

## PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision dated January 22, 2013 which denied the appellant's request for a stocking aid, a dressing stick, a button hook and a reacher ("the Items"). Specifically, the ministry determined that while the appellant was eligible to receive health supplements pursuant to section 62 and Schedule C of the Employment and Assistance for Persons With Disabilities Regulation ("EAPWDR"), it went on to find that:

- a. The appellant was not eligible for the Items as medical or surgical supplies pursuant to Schedule C, section 2 of the EAPWDR;
- b. The appellant was not eligible for the Items as medical equipment and devices pursuant to Schedule C, section 3 of the EAPWDR;
- c. The appellant was not eligible for the Items as a therapy pursuant to Schedule C, sections 2(1)(c), 2(2) and 2(2.1) of the EAPWDR;
- d. The appellant was not eligible for the Items as one of the remaining health supplements pursuant to Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9 of the EAPWDR;
- e. The appellant was not eligible for the Items as a health supplement for a person facing a direct and imminent life threatening health need pursuant to section 69 of the EAPWDR;
- f. The appellant was not eligible for the Items as a crisis supplement pursuant to section 57(3) of the EAPWDR; and
- g. The appellant was not eligible for the Items as they were not one of the supplements listed from sections 43 through 70.4 inclusive of the EAPWDR.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 2(1)  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 43 – 70.4 and  
Schedule C, sections 2 - 9

## 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 January 9, 2013;
2. A fax cover sheet from the appellant's advocate dated December 10, 2012 addressed to the ministry and requesting funding for the appellant to purchase the Items; and
3. A quote from store dated November 27, 2012 for the price of the Items.

No new evidence was submitted by the appellant or the ministry.

The appellant is a recipient of disability assistance. As a result of moving to a new residence, she was unable to bring her medical equipment with her from her old residence due to circumstances which necessitated the move. The appellant has a history of fibromyalgia, a closed head injury, degenerative disc disease and a mental health diagnosis. The appellant has difficulty dressing due to pain and range of motion limitations. The appellant claims that she will benefit from the Items and that in particular, she will benefit from a 30 inch reacher to assist her in reaching items which would be difficult and unsafe to otherwise due to her mobility impairments.

In her Request for Reconsideration, the appellant states that she cannot afford the Items, that she is in pain every day and has limited mobility and that the Items will help her be independent.

In the appellant's Notice of Appeal dated January 30, 2013, she states that the Items are for avoiding danger to health, that they can/will be prescribed and that they are required to enable her to perform her daily living activities.

At the hearing, the appellant submitted that she feels unsafe and that she has fallen twice in the bathtub. The appellant stated that it is very hard for her to bend and get dressed and that she suffers from a variety of medical conditions including incontinence, fibromyalgia and whiplash and that on some days she can't get out bed due to pain. The appellant submitted that the dressing hook would help her get dressed and that the reacher would help her reach things above her head as when she lifts her arms above her head it causes her to suffer from migraine headaches. The appellant stated that she has no money to buy the Items.

At the hearing, the appellant's advocate stated that the appellant requires the Items to assist her limb circulation as she is being encouraged to get up and move around. The advocate stated that the Items were prescribed, the least expensive supplies and necessary for the appellant to avoid imminent and substantial danger to her health. The advocate stated that reaching and putting on socks is dangerous for the appellant.

At the hearing, the ministry stated that when the Items were requested, there was nothing accompanying the request such as a doctor's note to indicate that the Items were to address imminent danger to the appellant's health. The ministry submitted that in any event, the appellant was not eligible for the Items under the provisions of the EAPWDR.

## PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's Reconsideration Decision dated January 22, 2013 which denied the Appellant's request for a stocking aid, a dressing stick, a button hook and a reacher ("the Items"). Specifically, the ministry determined that while the appellant was eligible to receive health supplements pursuant to section 62 and Schedule C of the Employment and Assistance for Persons With Disabilities Regulation ("EAPWDR"), it went on to find that:

- a. The appellant was not eligible for the Items as medical or surgical supplies pursuant to Schedule C, section 2 of the EAPWDR;
- b. The appellant was not eligible for the Items as medical equipment and devices pursuant to Schedule C, section 3 of the EAPWDR;
- c. The appellant was not eligible for the Items as a therapy pursuant to Schedule C, sections 2(1)(c), 2(2) and 2(2.1) of the EAPWDR;
- d. The appellant was not eligible for the Items as one of the remaining health supplements pursuant to Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9 of the EAPWDR;
- e. The appellant was not eligible for the Items as a health supplement for a person facing a direct and imminent life threatening health need pursuant to section 69 of the EAPWDR;
- f. The appellant was not eligible for the Items as a crisis supplement pursuant to section 57(3) of the EAPWDR; and
- g. The appellant was not eligible for the Items as they were not one of the supplements listed from sections 43 through 70.4 inclusive of the EAPWDR.

The applicable provision of the EAPWDA in this appeal is as follows:

### Persons with disabilities

2 (1) In this section:

**"assistive device"** means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

The applicable provisions of the EAPWDR in this appeal are as follows:

### Crisis supplement

57 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if

- (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and
- (b) the minister considers that failure to meet the expense or obtain the item will result in
  - (i) imminent danger to the physical health of any person in the family unit, or
  - (ii) removal of a child under the *Child, Family and Community Service Act*.

(2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.

(3) A crisis supplement may not be provided for the purpose of obtaining

- (a) a supplement described in Schedule C, or
- (b) any other health care goods or services.

### 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,
- (b) a person with disabilities who has not reached 65 years of age and who has ceased to be eligible for disability assistance because of
  - (i) employment income earned by the person or the person's spouse, if either the person or the person's spouse
    - (A) is under age 65 and the family unit is receiving premium assistance under the Medicare Protection Act, or
    - (B) is aged 65 or more and a person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
  - (ii) a pension or other payment under the Canada Pension Plan (Canada), or
  - (iii) money received by the person or the person's spouse under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,
- (c) a person who was a recipient of disability assistance on the day he or she became 65 years of age and a dependant of that person, if the dependant was a dependant of the person on that day and remains a dependant of that person,
- (d) a dependant of a person referred to in paragraph (a) or (b) (iii),
  - (d.1) a dependant of a person referred to in paragraph (b) (i), if any person in the family unit
    - (i) is under age 65 and the family unit is receiving premium assistance under the Medicare Protection Act, or
    - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
  - (d.2) a dependant of a person referred to in paragraph (b) (ii),
  - (d.3) a dependant of a person referred to in paragraph (f), if any person in the family unit
    - (i) is under age 65 and the family unit is receiving premium assistance under the Medicare Protection Act, or
    - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
- (e) a dependent child of a recipient of hardship assistance,
- (f) a person with disabilities who has ceased to be eligible for disability assistance because 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 the person's spouse, if
  - (i) the person is under age 65 and the family unit is receiving premium assistance under the Medicare Protection Act, or
  - (ii) the person is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, or
- (g) a person whose family unit ceases to be eligible for disability assistance because of financial assistance provided through an agreement under section 12.3 of the Child, Family and Community Service Act, during the term of the agreement.

**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 applicable provisions of Schedule C of the EAPWDR in this appeal are as follows:

**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.

(b) Repealed. [B.C. Reg. 236/2003, Sch. 2, s. 2 (b).]

(c) subject to subsection (2), a service provided by a person described opposite that service in the following table, delivered in not more than 12 visits per calendar year,

(i) for which a medical practitioner or nurse practitioner has confirmed an acute need,

(ii) if the visits available under the Medical and Health Care Services Regulation, B.C. Reg. 426/97, for that calendar year have been provided and for which payment is not available under the *Medicare Protection Act*, and

(iii) for which there are no resources available to the family unit to cover the cost:

Item	Service	Provided by	Registered with
1	acupuncture	acupuncturist	College of Traditional Chinese Medicine under the <i>Health Professions Act</i>
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the <i>Health Professions Act</i>
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia under the <i>Health Professions Act</i>
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia under the <i>Health Professions Act</i>
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia under the <i>Health Professions Act</i>
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia under the <i>Health Professions Act</i>

(d) and (e) Repealed. [B.C. Reg. 75/2008, s. (a).]

