

PART C – DECISION UNDER APPEAL

The issue under appeal is the reconsideration decision of July 24, 2012 of the Ministry of Housing and Social Development (the "Ministry") which denied the appellant's request to receive an air conditioner as a health supplement, as the air conditioner did not meet the legislated criteria set out in sections 62, 69 or Schedule C of the EAPWDR.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (the "EAPWDR") Sections 62 and 69

Employment and Assistance for Persons with Disabilities Regulation Schedule C ("EAPWDR, Schedule C").

Employment and Assistance Act ("EAA") Sections 22 and 24

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of the reconsideration decision included:

- Request for Reconsideration application (the "Request");
- a letter dated July 12, 2012 prepared by the Appellant's representative, in support of the Request;
- a letter dated July 12, 2012 prepared by the Appellant's physician, in support of the Request ("Physician's First Letter");
- an undated quote for air conditioner prepared by a Sears Sales Associate; and
- printed material in respect of her diagnosed illness describing the complications related to the illness and setting out tips for bating the summer heat [5pages].

Prior to the hearing, the Appellant submitted the following additional document:

- a letter dated August 1, 2012 prepared by the appellant's physician addressed To Whom it May Concern ("Physician's Second Letter").

The Ministry did not object to the appellant submitting the additional documentation.

The panel determined that the Physician's Second Letter was admissible under s. 22(4)(b) of the EAA -- as written testimony in support of the information and records before the minister at reconsideration.

The Physician's Second Letter was admitted because it contained further clarification by the physician in respect of the Physician's First Letter which was before the reconsideration officer.

The following additional written testimony was submitted and read out loud at the Hearing by the Appellant's Representative:

- A hand written note of explanation dated September 10, 2012, prepared by the Appellant in support of her appeal.

The Ministry did not object to the appellant submitting the additional testimony.

The Panel admitted the Appellant's oral and written testimony under section 22(4)(b) of the Act as evidence in support of the information and records that were before the reconsideration officer.

The evidence of the physician in the Physician's First Letter was that:

- Appellant was diagnosed with a severe pulmonary related disease.
- Appellant is prone to life threatening exacerbations of her medical condition and frequently requires hospital admission.
- An air conditioner would be of benefit to Appellant as her home has little or no air flow.
- An air conditioner may partially reduce appellant's risk of severe exacerbations of her disease.

The evidence of the Representative in the July 12, 2012 letter was that:

- The Appellant's home has very little flow of air and stays extremely hot during the summer heat.
- The only way to reduce the heat in her home is by way of an air conditioner as fans are of little use.
- Due to the nature of her condition, it is important to stay cool to avoid severe complications.
- Appellant was hospitalized earlier in the year due to her condition which was so severe she was put in a medically induced coma to allow her body to heal.
- Although the air conditioner is not normally allowed for under the EAPWDR legislation, the Appellant would like the minister to use its discretion and allow the request for an air conditioner on compassionate and extreme health need reasons.

The evidence of the physician in the Physician's Second Letter was that:

- The Appellant requires the air conditioner as a treatment for her life threatening breathing condition.
- The Appellant's medications alone are unable to control her condition.
- The Appellant requires a climate controlled room to prevent black-outs and respiratory failure.

- The Appellant has benefitted from a borrowed air conditioner unit which has helped to stabilize her breathing status, but which unit must soon be returned.

At the Hearing the Appellant stated that:

- She used to have the use of an air conditioner which has since broken down; the landlord has lent her a 10 year old air conditioning unit on a temporary basis and which unfortunately must be returned.
- The borrowed unit has literally saved her life.
- Each day she struggles to take a breath and fights not to black out.
- She takes many medications and relies on several types of puffer which she must administer hourly or run the risk of blacking out and going into respiratory failure.
- Late last winter she blacked out and was hospitalized, where they had to induce a coma in order for her body to stabilize.

