

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) Reconsideration Decision dated May 17, 2012, which held that the appellant is not eligible for Tena pads pursuant to section 2 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and section 66.1 of the Employment and Assistance Regulation (EAR). The ministry determined that the requested medical supplies are necessary to avoid an imminent and substantial danger to the appellant's health, are the least expensive supplies appropriate and that they are prescribed by a medical practitioner; however, the ministry held that the information provided by the appellant does not establish that there are no resources available to the family unit to pay the cost of or obtain the supplies.

PART D – Relevant Legislation

Employment and Assistance Regulation – EAR - Section 66.1

Employment and Assistance for Persons with Disabilities Regulation –EAPWDR – Schedule C - Section 2

PART E – Summary of Facts

The evidence before the ministry at the reconsideration decision included:

- Ministry's decision dated March 27, 2012;
- A prescription for Urinary Incontinence for the appellant dated March 14, 2012;
- A physician note dated April 17, 2012 indicating that the appellant has urinary and fecal incontinence and absolutely is in need of Tena Ultimate Absorbency undergarment. The physician stated that the appellant lives alone and must be mobile and functional outside the home for activities of daily living;
- Request for reconsideration dated May 11, 2012.

The appellant in the request for reconsideration submitted that she is in receipt of medical services only (MSO). She stated that according to the ministry's policy clients eligible for MSO may have access to medical supplies if they meet the eligibility requirements. The appellant submitted that she is eligible for Tena Pads as the supplies are required for incontinence and ongoing bowel care due to loss of muscle function. The appellant further submitted that the medical supplies were prescribed by a physician; it is the least expensive supplies available and is necessary to avoid imminent danger to her health. The appellant stated that without Tena Pads, she suffers from infections in her groin area, open sores and infection.

The appellant in the Notice of Appeal submitted that she told the ministry that she could not afford to pay for the medical supplements. the appellant stated that "I will disclose the reason, why I cannot afford an extra \$54 per month out of my pension"

The appellant submitted the following documents to the Tribunal on June 12, 2012 which was forwarded to the ministry:

- Written submission, a copy of a letter to the Minister;
- Medical documents indicating the appellant's medical conditions;
- Operative Report dated March 23, 2007;
- Supreme Court order dated August 5, 2011;
- A copy of a fax dated March 30, 2012 indicating missing (stolen) and damaged items due to eviction;
- Rent increase notice dated January 17, 2012;
- Disable Parking Permit dated May 30, 2012;
- Monthly obligations and expenditures including statement for propane dated January 3, 2012, Hydro increase statement dated May 8, 2012, receipt for mini storage dated April 27, 2012, cable and telephone statement dated April 22, 2012 and receipts for groceries;
- Property Tax Arrears dated February 9, 2012;
- Property Tax notice 2012;
- Car insurance renewal and rate increase dated June 5, 2012;
- 3 bank statements from June 2012.

The appellant submitted that she needs the medical supplies in order to continue a normal existence. The appellant stated that the ministry responded to her application 3 weeks after she requested the supplies. The appellant said that when she called the ministry asking about the status of her request, she was informed that her application was denied. The appellant stated that the ministry did not send her the reasons for denying her application and she had to borrow a car and drive to the city to pick up the letter. The appellant submitted that she is a lay person and did not understand the legal jargons. The appellant submitted that her application was denied under the wrong section of the legislation. The appellant stated that on April 26, 2012, she made an appointment to see an advocate at the community legal advocacy in the city and the earliest time she could see the advocate was May 11, 2012. She said that she was not able to obtain any legal advice from anyone prior to that date. The appellant submitted that she lives in a rural community away from the city and there is no bus service from her residence to the city. The appellant said that on May 9, 2012 she was able to get a ride and go to the ministry but was not able to apply for an adjournment for the reconsideration decision as she did not have her documents with her. The appellant further submitted that she went back to the ministry but

was unable to speak with the office supervisor.

The appellant stated that she contacted the ministry by phone on few occasions and at no time the ministry requested information regarding her ability to pay for the medical supplies. The appellant submitted that the ministry did not ask for proof of income. The appellant questioned the ministry's decision as "the ministry did not ask for proof of income, I would like to know why, if income and ability to pay, is part of the process, in a decision making".

At the hearing, the ministry acknowledged receiving the documents provided by the appellant and that the ministry had the opportunity to thoroughly review the new evidence. The ministry had no objection to admitting the documents and stated that it was a matter for the panel to determine whether the additional evidence met the legislative criteria.

The panel accepted the documents submitted by the appellant as being in support of the information before the ministry under section 22(4) of the Employment and Assistance Act (EAA) and therefore admitted the appellant's documents into evidence.

At the hearing, the appellant submitted that she is suffering from GERD, a hiatal hernia, bronchitis, and urinary tract infection, loss of hair, sleep disorder, and ongoing stress. The appellant stated that she has financial stress as her total income from Old Age Security, CPP, and BC housing is \$1588.83 a month. The appellant stated that she has the following monthly expenses: rent for pad \$404, mortgage \$360, propane \$200, hydro \$60, car insurance \$57 and storage rental \$84. The appellant said that in addition to the above monthly expenses, she has to pay for cable/internet, telephone and grocery.

The appellant submitted that she has been suffering emotionally, financially and physically. The appellant explained that she had never asked for help from the ministry and if she could have paid for the necessary medical supplies she would have done that.

The ministry stated that she does not dispute the fact that all other criteria have been met for the appellant to get tena pads; however, the ministry submitted that as the appellant is not eligible to apply for income assistance and that there is no evidence that resources are not available to the appellant to pay the cost of the supplies the ministry denies her application for the medical supplies.

