departing for the daughter's appointments from their current address on **April 27, 2024**, and returning on **May 1, 2024**.
  - They require overnight accommodation during travel, but **do not require help** finding accommodation.
  - They will be travelling by personal vehicle.

- A separate HR3320 Request for Local or Non-Local Medical Transportation Assistance form was also submitted for the Appellant herself, indicating that she also had an appointment scheduled with the family doctor in City A on April 29, 2024, at 10:30am.

### **Information Submitted After Reconsideration**

In the Notice of Appeal, the Appellant submitted that she believes it is against her human rights to deny financial support to go to see a pediatrician and doctor.

### **Hearing**

The hearing was initially scheduled as a telephone conference on July 11, 2024. The Appellant attended by telephone that morning and requested an adjournment as she had been called into work. The hearing was adjourned and was completed by video conference on July 30, 2024.

As a preamble to the Chair's introduction of the hearing process, the Panel referred to the Appellant's Notice of Appeal regarding human rights concerns.

The Panel advised that the Employment and Assistance Appeal Tribunal is established under the *Employment Assistance Act* to determine appeals of decisions that are appealable under that Act, the *Employment and Assistance for Persons with Disabilities Act*, and the *Child Care Subsidy Act*. In addition, section 19.1 of the *Employment and Assistance Act* stipulates that section 46.3 of the *Administrative Tribunals Act* applies. Under this section of the *Administrative Tribunals Act*, the Tribunal does not have jurisdiction to apply the *Human Rights Code* so any such concerns will need to be taken up in a different forum.

### **Appellant**

The Appellant's daughter appeared as a witness. She provided personal testimony and answers in response to questions from the Appellant. The witness expressed her feelings of trust and comfort with the doctors she is seeing in City A. She has had these doctors for many years and does not mind having to travel to see them.

On occasions she discusses her concerns with the doctors by phone and text and appreciates it took her mother a long time to find them and feels it unnecessary to change now.

The witness feels that the doctors understand what is going on with her and she receives better health support from that relationship.

With the consent of both the Appellant and the Ministry the Panel agreed that the Appellant's testimony from a previous hearing be admitted into this hearing. The previous hearing was held on the same day, before the same panel of the Tribunal and was for the same trip but for a separate dependent of the Appellant.

At the first hearing the Appellant recounted information previously submitted with her original applications for a transportation supplement and a letter submitted with her Request for Reconsideration.

She also reiterated that she is still unable to find local doctors or a pediatrician, and recounted experiences that leads her to believe there are problems with both health and mental health care within the Province.

The Appellant stated that the Ministry has approved similar trips in the past but had refused to approve this one. She makes efforts to minimize the number of times per year she must go to the Doctor's offices, often using telephone appointments, but noting the Doctor wants to see her daughter two times per year as part of ongoing complex care.

In response to a question, the Appellant acknowledged that the Ministry has accepted the need for her visits to the Doctors in City A, and that the Ministry refusal was based on there being no invoices submitted and an inability to confirm she had no resources to fund the trip. She confirmed she did complete the trip to City A and saw both the Doctor and Specialist Pediatrician.

The Appellant could not remember if she had submitted any invoices for hotels or ferry costs, explaining that she had suffered a brain injury herself in the past and has trouble remembering some things. She did not expect to have to submit any invoices and expected the Ministry to simply provide the basic level of funds they have in the past, such as set meal allowance limits.

The Appellant explained that sometimes the Ministry books the hotel, but it depends if the appointments are close together. On this occasion there was another appointment booked for City B, that was ultimately conducted by telephone.

In response to the need to travel to City A, a full two days before the scheduled appointments rather than a single day, the Appellant explained that the potential for inclement weather in late April, and the possibility of slow travel makes her plan an extra day of driving in case of problems.

With regard to her income the Appellant found no problem with the way in which the Ministry calculated the amounts. She explained that she provided the figures to the Ministry on her monthly submittal stub.

The Appellant stated that her income fluctuates, and her personal portion of the rent had gone up as two of her older children had lost or quit their jobs and her father had also previously been living with the family but is now in care. They were previously contributing to the rent payment.

The Appellant provided a quick verbal breakdown of her expenditures. These include;

- Rent of \$3264 per month. This differs from the amount she has provided to the Ministry as other members of her family including her elder son and daughter used to pay some of the rent before they lost their jobs,
- Payday loans of \$4000 per month,
- Vehicle loan of \$807 and insurance of \$207 per month,
- Another vehicle loan for her older son's car of \$307 bi-weekly and insurance of \$264 per month,

plus other bills for Shaw, cellular phones, Fortis and BC Hydro. She explained she has a Flexloan and also a line of credit. She has accessed these when she had a medical emergency. She had to take time off work and apply for employment insurance for several weeks when she had kidney stones. She has also used payday loans.