The panel finds that:

- Appellant is an eligible family unit; eligible to receive health supplements.
- The air conditioner has been prescribed by a medical practitioner.
- Appellant's physician confirmed that the air conditioner is required as treatment for the Appellant's direct and imminent life threatening condition.
- Appellant's physician confirmed the need for the air conditioner to avoid an imminent and substantial danger to the appellant's health.
- Health Supplements include medical equipment, medical devices and medical or surgical supplies.
- An air conditioner is not included in the listed descriptions of a health supplement as set out in the legislation.

PART F – REASONS FOR PANEL DECISION

The issue is whether the Ministry's decision to deny the Appellant her request for an air conditioner; because the said air conditioner was not an eligible item as required by section 62 and Schedule C of the EAPWDR, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

The relevant statutory provisions to be considered in this appeal are set out below:

Section 62 of the EAPWDR provides:

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 (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

- (a) a recipient of disability assistance,
- (b) a person with disabilities who has not reached 65 years of age and who has ceased to be eligible for a disability assistance because of
 - (i) employment income earned by the person or the person's spouse, if either the person or the person's spouse
 - (A) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (B) is aged 65 or more and a person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)
 - (ii) a pension or other payment under the *Canada Pension Plan* (Canada), or
 - (iii) money received by the person or the person's spouse under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry. (B.C. Reg. 92/2005)
- (c) a person who was a recipient of disability assistance on the day he or she became 65 years of age and a dependant of that person, if the dependant was a dependant of the person on that day and remains a dependant of that person,
- (d) a dependant of a person referred to in paragraph (a) or (b) (iii),
 - (d.1) a dependant of a person referred to in paragraph (b) (i), if any person in the family unit
 - (i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)
 - (d.2) a dependant of a person referred to in paragraph (b) (ii),
 - (d.3) a dependant of a person referred to in paragraph (b) (i), if any person in the family unit
 - (i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)
- (e) a dependent child of a recipient of hardship assistance,
- (f) a person with disabilities who has ceased to be eligible for disability assistance because of 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 the person's spouse, if
 - (i) the person is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or

ATTACH EXTRA PAGES IF NECESSARY

(ii) the person is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, or

(B.C. Reg. 170/2008) (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(g) a person whose family unit ceases to be eligible for disability assistance because of financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*, during the term of the agreement. (B.C. Reg. 67/2010)

(1.1) A person eligible to receive a health supplement under subsection (1) (b) (ii) or (d.2) may receive the supplement

(a) while any person in the family unit is

(i) under age 65 and receiving a pension or other payment under the Canada Pension Plan, or
 (ii) aged 65 or more and receiving the federal spouse's allowance or the federal guaranteed income supplement, and

(b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.
 (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(1.2) A person eligible to receive a health supplement under subsection (1) (c) may receive the supplement

(a) while any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, and

(b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(1.3) A person who was eligible to receive a health supplement under subsection (1) (b) (i), (d.1), (d.3) or (f) but ceases to be eligible for medical services only may continue to receive the supplement for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only. (B.C. Reg. 114/2010)

(2) A person referred to in subsection (1) (b) or (f) and his or her dependants and a person referred to in subsection (1) (c) cease to be eligible for any supplement under this division if the person's family unit takes up residence outside British Columbia. (B.C. Reg. 170/2008)

Section 2 of the EAPWDR, Schedule C provides:

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.

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

Section 3 of the EAPWDR, Schedule C provide:

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.

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if

(a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and

(b) the period of time, if any, set out in sections 3.1 to 3.11 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

(4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.

(5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if

(a) at the time of the repairs the requirements in this section and section 3.1 to 3.11 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and

(b) it is more economical to repair the medical equipment or device than to replace it.

