

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry) dated 16 October 2012 that denied the appellant's request for a hernia belt because the ministry found that the request does not meet the legislated eligibility criteria set out in the Employment and Assistance for Persons with Disabilities Regulation. Specifically, the ministry found that the hernia belt is not an eligible item as an orthosis, a medical or surgical supply, other medical equipment or as other services or treatments under Schedule C of the Regulation. The ministry also found that the information provided does not establish that the appellant is facing a life-threatening need and that the hernia belt is necessary to meet that need as required under section 69 of the Regulation.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA).  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 62 and 69 and Schedule C.

## PART E – Summary of Facts

The appellant failed to appear at the hearing at the scheduled time, date and place. The panel verified that the appellant had received notification of the hearing at least 2 business days before the hearing date by examining the Canada Post tracking report showing successful delivery of the Notice of Hearing. The panel also contacted the Tribunal office and was advised that someone had called on the appellant's behalf, stating that the appellant was not able to attend and declining an offer for him to participate by conference call. The hearing thus proceeded under section 86(b) of the Employment and Assistance Act.

The evidence before the ministry at reconsideration consisted of:

- A prescription form completed by a hospital physician dated 29 August with an Rx that the appellant requires a hernia belt for parastomal hernia, giving the brand name, model number, colour and cost (\$148.00). The request for a hernia belt was received by the ministry on 30 August 2012.
- The appellant's Request for Reconsideration dated 04 October 2012. An unknown author states:

"Patient suffers from parastomal hernias that requires 2-3x week homecare nursing, has already had 2 surgeries, 3 repeated parastomal bleeds. This belt is needed in addition to multiple hrs of the health team to maintain him & prevent further surgeries. It is a specified belt, ordered by a specialist & in hope of reducing health care costs burdens. Please reconsider your decision. Pt has no funds to purchase."

In his Notice of Appeal dated 25 October 2012, under Reasons, a wound clinician Registered Nurse writes:

"This belt is necessary to prevent further skin breakdown to the [parastomal] area due to stretching of the skin. It helps manage pain. It is medically necessary to prevent further deterioration of the hernia and hospitalization due to issues with the hernia. It helps prevent overuse of ostomy supplies that are currently being used."

At the hearing, the ministry stood by its position at reconsideration.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably determined that the appellant was not eligible for requested hernia belt because the ministry found that the request does not meet the legislated eligibility criteria set out in the EAPWDR. Specifically, the ministry found that the hernia belt is not an eligible item as an orthosis, a medical supply or as other health supplements under Schedule C of the Regulation, nor does the information provided establish that the appellant is facing a life-threatening need and that the hernia belt is necessary to meet that need as required under section 69 of the Regulation.

Schedule C of the EAPWDR sets out the categories of health supplements the minister is authorized to provide to family units eligible under Division 4 (sections 62.1 to 70.01) of the EAPWDR.

Section 1 of Schedule C contains relevant definitions.

The remaining sections deal with specific categories of health supplements, with category-specific criteria relating to such matters as exclusions, limits, purpose and replacement. These sections and the categories of supplement covered are listed below (as it read on 30 August 2012 when the ministry received the original request.)

| Section | Category |
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| 2 (1) | General health supplements |
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|  | (a) Medical or surgical supplies that are disposable or reusable and 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; |
|  | (c) The following services: acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy.  |
|  | (f) Travel for the purposes of medical care.   |

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| 2.1 | Optical supplements |
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| 2.2 | Eye examination supplements |
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| 3 | Medical equipment and devices – general provisions |
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| 3.1 | Canes, crutches and walkers |
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| 3.2 | Wheelchairs |
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| 3.3 | Wheelchair seating systems |
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| 3.4 | Scooters |
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| 3.5 | Bathing and toileting aids: (a) a grab bar in a bathroom;(b) a bath or shower seat;(c) a bath transfer bench with hand held shower;(d) a tub slide; (e) a bath lift; (f) a bed pan or urinal;(g) a raised toilet seat;(h) a toilet safety frame;(i) a floor-to-ceiling pole in a bathroom;(j) a portable commode chair. |
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| 3.6 | Hospital beds: (a) a hospital bed; (b) an upgraded component of a hospital bed; (c) an accessory attached to a hospital bed. |
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| 3.7 | Pressure relief mattresses |
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| 3.8 | Floor or ceiling lift devices |
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| 3.9 | Positive airway pressure devices |
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| 3.10 | Orthoses: (a) a custom-made or off-the-shelf foot orthotic;(b) custom-made footwear;(c) a |
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permanent modification to footwear;(d) off-the-shelf footwear required for the purpose set out in subsection (4.1) (a);(e) off-the-shelf orthopaedic footwear;(f) an ankle brace;(g) an ankle-foot orthosis;(h) a knee-ankle-foot orthosis;(i) a knee brace;(j) a hip brace;(k) an upper extremity brace;(l) a cranial helmet used for the purposes set out in subsection (7); (m) a torso or spine brace.