The Appellant explained she does not have a spouse and has taken out loans for medical transport in the past.

At this hearing the Appellant provided detailed information on the medical condition of her daughter including the treatment that is ongoing at the Children's hospital in City B.

The Appellant explained that these visits are set up to coincide with the visits to the family doctor and the specialist doctor in City A where possible. All three doctors communicate on the support and treatment of her daughter's condition.

When this hospital visit takes place some of the travel costs are shared with another agency. The ferry and vehicle costs are covered for both the Appellant and her daughter. The hospital visit in City B that was supposed to take place on this trip was booked for the same day as the specialist visit on May 1, 2024, in City A so therefore took place as a telephone call only.

In response to questions the Appellant confirmed she did not receive a written denial of the transportation supplement however she did have a number of telephone calls with the Ministry about the trip.

The Appellant stated that she has not had to submit a summary report or invoices for previous trips. In January 2024 she had made the same trip and travelled to City A by air sponsored through a charity. In this and other cases she applies to other agencies to cover portions of the costs not covered by the Ministry. They pay a base amount and so she needs to fund costs over those base amounts.

The Appellant stated that she also had an appointment with the local family doctor in City A, and had applied for a transportation supplement, as shown on the HR3320 Request for Local or Non-Local Medical Transportation Assistance form identified in the Reconsideration Decision. She had also been denied a transportation supplement for the trip and had asked for a Reconsideration package from the Ministry but was told it was not ready and was not provided to her at the time. She had not followed up.

#### Ministry

The Ministry relied upon the Reconsideration Decision, as summarized at the hearing.

At the first-related hearing, the Ministry also stated that if they had known the potential reason for the additional day of travel it would have been considered. As it was the Appellant had not provided any reason for the additional travel day.

The Appellant had an income stream between \$8 000 and \$10 000 per month for the four-month period and no information had been provided to suggest she did not have the resources to pay for the costs, as evidenced by the completion of the travel itself.

The Ministry confirmed that the least expensive cost for travel in this case would be to drive using the travel allowance. The Ministry stated that travelling on the earlier date of April 27, 2024, could have been taken into consideration now that they understood why the extra day was included in the request.

The Ministry explained as part of the process there is no pre-approval for transportation. After the travel is complete a claimant must submit travel receipts. Anything over a reasonable amount would be rejected. Inability to pay can be demonstrated for example by showing that monies had to be borrowed for travel due to no money in a claimant's bank account.

No receipts have been provided and a rough tally would indicate the costs, including ferry, hotels, meals and incidentals could reach over \$1600.

At the hearing the Ministry commented on the process for seeking an indication of the costs and the need to assess if the costs are reasonable and receive receipts. In some cases when a client seeks Ministry support in booking accommodation the Ministry can arrange the stay in hotels that charge government approved rates. In those cases the ministry knows how the costs may add up. In this case the Appellant had arranged the hotel costs herself and the Ministry needs to see receipts of the trip to verify the costs and whether the trip took place.

With regards to the Reconsideration package asked for by the Appellant at the hearing, the Ministry representative checked the case management system and noted that no such request existed, only Requests for Reconsideration for each of the Appellants dependent children who had scheduled medical appointments.

The Ministry stated that if the three separate Requests for Reconsideration for the dependent children for this trip had been incorporated into one, then the internal process of reconsideration could have been addressed for all parties at that time.

### **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* 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 City A. In particular, was the Ministry reasonable in finding that;

- it was unable to establish that the costs incurred to attend the appointments represented the least expensive appropriate mode of transportation for her travel, or
- that the Appellant had no resources available to cover the costs for travel to these appointments.

The relevant legislation is provided in Appendix A.

**Appellant Position**

The Appellant argues that she cannot find doctors or specialists in the local area that can take the family unit as patients or provide the specialized care her daughter needs. Based on the relationship between the doctors and her daughter and their availability in City A, the Ministry should provide a medical transportation supplement.

**Ministry Position**

The Ministry states that the Appellant is a Person with Disabilities, in receipt of disability assistance, and as such, is eligible for general health supplements which includes access to the medical transportation supplement for her daughter.