(6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

Sections 3.1 through 3.11 of the EAPWDR, Schedule C set out criteria for the provision of the following health supplements:

- canes, crutches and walkers (3.1)
- wheelchairs (3.2)
- wheelchair seating systems (3.3)
- scooters (3.4)
- bathing and toileting aids (3.5)
- hospital bed (3.6)
- pressure relief mattresses (3.7)
- floor or ceiling lift devices (3.8)
- positive airway pressure devices (3.9)
- orthoses (3.10)
- hearing aids (3.11)

Sections 2.1, 2.2 and 4 through 9 of the EAPWDR, Schedule C set out criteria for the provision of the following further health supplements:

- optical supplements (2.1)
- eye examination supplements (2.2)
- dental supplements (4)
- crown and bridgework supplements (4.1)
- emergency dental supplements (5)
- diet supplements (6)
- monthly nutritional supplements (7)
- natal supplements (8)
- infant supplements (9)

Section 69 of the EAPWDR provides:

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 sections 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, and 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).

The Appellant argues that she has well established the criteria set out in section 69 and that this is the applicable section of the legislation which must be relied upon to provide her with an air conditioner unit. The Appellant further argues that complications related to her illness are quite severe resulting in blackouts which can be life threatening. The Appellant goes on to argue that the air conditioner is considered medical equipment by the Appellant and that failure to provide such necessary medical equipment can, and very likely will, lead to successive blackouts and possible death. Consequently, the Appellant argues that when she is unable to keep her living quarters cool the incidence of blackouts and hospitalization increase placing the Appellant at a very high risk of a direct and imminent life-threatening health need.

Further, the Appellant notes that the regulations do not specifically provide for the treatment of this particular condition and argues that the ministry is obliged to do their best to supply suitable equipment or devices to treat the Appellant's particular condition. The Appellant argues that this is a most compelling case and that the ministry should be directed to exercise some discretion in approving provision of the air conditioner unit.

The ministry argues firstly that the Appellant's request does not meet the criterion set out in section 62 of the EAPWDR, in that the desired air conditioner unit is neither a general health supplement as described in section 2 of the EAPWDR, Schedule C nor a medical equipment or device type of health supplement as described in sections 3.1 through 3.11 of the EAPWDR, Schedule C.

These facts in relation to this appeal are not in dispute: The Appellant is not eligible under section 62 of EAPWDR to receive a health supplement in the form of an air conditioner because it is not set out in Schedule

C of the EAPWDR.

The panel finds that the ministry reasonably concluded that the Appellant is not currently eligible to receive an air conditioner under section 62 as it is not an eligible item.

Secondly, the ministry notes that even if the Appellant was able to establish a direct and imminent life-threatening need as required by section 69 of the EAPWDR, Schedule C, section 69 still requires that the item to be provided be set out in either section 2 or sections 3.1 through 3.11 of the EAPWDR, Schedule C and the air conditioner is not so described.

With respect to the first of two requirements set out in section 69(a), namely that the ministry must be satisfied that the Appellant faces a direct and imminent life-threatening need, the Appellant has shown that she has a history of severe blackouts, the prevention of which her physician describes as being a direct and imminent life-threatening need. As for the second requirement, the Appellant has shown that there are no resources available to her family unit with which to meet that need. With respect however to the initial requirement of section 69, namely that the minister may provide any health supplement set out in sections 2(1)(a) and (f) and 3 of EAPWDR, Schedule C, it has already been established that the air conditioner is not an eligible item. Thus the panel finds that the ministry reasonably concluded that the appellant does not meet the legislated criterion set out in section 69 of the EAPWDR.

Thirdly, the ministry notes that the Appellant is not eligible for the requested air conditioner as one of any of the remaining health supplements set out in legislation. The panel finds that the ministry reasonably concluded that the Appellant does not meet the legislated criterion set out in the balance of Schedule C of the EAPWDR.

Fourthly, the ministry notes that the legislation does not provide the minister with any discretionary powers to provide an item which does not meet the legislated criteria. The panel finds that the legislation does not provide the minister with any discretionary authority to provide the Appellant with an air conditioner as has been argued by the Appellant

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the ministry's decision.