

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of June 10, 2013, which denied the appellant's request for swim molds. The ministry determined that the appellant did not meet the program criteria because swim molds are ineligible items pursuant to Schedule C of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for persons with Disabilities Regulation (EAPWDR), Sections 62 and 69.
Employment and Assistance for persons with Disabilities Regulation, Schedule C.

PART E – Summary of Facts

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

- A Hearing Aid Program Authorization To Invoice dated April 29, 2013 listing: 1 pair of ear molds for hearing aids, price \$150, 1 pair of physician prescribed swim molds, price \$125 and 40 batteries type 13A for hearing Aids, price \$50.
- An Eligible Health Goods/Services Purchase Authorization dated May 14, 2013 for the ear molds and batteries.
- A letter from the appellant's physician dated May 21, 2013 stating that the appellant requires ear molds for bathing and showering due to chronic middle ear disease.
- The appellant's Request for Reconsideration dated May 27, 2013 indicating that she requires swim molds for a shower or bath on a daily basis and without them infections will increase. The appellant further states that her health and hygiene depend on the swim molds and that her swimming is very limited.

In the Notice of Appeal, the appellant states that she has Down Syndrome and a compromised immune system and that without the molds her health and safety are at risk.

Included with the Notice of Appeal was a second letter dated June 20, 2013 from the appellant's physician stating that the appellant has a life long history of middle ear disease and has had multiple sets of tubes and chronic tympanic membrane perforations. It is added that that the requested ear plugs called "swim molds" is actually a misnomer as they are medically essential and to be used anytime the appellant is bathing, showering or washing her hair as it is absolutely essential that she keep water out of her ears.

The panel finds that the new information provided by the appellant in her Notice of Appeal and the second letter from her physician are further description of the appellant's medical situation and its impact and is therefore in support of the information and records that were before the ministry at the time of reconsideration. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

Findings of Fact

The appellant is in receipt of disability assistance and is eligible to receive health supplements provided under section 62 and Schedule C of the EAPWD Regulation.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant is ineligible for swim molds as a health supplement as the criteria pursuant to sections 62 to 69 and Schedule C, of the Employment and Assistance for Persons with Disabilities Regulation were not met.

Relevant Legislation

The following sections of the EAPWDR and Schedule C apply to this appeal:

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 3.12 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.

Medical equipment and devices — hearing instruments

3.11 A hearing instrument is a health supplement for the purposes of section 3 of this Schedule if (a) the hearing instrument is prescribed by an audiologist or hearing instrument practitioner, and (b) an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument.

General health supplements – medical supplies

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.

Sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9 set out additional 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 including optical and dental, that are not that are relevant to the request.

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

The appellant's position is that that she requires swim molds for a shower or bath on a daily basis

and that without the molds her health and safety are at risk. She also indicates that her swimming is very limited and without them infections will increase. The appellant's physician states that the appellant requires ear molds for bathing and showering due to chronic middle ear disease and has had multiple sets of tubes and chronic tympanic membrane perforations. The physician reports that the requested ear plugs called "swim molds" is actually a misnomer as they are medically essential and to be used anytime the appellant is bathing, showering or washing her hair as it is absolutely essential that she keep water out of her ears.

The ministry's position is as follows:

1. the criteria of section 3, 3.1 to 3.12 were not met because the swim molds are not listed under medical equipment and devices to include: a cane, walker, wheelchair, scooter, a grab bar, a floor or ceiling lift device, a positive airway pressure device, a custom-made orthotic and/or a hearing aid or non-conventional glucose meter;
2. the criterion of section 3.11 was not met because the swim molds are not considered hearing aids;
3. the criterion of section 2(1)(a) was not met because the swim molds are not listed under disposable or reusable medical or surgical supplies required for any of the purposes set out in section 2(1)(a)(i); wound care, ongoing bowel care, catheterization, incontinence, skin parasite care and/or limb circulation care;
4. the criteria of section 2(1)(c) and 2(2) were not met because the swim molds are not required as therapy provided to include: acupuncture, chiropractic service, massage therapy, naturopathy, non-surgical podiatry and/or physiotherapy therapy;
5. the criteria of sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9 were not met because the swim molds are not listed under the remaining health supplement legislation; and
6. the criterion of section 69 was not met because the swim molds are not required to meet a life-threatening health need.

The panel finds that the ministry has reasonably determined that pursuant to the above noted legislation, the swim molds are not listed; under medical or surgical supplies, under medical equipment and devices, or as a therapy or under the remaining health supplements. Additionally, the panel finds the swim molds were reasonably determined by the ministry as not required to meet a life-threatening health need.

The panel notes that the appellant's physician has reported that the requested ear plugs called "swim molds" is actually a misnomer as they are medically essential and to be used anytime the appellant is bathing, showering or washing her hair as it is absolutely essential that she keep water out of her ears. Although the panel acknowledges the fact that the appellant has a real and urgent need for the swim molds, the legislation is very specific that these items are not a health supplement for the purposes of section 3 of Schedule C of the EAPWDR. The panel finds that the ministry's decision that the appellant was not eligible for swim molds was a reasonable application of the applicable enactment in the circumstances of the appellant and therefore confirms the ministry's decision.