The Ministry states the Appellant would be departing for the appointments on April 27, 2024, and returning on May 1, 2024, and that she required overnight accommodations for the duration of this travel. As the appointments were scheduled for April 29 and May 1, the Ministry is unclear why the family could not have departed for these appointments on April 28, or why they would require accommodation for the night of April 27. Furthermore, the Appellant has not provided any information or documentation, such as invoices, to establish where she stayed during her travel to [REDACTED] or the costs the family incurred.

For these reasons, the Ministry is unable to establish that the costs incurred represent the least expensive appropriate mode of transportation.

Furthermore, the Ministry states the Appellant has not provided any information to explain how she paid for the travel costs. A review of her file indicates that she is working and has declared



employment income in February, March, April and May of 2024. This income is in addition to the monthly child tax benefit and a monthly boarding allowance the Appellant receives.

These sources of income, in addition to her \$2,329.33 rate of disability assistance, add up to a total of approximately \$8,000 to \$10,500 per month. At this time, the only monthly expense for which the Ministry has information on file is her \$2,264.00 monthly rent.

The Ministry argues the Appellant has not provided any information to explain why she was unable to set aside some of this money for her travel expenses. Therefore, the Ministry is unable to establish that she had no resources available to cover the costs of travel to City A.

### **Panel Decision**

Relevant legislation is contained in section 62 of the Regulation which states that the Minister may provide any health supplement set out in section 2 of Schedule C of the Regulation to or for a person in receipt of disability assistance.

Section 2(1)(f) of Schedule C of the Regulation states that the medical transportation supplements must be the least expensive appropriate mode of transportation to or from;

- 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 if the person has been referred to a specialist in that field by a local medical practitioner,

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.

The Panel notes that the original decision not to approve the supplement was due to eligibility concerns relating to the location of the doctors' offices, however in the Reconsideration Decision the Ministry clearly accepted they were the closest and the Reconsideration Decision rejected the application for a transportation supplement due to the lack of knowledge of costs and the potential availability of resources.

The Panel will not comment further on the medical reasons for the visit, the acceptability of the location of the medical appointments as the Ministry is satisfied that these criteria have been met. With respect to the Appellant's reasons for the appeal related to the Human Rights Code, as stated above, the panel is without jurisdiction to hear human rights matters.

### The Appellant's Own Reconsideration

Within the *Act*, section 16 provides reconsideration and appeal rights. The *Act* states that a person may request the minister to reconsider a decision that results in a refusal to provide a supplement to or for someone in the person's family unit.

A request must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation. A person who is dissatisfied with the outcome of a request for reconsideration may appeal the decision that is the outcome of the request to the Tribunal. Further, a right of appeal is subject to the time limits and other requirements set out in the *Employment and Assistance Act* and the regulations under that Act.

The Panel notes that a Request for Local or Non-Local Medical Transportation Assistance form had been submitted by the Appellant for her own scheduled visit to the family doctor in City A. The Appellant states in the hearing that she had been denied the supplement and had asked for a Reconsideration package for herself. The Ministry responded that no request has been recorded in the case file and no Request for Reconsideration had been received from the Appellant. The Ministry confirmed that three separate requests for reconsideration had been submitted by the Appellant for her dependents for the trip.

The Panel has not been presented with either a Reconsideration Decision or a Notice of Appeal for the Appellant in her name, who was accompanying her dependent daughter, and will therefore not comment further on any aspect of a supplement on behalf of the Appellant herself as an individual member of the family unit.

### Least Expensive Appropriate Mode of Transportation

The Panel notes the Appellant was aware of the reasons for the Ministry refusal based on there being no information on costs submitted and her inability to remember if she had submitted any invoices or summary of costs.

The Panel also notes her statements that she completed the trip, had been approved in the past and her expectations were that the Ministry would simply provide reimbursement based on a schedule of fees based on the submitted form.

The Panel also noted the Ministry's comment at the hearing regarding the reason the Appellant felt the need to travel an extra day earlier than needed to attend the appointments. That is, that a concern for inclement weather would have been considered.

Section 2(1)(f) of Schedule C of the Regulation states that health supplements may be provided on the basis that “the least expensive appropriate mode of transport to or from” is used. The Ministry has agreed that the least expensive cost for travel in this case would be is to drive using the travel allowance.

Section 10(2) of the Act states that 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 a supplement. The Panel finds it reasonable that the Ministry would require some form of written information to confirm that the trip had been conducted and the amount of costs.

