

PART C – Decision under Appeal

The ministry in its Reconsideration Decision of April 18, 2013 denied the appellant's application for income assistance pursuant to s. 10 of the EAR because the appellant, who is over 65 years of age, receives monthly unearned income in the form of Old Age Security (OAS) and Guaranteed Income Supplement (GIS) payments which exceed both income and disability assistance rates. Additionally, the ministry denied the appellant's request for Medical Services Only (MSO) benefits because, as a new applicant, the appellant did not meet the requirement set out in s. 66.1 of the EAR that a person be a recipient of income assistance and eligible for Schedule C health supplements on the date of the person's 65th birthday.

The ministry in this reconsideration decision also notes that the appellant subsequently requested a wheelchair and that there are Life-Threatening Health Need provisions in the legislation that the appellant might wish to consider and make a formal application.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), sections 10, 28, 66.1, 67 and 76, Schedules A, B and C.

PART E – Summary of Facts

The ministry's evidence, at the time of reconsideration, was the following:

- March 4, 2013 the appellant in a scheduled intake appointment is advised she is not eligible for income assistance. The appellant receives a \$1480.00 monthly income from OAS and GIS payments as compared to the provincial single monthly disability assistance rate of \$906.42.
- April 1, 2013 the appellant files a Request for Reconsideration noting the application is for "Medical Services Only" to enable a request for an electric wheelchair and medical supplies, equipment and devices for the appellant who is over 65 years of age and paralyzed from the chest down. Attached supporting medical documentation from a medical practitioner dated February 5, 2013 confirms the appellant has "complete paraplegia".

In her Notice of Appeal (NOA) dated May 1, 2013 the appellant indicates she was advised by the ministry that to have access to medical equipment and supplies/devices, she must first apply for income assistance. The appellant states "With the help of my daughter, the online application was completed with clear indication that the request is not for financial assistance and it is merely to have access to medical equipment/supplies and transportation." The appellant indicates further that her daughter found details on the category of LTHN for people that are otherwise not eligible for income/disability assistance, such as in her case. As a result, she specified the nature of her request in her request for reconsideration. The appellant claims she has been unable to access and make application for a LTHN.

A revised NOA dated May 6, 2013 that attached a one page submission (a letter dated May 13, 2013 from the appellant's daughter to her mother's doctor) notes the worsening of the appellant's symptoms and the urgent need for the equipment and supplies for the appellant's daily care. A list of the recommended equipment and supplies is attached and a hand-written note by the appellant's doctor confirms the appellant's urgent need for these due to a life-threatening situation.

The panel accepted the NOA dated May 1, 2013 into evidence under Section 22(4) of the Employment and Assistance Act. The submission of May 13, 2013, however, deals with specific matters related to an LTHN beyond the scope of the ministry's reconsideration decision and is not admitted.

At the hearing, the appellant's daughter acted as her advocate and clarified that her on-line application and request was always for a wheelchair and other medical equipment, supplies and devices and not income assistance. The daughter argues the ministry told her that her mother first had to apply for income assistance and a medical services only file, but that the request for an electric wheelchair and other supplies and devices was made in her initial on-line application. She argued that the appellant should be eligible for a wheelchair and other medical supplies such as a specialized mattress as she is severely paralyzed, constantly in pain from rashes and in danger of infection. She pointed out that the appellant's income is not sufficient to manage these needed expenses and that she faces a life threatening health need.

The ministry stood by the record, but noted that the appellant initially applied for income assistance which was denied because her federal benefits of \$1480.00 per month exceeded the monthly income assistance available from the ministry as well as the maximum amount of Disability Assistance of \$906.40. The ministry further explained the appellant made a subsequent request for reconsideration of this denial and, at that stage, clarified the application was for a "Medical Services Only (MSO)" file to enable a request for a wheelchair and medical supplies, equipment and devices. The MSO file request of the appellant was addressed in its reconsideration decision. With respect to eligibility for MSO it further clarified that through an MSO file the ministry can continue to provide specific general health supplements, but only to former recipients of income assistance or persons with disabilities assistance. The provision allows a continuance of needed Medical Services Plan coverage and health supplements when former recipients are no longer eligible for assistance. Because the appellant was not eligible for income assistance and the health supplements she did qualify for an MSO file. The ministry clarified that an MSO file is not available under the Life Threatening provision of section 76 of the EAR.

