

PART C – Decision under Appeal

The appellant appeals the reconsideration decision of the Ministry of Social Development (ministry) dated December 31, 2012 in which the ministry denied the appellant's request for a Thermophore Heating Pad. The ministry found the item requested is not listed as an eligible item in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 67 and 76 and Schedule C-Health Supplements.

PART D – Relevant Legislation

Employment and Assistance Regulation, sections 67 and 76
Employment and Assistance, Schedule C-Health Supplements.

PART E – Summary of Facts

The evidence before the ministry at reconsideration included::

- The appellant's request for reconsideration dated December 14, 2012 with note written by appellant which states that the Thermophore Heating Pad as a health supplement is better than a regular heating pad.
- Prescription from a Doctor dated November 4, 2012 for a heating pad for chronic back pain.
- A quote for purchase from a pharmacy dated November 6, 2012 for a Thermophore Heating Pad for \$145.59.

The appellant in her notice of appeal submitted that the Thermophore Heating Pad will help her back pain which goes up to her shoulders. She states she has a sprain injury and needs the heating pad to relieve her pain and help her have a better life. The appellant notes that orthotics, hand brace, wheelchair and scooter are on the ministry health supplement list, but a heating pad is not listed and no other item is listed that can replace this item.

At the hearing the appellant stated that she has pain every day in her back, shoulder and leg and it is much worse at night. The pain wakes her up in the night and she must take pain medication to help her sleep. She also suffers from headaches due to the pain in her back and shoulders. She has a small heating pad but it does not cover most of the areas in her body that are painful. The appellant stated that she tried a Thermophore Heating Pad that belonged to her friend and she noticed that it worked for her as it was long and wide and covered all the areas on her body that are painful. The appellant stated that she went to a medical supply store to look at various heating pads and knows the Thermophore Heating Pad is the only one that will help her because of its large wrap around size. The appellant stated that she does not understand why the heating pad is not on the ministry's list when there are so many other items on the list and a Thermophore Heating Pad would help with her back pain. She stated that she is worried that if she is not able to have a Thermophore Heating Pad from the ministry the pain will get worse and she will need a wheelchair or a scooter to get around.

The panel admitted the evidence of the appellant Pursuant to Section 22(4) of the Employment and Assistance Act, as providing further detail in support of information that was before the ministry on reconsideration.

At the hearing the ministry restated the position as set out in the reconsideration decision reaffirming that the appellant did not meet the eligibility criteria for a Thermophore Heating Pad, EAR Section 67, General Health Supplements; Section 76, Health Supplements for persons facing direct and imminent life threatening health need and Schedule C Health Supplements. The ministry went through the legislation in detail reading each of the sections to point out that a Thermophore Heating Pad does not meet any of the criteria or is not mentioned as an approved item in Schedule C. She stated that a Thermophore Heating Pad does not qualify under medical supplies or medical equipment as stated in Schedule C Health Supplements. The ministry stated the appellant is not facing a direct and imminent life threatening need. The ministry confirmed that if the item is not eligible and not listed under Schedule C the ministry cannot approve it nor add it to the list. The ministry clarified that legislation does change from time to time and items are added under Health Supplements but this is not done by the ministry but by the provincial legislature.

The panel makes the following findings of fact:

- The appellant is qualified for the Persons with Persistent Multiple Barriers to Employment category and is eligible to receive Health Supplements provided under Section 67 and 76 Schedule C- Health Supplements of the EA Regulation.
- The appellant requested a Thermophore Heating Pad on November 6, 2012 to help with chronic back pain.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision at reconsideration, which denied the appellant's request for a Thermophore Heating Pad was a reasonable application of the applicable enactment in the circumstances of the appellant. At reconsideration the ministry denied the appellant's request for a Thermophore Heating Pad because the ministry found that the request does not meet the legislative eligibility criteria as set out in the Employment and Assistance Regulation, Sections 67 and 76 and Schedule C -Health Supplements.

Section 67 General Health Supplements

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) 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)
 - (b) Is a recipient of income assistance under section 8 (people receiving special care) of Schedule A,
 - (c) Is a dependant of a person referred to in
 - (i) paragraph (b)
 - (ii) paragraph (f), if the dependant was a dependant of the person on the day the person reached 65 years of age and remains a dependant of that person,
 - (iii) paragraph (g), if the dependant was a dependant of the person on the day the person's family unit ceased to be eligible for income assistance as a result of a payment made to the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry, or
 - (iv) paragraph (h), if the dependant was a dependant of the person on the day the person's family unit ceased to be eligible for income assistance as a result of an award of compensation under the Criminal Injury Compensation Act or an award of benefits under the Crime Victim Assistance Act made to the person or another member of the person's family unit, and
 - (A) if the dependent is under age 65, the family unit is receiving premium assistance under the Medicare Protection Act, or
 - (B) If the dependent is age 65 or more, any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement
 - (d) Repealed (B.C. reg. 48/2010, Sch. 1)
 - (e) is a dependent child of a recipient of income assistance or hardship assistance,
 - (f) was on the day the person reached 65 years of age
 - (i) a recipient of income assistance under section 2 (monthly support allowance), 4 (monthly shelter allowance), 6 (people receiving room and board), 8 (people receiving special care) or 9 (people in emergency shelters) of Schedule A, and