(f) the least expensive appropriate mode of transportation to or from

(i) an office, in the local area, of a medical practitioner or nurse practitioner

(ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,

(iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the *Hospital Insurance Act Regulations*, or

(iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*,

provided that

(v) the transportation is to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, and

(vi) there are no resources available to the person's family unit to cover the cost.

(g) Repealed. [B.C. Reg. 75/2008, s. (a).]

(1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

(2) No more than 12 visits per calendar year are payable by the minister under this section for any combination of physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services.

(2.1) If eligible under subsection (1) (c) and subject to subsection (2), the amount of a general health supplement under section 62 of this regulation for physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services is \$23 for each visit.

### **Medical equipment and devices**

**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.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

(a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;

(b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if

(a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and

(b) the period of time, if any, set out in sections 3.1 to 3.11 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

(4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.

(5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if

(a) at the time of the repairs the requirements in this section and section 3.1 to 3.11 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and

(b) it is more economical to repair the medical equipment or device than to replace it.

(6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

The appellant argues that she requires the Items to assist her in getting dressed and reaching for items. The appellant argues further that she feels unsafe and that she has no money to buy the Items.

The appellant's advocate argues that the Items are necessary for the appellant's limb circulation care insofar as the Items will allow the appellant to increase her mobility. The appellant's advocate also argues that the Items have been prescribed that they are the least expensive supplies available and that they are necessary to avoid imminent and substantial danger to the appellant's health as she has fallen previously while getting dressed and in the bath.

The Ministry argues that the appellant is not eligible for the Items and that there is insufficient information to confirm that the Items have been prescribed or that they are required to prevent imminent and substantial danger to the appellant's health to satisfy the requirements of Schedule C, section 2 of the EAPWDR. The ministry further argues that the Items do not satisfy the definition of a crisis supplement as set out in section 57(3) of the EAWDR.

There is no issue between the parties that the appellant is a recipient of disability assistance and therefore eligible to receive health supplements provided under section 62 and Schedule C of the EAPWDR.

*Are the Items eligible as medical or surgical supplies?*

Schedule C, section 2(1)(a) of the EAPWDR provides that certain medical or surgical supplies ("the Supplies") may be paid for by the minister to a family unit that is eligible for health supplements under section 62 of the EAPWDR. However, to be eligible the Supplies must be required for one of six specified purposes as set out in section 2(1)(a)(i), prescribed by a medical or nurse practitioner, the Supplies must be the least expensive for the purpose and the Supplies must be necessary to avoid an imminent and substantial danger to health. If a request for Supplies satisfies the foregoing requirements, the minister may only provide disposable or reusable medical or surgical supplies including lancets, needles and syringes, ventilator supplies required for the essential operation or sterilization of a ventilator or tracheostomy supplies or consumable medical supplies that are required to thicken food.

In the present case, the panel finds that there was no evidence before the ministry that specifically indicated that the Items were required to address the appellant's limb circulation care. Similarly, the panel finds that despite the advocate's argument at the hearing that the items are required to address the appellant's limb circulation care, the ministry was reasonable in its determination that the Items were not directly required for one of the purposes set out in Schedule C, section 2(1)(a)(i) of the EAPWDR. Further, while the advocate submitted that the Items have been prescribed, there is no evidence to support this and as such the panel finds that the ministry's finding that the Items have not been prescribed by a medical or nurse practitioner to be reasonable. Finally, the panel finds that while the Items may be assistive to the appellant, the evidence falls short of establishing that the Items are necessary for the appellant to avoid imminent and substantial danger to health. The panel therefore finds that the ministry reasonably determined that the appellant was not eligible for the Items as medical or surgical supplies pursuant to Schedule C, section 2 of the EAPWDR.