The ministry further outlined that the appellant's need for a wheelchair and medical equipment, supplies and devices through the legislative provisions of a Life-Threatening Health Need(LTHN) was not part of the applicant's original application and that the application screening process and assessment for that needs to be undertaken and satisfied.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's reconsideration decision which denied the appellant's application for income assistance pursuant to s. 10 of the EAR because the appellant, who is over 65 years of age, receives monthly unearned income in the form of OAS and GIS payments which exceed both income and disability assistance rates. Additionally, the ministry denied the appellant's request for Medical Services Only (MSO) benefits because, as a new applicant, the appellant did not meet the requirement set out in s. 66.1 of the EAR that a person be a recipient of income assistance and eligible for Schedule C health supplements on the date of the person's 65th birthday.

The EAR states the following:

Limits on income

10 (1) For the purposes of the Act and this regulation, "**income**", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

(2) A family unit is not eligible for income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

Amount of income assistance

28 Income assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

Health Supplements

Eligibility for medical services only

66.1 For the purposes of this Division, a person may be eligible for medical services only if

- (a) the person is part of a family unit that ceased to be eligible for income assistance as a result of
 - (i) 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 the person was eligible for health supplements under section 2 [general health supplements] or 3 [medical equipment and devices] of Schedule C on the date the person's family unit ceased to be eligible for income assistance, or
 - (ii) 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
 - (b) the person, on the date of the person's 65th birthday, was
 - (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 and transition houses] of Schedule A, and
 - (ii) eligible for health supplements under section 2 [general health supplements] or 3 [medical equipment and devices] of Schedule C,
- and the person's family unit ceased to be eligible for income assistance on that date.

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,

(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 dependant is under age 65, the family unit is receiving premium assistance under the Medicare Protection Act, or

(B) if the dependant is aged 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, s. 1 (b).]

(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 and transition houses] 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, or

(h) meets all of the following requirements:

(i) is 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;

(iii) 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.

(1.1) A person eligible to receive a health supplement under subsection (1) (c) (ii) or (f) may receive the supplement

(a) while any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, and

(b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(1.2) A person who was eligible to receive a health supplement under subsection (1) (c) (iv) or (h) but ceases to be eligible for medical services only may continue to receive the supplement for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(2) Subject to subsection (3), 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 recipient in the family unit who

(a) has received income assistance under the BC Benefits (Income Assistance) Act or the Act continuously from March 31, 1997 and on March 30, 1997 was eligible under section 37 (1) (a) of the BC Benefits (Income Assistance) Regulations, B.C. Reg. 272/96, as it read on March 30, 1997, for the health care services and benefits referred to in that provision, or

(b) is a dependant of a recipient referred to in paragraph (a).

(3) Subsection (2) applies only until the earlier of the following dates:

(a) the date the recipient ceases to receive income assistance;

(b) the first day of the calendar month after the minister makes a determination that the recipient, or any dependant of the recipient other than a dependent child, is capable of accepting employment.

(4) A person referred to in subsection (1) (c) (ii), (iii) or (iv), (f), (g) or (h) ceases to be eligible for any supplement under this Division if the person's family unit takes up residence outside British Columbia.

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).*

The ministry's position is that the appellant receives OAS and GIS payments in excess of income and disability assistance rates and is not eligible for these. As a result, the appellant does not meet the legislative criteria under sections 66.1 and 67 of the EAR for Medical Services Only (MSO) file coverage. As a result, it has no discretion available to open an MSO file. It also submits that eligibility for MSO is not available under the life threatening provisions of section 76 of the EAR as it is limited to medical equipment, supplies and transportation.

The appellant argues that she suffers from a life threatening health need and should be eligible for medical equipment and supplies under the legislation.

Respecting the EAR, sections 10 and 28, the panel determined that the appellant, who was over 65 years of age and the recipient of OAS and GIS payments in excess of provincial income and disability assistance rates did not qualify for income assistance. The panel, therefore, also determined the appellant did not meet the requirement of section 66.1 of the EAR for MSO that a person be a recipient of income assistance and eligible for Schedule C health supplements under section 67 of the EAR on the date of the person's 65th birthday. The panel further determined that the ministry had no discretion to open an MSO file for the appellant.

The panel finds an LTHN was not part of the appellant's initial request nor was it addressed in the ministry's reconsideration decision. As a result, the panel has no authority or jurisdiction to make a determination on the appellant's need for a health supplement under the LTHN provisions of the EAR, section 76 which is limited to medical or surgical supplies, medical transportation and medical equipment and devices.

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