

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated August 14, 2012 which denied the appellant's request for a supplement to cover the cost of an invalid cushion foam, embrace-air king back support and an embrace-air seat cushion. The ministry found that the items requested are not listed as eligible items in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and the appellant is not eligible for a supplement pursuant to Section 69 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 62 and 69 and Schedule C, Sections 2, 2.1, 2.2, 3, 3.1 to 3.11, 4, 4.1, 5, 6, 7, 8, 9

PART E – Summary of Facts

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

- 1) Prescription dated May 15, 2012 for a "cushion (donut-shaped) X 1, obus form back support X 1";
- 2) Quotation dated May 31, 2012 from a home health care and medical products supplier for 1 invalid cushion 18" foam for \$27.99, 1 embrace-air king back support for \$111.99 and 1 embrace-air seat cushion for \$59.99, for a total amount of \$223.97;;
- 3) Letter dated June 19, 2012 from the ministry to the appellant denying his request;
- 4) Letter dated August 1, 2012 from the same physician who wrote the prescription and stating that the appellant has "...significant limitations to sitting due to back problems, neck problems and inflammation of his prostate; he experiences significant pain and discomfort when sitting in a conventional chair for longer than a few minutes at a time; the [invalid cushion foam, embrace-air king back support, and embrace-air seat cushion] are expected to relieve pain, correct posture;" and,
- 5) Request for Reconsideration- Reasons prepared by an advocate on behalf of the appellant.

Prior to the hearing, the appellant provided a Surgical Pathology Report dated July 24, 2012 stating in part that the final diagnosis shows prostatic adenocarcinoma. The ministry did not object to admission of the Report into evidence. The panel reviewed the Report and admitted it, pursuant to Section 22(4) of the Employment and Assistance Act, as providing further detail in support of information that was before the ministry on reconsideration. The appellant's advocate also provided a written submission and the panel accepted it as argument.

At the hearing, the appellant's advocate stated that the appellant applied for the invalid cushion, embrace-air king back support and embrace-air seat cushion and, on June 19, 2012, he was denied all three items on the basis that these items are not considered health supplements under Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR). On August 9, 2012, the appellant made his reconsideration submission which included a letter from his doctor stating the three items were needed to relieve pain and correct posture when sitting due to back and neck problems and inflammation of the prostate. On August 14, 2012, the appellant's reconsideration request was denied on the basis that these items were not considered health supplements. On September 5, 2012, the appellant provided the Surgical Pathology Report indicating that the appellant has been found to have prostate cancer. The appellant submits that the three requested items fit under Section 2(1)(a)(i)(F) as reusable supplies to provide limb circulation care and, in view of treatment for the newly diagnosed cancer, under (A) as reusable supplies to provide wound care.

The appellant stated that since his initial request for these items he has discovered that he has prostate cancer. The appellant explained that he talked to the specialist a few days previously and he needs to go for a CT scan of his bones but there is no radiation treatment planned and he has no idea what they plan to do. The appellant stated that currently he has to sit forward or sideways in a normal chair in order to be comfortable. The appellant stated that 21 years ago he had a prostate gland removed and ever since he has been up every hour during the night to go to the washroom and that he has seen several specialists and nothing can be done. The appellant explained that the invalid cushion 18" foam is a donut-shaped cushion that takes the pressure off the prostate, the embrace-air king back support is to help improve his posture, and the embrace-air seat cushion is a rectangular cushion that is adjustable by pumping air into it. The appellant stated that these three items are used together, that the cushions work to prevent his flesh from pressing against a hard surface. The appellant stated that he gets swelling in his legs all the time and he takes medications for this. The appellant stated that his doctor does not recommend surgery.

In the Request for Reconsideration, the advocate states that the appellant is eligible for the invalid cushion foam, embrace-air king back support and an embrace-air seat cushion under Section 2(1)(F) of Schedule C of the EAPWDR as devices to promote limb circulation care. The supplements have been prescribed by a doctor and the physician has indicated the supplements are necessary to "...prevent significant pain and discomfort when sitting in a conventional chair" and that one of the symptoms the supplements are expected to relieve is inflammation of the prostate.

