

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (Ministry) reconsideration decision dated October 29, 2012 which found that the appellant was not eligible for funding for HpPAC as it is not an eligible health supplement item set out in the Employment and Assistance for Persons with Disability Regulations sections 62 to 69 or Schedule C.

PART D – Relevant Legislation

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

PART E – Summary of Facts

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

- 1) The appellant's Request for Reconsideration dated October 18, 2012 in which he states that he was diagnosed with H Pylori infection causing chronic diarrhea, weight loss and malnutrition. He also states that his medical condition is a direct and imminent life threatening health issue that needs the HpPac supplement, "...as in section 76 of the Act" and that the Ministry's decision is incorrect.
- 2) Prescription from a physician dated August 29, 2012 noting that the appellant requires a high protein diet for his medical condition of weight loss and malnutrition.
- 3) Letter from the Ministry to the appellant dated September 25, 2012 advising him that his request for funding of the HpPAC was denied as it is not an eligible item as described in the EAPWDR section 67.

In his Notice of Appeal, the appellant states that after further investigation his doctor found that he has H.P. infection which is potentially treatable and that compared with all the other medical expenses, he feels that treatment of this is justified and could keep him out of hospital.

The Ministry relied on its Reconsideration Decision.

The panel makes the following findings of fact:

- 1) The appellant has been designated as a persons with disability;
- 2) The appellant has been diagnosed with H-Pylori infection causing chronic diarrhea, weight loss and malnutrition; and
- 3) The appellant was prescribed HpPAC from a medical practitioner.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant is not eligible for funding for HpPAC on the basis that it is not an eligible health supplement item set out in the EAPWDR sections 62 to 69 or Schedule C.

The relevant sections of the EAPWDR are 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 recipient of disability assistance.

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).
- (B.C. Reg. 61/2010)

EAPWDR Schedule C

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.

(2) No more than 12 visits per calendar year are payable by the minister under this section for any combination of physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services.

(2.1) If eligible under subsection (1) (c) and subject to subsection (2), the amount of a general health supplement under section 62 of this regulation for physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services is \$23 for each visit.

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 ...

Medical equipment and devices – canes, crutches and walkers

3.1 (1) Subject to subsection (2) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:

- (a) a cane;
- (b) a crutch;
- (c) a walker;
- (d) an accessory to a cane, a crutch or a walker.

(2) A walking pole is not a health supplement for the purposes of section 3 of this Schedule.

Medical equipment and devices – wheelchairs

3.2 (1) In this section, "wheelchair" does not include a stroller.

(2) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:

- (a) a wheelchair;
- (b) an upgraded component of a wheelchair;
- (c) an accessory attached to a wheelchair.

Medical equipment and devices – wheelchair seating systems

3.3 (1) The following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain a person's positioning in a wheelchair:

- (a) a wheelchair seating system;
- (b) an accessory to a wheelchair seating system.

Medical equipment and devices – scooters

3.4 (1) In this section, "scooter" does not include a scooter with 2 wheels.

(2) Subject to subsection (5) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (3) of this section are met:

- (a) a scooter;
- (b) an upgraded component of a scooter;
- (c) an accessory attached to a scooter.

Medical equipment and devices – bathing and toileting aids

3.5 (1) The following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to facilitate transfers of a person or to achieve or maintain a person's positioning:

- (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.

Medical equipment and devices – hospital bed

3.6 (1) Subject to subsection (3) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to facilitate transfers of a person to and from bed or to adjust a person's positioning in bed:

- (a) a hospital bed;
- (b) an upgraded component of a hospital bed;
- (c) an accessory attached to a hospital bed.

Medical equipment and devices – pressure relief mattresses

3.7 (1) A pressure relief mattress is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that the pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity.

Medical equipment and devices – floor or ceiling lift devices

3.8 (1) In this section, "**floor or ceiling lift device**" means a device that stands on the floor or is attached to the ceiling and that uses a sling system to transfer a person.

(2) A floor or ceiling lift device is a health supplement for the purposes of section 3 of this Schedule if the following requirements are met:

- (a) the minister is satisfied that the floor or ceiling lift device is medically essential to facilitate transfers of a person in a bedroom or a bathroom;
- (b) the cost of the floor or ceiling lift device does not exceed \$4 200 or, if the cost of the floor or ceiling lift device does exceed \$4 200, the minister is satisfied that the excess cost is a result of unusual installation expenses.

Medical equipment and devices – positive airway pressure devices

3.9 (1) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (2) of this section are met:

- (a) a positive airway pressure device;
- (b) an accessory that is required to operate a positive airway pressure device;
- (c) a supply that is required to operate a positive airway pressure device.

Medical equipment and devices – orthoses

3.10 (1) In this section:

"off-the-shelf", in relation to an orthosis, means a prefabricated, mass-produced orthosis that is not unique to a particular person;

"orthosis" means

- (a) a custom-made or off-the-shelf foot orthotic;
- (b) custom-made footwear;
- (c) a 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.

Medical equipment and devices – hearing instruments

3.11 A hearing instrument is a health supplement for the purposes of section 3 of this Schedule if

- (a) the hearing instrument is prescribed by an audiologist or hearing instrument practitioner, and

(b) an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument.

Eligibility for HpPAC as a medical supply

The appellant's position is that he requires HpPAC as it is potentially treatable, that treatment is justified, and that treatment could keep him out of hospital.

