

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development's (Ministry) reconsideration decision dated November 6, 2012 which found that the appellant was not eligible for funding for Ortho Eyes eye drops ("Eye Drops") as it is not an eligible health supplement item set out in the Employment and Assistance for Persons with Disability Regulations sections 62 or Schedule C, section 2(1)(a).

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 62 and Schedule C, section 2(1)(a).

## 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 4, 2012 in which she states that the Ministry has interpreted the legislation incorrectly, has not provided a thorough analysis or proper interpretation, and that she has provided sufficient information to establish that the regulatory criteria have been met.
- 2) Letter from the appellant dated October 4, 2012 requesting an extension of time to submit documents for reconsideration.
- 3) Letter from the appellant dated October 4, 2012 stating that her left eye has a detached retina which required surgical repair and has left her with a silicone buckle stitched to her eye to hold her retina in place, which significantly worsened her already poor vision. The appellant states that she later developed a vitreous detachment in her right eye which has caused reading to become very difficult for her. The appellant states that in the last year she has begun seeing a black dot in her left eye, a piece of the retina in her left eye detached and she developed a cataract. Although her doctor recommended laser surgery, she is scared to undergo further surgery and the situation is currently being monitored conservatively. The appellant states that the Eye Drops prescribed to her are an alternative to surgery, that studies have shown their success in ability to reverse cataracts and have shown other healing effects on the eyes. The appellant states that because the cataract is a wound caused by the retinal surgery, and the Eye Drops can heal the wound, the Eye Drops qualify as wound care under EAPWDR Schedule C, section 2(1)(a)(i). The appellant states that the Eye Drops are her only source of treatment, can be purchased over the counter without a prescription, are the least expensive options, that the Eye Drops were prescribed by the Ophthalmologist and that there is no alternative version of this "wound care". The appellant also states that the spirit of the legislation ought to cover the requested treatment as the legislation provides for various treatments to help repair body parts that rank far lower than eyes. The appellant also states that she has experienced substantial damage to her visual health and lives in imminent danger of further eye damage of various kinds. The appellant states that the cost for the Eye Drops is \$59.35 for one month, \$356.10 for six months and \$712.20 for one year but that she has no resources available to pay for the Eye Drops.
- 4) Note from the Ophthalmologist, undated, stating that the appellant has Post Vitrectomy Cataract OS, that the appellant wishes to defer cataract surgery, proceed with non-surgical alternative and use the Eye Drops. The Ophthalmologist states that there are no medical contraindications to using the Eye Drops.
- 5) Letter from the appellant's Psychiatrist dated October 9, 2012 (the "Psychiatrist") stating that the Eye Drops can be considered "wound care" under EAPWDR Schedule C, section 2(1)(a) and that it would be prudent for the Ministry to cover the relatively small expense of the Eye Drops. The Psychiatrist states that the Eye Drops may help to dissolve the cataract and avoid surgery. The Psychiatrist also states that the appellant is in a fragile and stress-filled mental state, living with multiple damages to her eyes, and multiple "imminent and substantial dangers" due to them such as going blind either gradually or suddenly without warning, or due to complications from cataract surgery. The Psychiatrist states that the situation is very stressful for the appellant and may tip her over into a psychiatric emergency that would have

dire consequences for her being able to function independently.

- 6) Prescription from an Ophthalmologist dated July 31, 2012 for the Eye Drops.
- 7) Fax to the appellant's ophthalmologist dated November 7, 2012 (the "Ophthalmologist") with the Ophthalmologist's handwritten response to questions posed by the Ministry. The Ophthalmologist confirms that the appellant's retinal surgery caused the appellant's cataracts but that the cataracts are not considered "wounds". The Ophthalmologist also confirms that the Eye Drops are not prescribed for "wound care", and that the Eye Drops are not necessary for the appellant to avoid an imminent and substantial danger to health. The Ophthalmologist also indicates that the appellant's statement that studies that have shown that the Eye Drops have shown success in their ability to reverse cataracts and provide other healing effects on the eyes is not correct.

In her Notice of Appeal, the appellant states that the Ministry erred in their interpretation and application of the legislation.

Neither the appellant nor the Ministry attended the hearing. Having confirmed that the appellant and ministry were notified of the hearing, the panel proceeded with the hearing pursuant to EAPWDR section 86(b).

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 a Post Vitrectomy Cataract OS; and
- 3) The Ophthalmologist accepted the appellant's preference to take the Eye Drops rather than proceeding with cataract surgery.

## 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 the Eye Drops on the basis that it is not an eligible health supplement item set out in the EAPWDR sections 62 or Schedule C, section 2(1)(a).

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.

### 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.

### EAPWDR Schedule C, section 2(1)(a) - eligibility for the Eye Drops as a medical supply

The EAPWDR, Schedule C, section 2(1)(a)(i) 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's position is that the only possible category that the Eye Drops might meet is 2(1)(a)(i)(A) as "wound care". The Ministry's position is that although the Psychiatrist provided a letter of support for funding of the Eye Drops under the definition of "wound care", the Ophthalmologist has confirmed that the Eye Drops are not required for wound care, so the information provided does not establish that the appellant has met the requirements to have the Eye Drops funded as a medical supply for wound care under the EAPWDR Schedule C, section 2(1)(a)(i).

