

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the "Ministry") April 9, 2013 reconsideration decision in which the Ministry determined that the Appellant, who has Persons with Disabilities ("PWD") designation, was not eligible for a supplement for Muro OTC eye ointment and solution medications because he did not meet the criteria in the following sections of the Employment and Assistance for Persons with Disabilities Regulation: section 62, 62.1, 62.2, 67(3), 69 and Schedule C sections 2, 2.1, 2.2, 3, 4, 4.1, 5, 6, 7, 8 and 9.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 62, 62.1, 62.2, 67, 69 and Schedule C Sections 2, 2.1, 2.2, 3, 4, 4.1, 5, 6, 7, 8 and 9.

PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Information from its files that:

- The Appellant is a single recipient of assistance for Persons with Disabilities.
- On January 18, 2013, he requested assistance to obtain over-the-counter eye drops for treating cornea edema and he stated that without this item his condition will eventually result in blindness.
- The Appellant stated that pharmacare does not cover this item because it is non-prescription and the cost is about \$80 a month.
- The Ministry suggested that the Appellant have a doctor submit a prescription.
- On February 18, 2013, he submitted a letter from his doctor.

2. Letter dated January 18, 2013 from a doctor stating that the Appellant has an extensive ophthalmology history and is presently prescribed 5 different eye medications. The Muro OTC eye ointment and solution was recently started by another doctor. They are requesting coverage for these OTC medications, as they are very important to maintain the Appellant's already unfortunately poor vision.

3. Appellant's request for reconsideration in which he wrote that he is blind in his right eye and his left eye has lost most of its sight. However, if the Ministry is able to provide funds for his left eye, he will be able to see. The Appellant stated that he has a condition called cornea edema in his left eye and without these eye drops and ointment, he will go totally blind. He wrote that he is unable to work because of this condition; otherwise, he would be earning money to pay for these drops. He receives \$905 a month and the drops cost \$100 a month.

In his notice of appeal, the Appellant wrote that without help to pay for the Muro OTC ointment and solution medications he will go blind – lose sight in both eyes. The Appellant asked that the Ministry's decision be reconsidered for compassionate reasons. He has all the past receipts and no way to pay. The Appellant submitted that all of his doctors know that he absolutely needs these.

For this appeal, the Ministry relied on its reconsideration decision.

The Panel makes the following findings of fact:

1. The Appellant is a PWD receiving assistance from the Ministry.
2. A doctor stated that the Muro OTC eye ointment and solution are very important to maintain the Appellant's already poor vision.
3. There is no information from a medical practitioner confirming a life-threatening need for the items.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that Appellant was not eligible for a supplement for Muro OTC eye ointment and solution medications because he did not meet the criteria in the following sections of the EAPWDR: section 62, 62.1, 62.2, 67(3), 69 and Schedule C sections 2, 2.1, 2.2, 3, 4, 4.1, 5, 6, 7, 8 and 9.

The following section of the EAPWDR apply to this appeal:

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,

Optical supplements

62.1 (1) Subject to subsections (1.1) and (1.2), the minister may provide any health supplement set out in section 2.1 [*optical supplements*] of Schedule C to or for a family unit if the supplement is provided to or for a person in the family unit who is

(a) a recipient of disability assistance,

Eye examination supplements

62.2 (1) Subject to subsections (1.1), the minister may provide a health supplement under section 2.2 [*eye examination supplements*] of Schedule C to or for a family unit if the supplement is provided to or for a person in the family unit who is

(a) a recipient of disability assistance,

Nutritional supplement

67(3) The minister may provide a nutritional supplement for a period of 3 calendar months to or for a family unit if the supplement is provided to or for a recipient of disability assistance or a dependent child of a recipient of disability assistance if

(a) the recipient or dependent child is not receiving a supplement under subsection (1) of this section or section 2(3) of Schedule C, and

(b) a medical practitioner or nurse practitioner confirms in writing that the recipient or dependent child has an acute short term need for caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from

(i) surgery, (ii) a severe injury, (iii) a serious disease, or (iv) side effects of medical treatment.

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).

Schedule C – Health Supplements

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;

(a.1) the following medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, 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;

(a.2) consumable medical supplies, if the minister is satisfied that all of 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;

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

(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, for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy.

Optical supplements

2.1 The following are the optical supplements that may be provided under section 62.1 [*optical supplements*] of this regulation: (a) basic eyewear and repairs; (b) pre-authorized eyewear and repairs.

Eye examination supplements

2.2 The minister may pay a health supplement under section 62.2 [*eye examination supplements*] of this regulation for an eye examination that,

(a) if provided by an optometrist, is provided for a fee that does not exceed \$44.83 or

(b) if provided by an ophthalmologist, is provided for a fee that does not exceed \$48.90.

