

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated June 20, 2012 which held that the appellant is not eligible for a health supplement for nitrile non-latex gloves as medical supplies because the requested gloves are not considered for one of the purposes set out in EAPWDR, Schedule C, section 2 (1) (a) (i). Specifically, the ministry determined that the supplies did not meet the purposes set out in this section as the request is for monitoring blood sugar which is not considered for any of the categories listed. Additionally, it determined that the request did not establish that the appellant did not have other resources to obtain the supplies pursuant to Schedule C, section 2 (1) (a) (iii) because it determined that while there is provision in ministry policy to allow rubber gloves to be provided either to the client or a non-employed care provider when required as part of the care of the client, the care-giver in the appellant's case is employed and Worksafe BC legislation requires the employer to provide gloves.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) - Section 62
Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) - Schedule C, section 2
Workers Compensation Act, Occupational Health and Safety Regulation, Part 8, section 8.2(2) and 8.19 (1) and (2)

PART E – Summary of Facts

The appeal record includes the following information available at the time of reconsideration:

- The appellant is a recipient of disability assistance.
- March 6, 2012 the ministry denies the appellant's request for nitrile non-latex gloves as prescribed by his physician.
- March 30, 2012 letter from a nurse practitioner who provides services to the appellant seeking a re-evaluation of the ministry decision. The letter notes that the appellant is legally blind and deaf since childhood and is a Type II diabetic and is incapable of monitoring his own blood sugar via glucometer once per week. The letter further reports that if the appellant was capable of safely and accurately providing his own self care, disposable gloves would not be required. The letter also notes that the appellant is at risk of imminent and substantial danger to health if gloves are not used by any individual monitoring his blood glucose by finger prick (lancet). The procedure involves puncturing the skin which puts the appellant at risk for contact with the caregiver and environmental germs via the puncture site. The glove use is for the appellant's safety and necessary to meet his health care need and is an universal/mandated/recommended practice according to the World Health Organization.
- June 14, 2012 the appellant submitted a Request for Reconsideration
- June 19 and 20, 2012 the ministry confirmed that the appellant's caregiver is employed by an incorporated caregiver organization that does not provide supplies to its caregivers and that the caregiver has been buying her own gloves.. It also clarified that the organization does not provide notification in writing to its clients indicating they are responsible for purchasing their own supplies. The agency that has a contract with the organization stated that they are not responsible for providing medical supplies for the organization's employees via the contract and it is the responsibility of the organization to supply their care givers with appropriate supplies.

The appellant's Notice of Appeal dated June 30, 2012 attached a letter dated June 29, 2012 from a the appellant's nurse practitioner that was identical to a letter dated March 30, 2012 from her, but which included an addendum that refers to errors by the ministry and reports that the appellant uses the gloves for the purpose of blood glucose monitoring. The addendum further notes that the appellant is a vulnerable developmentally delayed individual who is completely dependent for all his care needs and the need to protect his health and well-being is a priority. The addendum indicates that if the ministry does not fund the gloves they are putting the appellant's health in imminent and substantial danger. This updated letter was admitted into evidence under Section 22(4) of the Employment and Assistance Act as being in support of the information that was before the ministry at the time of reconsideration.

In this written hearing, the ministry advised that its submission is the reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is whether the decision of the ministry at reconsideration was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances. The ministry's reconsideration decision held that the appellant is not eligible for a health supplement for nitrile non-latex gloves as medical supplies because the request is not considered for one of the purposes set out in EAPWDR, Schedule C, section 2 (1) (a) (i). Specifically, the ministry determined that the supplies did not meet the purposes set out in this section as the request is for monitoring blood sugar which is not considered for any of the categories listed. Additionally, it determined that the request did not establish that the appellant did not have other resources to obtain the supplies pursuant to Schedule C, section 2 (1) (a) (iii). Finally it determined, that while there is provision in ministry policy to allow rubber gloves to be provided either to the client or a non-employed care provider when required as part of the care of the client, the care-giver in the appellant's case is employed and WorkSafe BC related legislation requires the employer to provide gloves

The EAPWDR provides the following:

General health supplements

62 (1) Subject to subsections (1.1) and (1.2), 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

General health supplements – Section 2

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.
- (1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

[Sections 2 and 2.1 are related to therapies]

3) If the minister provided a benefit to or for a person under section 2 (3) of Schedule C of the Disability Benefits Program Regulation, B.C. Reg. 79/97, the Income Assistance Regulation, B.C. Reg. 75/97 or the Youth Works Regulation, B.C. Reg. 77/97, as applicable, for the month during which the regulation was repealed, the minister may continue to provide that benefit to or for that person as a supplement under this regulation on the same terms and conditions as previously until the earlier of the following dates:

- (a) the date the conditions on which the minister paid the benefit are no longer met;
- (b) the date the person ceases to receive disability assistance.