APPEAL #

The ministry's evidence included that the appellant submitted a request for an invalid cushion foam, an embrace-air king back support and an embrace-air seat cushion on May 31, 2012. The request included a prescription dated May 15, 2012 and a Quote from a home health care and medical products supplier. On June 19, 2012, the appellant was advised that the request was denied and the appellant requested a reconsideration. A letter from the physician dated August 1, 2012 was also provided and the ministry acknowledges that the appellant is suffering significant discomfort when sitting in a conventional chair.

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 an invalid cushion foam, embrace-air king back support and an embrace-air seat cushion because the items requested are not listed as an eligible item in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and the appellant is not eligible for a supplement pursuant to Section 69 of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Pursuant to Section 62 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the applicant must be a recipient of disability assistance, or be a dependent of a person in receipt of disability assistance in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has found that the requirement of Section 62 has been met in that the appellant has been approved as a recipient of disability assistance.

At issue is whether the requested items are eligible items under Schedule C of the EAPWDR, including:

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. ...

Further, Section 2(1.1) of Schedule C, provides that "medical or surgical supplies" do not include nutritional supplements, food, vitamins, minerals or prescription medications.

Section 2(1)(c) provides that the following items are health supplements if the other criteria of the section are met: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physiotherapy.

Section 2(1)(f) of Schedule C provides that the following items are health supplements if the other criteria of the section are met: the least expensive appropriate mode of transportation.

Section 2.1 of Schedule C provides that the following are the optical supplements that may be provided under Section 62.1 of the EAPWDR: basic eyewear and repairs, pre-authorized eyewear and repairs.

Section 2.2 of Schedule C provides that the minister may pay a health supplement under Section 67.2 of the EAPWDR for an eye examination if the other criteria of the section are met.

Medical equipment and devices

- 3 (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 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. ...

Section 3.1 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a cane, a crutch, a walker, an accessory to a cane, a crutch or a walker.

Section 3.2 provides that the following items are health supplements for the purposes of section 3 if the other criteria of the section are met: a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair.

Section 3.3 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a wheelchair seating system, an accessory to a wheelchair seating system.

Section 3.4 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a scooter, an upgraded component of a scooter, an accessory attached to a scooter.

Section 3.5 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a grab bar in a bathroom, a bath or shower seat, a bath transfer bench with hand held shower, a tub slide, a bath lift, a bed pan or urinal, a raised toilet seat, a toilet safety frame, a floor-to-ceiling pole in a bathroom, a portable commode chair.

Section 3.6 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed.

Section 3.7 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a pressure relief mattress.

Section 3.8 provides that the following item is a health supplement for the purposes of section 3 of the

Schedule, if the other criteria of the section are met: a floor or ceiling lift device.

Section 3.9 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a positive airway pressure device, an accessory that is required to operate a positive airway pressure device, a supply that is required to operate a positive airway pressure device.

Section 3.10 provides that the following items are an orthosis which is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a custom-made foot orthotic, custom-made footwear, a permanent modification to footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, a hip brace, an upper extremity brace, a cranial helmet, a torso or spine brace.

Section 3.11 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hearing aid.

Section 4 of the Schedule provides that the health supplement that may be paid under section 63 [*dental supplements*] are basic dental services, if the other criteria of the section are met.

Section 4.1 provides that the health supplement may be paid under section 63.1 for crown and bridgework, if the other criteria of the section are met.

Section 5 of Schedule C provides that the health supplement that may be paid for under Section 64 of the EAPWDR are emergency dental services.

Section 6 of the Schedule provides that the amount of a diet supplement that may be provided under section 66 [*diet supplements*] is set out for various conditions, if the other criteria of the section are met.

Section 7 of the Schedule provides as follows:

- 7 The amount of a nutritional supplement that may be provided under section 67 [*nutritional supplement*] of this regulation is the sum of the amounts for those of the following items specified as required in the request under section 67 (1) (c):
- (a) for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to \$165 each month;
 - (b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]
 - (c) for vitamins and minerals, up to \$40 each month.