The panel notes that there is no dispute that the requested medical supplies is required for incontinence, they are prescribed by a medical practitioner and are the least expensive supplies appropriate for the purpose and that the medical supplies are necessary to avoid an imminent and substantial danger to the appellant's health.

The panel finds that:

- The appellant's monthly income is \$1,588.83;
- The appellant has monthly expenses for a total of \$1,165 that does not include expenses for telephone, cable and grocery.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably concluded that the appellant is not eligible for Tena pads because the requested items do not meet the legislative criteria as set out in section 2(1)(a)(iii) of Schedule C of EAPWDR. The ministry determined that the appellant did not provide information to establish that there are no resources available to the family unit to pay the cost of or obtain the supplies.

Schedule C, section 2 of the EAPWDR set out the guidelines for general eligibility requirements for the provision of medical supplies. Pursuant to section 2(1) of the Schedule C 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.
- (b) Repealed. [B.C. Reg. 236/2003, Sch. 2, s. 2 (b).]
- (c) subject to subsection (2), a service provided by a person described opposite that service in the following table, delivered in not more than 12 visits per calendar year,
 - (i) for which a medical practitioner or nurse practitioner has confirmed an acute need,
 - (ii) if the visits available under the Medical and Health Care Services Regulation, B.C. Reg. 426/97, for that calendar year have been provided and for which payment is not available under the *Medicare Protection Act*, and
 - (iii) for which there are no resources available to the family unit to cover the cost:

Section 66.1 of the EAR sets out eligibility for medical services only, For the purposes of this Division, a person may be eligible for medical services only if

- (a) the person is part of a family unit that ceased to be eligible for income assistance as a result of
 - (i) an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or another member of the person's family unit, and the person was eligible for health supplements under section 2 [general health supplements] or 3 [medical equipment and devices] of Schedule C on the date the person's family unit ceased to be eligible for income assistance, or
 - (ii) a payment made to the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry, or
- (b) the person, on the date of the person's 65th birthday, was
 - (i) a recipient of income assistance under section 2 [monthly support allowance], 4 [monthly shelter allowance], 6 [people receiving room and board], 8 [people receiving special care] or 9 [people in emergency shelters and transition houses] of Schedule A, and
 - (ii) eligible for health supplements under section 2 [general health supplements] or 3 [medical equipment and devices] of Schedule C,
 and the person's family unit ceased to be eligible for income assistance on that date.

The appellant submitted that she has no resources to pay for the Tena pads; she lives alone and needs to be mobile and functional outside of her home. The appellant submitted that she is unable to pay for Tena pads

without further compromising the quality of her life.

The ministry's position is that the appellant is eligible, pursuant to the MSO provisions of section 66.1(b) (ii) of the EAR, for health supplement under section 2 of schedule C of the EAR, but argues that the appellant's request to cover the cost of the Tena Ultimate Absorbency pads does not meet all the applicable criteria under section 2 of Schedule C of the EAPWDR. The ministry argues that the requirements in section 2(1)(a)(iii) have not been met as the ministry is not satisfied that there are no resources available to the appellant to pay the cost of or obtain the supplies.

With respect to section 66.1 of the EAR, a person may be eligible for medical services only if

- (a) the person is part of a family unit that ceased to be eligible for income assistance as a result of
- (b) the person, on the date of the person's 65th birthday, was
 - (i) a recipient of income assistance under section 2 [monthly support allowance], 4 [monthly shelter allowance], 6 [people receiving room and board], 8 [people receiving special care] or 9 [people in emergency shelters and transition houses] of Schedule A, and
 - (ii) eligible for health supplements under section 2 [general health supplements] or 3 [medical equipment and devices] of Schedule C,

and the person's family unit ceased to be eligible for income assistance on that date.

The panel notes that the appellant was transitioned to MSO in 1993 as a result of receiving federal benefits and therefore, pursuant to section 66.1(b)(ii) of the EAR, is eligible for health supplements under section 2 of Schedule C of the EAPWDR.

With respect to section 2(1) of the Schedule C of the EAPWDR, the ministry may provide medical supplies if 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.

The panel notes that the ministry is satisfied that the supplies are required for the purpose of incontinence; they have been prescribed by a physician, are the least expensive supplies appropriate and are necessary to avoid an imminent and substantial danger to health.

With respect to available resources, the panel notes that the appellant in the request for reconsideration submitted that she cannot afford the medical supply. The panel finds that the appellant provided persuasive documents regarding her income and her monthly obligations including:

- The appellant's total monthly income from Old Age Security, CPP, and BC housing is \$1588.83;
- The appellant has monthly expenses of \$1,165 for rent \$404, mortgage \$360, propane \$200, hydro \$60, car insurance \$57 and storage rental \$84;
- The appellant has further expenses for groceries and telephone.

The panel accepts the evidence of the appellant regarding her income and her expenses and notes that the

ministry does not object admitting the documents into evidence.

The panel finds that the appellant provided sufficient evidence in support of her resources. The panel further finds that the evidence establishes that the appellant's income is allocated to important items and that the appellant does not have any other resources in the community to obtain the supplies, therefore, the appellant does not have resources available to the family unit to pay the cost of the supplies. The appellant is an elderly woman who lives alone in a remote area. The panel further accepts the evidence of the appellant that the ministry did not request information from her regarding her ability to pay for the medical supplies. The panel finds that with the evidence provided at the hearing, the ministry unreasonably determined that the appellant did not meet all of the criterion prescribed in section 2 of the Schedule C of the EAPWDR.

Therefore, the panel finds that based on the evidence, the ministry's decision to deny the Appellant's request for the Tena pads was not reasonable. The Appellant has met the legislative requirements for provision of the Tena pads and she does not have resources available to pay the cost. Accordingly, the panel finds that the ministry's decision is not reasonably supported by the evidence and therefore rescinds the Ministry's decision.