

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision of November 26, 2012 in which the ministry denied the appellant's request for reimbursement of \$3,400 for a hearing aid on the basis that the appellant did not receive pre-authorization of the minister prior to obtaining the hearing aid, as required by s. 3(1)(b)(i) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The ministry also considered the appellant's request under the criteria in s. 69 of the EAPWDR, and determined that the appellant had not established that she was facing a direct and imminent life threatening need.

PART D – Relevant Legislation

EAPWDR s. 69;
EAPWDR, Schedule C, ss. 3(1)(b)(i) and 3.11

PART E – Summary of Facts

The appellant did not personally attend the appeal hearing but was represented by her mother. Having confirmed that the appellant was notified of the hearing, the hearing proceeded in accordance with s. 86(b) of the Employment and Assistance Regulation.

The information before the ministry at the time of reconsideration included the following:

- The appellant has been a recipient of disability assistance since 2007. She is developmentally delayed and suffers from significant hearing loss.
- On October 1, 2012 the appellant's mother contacted the ministry to request a replacement hearing aid as the appellant's hearing aid had been lost. The ministry advised her that a hearing assessment report and a detailed quote would be needed in order to process her request.
- The appellant's mother immediately took steps to arrange a referral to an audiologist to obtain the necessary report and quote, but it wasn't until October 26, 2012 that she was able to get an appointment for the appellant to see the audiologist. Attendance at the audiologist required two lengthy return trips in poor driving conditions.
- The audiologist prescribed a bone-anchored hearing aid (BAHA), and the appellant's mother ordered and paid for it on October 26, 2012.
- On October 29, 2012 the appellant's mother submitted the hearing assessment report and the quote for \$3,400 to the ministry, along with confirmation that she had paid for the BAHA.
- On October 31, 2012, the appellant's mother was advised by the ministry that her request for reimbursement was denied as she had not obtained the prior approval of the ministry.
- In an e-mailed submission to the ministry, dated November 9, 2012 (the November 9 e-mail) the appellant's mother explained that she had paid for the BAHA immediately because the supplier was offering it at a reduced summer special price and it could not be ordered without payment. She also wanted to expedite the improvement of the appellant's quality of life. The appellant's mother stated that she had not been advised by the ministry not to pay for the BAHA.

Prior to the appeal hearing the appellant, through her mother, submitted a letter from the appellant's physician dated December 6, 2012, confirming that the appellant is deaf and medically requires the BAHA (the Physician's Letter). The physician wrote "If [the appellant] does not wear these hearing aids this will cause direct and imminent danger to her life. Without the hearing aids [the appellant] wouldn't be able to hear fire alarms or instructions to vacate a building, verbal prompts to move away from danger ex: fire, something falling on her when hiking/walking, traffic when crossing the road etc... She would also not hear a sexual predator correctly and could be coerced away which has happened in the past."

Also prior to the appeal hearing, the appellant's mother made a written submission in the form of a letter dated December 5, 2012 (the Appeal Letter). The Appeal Letter "...rationalizes the decision

made to replace the BAHA ... prior to approval from the Ministry..." It substantially reiterates previous information that had been before the ministry. It also confirms that the appellant "...is developmentally delayed and relies on verbal prompts for communication in most aspects of her life so without hearing she is placed in a dangerous predicament. With the hearing aid she is at least able to hear instructions & prompts for her safety... This has led to some very unsafe situations for her such as not being able to hear a car approaching when she is crossing the street and poor decision making."

At the appeal hearing the appellant's mother informed the panel that by ordering the BAHA promptly it was obtained at a savings of \$725 from the regular price. She advised that the appellant has had a hearing aid since she was 2 years old and that her parents had always paid for the devices, never requesting funding from the government until now. She stated that her first phone call on discovering that the appellant's hearing aid had been lost was to call the ministry, said that she only got partial information from the ministry, and confirmed that she had not been told not to pay for the BAHA prior to receiving approval. There were difficulties in obtaining timely referrals – those difficulties combined with the amount of travel involved and time needed for the audiologist to obtain the BAHA from the supplier and make custom adjustments meant it was approximately 6 weeks from the time the loss of the appellant's hearing aid was discovered until receipt of its replacement. During that time, the appellant's mother and the family with which the appellant lives had to be especially watchful that the appellant came to no harm.

