

PART C – Decision under Appeal

The appellant appeals the reconsideration decision of March 21, 2012 in which the ministry denied the appellant's request for a dry and store unit, the bricks for the dry and store unit, and a germicidal lamp for the unit (together, the "requested equipment") for his hearing aids as a health supplement under the *Employment and Assistance for Persons with Disabilities Regulation* ("EAPWDR"). The ministry found that the eligibility criteria set out in the legislation had not been met, as follows:

- 1) The appellant did not provide information that there are no resources available to him to pay the cost to obtain the requested equipment, as required by section 3 of Schedule C of the EAPWDR;
- 2) The requested equipment cannot be considered a "hearing aid" for the purposes of section 3.11 of Schedule C of the EAPWDR;
- 3) The requested equipment is not "any other health supplement" as set out in sections 2.1, 2.2, 3, 3.1 through 3.10, 4, 4.1, 5, 6, 7, and 9 of Schedule C of the EAPWDR;
- 4) The requested equipment is not a "medical supply" under section 2(1) of Schedule C of the EAPWDR, an optical supplement under s. 2.1 of Schedule C; and
- 5) The requested equipment does not meet the legislated criteria as a life-threatening need under section 69 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") section 69 and Schedule C, Health Supplements, sections 1, 2(1), 2.1, 2.2, 3, 3.1-3.11, 4-9.

PART E – Summary of Facts

The evidence before the ministry at the reconsideration included:

- A letter/fax dated January 30, 2012 from a registered audiologist and registered hearing instrument practitioner requesting financial support for the appellant to purchase a dry and store unit for his hearing aids for a cost of \$220.00.
- A letter dated March 12, 2012 from the registered audiologist and registered hearing instrument practitioner, in which the audiologist requested financial support for the appellant for the purchase of new dry and store bricks (a one-year supply at a cost of \$35) and a germicidal lamp (at a cost of \$18) for the appellant's dry and store unit for his hearing aid. The audiologist noted that the appellant suffers from excessive perspiration, which shorts out his hearing aids, requiring the appellant to remove the hearing aids as frequently as every two hours and dry them.
- The appellant's written submission on reconsideration dated March 12, 2012, in which the appellant wrote that he has "not been able to find any other source of funding" to pay for the dry and store unit.

The reconsideration decision notes that appellant receives disability assistance (he has been designated a person with disabilities) and is thus eligible to receive health supplements under section 62 and Schedule C of the EAPWDR.

The appellant did not attend the hearing. The panel received confirmation from the Tribunal that the appellant had been notified of the date, time and location of the hearing. Accordingly, under s. 86(b) of the *Employment Assistance Regulation*, the panel heard the appeal in the appellant's absence.

The ministry confirmed that the appellant requires hearing aids, for which he receives funding from the ministry. The ministry confirmed that, in addition to his hearing disability, the appellant suffers from the medical condition of excessive perspiration; however, the ministry has no information that the appellant is seeking available treatment for this medical condition. The ministry told the panel that the appellant receives \$100 per month in discretionary funding through the community volunteer supplement program.

The panel makes the following findings of fact:

- The appellant is a person with disabilities who receives disability assistance from the ministry;
and
- The appellant requires hearing aids.

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the ministry's reconsideration decision of March 21, 2012, denying the appellant's request for financial assistance to purchase the requested equipment on the basis that the information provided by the appellant did not meet the eligibility criteria set out in Schedule C and section 69 of the EAPWDR.

Schedule C – Health Supplements

Definitions

1. In this Schedule:

“audiologist” means an audiologist registered with the College of Speech and Hearing Health Professionals of British Columbia established under the *Health Professions Act*,

.....

“hearing instrument practitioner” means a hearing instrument practitioner registered with the College of Speech and Hearing Health Professionals of British Columbia established under 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:

(a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:

(i) the supplies are required for one of the following purposes:

- (A) wound care;
- (B) ongoing bowel care required due to loss of muscle function;
- (C) catheterization;
- (D) incontinence;
- (E) skin parasite care;
- (F) limb circulation care;

(ii) the supplies are

- (A) prescribed by a medical practitioner or nurse practitioner,
- (B) the least expensive supplies appropriate for the purpose, and
- (C) necessary to avoid an imminent and substantial danger to health;

(iii) there are no resources available to the family unit to pay the cost of or obtain the supplies.

...

Medical equipment and devices

3. (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in section 3.1 to 3.11 of this Schedule are the health supplements that may be provided by the minister if

(a) the supplements are provided to a family unit that is eligible under section 62 [general health supplements] of this regulation, and

(b) all of the following requirements are met:

(i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;

- (ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
- (iii) the medical equipment or device is the least expensive appropriate medical equipment or device.

.....

The following medical equipment and devices, and medical supplements, are expressly set out in sections 2.1, 2.2, 3.1-3.10, 4, 4.1, 5, 6, 7, 8, and 9 of Schedule C as follows:

- optical supplements – section 2.1;
- eye examination supplements – section 2.1;
- canes, crutches and walkers – section 3.1;
- wheelchairs – section 3.2;
- wheelchair seating systems – section 3.3;
- scooters – section 3.4;
- bathing and toileting aids – section 3.5;
- hospital bed – section 3.6;
- pressure relief mattress – section 3.7;
- floor or ceiling lift devices – section 3.8;
- positive airway pressure devices – section 3.9;
- orthoses – section 3.10;
- dental supplements – section 4;
- crown and bridgework supplement – section 4.1;
- emergency dental supplements – section 5;
- diet supplements – section 6;
- monthly nutritional supplement – section 7;
- natal supplement – section 8; and
- infant formula – section 9.