(ii) eligible for health supplements under section 2 (general health supplements) or 3 (medical equipment and devices) of Schedule C,

(g) meets the following requirements:

- (i) has not reached 65 years of age;
- (ii) is a part of a family unit that ceased to be eligible for income assistance as a result of a payment made to the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry;
- (iii) was eligible for health supplements under section 2 or 3 of Schedule C on the day the person's family unit ceased to be eligible for income assistance,

(h) meets all of the following requirements:

- (i) is a part of a family unit that ceased to be eligible for income assistance as a result of an award of compensation under the Criminal Injury Compensation Act or an award of benefits under the Crime Victim Assistance Act made to the person or another member of the person's family unit;
- (ii) was eligible for health supplements under section 2 or 3 of Schedule C on the day the person's family unit ceased to be eligible for income assistance;
- (iv) either
 - (A) if the person is under age 65, the family unit is receiving premium assistance under the Medicare Protection Act, or
 - (B) if the person is aged 65 or more, any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,

Section 76 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 3.12, other than paragraph (a) of section 3 (1).

Employment and Assistance Regulation Schedule C, section 2 sets out that the ministry may provide either disposable or reusable medical or surgical supplies if:

- (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 and imminent and substantial danger to health;
- (iii) there are no resources available to the family unit to pay the cost or obtain the supplies.

The EA Regulation, Schedule C, subsection 2(a.1) sets out that the following medical or surgical supplies may be paid for by the minister if the minister is satisfied that all the requirements described in paragraph (a)(ii) and (iii) are met in relation to the supplies:

- i. lancets;
- ii. needles and syringes;
- iii. ventilator supplies required for the essential operation or sterilization of a ventilator;
- iv. tracheostomy supplies;

The EA Regulation, Schedule C, subsection 2(a.2) sets out that consumable medical supplies may be paid for by the minister if the minister is satisfied that the following requirements are met:

- (i) the supplies are required to thicken food
- (ii) all the requirements described in paragraph (a)(ii) and (iii) are met in relation to the supplies.

The EA Regulation, Schedule C, section 3 sets out the general requirements for all equipment/devices. Sections 3.1 to 3.12 states that the ministry is authorized to provide the following medical equipment/devices: a cane, crutch, walker, wheelchair, wheelchair seating system, scooter, grab bar, bathroom or shower seat, tub slide, bath lift, bed pan or urinal, raised toilet seat, commode chair, positioning or standing chair, transfer aid, hospital bed, pressure relief mattress, floor or ceiling lift device, airway pressure device, foot orthotic, hearing instrument, a non-conventional glucose meter.

The EA Regulation, 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 per visit for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physiotherapy treatments.

The EA Regulation, Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, 9, and 10 set out that the ministry may provide: optical supplements; eye examination supplements; dental supplements; crown and bridgework supplements; denture supplements; emergency denture supplements; diet supplements; natal supplements; and infant formula.

The appellant's position is that she needs the Thermophore Heating Pad to help her with her chronic back shoulder and leg pain and this type of wrap around heating pad is the only one she has found that will cover the areas in her body that are afflicted with pain.

The ministry's argued that the eligibility criteria set out under Schedule C for health supplements were not met because the requested heating pad is not any of the health supplements set out in Schedule C and did not meet the other criteria set out in Schedule C and that the criteria of s.76 which provides health supplements for persons facing direct and imminent life threatening health needs were not met.

Pursuant to Section 67 (1)(a)(i) the appellant is qualified for the Persons with Persistent Multiple Barriers to Employment category and therefore is eligible to receive health supplements provided under Section 67 and Schedule C of the EA regulation. However the ministry in its reconsideration decision looked at Section 67 General Health Supplements and Section 76 Health Supplements for persons facing direct or imminent health threatening health need as well as Schedule C – Health Supplements of the EA Regulation and determined that a Thermophore Heating Pad does not meet any of the criteria listed in Section 67, and 76 or is an item or criteria listed in Schedule C.

The panel finds that the ministry was reasonable to conclude that the Thermophore heating pad was not required for any of the set out purposes in Schedule C 2(1)(a) and therefore reasonable to conclude that this criterion was not met. The ministry was reasonable to conclude that the requirements of 2(1)(a.1) or (a.2) were not met as the item was not any of those listed. The ministry was also reasonable in concluding that the criterion of (1)(a)(ii)(C) was not met because the evidence didn't establish a heating pad was necessary to avoid imminent and substantial danger to health.

The ministry was reasonable in finding that the criteria in sections 2(1)(c), 3, 3.1 to 3.12 and 2.1 through 10 of Schedule C was not met as the Thermophore heating pad was not any of these items.

The ministry was reasonable in denying a health supplement under section 76 as a imminent life-threatening need was not established and section 76 only provides for those health supplements set out in sections 2(1)(a) or (f) and section 3 and these sections do not include heating pads.

Accordingly, the panel finds that the ministry's decision at reconsideration was reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel confirms the ministry's decision.