

### PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision of September 17, 2012 wherein the ministry denied the appellant a health supplement to provide a custom made wrist/thumb splint.

The ministry determined that the appellant is not eligible to receive medical equipment-orthoses under Section 67 or 76 of the Employment and Assistance Regulation (EAR) or Section 62 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). Further, the Ministry determined that the Appellant does not have a direct and imminent life threatening need that would permit the provision of a wrist/thumb splint under Section 76 and Schedule C of the EAR and Schedule 2.

The Ministry also determined that because the Appellant was seeking funds for a resting brace and a working brace he does not meet the eligibility requirements stipulated in Subsection 3.10 (9) of Schedule C of the EAR that sets a limit on the number of orthoses that can be provided as one per hand, finger, wrist, elbow or shoulder.

### PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) Sections 67 and 76 and  
Schedule C, Section 3 and 3.10

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 62

## PART E – Summary of Facts

On June 11, 2012 the Appellant completed a Ministry form ORTHOSES REQUEST AND JUSTIFICATION in order to request wrist thumb splints for his left hand. The form included information provided by an Occupational Therapist. On August 7, 2012 the Appellant submitted to the Ministry a letter from his physician reporting that the Appellant has severe arthritic changes to both hands and needs orthotic splints made for both wrists and thumbs. On August 13, 2012 the Appellant was advised by telephone that his request was denied because he was not eligible to receive medical equipment – orthoses under Section 67 or 76 of the EAR or Section 62 and 69 of the EAPWDR. The Appellant applied for Reconsideration on September 6, 2012.

The evidence before the Ministry at reconsideration consisted of the original ORTHOSES REQUEST AND JUSTIFICATION, the letter from the Appellant's Physician, and the Request for Reconsideration that was accompanied by a letter from the Appellant in which he states, "I feel I am eligible under current sections of the act. I scored myself on the multiple barriers to employment scale and seemed to rate fifteen out of a possible twenty-one. Please the longer the debate concerning my need for this medical equipment, the greater my hardship becomes. The undue hardship I must endure without this medical equipment is increased pain and decreased mobility..." The Appellant describes the activities that he can not perform without the medical equipment - such as securing a winter wood supply - and his concerns about not being able to meet his obligations as a tenant since he is required to maintain the lawns and garden and clear snow in the winter. The appellant concludes the letter by stating that he has a great need, has no other potential sponsor and he asks the Ministry to reconsider his application for custom made medical devices.

The Appellant submitted a Notice of Appeal on September 27, 2012 in which he states "Previous injury to R/Wrist with recent work place aggravation. Left Hand remained as only working hand. New arthritic condition in L/Hand has reduced use. Undue hardship is the result of combination of conditions. No other sponsor exists except me".

At the hearing the Appellant stated that he knew that he was not asking to bend the legislation but hoping that there was a way he could get an orthoses. He showed the over-the-counter brace that he purchased himself and said that he has one hand out of action. He said that he has served in the armed forces and has tried to give the country all he can. He said that he is hoping that there is some kind of "faint hope" clause that will provide him with a brace as he has an income of \$610.00 a month and needs a custom made brace that will not wear out so fast. He said that the legislation is black and white but he is a gray area.

The Ministry said that people on regular income assistance are not eligible for health supplements and that Section 67 of the EAR and Section 62 of the EAPWDR say that health supplements are only provided to people who qualify as PPMB (having Persistent Multiple Barriers to Employment) or individuals who are designated a Person with Disability (PWD). He said that the only part of the legislation that speaks to a faint hope clause is Section 76 of the EAR that allows the Ministry to provide a health supplement to a person who is otherwise not eligible for a health supplement when there is a direct and imminent life threatening need. The Ministry said that a doctor would need to provide information that there is a direct and imminent life threatening need.

The Ministry also said that although it is not relevant to the Appeal hearing he brought information on eligibility for PPMB and that he would speak to the Appellant about this information after the hearing

concluded.

