

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated January 9, 2013 which denied the appellant's request for a supplement to cover the cost of a wrist widget.

The ministry found that the appellant is in receipt of regular income assistance and is, therefore, not eligible for health supplements under Section 67 of the Employment and Assistance Regulation (EAR) nor under Section 62 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) and the appellant's request did not meet the requirements of Section 76 of the EAR nor Section 69 of the EAPWDR as the information provided does not establish that the appellant faces a life threatening health need and the supplement is necessary to meet that need.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 62 and 69

Employment and Assistance Regulation (EAR), Sections 67 and 76

PART E – Summary of Facts

With the consent of the parties this appeal was conducted in writing in accordance with s. 22(3)(b) of the Employment and Assistance Act (EAA).

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

- 1) Orthoses Request and Justification dated November 9, 2012 which states in part that the appellant's medical condition is an intra-articular distal radial fracture and ulnar styloid fracture of her left wrist with a recommendation for a wrist widget which is "one size fits most wrists" at a price of \$29.00. The wrist widget would help to stabilize the distal radial ulnar joint during movement and loading of the wrist and hence reduce pain. The wrist widget would improve physical functioning that has been impaired by a neuro-musculo-skeletal condition. The Request is completed by a physiotherapist and endorsed by a physician; and,
- 2) Request for Reconsideration- Reasons.

In her Request for Reconsideration, the appellant stated that she recognizes that the legislation (section 67) states that only individuals receiving disability assistance can qualify for general health supplements but, without the wrist widget, she is disabled. The appellant stated that in the Orthoses Request and Justification the physiotherapist as well as a doctor concur that the wrist widget would stabilize the bones because they are not aligned properly. Without the wrist widget, the bones are not stabilized. The appellant stated that the cost of the wrist widget is \$29.00, which is a large amount for someone on income assistance to pay.

In her Notice of Appeal, the appellant stated that the ministry's decision is unfair as it is not her fault that her bones were not aligned after the break. Pain occurs when her wrist and hand are pressure-loaded and after writing letters. The appellant stated that her hand also tires. The appellant stated that the style of her writing has changed. For graphic art and calligraphy, the control and strength are not the same and are more difficult. Some movements and flexibility are restricted, e.g. to brush her teeth and rotate her hand and wrist around to clean her teeth or comb her hair have been altered and is awkward. The appellant stated that surgery may be a risk and was not recommended by the appellant's general practitioner. The appellant stated that her wrist and hand are not as they were, that she is left-handed and has broken her left wrist.

The ministry relied on its reconsideration decision which included evidence that the appellant is in receipt of regular income assistance and does not have qualification as a Person with Persistent Multiple Barriers to Employment (PPMB), and she does not receive income assistance under Section 8 of Schedule A of the Employment as Assistance Regulation [people receiving special care]. The appellant is also not a recipient of disability assistance.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of a wrist widget because the appellant is not eligible for health supplements under Section 67 of the EAR nor under Section 62 of the EAPWDR and the appellant's request did not meet requirements of Section 76 of the EAR nor Section 69 of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 67 of the EAR provides in part:

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 Schedule C 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 ...

Section 62 of the EAPWDR provides in part:

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 ...

Section 76 of the EAR provides as follows:

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).

Section 69 of the EAPWDR provides as follows:

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).

The ministry's position is that the appellant is in receipt of regular income assistance and, therefore, is not eligible to receive health supplements under Section 67 of the EAR as she does not qualify as a PPMB and she does not receive income assistance as a person receiving special care under Section 8 of Schedule A of the EAR. The ministry's position is that the appellant is also not eligible to receive health supplements under Section 62 of the EAPWDR as she is not a recipient of disability assistance. The ministry argues that although Section 76 of the EAR and Section 69 of the EAPWDR apply to the appellant since she is otherwise not eligible for a health supplement under the regulations, the appellant's request for a supplement to cover the cost of a wrist widget, does not meet the criteria of Section 76 (a) and (b) of the EAR nor Section 69 (a) and (b) of the EAPWDR. The ministry argues that the information provided does not establish that the appellant faces a life threatening health need or that the requested wrist widget is required to meet that need.

The appellant acknowledges that the legislation states that only individuals receiving disability assistance can qualify for general health supplements but she argues that, without the wrist widget, she is disabled. The appellant argues that she has a medical need for the wrist widget as, in the Orthoses Request and Justification, the physiotherapist as well as a doctor concur that the wrist widget would stabilize the bones because they are not aligned properly. The appellant argues that without the wrist widget, the bones in her wrist are not stabilized. The appellant argues that it is not her fault that her bones were not aligned after the break and pain occurs when her wrist and hand are pressure-loaded and after writing letters. The appellant argues that she is left-handed and has broken her left wrist and that some movements and flexibility are restricted, e.g. to brush her teeth and rotate her hand and wrist around to clean her teeth or comb her hair. The appellant argues that surgery may be a risk and was not recommended by the appellant's general practitioner.

The panel finds that it was not disputed that the appellant is not eligible to receive health supplements under Section 67 of the EAR as she does not qualify as a PPMB and she does not receive income assistance as a person receiving special care under Section 8 of Schedule A of the EAR and that she is not eligible to receive

health supplements under Section 62 of the EAPWDR as she is not a recipient of disability assistance. Although the appellant argued that without the wrist widget she is "disabled", the panel finds that she has not been designated as a Person With Disabilities (PWD) which is a requirement under the legislation in order to receive disability assistance. It was also not disputed that Section 76 of the EAR and Section 69 of the EAPWDR apply to the appellant since she is otherwise not eligible for a health supplement under the EAR or the EAPWDR. Both Section 76(a) and (b) of the EAR and Section 69(a) and (b) of the EAPWDR require that the ministry be satisfied that the person faces a direct and imminent life threatening need and the health supplement is necessary to meet that need. The appellant argued that she has a medical need for the wrist widget as both the physiotherapist and the doctor concur that it would stabilize the bones in her wrist thereby improving functioning and reducing pain and that, otherwise, some movement and flexibility are restricted and surgery is a risk. The panel finds that neither the physiotherapist nor the physician have provided evidence that the appellant faces a life threatening need that is 'direct' and 'imminent,' or that the wrist widget is necessary to meet that need and that, therefore, the ministry reasonably concluded that the requirements of Section 76 of the EAR and Section 69 of the EAPWDR have not been met.

In conclusion, the panel finds that the ministry's decision to deny the appellant's request for a supplement to cover the cost of the wrist widget because the appellant is not eligible for health supplements under Section 67 of the EAR nor under Section 62 of the EAPWDR and the appellant's request did not meet requirements of Section 76 of the EAR nor Section 69 of the EAPWDR since the information provided does not establish that the appellant faces a direct and imminent life threatening need and the supplement is necessary to meet that need was a reasonable application of the applicable enactment in the appellant's circumstances and the panel confirms the ministry's decision.