Workers Compensation Act

Occupational Health and Safety Regulation

Part 8 — Personal Protective Clothing and Equipment

General Requirements

Responsibility to provide

8.2 (1) A worker is responsible for providing

- (a) clothing needed for protection against the natural elements,
- (b) general purpose work gloves and appropriate footwear including safety footwear, and
- (c) safety headgear.

(2) An employer is responsible for providing, at no cost to the worker, all other items of personal protective equipment required by this Regulation.

(3) If the personal protective equipment provided by the employer causes allergenic or other adverse health effects, the employer must provide appropriate alternate equipment or safe measures.

(4) Nothing in this section precludes or alters an existing or future agreement between a worker or workers and an employer to the effect that the employer will be responsible for the provision, either at no cost or some cost to the worker, of any or all of the items described in subsection (1).

Limb and Body Protection

General requirement

8.19 (1) The employer must provide appropriate skin, hand, foot or body protection if a worker is exposed to a substance or condition which is likely to puncture, abrade or otherwise adversely affect the skin, or be absorbed through it.

(2) If there is a danger of injury, contamination or infection to a worker's hands, arms, legs, or torso, the worker must wear properly fitting protective equipment appropriate to the work being done and the hazards involved.

The appellant's position is that he requires the nitrile non-latex gloves for use by his caregiver during the monitoring of his blood glucose by finger prick (lancet). A procedure that involves puncturing the skin which puts him at risk for contact with his care-giver and environmental germs via the puncture site. The appellant contends the gloves are necessary to avoid an imminent and substantial danger to his health. In support of his position, the evidence of the nurse practitioner is that if the ministry does not fund the gloves for the appellant they are putting health in imminent and substantial danger.

The ministry's position is that the appellant, as a recipient of disability assistance, is eligible to receive health supplements under Section 62 of the EAPWDR recipient. Because the nurse practitioner reports that the gloves are necessary for the appellant's safety and to meet his basic health care needs and were prescribed by a doctor, the appellant meets the requirements of the EAPWDR,

Schedule C, subsection 2 (1) (a) (ii). The ministry, however, argues the appellant's request does not meet the required purposes or fall within the eligibility guidelines of a disposable or reusable medical or surgical supply that are required for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care or limb circulation care pursuant to Schedule C, subsection 2 (1) (a) (i).

Finally, the ministry contends that the request does not meet the requirement set out in Schedule C, subsection 2 (1) (a) (iii) as the appellant's caregiver is employed by an employer, who is responsible and obligated under related WorkSafe BC Regulations (*Workers Compensation Act, Occupational and Health Safety Regulation Part 8 Personal Protective Clothing and Equipment*) to provide the appellant's care-giver with gloves. This regulation states " the employer must provide appropriate skin, hand, foot or body protection if a worker is exposed to a substance or condition which is likely to puncture, abrade or otherwise adversely affect the skin or be absorbed through it."

The panel finds the evidence confirms the medical supplies requested are not required for wound care, ongoing bowel care required due to loss of function, catheterization, incontinence, skin parasite care or limb circulation care pursuant to the EAPWDR, Schedule C, 2(1)(a)(i) . The nitrile non-latex gloves requested are for the appellant's caregiver with regard to monitoring the appellant's blood glucose as related to his diabetes.

It is noted in the record that ministry policy will provide rubber gloves to a client or a non-employed care provider when required as part of the care of the client. The evidence, however, confirms the appellant's caregiver is employed and that pursuant to the provisions in Part 8 of the Occupational and Health Safety Regulation, Workers Compensation Act the caregiver's employer is responsible to provide the medical supplies at no cost to her under the circumstances requested by the appellant. As a result, the provisions of the EAPWDR, Schedule C, 2(1)(a)(iii) are not met.

The panel finds the ministry decision was a reasonable application of the legislation and is reasonably supported by the evidence in the circumstances of the appellant and confirms the decision.