Section 8 of the Schedule provides that the amount of a natal supplement that may be provided under section 68 [*natal supplements*] is set out, if the other criteria of the section are met.

Section 9 of the Schedule provides that the minister may provide infant formula under section 67.1 of the EAPWDR if the other criteria of the section are met.

As well, under Section 69 of the EAPWDR, the minister may provide a general health supplement if it is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under the 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 eligible to receive health supplements under Section 62 of the EAPWDR but that the requested items, invalid cushion foam, embrace-air king back support and an embrace-air seat cushion, are not eligible items as a medical or surgical supply under Section 2(1)(a) of Schedule C of the EAPWDR as the items do not meet all of the criteria. The ministry argues that although the additional information outlines that the items "fit the ministry's medical supplies legislation", the items are not medical or surgical supplies that are reusable or disposable. At the hearing, the ministry clarified its position that the requirements of the section are cumulative and must all be met, including that the supplies are required for one of the purposes listed in (A) through (F) of Section 2(1)(a) of Schedule C. The ministry also argues that it has not been shown that the items are necessary to avoid an imminent and substantial danger to health as set out in Section 2(1)(ii)(C) of Schedule C. The advocate points out that the requested items are supplied by a medical products company and that they are medical supplies that are reusable. The appellant argues, through his advocate, that the requested items meet the criteria in Section 2(1)(a)(i)(F) and (A) as being supplies required for the purpose of limb circulation care and wound care. The appellant argues that his doctor states that the requested items are needed to relieve pain and correct posture when sitting due to back and neck problems and inflammation of the prostate. The appellant argues that these three items are used together and that the cushions work to prevent his flesh from pressing against a hard surface. The appellant points out that the Surgical Pathology Report confirms that he has been diagnosed with prostate cancer and argues that the requested items will also be needed for wound care once his cancer treatments begin.

The panel finds that the requested items, the invalid cushion foam, embrace-air king back support and embrace-air seat cushion, are all provided by a supplier of home health care and medical products and that they fall within the definition of a "medical supply" which is reusable. Section 2 of Schedule C requires that the supplies are needed for one of the listed purposes, which includes "limb circulation care" [Section 2(1)(a)(i)(F)] and "wound care" [Section 2(1)(a)(i)(A)]. The same physician who wrote the prescription for the items states in his August 1, 2012 letter that the appellant has "...significant limitations to sitting due to back problems, neck problems and inflammation of his prostate; he experiences significant pain and discomfort when sitting in a conventional chair for longer than a few minutes at a time; the [invalid cushion foam, embrace-air king back support, and embrace-air seat cushion] are expected to relieve pain, correct posture" and the panel finds that the requested items are required for the primary purpose of pain relief and to correct posture, and not for limb circulation care or wound care. The appellant admitted that he has not currently commenced any treatment for his prostate cancer and surgery is not recommended by his doctor and the panel finds that the appellant does not currently have any wounds requiring treatment. Section 2(1)(iii)(C) of Schedule C also requires that the evidence establish that the supplies are necessary to avoid an imminent and substantial danger to health and the panel finds that the physician has not provided evidence in the August 1, 2012 letter that the requested items are necessary to avoid an imminent danger to the appellant's health. The panel finds that the ministry's decision, which concluded that the invalid cushion foam, embrace-air king back support and embrace-air seat cushion do not meet all of the legislative criteria as set out in Section 2(1)(a) of Schedule C of the EAPWDR, was reasonable.

