

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated May 21, 2013 that held that the appellant was not eligible for an abdominal support binder 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 (EAPWDR) were not met.

The ministry determined that as provided in Schedule C, specifically:

1. the criterion of section 2(1)(a) was not met because the abdominal support binder (the item) is not listed under disposable or reusable medical or surgical supplies required for any of the purposes set out in section 2(1)(a)(i);
2. the criterion of section 3, 3.1 to 3.12 was not met because the item is not listed under medical equipment and devices;
3. the criterion of section 2(1)(c) and 2(2) were not met because the abdominal support binder is not required as therapy;
4. the criterion of sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9 was not met because the abdominal support binder is not listed under the remaining health supplement legislation; and
5. the criterion of section 69 was not met because the abdominal support binder is not required to meet a life-threatening health need.

PART D – Relevant Legislation

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

PART E – Summary of Facts

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

- A prescription from the appellant's physician dated March 21, 2013 for an abdominal support binder-velcro closure.
- A quote from a pharmacy for an abdominal support binder dated March 22, 2013 indicating a total cost of \$43.67.
- The appellant's Request for Reconsideration dated May 10, 2013 with a letter written by the appellant's care giver.

In his letter, the care giver describes the appellant as a mentally handicapped adult who has no family and has lived in the care giver's home for about 24 years. It is stated that several years ago the appellant had emergency surgery for a large life threatening abdominal hernia. As the appellant has since developed several more hernias, his surgeon has suggested that the appellant wear an abdominal binder to slow the progress of his hernias. The abdominal binder covers the area of the hernias and supports the inner pressures that cause the bowel to separate and protrude through the abdominal wall. The appellant soils the binder resulting in frequent washing which wears out the velcro. A binder usually lasts several months depending on the frequency of washing. When the velcro wears out, the binder becomes unusable and will not remain tight, therefore ineffective. The care giver who is a registered nurse states that previous authorization has been given for the item, that the appellant has been using the abdominal support binder for several years, that the abdominal binder is a medically necessary device, that it prevents surgery and that it improves the appellant's physical functioning and quality of life.

Included with the Notice of Appeal was a new prescription from the appellant's physician dated June 17, 2013 for 2 abdominal support binders-velcro closures to treat a Ventral hernia.

Also, included with the Notice of Appeal was a letter from the appellant's care giver dated June 17, 2013 which describes the appellant's medical history as it pertains to his hernias. It states that the appellant's surgeon has recommended that he use an abdominal binder because his abdominal lining is thinner than normal and it would be more susceptible to separation and permitting the inner organs from pressing through. The appellant's care giver indicates that the appellant is being denied an abdominal binder based on a regulation which does not take into account the fact that he has a real and urgent need for the item.

The panel finds that the new information provided by the appellant in his Notice of Appeal and the recent prescription from his physician are further description of the appellant's current 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 a single recipient with Persons with Disabilities designation.

There are no resources available to the family unit to cover the cost of the abdominal support binder.

The item has been prescribed by a medical practitioner.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant is ineligible for an abdominal support binder 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.

3.10(11) The following items are not health supplements for the purposes of section 3 of this Schedule:

- (a) a prosthetic and related supplies;
- (b) a plaster or fiberglass cast;
- (c) a hernia support;
- (d) an abdominal support;
- (e) a walking boot for a fracture.

General health supplements – Section 2, Schedule C

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 previous authorization has been given for the item, that the appellant has been using the abdominal support binder for several years, that the abdominal binder is a medically necessary device, that it prevents surgery and that it improves the appellant's physical functioning and quality of life. The appellant also argues that he has a prescription for the device from his physician and that he is being denied an abdominal binder based on a regulation which does not take into account the fact that he has a real and urgent need for the item.

The ministry's position is as follows:

1. the criterion of section 2(1)(a) was not met because the abdominal support binder is 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;
2. the criterion of section 3, 3.1 to 3.12 was not met because the item is 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;
3. the criterion of section 2(1)(c) and 2(2) were not met because the abdominal support binder is not required as therapy provided to include: acupuncture, chiropractic service, massage therapy, naturopathy, non-surgical podiatry and/or physiotherapy therapy;
4. the criterion of sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9 was not met because the abdominal support binder is not listed under the remaining health supplement legislation; and
5. the criterion of section 69 was not met because the abdominal support binder is 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 abdominal support binder is not listed; under medical or surgical supplies, under medical equipment and devices, as a therapy or under the remaining health supplements. Additionally, the panel finds the abdominal support binder was reasonably determined by the ministry as not required to meet a life-threatening health need. The panel finds that the relevant legislation in this appeal which concerns eligibility for an abdominal support binder is section 3.10(11) of Schedule C.

The panel notes that the appellant's care giver has stated that the appellant has received previous authorization for the item that he has been using for several years and that the appellant's need for the item is supported by the appellant's physician who most recently has issued a prescription for 2 abdominal support binders for the appellant. Although the panel acknowledges the fact that the appellant has a real and urgent need for the item; section 3.10(11) is very specific that the abdominal support binder is not a health supplement for the purposes of section 3 of Schedule C. The panel finds that the ministry's decision that the appellant was not eligible for an abdominal support binder was a reasonable application of the applicable enactment in the circumstances of the appellant and therefore confirms the ministry's decision.