The Physician's Letter, the Appeal Letter, and the oral testimony of the appellant's mother provide more detail about issues and information that were before the ministry at reconsideration, and were accepted by the panel as written and oral testimony in support, in accordance with s. 22(4)(b) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision and did not introduce new evidence.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's decision of November 26, 2012 not to provide reimbursement for the purchase of the BAHA on the bases that:

- The appellant had not received the prior approval of the minister as required by s. 3(1)(b)(i) of Schedule C of the EAPWDR; and
- The appellant had not been facing a direct and imminent life threatening need as required by s. 69 of the EAPWDR.

The relevant legislation is as follows:

EAPWDR Schedule C

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.

EAPWDR

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).

* * *

Pre-authorization of the ministry

The appellant, through her mother, acknowledges that the BAHA was purchased and paid for prior to receipt of approval by the ministry. The Appeal Letter was expressly proffered, in part, as a rationalization for the premature purchase. The panel acknowledges the pressure that the appellant's mother felt to pay for the BAHA when she did, and understands that the appellant's mother was acting in good faith with the best of intentions when she ordered and paid for the BAHA. However, the fact is this was done without the ministry's pre-authorization. Section 3(1)(b)(i) of Schedule C only authorizes the ministry to provide a health supplement if prior approval is obtained – it does not give the ministry the discretion to provide the BAHA otherwise. Accordingly, the panel finds that the ministry acted reasonably in finding that this legislative criterion was not satisfied.

Direct and Imminent life threatening need

The appellant's position, as expressed by her mother, is that the appellant had a direct and imminent life threatening need for the BAHA, as she is endangered by not being able to hear threats or warnings of threats such as fire alarms, oncoming traffic, falling objects or sexual predators. She relies on the Physician's Letter as support for her position. She also says that the BAHA substantially improves the appellant's quality of life, as she relies extensively on verbal prompts from others.

The ministry's position, as expressed in its reconsideration decision, is simply that the information provided does not establish that the BAHA was paid for under a "life-threatening emergency situation."

The legislation uses the words "direct and imminent life threatening need." In the panel's view, the word "need" means the need for the requested health supplement which arises from the underlying health condition. The word "direct" means that the "life threatening" aspect must arise directly from the "need" – there must be a causal relationship. For instance, the need for a person with severe asthma to have a "puffer" would be a direct need. However, the examples of threats relied on by the appellant are all external threats that exist for many - if not most - people and they exist for the appellant regardless of whether she has a BAHA or not. Not having the BAHA increases the risk to the appellant, but does not directly cause the threat(s) and does not cause their "life threatening" nature.

Similarly, the word "imminent" denotes a degree of immediacy that was not present in the circumstances of the appellant. In the panel's view "imminent" means that the threatened loss of life is more likely than not going to occur very soon. The Physician's Letter and the appellant's mother assert that the threats of fire, traffic accident, falling objects or sexual predators create imminent need for the BAHA. Even if, contrary to the panel's finding, the threats the appellant identifies could be construed as "direct", those threats may or may not occur at unspecified future times. Since there is no evidence that at the time of purchase of the BAHA those threats would arise very soon, they were not imminent. Section 69 of the EAPWDR does not permit the minister to consider factors such as reduced price and improvement of quality of life, raised in the November 9 e-mail, as reasons to provide the

BAHA in the absence of pre-authorization.

The ministry expressed the degree of urgency inherent in the term "imminent" by using the word "emergency." In the panel's view, the ministry reasonably determined that the appellant did not face a "direct and imminent life threatening need" for the BAHA.

Conclusion

The panel acknowledges again that the appellant's mother has acted in good faith in all respects. It is unfortunate that the ministry appears not to have sufficiently stressed to her on October 1st the importance of not ordering or paying for the BAHA without pre-authorization. However, the panel is obliged to apply the law to the facts as it finds them, and based on the foregoing analysis of the legislation the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence.

Accordingly, the panel confirms the ministry's decision.