

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated August 16, 2012 which denied the appellant's request for a supplement to cover the cost of the rental of a CPAP with humidifier, and the purchase of a mask and headgear.

The ministry found that the appellant is not eligible for health supplements under Section 67 of the Employment and Assistance Regulation (EAR) nor under Section 62 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) and the appellant's request did not meet requirements of Section 76 of the EAR as the information provided does not establish that the appellant faces a life threatening health need and the supplement is necessary to meet that need.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 62 and
Employment and Assistance Regulation (EAR), Sections 67 and 76

PART E – Summary of Facts

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

- 1) Oximetry: Summary Report dated April 11, 2012 with comments "...overnight ox on room air, 32 weeks pregnant";
- 2) Sleep Apnea Referral Form dated April 25, 2012 for a CPAP trial;
- 3) Medical Equipment Request and Justification dated May 23, 2012 which states in part that the appellant's medical condition is severe OSA (obstructive sleep apnea), morbid obesity and recent pregnancy/delivery and that she needs a CPAP machine with a humidifier, mask, filters and tubing;
- 4) Facsimile Cover Sheet stamped May 25, 2012 which states in part for a Summary of Overnight Sleep Study that the total valid sampling time was 9 hours and 51 minutes and the Sleep Disturbance Index (on room air) is 52.9;
- 5) Quote from a sleep services company dated May 25, 2012 for 2 CPAP monthly rental at \$160 per month for the period from May 17, 2012 to July 17, 2012 for a total of \$320, for 2 heated humidifier rental at \$35 per month for a total of \$70 and for 1 true blue CPAP nasal mask with headgear for \$259, for a total of \$649;
- 6) Letter dated May 25, 2012 from the ministry to the appellant denying her request for a CPAP;
- 7) Medical Certificate dated July 13, 2012 which certifies that the physician has seen the appellant on that day. The appellant "...suffers from diabetes and hypothyroidism along with sleep apnea. It is important for her to have a CPAP machine as this will have a significant impact on her health as without it she may experience detrimental effects to her health;"
- 8) Fax dated July 24, 2012 to the physician who signed the Medical Certificate from the ministry requesting clarification regarding the oximetry testing on April 6, 2012 and whether the fact that the appellant was 32 weeks pregnant at the time had an effect on her respiratory status, and whether the appellant has a direct and imminent life threatening health need for a CPAP machine and, without this, her life is at risk;
- 9) Letter from a respiratory therapist to the ministry dated July 30, 2012, which states in part that the appellant has severe obstructive sleep apnea and requires a CPAP machine indefinitely to treat this. The appellant is currently unable to afford a machine on her own and it has been suggested that she apply through the ministry under the "life threatening need" category.
- 10) Letter from a respiratory therapist to the ministry dated August 3, 2012, which states in part that the appellant has severe sleep disordered breathing and requires a CPAP machine for this life threatening condition. Moderate to severe sleep apnea is associated with serious cardiovascular morbidity and reduced survival if left untreated. Given the severity of the appellant's sleep apnea ("RDI 53"), she does have an increased risk for cardiovascular event if this serious sleep disorder is left untreated. The appellant requires the use of a CPAP machine indefinitely.
- 11) Notes for the appellant's CPAP Request indicating a respiratory test on April 6, 2012, Sleep Apnea Referral Form dated April 25, 2012, baby boy born May 16, 2012, CPAP trial requested May 25, 2012 with quote for \$649, and letter from GP dated July 13, 2012 giving diagnosis; and,
- 12) Request for Reconsideration- Reasons.

In her Notice of Appeal, the appellant states that there is a direct and imminent life-threatening health need for a CPAP. "Morbid obesity despite being post partum, BMI greater than 60. Repeat sleep study continues to show severe sleep apnea (AHI 43) DEI- 51. Significant risk for stroke and cardiac disease given significant hypoxia (low oxygen). If this is denied, patient will have to go on home oxygen through the government, worsening diabetes and depression if left untreated. The oxygen will cost more than the CPAP will. Family GP letter to follow." In her Request for Reconsideration, the appellant states that not having the CPAP machine may result in her death and will leave her children without a mother. She believes that the ministry should be able to cover equipment cost when the ailment is life threatening. The appellant states that she stops breathing 63 times per hour which causes stress on her heart and leaves her exhausted during the day. The appellant states that she suffers from stress due to the fear of dying in her sleep and she worries about what will be for her children. The panel admitted the appellant's written evidence as relating to the appellant's medical condition and her need for a CPAP machine, and being in support of the information before the ministry on reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