The panel admitted the written testimony of the Appellant and the Ministry as evidence that is in support of the information and records that were before the Ministry at the time of reconsideration.

The panel makes the following findings of fact: The Appellant is a recipient of income assistance under the Employment and Assistance Act. The Appellant submitted a request for wrist/thumb splints because of pain and decreased mobility due to injury and arthritis. An occupational therapist and the Appellant's physician supported the request for wrist/thumb splints.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision was a reasonable application of the legislation supported by the evidence and whether the Ministry reasonably determined that the Appellant is not eligible for a health supplement to provide a custom made wrist/thumb splint.

The ministry determined that the appellant is not eligible to receive medical equipment-orthoses under Section 67 or 76 of the Employment and Assistance Regulation (EAR) or Section 62 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). Further, the Ministry determined that the Appellant does not has a direct and imminent life threatening need that would permit the provision of a wrist/thumb splint under Section 76 and Schedule C of the EAR and Schedule 2.

The Ministry also determined that because the Appellant was seeking funds for a resting brace and a working brace he does not meet the eligibility requirements stipulated in Subsection 3.10 (9) of Schedule C of the EAR that sets a limit on the number of orthoses that can be provided as one per hand, finger, wrist, elbow or shoulder.

The relevant legislation is the Employment and Assistance Regulation as follows:

### 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 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,

(c) is a dependant of a person referred to in

- (i) paragraph (b),
- (ii) paragraph (f), if the dependant was a dependant of the person on the day the person reached 65 years of age and remains a

dependant of that person,

(iii) paragraph (g), if the dependant was a dependant of the person on the day the person's family unit ceased to be eligible for income assistance as a result of 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

(iv) paragraph (h), if the dependant was a dependant of the person on the day the person's family unit ceased to be eligible for income assistance as a result 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 another member of the person's family unit, and

(A) if the dependant is under age 65, the family unit is receiving premium assistance under the *Medicare Protection Act*, or

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

(d) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]

(e) is a dependent child of a recipient of income assistance or hardship assistance,

(f) was on the day the person reached 65 years of age

(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 ,

(g) meets the following requirements:

(i) has not reached 65 years of age;

(ii) is a part of a family unit that ceased to be eligible for income assistance as a result of 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;

(iii) was eligible for health supplements under section 2 or 3 of Schedule C on the day the person's family unit ceased to be eligible for income assistance, or

(h) meets all of the following requirements:

(i) is part of a family unit that ceased to be eligible for income assistance as a result 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 another member of the person's family unit;

(ii) was eligible for health supplements under section 2 or 3 of Schedule C on the day the person's family unit ceased to be eligible for income assistance;

(iii) either

(A) if the person is under age 65, the family unit is receiving premium assistance under the *Medicare Protection Act*, or

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

(1.1) A person eligible to receive a health supplement under subsection (1) (c) (ii) or (f) 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.

(1.2) A person who was eligible to receive a health supplement under subsection (1) (c) (iv) or (h) 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.

(2) Subject to subsection (3), 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 recipient in the family unit who

(a) has received income assistance under the *BC Benefits (Income Assistance) Act* or the Act continuously from March 31, 1997 and on March 30, 1997 was eligible under section 37 (1) (a) of the *BC Benefits (Income Assistance) Regulations*, B.C. Reg. 272/96, as it read on March 30, 1997, for the health care services and benefits referred to in that provision, or

(b) is a dependant of a recipient referred to in paragraph (a).

(3) Subsection (2) applies only until the earlier of the following dates:

(a) the date the recipient ceases to receive income assistance;

(b) the first day of the calendar month after the minister makes a determination that the recipient, or any dependant of the recipient other than a dependent child, is capable of accepting employment.

(4) A person referred to in subsection (1) (c) (ii), (iii) or (iv), (f), (g) or (h) ceases to be eligible for any supplement under this Division if the person's family unit takes up residence outside British Columbia.

### **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).

[en. B.C. Reg. 61/2010, s. 1.]

