



**PART C – Decision under Appeal**

The appellant appeals the reconsideration decision of May 17, 2012 in which the ministry denied the appellant's request for a TENS machine on the basis that a TENS machine is not an eligible health supplement as it is not listed as medical equipment or devices under the applicable provisions, sections 3 and 3.1 through 3.11 of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* ("EAPWDR").

**PART D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Regulation* ("EAPWDR") section 62 and Schedule C, Health Supplements, sections 3 and 3.1-3.11.

## PART E – Summary of Facts

The evidence before the ministry submitted with the request for reconsideration included:

- A copy of a medical equipment request and justification form, signed by the appellant on April 12, 2012, and section 2 completed by a medical/nurse practitioner on March 26, 2012, and section 3 completed by a physiotherapist on April 12, 2012 (2 pages);
- A copy of a letter from a physiotherapy clinic to the appellant's physician advising that the appellant had been started on TENS and heat therapy to relax tension and spasms in his muscles – the letter is not dated (1 page); and
- A copy of a price quote from a health care provider indicating that a TENS unit would cost \$159.99 (1 page).

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 on June 8, 2012. The panel allowed 15 minutes grace time for the appellant's arrival, but he did not attend the hearing. Accordingly, under s. 86(b) of the *Employment Assistance Regulation*, the panel heard the appeal in the appellant's absence.

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.

On the medical equipment request and justification form, the medical/nurse practitioner indicated that the appellant suffers from the medical condition of "chronic shoulder/neck/upper neck soft tissue strain" and indicated that "TENS machine & heating pad" is recommended (first page of form, section 2). On the second page of the medical equipment request and justification form, the appellant's physiotherapist indicated that the appellant requires "TENS unit & heating pad" as the medical equipment to meet the appellant's needs (section 3 of form).

The panel makes the following findings of fact:

- The appellant is a person with disabilities who receives disability assistance;
- The appellant submitted a medical equipment request and justification form to the ministry on April 12, 2012, requesting a TENS machine to alleviate his chronic shoulder/neck/upper neck soft tissue strain.

## PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the ministry's decision dated May 17, 2012 denying the appellant's request for a TENS machine on the basis that a TENS machine is not an item on the list of eligible medical equipment and devices set out in sections 3 and 3.1-3.11 of Schedule C of the EAPWDR.

### Section 62 – General health supplements

62(1) Subject to subsection (1.1), 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 family unit if the health supplement is provided to or for a person in the family unit who is

- (a) a recipient of disability assistance
- .....

### Schedule C – Health Supplements

#### 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.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
- (b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.
- .....

The following medical equipment and devices are expressly set out in sections 3.1-3.11 of Schedule C as follows:

- 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; and
- hearing aids – section 3.11.

In his notice of appeal, the appellant wrote that he “finds it hard to believe there is no provision for therapeutic devices to help clients return to the workforce in the Employment and Assistance Act for PWD, just far more expensive devices that do not improve employment capability.”

The ministry says that the requested TENS machine is not one of the items listed as medical equipment and devices set out in sections 3.1 to 3.11 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, orthoses, and hearing aids. The ministry says that it does not have the discretion to override the provisions of the legislation (sections 3.1 to 3.11 of Schedule C of the EAPWDR), which list the medical equipment and devices, which may be provided.

The panel finds that the requested equipment, a TENS machine, does not meet the legislative criteria as medical equipment or device set out in section 3.1 through 3.11 of Schedule C because it does not correspond to any of the listed supplements (it is not a cane, crutch or walker, a wheelchair or wheelchair seating system, a scooter, a bathing or toileting aid, a hospital bed or pressure relief mattress, a floor or ceiling lift device, a positive airway pressure device, orthoses or a hearing aid). Accordingly, the panel finds that the ministry’s denial of the appellant’s request for a TENS machine is a reasonable application of the legislation to the circumstances of the appellant. The panel confirms the ministry’s reconsideration decision.