APPEAL #

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry) dated 01 February 2013 that denied the appellant's request for a circulation booster. The ministry held that the item is not an eligible medical supply under section 2(1) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation, that it is not an eligible medical equipment or device item under section 3 and sections 3.1 to 3.12 of Schedule C, nor does it meet the criteria of any of the remaining health supplements set out in Schedule C. The ministry also held that the appellant was not eligible for a circulation booster 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), section 62 and 69 and Schedule C.

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PART E – Summary of Facts

With the consent of the parties, the appeal hearing was conducted in writing in accordance with section 22(3)(b) of the *Employment and Assistance Act.*

The evidence before the ministry at reconsideration consisted of the following:

- From the ministry's files: the appellant is a recipient of disability assistance.
- A prescription form completed by the appellant's physician dated 07 December 2012, prescribing a circulation booster.
- A web page print-out attached to the prescription providing information on a Revitive Circulation Booster®. The web page explains that the item "is a medical device designed to increase leg circulation. It uses Electrical Muscle Stimulation (EMS) to stimulate the muscles in your feet and lower legs to help counteract stasis and help maintain healthy legs. By placing your bare feet on each of the foot pads, therapeutic electrical impulses stimulate the nerve endings on the soles of your feet which in turn contracts and relax the muscles in the lower legs to increase circulation." A hand-written marginal note indicates the regular price of the item is $299.99.

In her Request for Reconsideration dated 28 January 2013, the appellant writes:

> "..... I think this machine will help me. I have very bad legs, first my ankles swell lots and this is supposed to help. I take a water pill once a day and if I wear any kind of socks you can see the indentation from the socks. I can only walk about one block before I have trouble walking any further. I also have two very bad knees which is bone on bone. So I think this machine will help me to walk further and take some pressure off my legs...."

In her Notice of Appeal dated 07 February 2013, the appellant writes:

> "I think the ministry should reconsider my claim. As this is a new product, it has only been out for about 3 - 4 months. I really think that this product will help my legs. I'm only 57 but I feel like I'm in my late 60s or 70s. I have a very hard time getting around so I don't get to town very often. I'm resting more and more confined to my home...."

In an email dated 12 March 2013, the ministry stated that its submission is the reconsideration decision.

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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 circulation booster because the item requested is not listed as an eligible item in Schedule C of the EAPWDR and the appellant is not eligible for this item as a supplement pursuant to 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.

Pursuant to Section 62 of the EAPWDR, the applicant must be a recipient of disability assistance, or be a dependant of a person in receipt of disability assistance in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has found that the requirement of Section 62 has been met as the appellant is a recipient of disability assistance.

Schedule C of the EAPWDR:

Section 1 of Schedule C contains relevant definitions.

The remaining sections deal with specific categories of heath 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:

Section	Category
2 (1)	General health supplements (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.
2.1	Optical supplements
2.2	Eye examination supplements
3	Medical equipment and devices – general provisions
3.1	Canes, crutches and walkers
3.2	Wheelchairs
3.3	Wheelchair seating systems
3.4	Scooters
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; (k) a standing frame; (l) a positioning frame; (m) a transfer aid
3.6	Hospital beds: (a) a hospital bed; (b) an upgraded component of a hospital bed; (c) an accessory attached to a hospital bed; (d) a positioning item on a hospital bed
3.7	Pressure relief mattresses

3.8 Floor or ceiling lift devices
3.9 Positive airway pressure devices
3.10 Orthoses: (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; (n) a foot abduction orthosis; (o) a toe orthosis
3.11 Hearing instruments
3.12 Non-conventional glucose meters

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.

In particular, part of section 2(1) 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:
>
> (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.

Circulation booster as a health supplement

The position of the ministry is that is it has reviewed all possible legislated eligibility criteria and concluded that the requested item does not fall under any of the categories of health supplements listed in Schedule C. In particular, the ministry determined that a circulation booster is not a medical or surgical supply under section 2(1) of Schedule C, nor is it an eligible medical equipment or device item under sections 3 and 3.1 to 3.12 of Schedule C and specifically not a positive airway pressure device under section 3.9. Therefore, the ministry was not authorized to provide the appellant with a circulation booster under the legislation.

The position of the appellant is that the requested circulation booster would be beneficial in alleviating circulation problems in her legs, thereby improving her mobility.

On reviewing the evidence describing a circulation booster, how it works and its claimed benefits, it is clear to the panel that the item is a "device." As such, the panel finds that it is not one of those listed as eligible medical equipment and devices under Sections 3.1 to 3.12. Nor can it be considered to be functionally similar to, or a substitute for, any of those listed items. And as a "device" it is not a disposable or reusable medical or surgical "supply" that is referred to for limb circulation care in section 2(1)(a)(i)(F) of Schedule C. Further, the item is for "do it yourself" purposes to be used at home, not a therapy requiring the supervision of a service provider described in section 2(1)(c) of Schedule C, such as a physical therapist. Upon careful review of the whole Schedule, the panel finds that the ministry reasonably determined that a circulation booster is not an eligible medical equipment or device item listed in Section 3 and is not included as an eligible supply 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.

Eligibly under section 69

The ministry also found that the appellant was not eligible for a circulation booster under section 69 of the EAPWDR. This section provides that the minister may provide health supplements set out in Schedule C sections 2(1)(a) [medical supplies] and (f) [medical transportation] and 3 [medical equipment and devices] 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. The ministry found the appellant not eligible under section 69 because, as she is a recipient of disability assistance, the appellant is "otherwise" eligible for health supplements under Schedule C and the circulation booster is not a health supplement under sections 2(1) or 3 of Schedule C.

The panel notes that section 69 refers to a subset of certain health supplements set out in Schedule C and applies to the provision of only those supplements if other criteria are met. As the panel has found that the ministry reasonably determined that that the requested item is not an eligible supply, equipment or treatment under all of Schedule C, and therefore not one of the subset of Schedule C supplements specified in section 69, the panel finds that the ministry reasonably determined that the appellant was not eligible for the circulation booster under section 69.

Conclusion

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.