Also relevant to this appeal is the Employment and Assistance for Persons with Disabilities Regulation as follows:

### **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,
- (b) a person with disabilities who has not reached 65 years of age and who has ceased to be eligible for 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,
  - (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,
- (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,

(d.2) a dependant of a person referred to in paragraph (b) (ii),

(d.3) a dependant of a person referred to in paragraph (f), 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,

(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

(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

(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.

(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.

(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.

(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.

(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.

[am. B.C. Regs. 92/2005; 170/2008. App. 2, s. 1; 67/2010, Sch. 2, s. 1; 114/2010, Sch. 2, s. 2; 85/2012, Sch. 2, s. 5.]

The provision for considering an orthoses as a health supplement is contained in Schedule C of the EAR as follows:

### **Schedule C - 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.

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a 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.

3.10 (6) For an orthosis that is an upper extremity brace, in addition to the requirements in subsection (2) of this section, the upper extremity brace must be intended to provide hand, finger, wrist, elbow or shoulder support.

The following is the relevant section of the chart in Schedule C that outlines the number of orthoses that can be provided to an eligible person:

Table 1		
Item	Column 1 Orthosis	Column 2 Limit
9	upper extremity brace	1 per hand, finger, wrist, elbow or shoulder

In the reconsideration decision the Ministry addressed the Appellant's eligibility for a health supplement as follows:

"Your application does not meet the legislated criteria in the Regulation, Section 67 ... (because)

- You do not have qualification as a person with persistent multiple barriers to employment and you do not receive income assistance under Section 8 of Schedule A
- You are not a person otherwise described in Section 67"

Further the Ministry states:

"In addition, your application does not meet the legislated criteria in the Employment and Assistance for Persons with Disabilities Regulation Section 62(1)... (because)

- You are not a recipient of disability assistance and
- You are not a person otherwise described in Section 62"

At the hearing the Ministry stated that persons who are receiving regular income assistance are not eligible for health supplements.

The Appellant stated that he knows the legislation does not cover his situation and that although the legislation is black and white he is a gray area.

The panel finds that the Appellant is a recipient of income assistance and does not have status as person in receipt of benefits because of multiple barriers to employment (PPMB) or a person with disabilities (PWD). Therefore the panel is unable to concur with the Appellant that there is a "gray" area in the legislation and further finds that the Ministry's denial of a health supplement is a reasonable application of the legislation.

With respect to the Appellant's argument that there may be a "faint- hope clause" that will provide him with a brace that will not wear out so fast the Ministry addressed that issue in the reconsideration decision as follows:

"The Ministry finds that the information provided in your initial request and Request for Reconsideration does not establish that you are facing a direct and imminent life threatening health need or that the items requested are necessary to meet a direct and life threatening health need."

At the hearing the Appellant provided no information of a life threatening health need although he did ask the Ministry if suicide was a life threatening health need. The Ministry said that a doctor would be required to verify a life threatening health need.

The panel finds that the Ministry's determination that there is no direct or life threatening health need that would allow the provision of a orthoses as a health supplement under Section 76 of the EAR is a reasonable application of the legislation.

The final reason, stated in the reconsideration decision, for denying a health supplement is because the occupation therapist requested two braces – a working brace and a resting brace – when the legislation only allows the provision of one orthoses per hand.

Neither the Appellant nor the Ministry addressed this issue at the hearing. The panel finds that the Ministry's decision that the Appellant's request for two braces exceeds the criteria stipulated in Subsection 3.10(9) of Schedule C of the EAR is a reasonable application of the legislation.

In conclusion, the panel finds that the Ministry reasonably determined, in the circumstances of the Appellant, that the Appellant is not eligible for a health supplement to provide orthoses under Section 67 and 76 of the EAR or Sections 62 of the EAPWDR and further finds that the denial of a health supplement is a reasonable application of the law.

Therefore, the Panel confirms the ministry's decision pursuant to Section 24(1)(a) and Section 24(2)(a) of the Employment and Assistance Act.