

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated April 9, 2013, which held that the appellant is not eligible for a prescription drug Aprepitent as it is an ineligible item pursuant to Section 62 and Schedule C of the Employment and Assistance for Persons with Disabilities Regulation. (EAPWDR)

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act, Section 5 and Employment and Assistance for Persons with Disabilities Regulation, Section 62 and Section 69 and Schedule C.

PART E – Summary of Facts

The evidence before the ministry at the reconsideration decision included:

- Ministry's decision dated March 1, 2013.
- A copy of a letter dated February 26, 2013 and receipts submitted by the appellant's advocate requesting reimbursement for the prescription drug Aprepitant.
- The appellant is a recipient of disability assistance.

The appellant in her April 12, 2013 notice of appeal submitted that she met the basic eligibility as her cancer is life threatening and she is only asking for a onetime payment to cover the medications. She states that she needs her medication to maintain her health and states that she is already malnourished due to other health concerns.

The appellant's advocate submitted a letter to an advocacy organization dated April 17, 2013 stating that she is waiting for a letter from the appellant's oncologist and that the appellant is unwell and is having ongoing cancer treatments.

At the hearing the appellant's advocate, speaking on behalf of the appellant, stated that the appellant suffers from cancer as well as a number of other medical conditions. The prescription drug Aprepitant is working to maintain her health and has helped her through chemotherapy. The drug is also helping with the appellant's malnourishment. The advocate said that this is a onetime only request for two months of the prescription drug as PharmaCare did not cover the first submission the appellant made for the cost of the drug. The appellant has found funding for the prescription drug for future doses.

The appellant's advocate acknowledged that the prescription drug was not a health supplement under the legislation, but this prescription is keeping the appellant alive. The advocate also stated that the appellant's cancer is life threatening and the appellant has had her breast removed and is in the middle of chemotherapy. The appellant's advocate had asked the appellant's Doctor for a note stating that her cancer is life threatening but the Doctor's note would not be available for a couple of weeks.

At the hearing the ministry stated that there was no evidence submitted stating that the appellant's cancer or other medical conditions are life threatening and there is nothing under health supplements or medical supplies in Schedule C of the EAPWDR that meets the legislated criteria. The ministry representative clarified that the ministry does not cover prescription drugs as all medication coverage falls under PharmaCare.

The panel makes the following findings of fact:

- the appellant is a recipient of disability assistance and is eligible to receive health supplements provided under Section 62 and Schedule C of the EAPWDR.
- The appellant was not reimbursed for the prescription drug Aprepitant for two months.
- The appellant's advocate states that the appellant's cancer is life threatening.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably concluded that the appellant is not eligible for the prescription drug Aprepitant because the requested item does not meet the legislated criteria as set out in section 62 and 69 Schedule C of EAPWDR.

Employment and Assistance for Persons with Disabilities Act Section 5 states that subject to regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Pursuant to Section 62(1)(a) of the EAPWDR the applicant must be a recipient of disability assistance, or be a dependant of a person in receipt of disability assistance in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has found that the requirement of Section 62 has been met in that the appellant has been approved for disability assistance.

Section 69 sets out that the minister may provide to a family unit any health supplement set out in sections 2 (1)(a) (medical supplies) and (f) (medical transportation) 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 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).

At issue is whether the prescription drug Aprepitant is eligible under Schedule C.

Schedule C, section 2 of the EAPWDR set out the guidelines for general eligibility requirements for the provision of medical supplies. Pursuant to section 2(1) of Schedule C the following are the health supplements that may be paid 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 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 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.

The ministry also considered the appellant's request under all provisions provided under Schedule C which included such items as acupuncture, chiropractic, massage therapy, naturopathy, physical therapy, optical supplements, medical equipment and devices, dental supplements, diet supplements, monthly nutritional supplements all of which had no relation to the appellant's request.

The EAPWDR Regulation, Schedule C, subsection 2(1)(a.1) sets out that the following medical or surgical supplies may be paid by the minister 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;

The EAPWDR Regulation, Schedule C, subsection 2(1)(a.2) sets out that consumable medical supplies may be paid for by the minister if the minister is satisfied that the following requirements are met:

- (i) the supplies are required to thicken food;
- (ii) all the requirements described in paragraph 2(ii) and (iii) are met in relation to the supplies.

Section 2(1.1) sets out that for the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

At reconsideration the ministry looked at the appellant's request in the context of the legislation mentioned above. The ministry found that the reimbursement requested for the prescription drug Aprepitant is not required for one of the purposes set out in the EAPWDR, Schedule C. .

Pursuant to Section 67 (1)(a)(i) the appellant is qualified to receive health supplements provided under Section 67 and Schedule C of the EAWDR. The ministry in its reconsideration decision looked at Section 69 where the minister may provide to a family unit any health supplement if the person is facing a direct and imminent life threatening need. There is no evidence that the appellant is facing a direct and imminent life threatening need.

The ministry also looked at Schedule C- Health Supplements of the EAWDR and determined that the prescription Aprepitant does not meet any of the criteria listed in Section 67, and 69 and is not an item listed in Schedule C.

The appellant states that she is requesting a onetime only payment for the prescription drug Aprepitant as PharmaCare did not cover the first submission the appellant made for the cost of the drug.

The ministry states that there was no evidence submitted stating that the appellant's cancer or other medical conditions are life threatening and there is nothing under health supplements or medical supplies in Schedule C of the EAPWDR that meets the legislated criteria for receiving support.

The panel finds that the ministry was reasonable to conclude that the prescription Aprepitant was not required for any of the set out purposes in Schedule C 2(1)(a) and therefore reasonable to conclude that this criteria was not met. The ministry was also reasonable to conclude that none of the other requirements of Schedule C were met as the item was not any of those listed.

The ministry was reasonable in denying a health supplement under section 69 as a imminent life-threatening need was not established and section 69 only provides for certain health supplements set out in 2 and 3 of Schedule C and the prescription Aprepitant is not one of these health supplements.

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

The panel confirms the ministry's decision.