Medical equipment and devices – hearing aids

- 3.11 A hearing aid is a health supplement for the purposes of section 3 of this Schedule if
- (a) the hearing aid is prescribed by an audiologist or hearing aid dealer or consultant, and
 - (b) an audiologist or hearing aid dealer or consultant has performed an assessment that confirms the need for a hearing aid.

The panel notes that effective May 1, 2012 (the date of the hearing), through Order in Council No. 244, section 1 of Schedule C was amended by adding the following definition for “hearing instrument”, namely, that it “has the same meaning as in the *Speech and Hearing Health Professionals Regulation*, B.C. Reg. 413/2008.” Further, section 3.11 of Schedule C was amended by striking out “hearing aid” each place it appears and substituting “hearing instrument” and by striking out “hearing aid dealer or consultant” each place it appears and substituting “hearing instrument practitioner.”

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

69. The minister may provide to a family unit any health supplement set out in section 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, 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 person's family unit is receiving premium assistance under the Medicare Protection Act, 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 3.11, other than paragraph (a) of section 3(1).

In the notice of appeal, the appellant submits that the legislation should include provision for hearing aid accessories, such as the requested equipment. The panel does not have the jurisdiction to revise the legislation.

The ministry's position is that the denial of the appellant's request for financial support to purchase the requested equipment is reasonable. The ministry says that the appellant receives \$100 in community volunteer supplement payments, which could assist him with the purchase of the requested equipment, and that he has not met the criteria that he has no other resources available to pay the cost of the requested equipment, as required by subsection 3(1)(b)(ii) of Schedule C of the EAPWDR. The ministry also says that the appellant could seek treatment for his medical condition of excessive perspiration, which would help reduce the effect on his hearing aids.

The ministry submits that the requested equipment does not meet the criteria set out in the legislation for the following reasons. The ministry says that within the context of the legislation, "hearing aids" in section 3.11 of Schedule C of the EAPWDR is intended to mean "hearing instruments" as it is defined in the *Speech and Hearing Professionals Regulation*. "an appliance or a device designed or offered for a hearing condition including any ear molds, boots or other acoustic couplers and any parts or accessories for the appliance or device intended to affect the sound pressure level at the eardrum and excluding direct audio input accessories, batteries and any accessories that are attachable to the appliance or device by the wearer and not intended to affect the sound pressure level at the eardrum." The panel notes that as of May 1, 2012, section 3.11 of Schedule C of the EAPWDR has now been revised, reflecting this definition, as noted above. The ministry says that the requested equipment is not intended to affect the sound pressure level at the eardrum and is not a wearable hearing instrument, and thus cannot be considered a "hearing aid" for the purposes of section 3.11 of Schedule C of the EAPWDR.

Further, the ministry says that the requested equipment is not one of the listed health supplements set out in sections 3.1 to 3.10 of Schedule C of the EAPWDR, which expressly provides for canes, crutches and walkers, wheelchairs, wheelchair seating systems, scooters, bathing and toileting aids, hospital bed, pressure relief mattresses, floor or ceiling lift devices, positive airway pressure devices, and orthoses. The ministry says that the requested equipment is not required for one of the purposes set out in section 2(1)(a) of Schedule C (disposable or reusable medical or surgical supplies), it was not prescribed by a medical or nurse practitioner (as required by section 2(1)(a)(ii)(A) of Schedule C), and there is no information from the appellant that the requested equipment is necessary to avoid an imminent and substantial danger to health (as required by section 2(1)(a)(ii)(C) of Schedule C). The ministry says that there is no information from the appellant to satisfy the minister that the appellant faces a direct and imminent life threatening need for the requested equipment and there are no resources available to the appellant with which to meet that need, as required by section 69 of the EAPWDR.

The panel finds that the appellant has not provided any information regarding the availability of other resources to him to purchase the requested equipment and therefore the ministry has reasonably determined that he has not met the criteria required by section 3(1)(b)(ii) of Schedule C of the EAPWDR. The panel finds that the requested equipment does not meet the legislative criteria as a "hearing aid" or "hearing instrument" set out in section 3.11 of Schedule C because it does not affect the sound pressure level at the eardrum. The panel finds that the ministry reasonably determined that the requested equipment does not meet the legislative criteria as the other health supplements listed in sections 2.1, 2.1, 3.1-3.10, 4, 4.1, 5, 6, 7, 8, and 9 of Schedule C as the requested equipment does not correspond to any of these listed supplements. The panel finds that the requested equipment does not meet the criteria required by section 2(1)(a) of Schedule C. The panel also finds that the appellant has not provided any evidence that he faces a direct and imminent life threatening need for the requested equipment as required by section 69 of the EAPWDR. Accordingly, the panel finds that the ministry's denial of the appellant's request for financial support to obtain the requested equipment is reasonably supported by the evidence and is a reasonable application of the legislation to the circumstances of the appellant. The panel confirms the ministry's reconsideration decision.