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.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, 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.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements

in that section 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 a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

3.1 crane, crutch, walker, walker accessory; 3.2 wheelchair; 3.3 wheelchair seating system; 3.4 scooter; 3.5 bath/seating bars and accessories; 3.6 hospital bed; 3.7 pressure relief mattress; 3.8 floor or ceiling lift device; 3.9 positive airway device; 3.10 foot orthotics; 3.11 hearing aid; 3.12 non-conventional glucose meter.
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.

The Parties' Positions

The Ministry's position is that, although it is sympathetic with the Appellant's circumstances and the Appellant is eligible for health supplements provided under section 62 and Schedule C of the EAPWDR, it determined that the request for Muro OTC eye ointment and solution medications does not meet the legislated criteria in the EAPWDR. It considered whether the Appellant qualified under several sections of the EAPWDR as discussed below.

The Appellant submitted that without help from the Ministry to pay for the eye ointment and solution medication he will go totally blind. He is already blind in one eye. He cannot afford the monthly cost of the items and therefore he asked that the funds be provided to him on compassionate grounds.

The Panel's Findings

The Appellant asks that his request for the medications be considered on compassionate grounds. Under section 24(1) of the Employment and Assistance Act, this Panel can only determine if the Ministry's reconsideration decision was reasonably supported by the evidence and/or was a reasonable application of the applicable legislation.

In its reconsideration decision, the Ministry made a number of separate findings based on its consideration of whether different sections of the EAPWDR applied to the Appellant's circumstances. The Panel, therefore, will review whether the Ministry's decision was reasonable with respect to each of those sections of the EAPWDR.

The Ministry determined that as a recipient of disability assistance, the Appellant is eligible for health supplements under section 62 and Schedule C of the EAPWDR. Then it considered whether the requested items are optical supplements that may be provided under section 62.1 and Schedule C, section 2.1 of the EAPWDR. The Panel finds that the Ministry reasonably determined that the requested items are not basic eyewear and repairs and not pre-authorized eyewear and repairs, which are the only things that the Ministry may fund under these sections.

The Ministry also considered whether the requested items qualified as one of the medical supplies that may be provided for under Schedule C section 2(1)(a). The Panel finds that the Ministry reasonably determined that the requested items are not required for any of the purposes listed in section 2(1)(a)(i) as set out above, are not one of listed items in Schedule C section 2(1)(a.1) and do not meet the requirements in section 2(1)(a.2). The Panel also finds that the Ministry reasonably considered section 2(1.1) of that Schedule which states that medical and surgical supplies covered by subsection (1)(a) do not include nutritional supplements, food, vitamins, minerals or prescription

medications.

In addition, the Ministry determined that the requested items are not one of the health supplements set out in Schedule C sections 3.1 to 3.12. The Panel finds that the Ministry reasonably determined that the requested items are not one of those health supplements as listed above. The Panel also finds that the Ministry reasonably determined that there was no information to establish that the requested items satisfied any of the other regulatory requirements for these health supplements.

The Ministry determined that the requested items are not one of the listed therapies it may provide under Schedule C sections 2(1)(c), 2(2) and 2(2.1) and the information provided did not establish that the criteria in these sections was met. The Panel finds that the Ministry reasonably determined that the requested items are not one of these therapies and there was no information to satisfy the regulatory criteria.

The Ministry also determined that the requested items did not meet the criteria for the other supplements listed in Schedule C, section 2.2, 4, 4.1, 5, 6, 7, 8 and 9. The Panel finds that the Ministry reasonably determined that the requested items do not qualify under these regulations, which provide for eye examination supplements, dental supplements, crown and bridgework supplements, emergency dental supplements, diet supplements, monthly nutritional supplements, natal supplements, infant formula and transitional nutritional supplements.

The Ministry further determined that the requested items are not a nutritional supplement for an acute short-term need as provided for in EAPWDR section 67(3). The Panel finds that no information was provided that the requested items are a nutritional supplement needed for an acute short-term need and therefore, the Panel finds that the Ministry reasonably determined that the requested items do not meet the criteria in section 67(3).

Finally, the Ministry considered whether the Appellant is eligible for a supplement for the requested items under the provisions of section 69 of the EAPWDR; that is, a health supplement for a person facing a direct and imminent life threatening health need. The Panel notes that section 69 applies only to the health supplements provided for under Schedule C sections 2(1)(a) to (f) or sections 3 to 3.12 as listed above. In this case, the Panel finds that the Ministry reasonably determined that the Appellant's request does not fall within the listed supplements in sections 2(1)(a) to (f) or in sections 3 to 3.12. The Ministry also determined that the information provided did not establish that the Appellant faced a direct and imminent life-threatening health need for the ointment and solution medication. The Appellant submitted that without the requested items, he will go totally blind and he provided a letter from his doctor stating that the items are very important to maintaining his vision. The Panel finds that the information provided by the Appellant establishes that he needs the ointment and medication to maintain his vision; however, there is no information that without these items he faces a direct and imminent life-threatening health need. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant did not meet the requirements in section 69 of the EAPWDR.

Conclusion

After considering all of the evidence and the applicable legislation, the Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence. Therefore, the Panel confirms that decision.