3.11 Hearing aids

4 Dental supplements

4.1 Crown and bridgework supplement

5 Emergency dental supplements

6 Diet supplements

7 Monthly nutritional supplement

8 Natal supplement

9 Infant formula

10 Transitional nutritional supplement for bottled water.

The following are extracts from the EAPWDR, as the legislation read on 30 August 2012, when the ministry received the original request.

In particular, section 2(1)(a) of Schedule C reads:

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.

And from section 3.10(11):

3.10(11) The following items are not health supplements for the purposes of section 3 of this Schedule:

- (c) a hernia support;
- (d) an abdominal support;

The ministry found that, as the appellant is a recipient of disability assistance, he is eligible to receive health supplements under the EAPWDR. The position of the ministry is that it has reviewed all possible legislated eligibility criteria and concluded that the requested items do not fall under any of

the categories of health supplements listed in Schedule C. In particular, the ministry determined that a hernia support or an abdominal support is specifically listed as a non-eligible orthosis under section 3.10(11) of Schedule C. In addition, the ministry determined that the requested item did not meet the criteria for medical or surgical supplies under section 2(1)(a) of Schedule C. The ministry also noted that even if the requested item met those criteria, it would not be eligible as one of the items listed in section 2(1)(a.1) – lancets, needles and syringes, ventilator supplies or tracheostomy supplies or in 2(1)(a.2) - consumable medical supplies. The ministry canvassed other sections of Schedule C and determined that a hernia belt was not one of the items or services listed. The ministry concluded that although it is sympathetic with the circumstances of the appellant's case, the ministry was not authorized to provide the appellant with a hernia belt under the legislation.

The position of the appellant is that the requested hernia belt is medically necessary to prevent further deterioration of the hernia and further hospitalization due to issues with the hernia. It would also help to reduce the costs to the health-care system of the appellant's care.

The panel notes that in canvassing the EAPWDR, including Schedule C, to determine whether a hernia belt was an eligible health supplement, the ministry relied on the most recent version of the legislation, including amendments that came into effect on 01 October 2012 [including B.C. Regs. 197/2012, Sch. 2 and 198/2012, Sch. 2 ams.] As the appellant's request for a hernia belt was received by the ministry on 30 August 2012, the panel finds that the applicable legislation was that which was in force at that time. The panel has reviewed the differences between the legislation in force at the time of the application and that which came into effect on 01 October 2012. The panel notes that there is no change to section 3.10(11) of Schedule C setting out the exclusion of a hernia support and an abdominal support as eligible health supplements. The panel also notes that section 2(1) of Schedule C has been amended to add subsections (a.1) and (a.2), further limiting eligible supplies to lancets, needles, etc. and consumable medical supplies. The ministry also canvassed Section 3.12 of Schedule C which provides for a non-conventional glucose meter which was not included in the previous legislation. The panel finds that these amendments make no material difference to whether a hernia belt is an eligible item under Schedule C. The panel will proceed to determine the reasonableness of the ministry's decision based on the legislation in effect when the appellant's request was received by the ministry.

Taking into account section 3.10(11) of Schedule C, and also upon careful review of the whole Schedule, the panel finds that the ministry reasonably determined that a hernia belt is specifically excluded as a health supplement for the purposes of Section 3 and is not included as an eligible supply, equipment or treatment under Section 2 of Schedule C, or an item set out in the other sections of Schedule C.

The panel has reviewed the EAPWDA and the EAPWDR, including Schedule C, and finds that the legislation does not establish any discretionary authority for the minister to make exceptions and provide any health care products or services other than those set out in Schedule C.

The ministry also found that the appellant was not eligible for a hernia belt under section 69 of the EAPWDR. This section provides that the minister may provide certain health supplements set out in Schedule C if the health supplement is provided to or for a person who is not otherwise eligible for it under the Regulation and if the minister is satisfied that 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. As the ministry had found that, as he is a recipient of disability assistance, the appellant is "otherwise" qualified for health supplements under Schedule C, and as the panel has found that that

the requested item is not an eligible supply, equipment or treatment under Schedule C, the panel finds that the ministry reasonably determined that the appellant was not eligible for the hernia belt under section 69.

The appellant has provided compelling evidence from medical professionals that there is a demonstrable medical need for the requested item, as well as a significant health-care cost savings benefit. However, no argument has been made, legislation cited, or evidence presented that the requested item falls into any of the categories of health supplement listed in Schedule C. As the panel has found that the legislation does not establish any discretionary authority for the minister to make exceptions and provide any health care products or services other than those set out in Schedule C, the panel finds the ministry determination that the appellant was not eligible for the requested item was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.