*Are the Items eligible as medical equipment and devices?*

Schedule C, section 3 of the EAPWDR provides that the medical equipment and devices ("the Equipment") described in sections 3.1 through 3.12 are health supplements that may be provided by the minister if the family unit is eligible under section 62 of the EAPWDR and if the family unit has received pre-authorization for the Equipment requested, there are no resources available to the family unit to pay for the cost of the Equipment and the Equipment is the least expensive appropriate Equipment.

In the present case, the panel notes that none of the Items individually fit within any of the categories of Equipment described in sections 3.1 through 3.12 of the EAPWDR and there is no evidence to suggest that the minister has provided the appellant with pre-authorization for the Items which, as noted, do not fall within any of the listed Equipment in any event. The panel therefore finds that the ministry reasonably determined

that the appellant was not eligible for the Items as medical equipment and devices pursuant to Schedule C, section 3 of the EAPWDR.

*Are the Items eligible as a therapy?*

Schedule C, sections 2(1)(c), 2(2) and 2(2.1) of the EAPWDR considers certain services that the minister may authorize to a family unit including acupuncture, chiropractic and massage therapy as set out in Schedule C, section 2(1)(c)(iii). The panel finds that the ministry's determination that the Items are not included in this list of services to be reasonable and as such, the panel also finds that the ministry reasonably determined that the appellant was not eligible for the Items as therapy pursuant to Schedule C, section 2(1)(c) of the EAPWDR.

*Are the Items eligible as one of the remaining health supplements in Schedule C?*

Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9 of the EAPWDR set out other health supplements which include optical and eye examination supplements, dental, crown and bridgework supplements, emergency dental supplements, diet supplements, monthly nutritional supplements, natal supplements and infant formula. The panel finds that the ministry reasonably determined that the Items are not one of these listed supplements and that the appellant is therefore not eligible for the Items pursuant to Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9 of the EAPWDR.

*Are the Items eligible as a life-threatening health need?*

Section 69 of the EAPWDR provides that health supplements described in Schedule C, sections 2(1)(a) and (f) and section 3 may be provided to a family unit if the family unit is not otherwise eligible if the minister is satisfied that, among other things, the person faces a direct and imminent life threatening need and there are no resources available to the personal's family unit with which to meet that need.

In the present case, the appellant has described how the Items will assist her in some of her daily living activities and the advocate has submitted that the Items are necessary to increase the appellant's mobility and by extension, assure her safety. The panel finds that the ministry reasonably determined not only that the Items are not health supplements in Schedule C, sections 2(1)(a) and (f) and section 3 of the EAPWDR, but further, that it reasonably determined that there was no evidence to establish that the appellant faces a direct and imminent life threatening need for the Items. As such, the panel finds that the ministry reasonably determined that the appellant is not eligible for the Items as a life-threatening health need pursuant to section 69 of the EAPWDR.

*Are the Items eligible as a crisis supplement?*

Section 57(3) of the EAPWDR provides that a crisis supplement may not be provided for the purpose of obtaining a supplement described in Schedule C or any other health care goods or services.

The panel finds that the ministry reasonably determined that the Items are not a supplement described in Schedule C. However, the ministry takes the position that the Items are assistive devices which are defined in section 2(1) of the EAPWDA as "a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform." Given the evidence of the appellant and the advocate as to the purposes that the appellant would use the Items, specifically dressing, reaching for items and general mobility, the panel finds that the ministry reasonably determined that the Items are "other health care goods or services" as provided for in section 57(3)(b) of the EAPWDR and that therefore, the appellant is not eligible for the Items as a crisis supplement.

*Are the items eligible as "other" supplements?*



In the Reconsideration Decision, the minister sets out a number of "other supplements" that it is able to provide besides health and crisis supplements. Those are found beginning at section 43 and continuing up to and including section 70.4 of the EAPWDR. The panel finds that the ministry reasonably determined that the Items are not found in any of the sections from section 43 through 70.4 of the EAPWDR and that therefore, the appellant is not eligible for the Items as an "other" supplement.

The panel finds that the ministry's Reconsideration Decision was a reasonable application of the applicable enactment in the appellant's circumstances and confirms the decision pursuant to section 24(2)(a) of the Employment and Assistance Act.