The appellant consented to a ministry observer attending the hearing for training purposes. The appellant stated that the ministry covers the expense of birth control methods but will not pay for something like a CPAP machine where the condition is actually life threatening. The appellant stated that she has two young children and she is afraid that she will go to sleep for a nap and never wake up. The appellant stated that her own mother passed away from breathing problems. The appellant stated that her children need her as much as she needs them and she cannot afford the CPAP machine herself. The appellant stated that her doctor wrote a letter dated July 13, 2012 saying that she has sleep apnea and that she may experience detrimental health affects without the CPAP machine. The appellant stated that the respiratory therapist wrote a letter dated August 3, 2012 saying that she has a severe condition and she requires a CPAP machine. The appellant stated that she was 32 weeks pregnant at the time of the first test and her score was 53 and anything over 30 is considered "severe." The appellant stated that she did a second test around August 3, 2012 and her score was "50-something" although she did not receive a copy of the test Report. The appellant stated that she applied for Persons With Disabilities (PWD) designation but was denied and she also applied for Persons with Persistent Multiple Barriers (PPMB) to employment status and she has not heard yet whether she qualifies.

The ministry's evidence included that the appellant does not currently have PWD or PPMB designation and does not receive income assistance as a person receiving special care. The ministry states that the appellant was 32 weeks pregnant at the time that the sleep study was performed on April 6, 2012 and was in the severe range at that time. The appellant delivered on May 16, 2012. On July 13, 2012, a physician wrote that the appellant has diabetes and hypothyroidism along with sleep apnea and it is important for the appellant to have a CPAP machine as, without it, the appellant may experience detrimental effects to her health. On July 24, 2012, the ministry contacted the physician to ask if pregnancy would affect the results of a sleep study and, in response, the physician decided to order a new sleep study and scheduled it for either August 1 or 2, 2012. On July 30, 2012, the respiratory therapist sent a letter stating that the appellant has severe obstructive sleep apnea and requires a CPAP machine to treat this. On August 8, 2012, the ministry contacted the appellant and was told that she did not take a new sleep study although she did see the respiratory therapist to ask that he write a letter to the ministry. The respiratory therapist wrote a letter on August 3, 2012 to say that the appellant has severe sleep disordered breathing and require a CPAP machine for this life threatening condition. The ministry believes that the respiratory therapist did not conduct a new study and was reporting severity and life threatening need based on the study performed while the appellant was pregnant. The ministry respiratory technician was consulted and it was confirmed that pregnancy may have an effect on the results of such a study and a new study is warranted.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of the rental of a CPAP with humidifier, and the purchase of a mask and headgear because the appellant is not eligible for health supplements under Section 67 of the EAR nor under Section 62 of the EAPWDR and the appellant's request did not meet requirements of Section 76 of the EAR as the information provided does not establish that the appellant faces a life threatening health need and the supplement is necessary to meet that need, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 67 of the EAR provides in part:

General health supplements

67 (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

(a) is a recipient of income assistance under section 2 [*monthly support allowance*], 4 [*monthly shelter allowance*], 6 [*people receiving room and board*] or 9 [*people in emergency shelters and transition houses*] of Schedule A if

- (i) any person in the family unit is a person who has persistent multiple barriers to employment, and
- (ii) the recipient does not receive a federal spouse's allowance or guaranteed income supplement benefits.

(iii) Repealed. [B.C. Reg. 57/2007, s. 1.]

(b) is a recipient of income assistance under section 8 [*people receiving special care*] of Schedule A ...

Section 62 of the EAPWDR provides in part:

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 ...

Section 76 of the EAR provides as follows:

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

76 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 ministry's position is that the appellant is not eligible to receive health supplements under Section 67 of the EAR as she does not qualify as a PPMB and she does not receive income assistance as a person receiving special care under Section 8 and that she is also not eligible to receive health supplements under Section 62 of the EAPWDR as she is not a recipient of disability assistance. The ministry argues that although Section 76 applies to the appellant since she is otherwise not eligible for a health supplement under the EAR, the appellant's request for a supplement to cover the cost of rental of a CPAP with humidifier and the purchase of a mask and headgear, does not meet the criteria of Section 76 (a) and (b) of the EAR. The ministry argues that the information provided does not establish that the appellant faces a life threatening health need or that the requested rental of a CPAP with humidifier and purchase of a mask and headgear are required to meet that need. The ministry argues that the appellant's physician has not confirmed that the appellant currently has severe sleep apnea since the most recent sleep study on April 6, 2012, which showed sleep apnea in the severe range, was conducted when the appellant was 32 weeks pregnant, that the physician recommended a new sleep study after the appellant delivered her baby, and the ministry respiratory technician confirmed that pregnancy may have an effect on the results of the study. The ministry argues that the physician stated in the letter dated July 13, 2012 that the use of a CPAP machine will have a significant impact on the appellant's health as without it she may experience detrimental effects to her health and this is not evidence of a direct and imminent life-threatening health need for a CPAP machine without which the appellant's life would be at risk.

The appellant acknowledges that she is not eligible to receive health supplements as a PPMB or as a recipient of income assistance as a person receiving special care or as a recipient of disability assistance, but she argues that Section 76 of the EAR applies and she is eligible for a supplement as a person facing a life-threatening health need. The appellant argues that her doctor wrote a letter dated July 13, 2012 confirming that she has sleep apnea and that she may experience detrimental health affects without the CPAP machine and the respiratory therapist also wrote a letter dated August 3, 2012 confirming that she has a severe condition and she requires a CPAP machine. The appellant points out that even though she was 32 weeks pregnant at the time of the first test, her score was 53 and anything over 30 is considered "severe." The appellant argues that she did a second test around August 3, 2012 and her score was "50-something" although she did not receive a copy of the test Report. The appellant argues that she stops breathing 63 times per hour which causes stress on her heart and leaves her exhausted during the day and she also suffers from stress due to the fear of dying in her sleep and she worries about what will be for her children.

The panel finds that it was not disputed that the appellant is not eligible to receive health supplements under Section 67 of the EAR as she does not qualify as a PPMB and she does not receive income assistance as a person receiving special care under Section 8 and that she is not eligible to receive health supplements under Section 62 of the EAPWDR as she is not a recipient of disability assistance. It was also not disputed that Section 76 applies to the appellant since she is otherwise not eligible for a health supplement under the EAR. The panel finds that Section 76(a) and (b) of the EAR requires that the ministry be satisfied that the person faces a direct and imminent life threatening need and the health supplement is necessary to meet that need. The ministry argues that although the April 6, 2012 Oximetry test indicated that the appellant's sleep apnea is in the severe range, the test was conducted when the appellant was 32 weeks pregnant and that both the appellant's physician and the ministry respiratory technician agreed that her pregnancy could have an impact on the test results and that another test should be conducted when the appellant is not pregnant. The Summary Report dated April 11, 2012 specifically notes "...overnight ox on room air, 32 weeks pregnant," and the panel finds that the appellant's pregnancy was a sufficiently significant factor that it warranted comment and may have had an effect on the test results. The panel finds that the ministry reasonably concluded that

the information in the Medical Equipment Request and Justification dated May 23, 2012 and the letters from the respiratory therapist dated July 30 and August 3, 2012 was based on the results of the Oximetry test conducted April 6, 2012 and that this may not be an accurate reflection of the appellant's condition. Although the appellant stated that another test was conducted around August 3, 2012, she admitted that she does not have a copy of the Report and no further information was provided at the hearing despite a reference in the Notice of Appeal dated August 24, 2012 to a family GP letter "...to follow." The most recent information from the family physician is the Medical Certificate dated July 13, 2012 which reports that the appellant "...suffers from diabetes and hypothyroidism along with sleep apnea. It is important for her to have a CPAP machine as this will have a significant impact on her health as without it she may experience detrimental effects to her health." The panel finds that the ministry reasonably determined that the physician has not commented on the relative severity of the appellant's sleep apnea nor provided an opinion that it is a direct and 'imminent' life threatening need or that the CPAP machine is necessary to meet that need.

In conclusion, the panel finds that the ministry's decision to deny the appellant's request for a supplement to cover the cost of the rental of a CPAP with humidifier and the purchase of a mask and headgear because the appellant is not eligible for health supplements under Section 67 of the EAR nor under Section 62 of the EAPWDR and the appellant's request did not meet requirements of Section 76 of the EAR as the information provided does not establish that the appellant faces a life threatening health need and the supplement is necessary to meet that need was reasonably supported by the evidence and the panel confirms the ministry's decision.