In summary, even though the method of travel and the reason for the early departure may satisfy the legislative requirements, there is no further testimony and/or evidence on the actual weather conditions or submittals on the actual costs by the Appellant, such as ferries, vehicle or hotel costs. Without this information, the Panel cannot determine whether the costs were the least expensive appropriate for the trip.

The Panel finds on the evidence provided the Ministry was reasonable in determining it was unable to establish the costs represent the least expensive appropriate mode of transportation for the Appellant’s trip.

#### Availability of Resources

The Panel notes the Appellant’s reported range of monthly income of \$8000 to \$10 500 and her explanation of expenditures, some of which appear very large. Some of the expenditures are for vehicles and rent for other members of the family with no confirmation of dependent status.

The Ministry has questioned, with the apparent disposable income that may be available, of approximately \$5,700 to \$8,200 monthly income remaining after paying her rent to cover costs for utilities, food, and other daily expenses, why the Appellant was not able to put monies aside for the trip.

The Panel also notes the Appellant’s response, that she uses pay day loans and a line of credit to get by, and her listing of some \$5 587 per month in pay day loans and car payments alone.

Section 2(1)(f)(vi) of Schedule C of the Regulation requires that there are no resources available to the person's family unit to cover the cost (of the transportation) to be eligible for a health supplement under this heading, and the Panel finds that it is reasonable that the Ministry would require some material proof of the fact.

The Panel has no reason to doubt the testimony of the Appellant as to the number and type of monthly bills she pays, including several cell phones and vehicles. However, the Panel was presented with no written evidence, such as bank statements or credit invoices or loan statements, to confirm she had no resources to fund the trip at the time the trip was conducted.

Based on the evidence the Panel finds the Ministry was reasonable in its determination that it was unable to establish the Appellant had no resources available to cover the costs of her travel for her daughter's appointments.

### **Conclusion**

Based on all available evidence the panel finds that the Ministry's Reconsideration Decision 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.

### **Information and verification**

#### **10**

(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 disability assistance, hardship assistance or a supplement.

## **Part 3 — Appeals**

### **Reconsideration and appeal rights**

**16** (1)Subject to section 17, a person may request the minister to reconsider any of the following decisions made under this Act:

- (a) a decision that results in a refusal to provide disability assistance, hardship assistance or a supplement to or for someone in the person's family unit;
  - (b) a decision that results in a discontinuance of disability assistance or a supplement provided to or for someone in the person's family unit;
  - (c) a decision that results in a reduction of disability assistance or a supplement provided to or for someone in the person's family unit;
  - (d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of
    - (i) the maximum amount of the supplement under the regulations, and
    - (ii) the cost of the least expensive and appropriate manner of providing the supplement;
  - (e) a decision respecting the conditions of an employment plan under section 9 [*employment plan*].
- (2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation.
- (3) Subject to a regulation under subsection (5) and to sections 9 (7) [*employment plan*], 17 and 18 (2) [*overpayments*], a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.
- (4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in the [Employment and Assistance Act](#) and the regulations under that Act.
- (5) The Lieutenant Governor in Council may designate by regulation
- (a) categories of supplements that are not appealable to the tribunal, and
  - (b) circumstances in which a decision to refuse to provide disability assistance, hardship assistance or a supplement is not appealable to the tribunal.

## **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**

### **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,
- 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.

## **Employment and Assistance Act**

### **Application of *Administrative Tribunals Act***

**19.1** The following provisions of the *Administrative Tribunals Act* apply to the tribunal:  
(f) section 46.3 [*tribunal without jurisdiction to apply the Human Rights Code*];

### **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.

## **Administrative Tribunals Act**

### **Tribunal without jurisdiction to apply the *Human Rights Code***

**46.3** (1) The tribunal does not have jurisdiction to apply the *Human Rights Code*.

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**Part G – Order**

The panel decision is: (Check one)     Unanimous     By Majority

The Panel     Confirms the Ministry Decision     Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred back  
to the Minister for a decision as to amount?    Yes     No

**Legislative Authority for the Decision:**

*Employment and Assistance Act*

Section 24(1)(a)     or Section 24(1)(b)   
Section 24(2)(a)     or Section 24(2)(b)

**Part H – Signatures**

Print Name  
Donald Stedeford

Signature of Chair

Date (Year/Month/Day)  
2024/08/14

Print Name  
Glenn Prior

Signature of Member

Date (Year/Month/Day)  
2024/08/14

Print Name  
Kenneth Smith

Signature of Member

Date (Year/Month/Day)  
2024/08/14