The EAPWDR, Schedule C, section 2(1)(a) sets out that the Ministry may provide either disposable or reusable medical or surgical supplies for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care or limb circulation care if the supplies are prescribed by a medical practitioner, the least expensive supplies appropriate for the purpose and necessary to avoid an imminent and substantial danger to health, and there are no resources available to the family unit to pay the cost of or obtain the supplies.

The Ministry argues that the appellant is not eligible for an HpPAC as a medical supply as it is not required for one of the purposes set out in the EAPWDR, Schedule C, section 2(1)(a)(i). The Ministry also argues that HpPAC is a prescription medication so pursuant to EAPWDR 2(1.1) it is not an eligible item.

The panel finds that as HpPAC is a prescription it is an excluded item as per EAPWDR section 2(1.1). The panel also finds that HpPAC is not a medical or surgical supply for any of the purposes prescribed by EAPWDR, Schedule C, section 2(1)(a.1) or (a.2) so the panel finds that the Ministry's decision that the appellant was not eligible to receive HpPAC as a medical supply was reasonable.

Eligibility for HpPAC as medical equipment

The EAPWDR Schedule C, sections 3.1 to 3.12 specifies that medical equipment and devices include items such as a cane, crutch, walker and accessories, wheelchair, scooter, various assistive devices, hospital bed, pressure relief mattress, lift devices, positive airway pressure device, orthotics, hearing instrument, or a non-convention glucose meter.

The Ministry argues that as the requested HpPAC is not one of the specified medical equipment listed in EAPWDR Schedule C, sections 3.1 to 3.12, the appellant is not eligible for funding for HpPAC as medical equipment.

The panel finds that HpPAC does not fit in the criteria listed in EAPWDR Schedule C, sections 3.1 to 3.12 and concludes that the Ministry's decision that the appellant was not eligible for HpPAC as medical equipment was reasonable.

Eligibility for health supplements under EAPWDR Schedule C, sections 2.1 to 9

EAPWDR, Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, and 9 set out that the Ministry may provide: optical supplements, eye examination supplements, dental supplements, crown and bridgework supplements; emergency dental supplements, diet supplements; monthly nutritional supplements; natal supplements; and infant formula. EAPWDR section 67(3) sets out that the Ministry may provide a nutritional supplement for an acute short-term need.

The Ministry argues that as HpPAC is not one of the other health supplements specified in EAPWDR Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9, the appellant is not eligible for HpPAC under this legislation.

The panel finds that as HpPAC is not one of the other health supplements specified in EAPWDR Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 or 9, the Ministry's decision that the appellant was not eligible for funding for an HpPAC as a health supplement was reasonable.

Eligibility for HpPAC as a therapy

EAPWDR, Schedule C, sections 2(1)(c), 2(2) and 2(2.1) set out that the Ministry may provide no more than 12 visits per calendar year in the amount of \$23 for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physiotherapy treatments but as HpPAC is not one of these therapies it is not eligible for funding under these sections of the EAPWDR.

The panel finds that as HpPAC is a prescription and is not one of the specified therapies under EAPWDR Schedule C, sections 2(1)(c), 2(2) and 2(2.1), the Ministry's decision that the appellant is not eligible for HpPAC as a therapy was reasonable.

Life Threatening Health Need

The appellant's position is that his medical condition is a direct and imminent life threatening health issue that needs the HpPAC supplement as in "*section 76 of the Act*".

The Ministry's position is that the appellant is not eligible for HpPAC under EAPWDR section 69, as a health supplement for a person facing a direct and imminent life threatening health need. The Ministry's position is that the appellant's medical practitioner has not confirmed that the appellant faces a direct and imminent life-threatening health need. In addition, the Ministry's position is that as HpPAC is not a general health supplement, medical equipment or device or other health supplements as set out in Schedule C, sections 2(1)(a) to (f) or section 3, section 69 is not applicable.

The panel notes that section 76 of the EAPWDR was repealed but that section 69 contains the same wording as section 76 previously did so the panel finds that the Ministry's reference to section 69 of the EAPWDR as opposed to section 76 of the EAPWDR was reasonable and that the appellant's reference to section 76 of the ACT can be considered a reference to section 69 of the EAPWDR.

The panel finds that although the appellant states that his health condition presents a direct and imminent life threatening health need, he has not provided any evidence as to the nature of the direct and imminent life threatening health need. In addition, there is no evidence from a medical practitioner confirming that the appellant faces a direct and imminent life threatening health need or further explanation of the direct and imminent life threatening health need.

The appellant states that treatment is justified and "...at best will keep him out of hospital" but being in hospital does not necessarily constitute a direct and imminent life threatening health need. As there is no further explanation of the nature of the appellant's direct and life threatening health need

and as there is no evidence from a medical practitioner confirming that the appellant faces a direct and imminent life threatening health need, the panel finds that the Ministry's decision that the appellant was not eligible for HpPAC pursuant to EAPWDR Section 69 was reasonable.

Conclusion:

The panel notes that the Ministry sympathizes with the appellant's circumstances but was unable to grant the appellant's request for HpPAC as it does not meet the legislated criteria set out in the EAPWDR and Schedule C. The panel notes that a person with disabilities designation may be covered for prescription medications through the Ministry of Health (premium assistance) and Fair Pharmacare but it is not clear whether the appellant was advised of the possibility of coverage through these other sources, or whether the appellant had explored these options. However, in conclusion, the panel finds that the Ministry's Reconsideration Decision was reasonable and confirms the decision.