The ministry's position is that although the requested items are prescribed by a medical practitioner, they are not one of the medical equipment and devices specifically set out in Sections 3.1 through 3.11 of Schedule C of the EAPWDR. The appellant does not dispute that the requested items are not specifically listed as an item in Sections 3.1 through 3.11. The panel finds that the ministry reasonably determined that the requested invalid cushion foam, embrace-air king back support and embrace-air seat cushion are not specifically set out in Section 3.1 through 3.11 of Schedule C of the EAPWDR as they are not: a cane, a crutch or a walker; a

wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair; a wheelchair seating system, an accessory to a wheelchair seating system; a scooter, an upgraded component of a scooter, an accessory attached to a scooter; a grab bar in a bathroom, a bath or shower seat, a bath transfer bench, a tub slide, a bath lift, a bed pan or urinal, a raised toilet seat, a toilet safety frame, a floor-to-ceiling pole in a bathroom, or a portable commode chair; a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed; a pressure relief mattress; a floor or ceiling lift device; a positive airway pressure device, an accessory that is required to operate a positive airway pressure device, a supply that is required to operate a positive airway pressure device; a custom-made foot orthotic, custom-made footwear, a permanent modification to footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, a hip brace, an upper extremity brace, a cranial helmet, a torso or spine brace; or a hearing aid. The panel finds that the ministry reasonably concluded that the invalid cushion foam, embrace-air king back support and embrace-air seat cushion do not meet the requirements of Sections 3.1 to 3.11 of Schedule C of the EAPWDR.

The ministry's position is that the appellant's request for a supplement to cover the cost of the invalid cushion foam, embrace-air king back support and embrace-air seat cushion does not meet the criteria of the other sections of Schedule C of the EAPWDR, including sections 2(1)(c), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9, since they are not any of the items covered, namely: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physiotherapy; optical supplements; eye examination supplements; a dental supplement; a crown and bridgework supplement; emergency dental supplements; diet supplements; monthly nutritional supplements; natal supplements; or infant formula. The advocate does not dispute that the requested items do not fall within any of these other sections of Schedule C. The panel finds that the ministry's decision, which concluded that the invalid cushion foam, embrace-air king back support and embrace-air seat cushion are not an item listed in the other sections of Schedule C of the EAPWDR, was reasonable.

With respect to Section 69 of the EAPWDR, the ministry's position is that this section is intended to provide a remedy for those persons who are facing a direct and imminent life-threatening need for these supplements and who are not otherwise eligible to receive them. The ministry argues that the appellant does not require a remedy under Section 69 as he is eligible to receive health supplements set out under Schedule C, Sections 2 and 3. The ministry further argues that information has not been provided to demonstrate that the requirements of Section 69(d) are met as the invalid cushion foam, embrace-air king back support and embrace-air seat cushion do not meet the criteria under Schedule C, Section 2(1)(a) [medical supplies] and are not listed under Section 2(1)(f) [medical transportation] or in Sections 3 to 3.11. The appellant acknowledges that he is eligible to receive health supplements sets out in Schedule C and argues that the requested items meet the requirements of Section 2(1)(a) of Schedule C of the EAPWDR [medical supplies].

The panel finds that the ministry reasonably concluded that the appellant is eligible, as a recipient of disability assistance, for health supplements under Section 62 of the EAPWDR, whereas Section 69 applies to provide a health supplement to a person in the family unit who is otherwise not eligible for the health supplement under the EAPWDR. The panel also finds that the ministry reasonably determined that the requirements of Section 69(d) are not met as the invalid cushion foam, embrace-air king back support and embrace-air seat cushion do not meet the criteria under Schedule C, Section 2(1)(a) as medical supplies and are not listed under Section 2(1)(f) as a mode of medical transportation, or under Sections 3 to 3.11, as detailed above. Therefore, the panel finds that the ministry's decision, which concluded that Section 69 of the EAPWDR does not apply to the appellant's circumstances, was reasonable.

In conclusion, the panel finds that the ministry's decision to deny the request for a supplement to cover the cost of the invalid cushion foam, embrace-air king back support and embrace-air seat cushion as not meeting the legislated criteria of Schedule C, Sections 3, 3.1 to 3.11, or Section 2(1)(a) or (c), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, and 9 or Section 69 of the EAPWDR, was a reasonable application of the applicable enactment in the circumstances of the appellant and, therefore, confirms the decision.