The appellant's position is that she requires the Eye Drops as they could treat her vision problems and hopefully improve her vision. The appellant argues that the Eye Drops prescribed to her are an alternative to surgery, that studies have shown their success in ability to reverse cataracts and have shown other healing effects on the eyes. The appellant states that because the cataract is a wound caused by the retinal surgery, and the Eye Drops can heal the wound, the Eye Drops qualify as wound care under EAPWDR Schedule C, section 2(1)(a)(i)(A).

The appellant states that the Eye Drops are her only source of treatment, can be purchased over the counter without a prescription, are the least expensive options, that the Eye Drops were prescribed by the Ophthalmologist, that there is no alternative version of this "wound care", and that she cannot afford to buy them.

The appellant also states that "*...the spirit of the legislation ought to cover the requested treatment as the legislation provides for various treatments to help repair body parts that rank far lower than eyes*". The appellant states that "wound care" is a broad category encompassing various items such as bandages, antiseptic or healing salves, tinctures, etc. and that medicinal eye drops are required for another kind of wound. The appellant states that the legislation does not contain a list stating what medical or surgical supplies can or cannot be considered "wound care" and it is appropriate that there is not such a list. The appellant states that "*...it is appropriate to defer the decision as to what constitutes "wound care" to a medical practitioner or nurse, which the legislation has done in stating that the medical supply must be "prescribed"*".

The appellant and the Psychiatrist both state that the Eye Drops should be covered under the definition of "wound care". The appellant states that she still has a hole in her retina and that this hole is a "wound" as required in the legislation. In contrast however, the panel notes that the Ophthalmologist states that the Eye Drops are not required for wound care.

The panel notes that the section 8 of the Interpretation Act, [RSBC 1996] chapter 238 states that every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. The panel also notes that the definition of "wound" found in Webster's English Dictionary is "any cut, bruise, hurt or injury caused to the skin" and "injury" is defined as "physical damage; harm". However, as the appellant's medical condition relates to her eye conditions, and the treating Ophthalmologist who has the specialty in eye care states that the Eye Drops are not required for "wound care", the panel finds that the Ophthalmologist's opinion must be given greater weight and preferred over the evidence of the appellant and the Psychiatrist.

In addition, although the appellant states that studies have shown success in the ability of the Eye Drops to reverse cataracts, and have shown other healing effects on the eyes, the Ophthalmologist

does not agree with these statements. The appellant has not provided other medical evidence or copies of the studies supporting these statements. Based on the evidence, the panel gives more weight to the Ophthalmologist's evidence as he is the medical practitioner specializing in the treatment of eye conditions.

As the Ophthalmologist states that the Eye Drops are not required for wound care the panel finds that the Ministry's decision that the appellant has not met the legislated requirements to have the Eye Drops funded as a medical supply for wound care pursuant to the EAPWDR Schedule C, section 2(1)(a)(i) was reasonable.

#### EAPWDR Schedule C, section 2(1)(a)(ii)(C) - Imminent and Substantial Danger to Health

The Ministry's position is that the evidence does not establish that the appellant requires the Eye Drops to avoid an imminent and substantial danger to health as required by EAPWDR Schedule C, section 2(1)(a)(ii)(C). The Ministry's position is that the appellant's medical practitioner has not confirmed that the appellant faces an imminent and substantial danger to health.

The appellant argues that she has experienced substantial damage to her visual health and lives in imminent danger of further eye damage of various kinds such as detached retina, worsening cataracts and worsening vitreous detachments, all of which cause increased vision loss or blindness.

Although the Psychiatrist states that the appellant lives with multiple damages to her eyes, and faces multiple imminent and substantial dangers such as going blind either gradually or suddenly without warning, or due to complications from cataract surgery, the Ophthalmologist confirmed that in his opinion, the appellant does not face imminent and substantial danger to her health. The Ophthalmologist has not provided any information to indicate that the appellant faces imminent and substantial danger to her health from further eye damage as noted by the appellant such as detached retina, worsening cataracts, worsening vitreous detachment, increased vision loss or blindness.

As the Ophthalmologist is the specialist treating the appellant for her eye conditions and has not provided any information indicating that the appellant faces imminent and substantial dangers of going blind either gradually or suddenly without warning, or due to complications from cataract surgery, the panel finds that the Ophthalmologist's evidence is preferred and is given more weight than the appellant or the Psychiatrist's evidence in this regard. In addition, the Ophthalmologist confirms that the appellant has deferred cataract surgery and wishes to proceed with a non-surgical alternative, so the panel finds that the appellant does not face an imminent and substantial danger to health due to complications from cataract surgery.

The Psychiatrist also states that the appellant is in a fragile and stress-filled mental state, that the situation is very stressful for her, and may tip her over into a psychiatric emergency that would have dire consequences for her being able to function independently. While the panel appreciates that this situation may be difficult and frustrating for the appellant, the information provided by the Psychiatrist does not demonstrate that the appellant is unable to function independently at this time or that she is currently facing an imminent and substantial danger to her health. The panel finds that the Ministry's decision that the appellant does not require the Eye Drops to avoid an imminent and substantial danger to health as required in the EAPWDR Schedule C, section 2(1)(a)(ii)(C) was reasonable.

Conclusion:

In conclusion, the panel finds that the Ministry's Reconsideration Decision was reasonably supported by the evidence and confirms the decision.