

### PART C – Decision under Appeal

The appellant appeals the reconsideration decision of the Ministry of Social Development ("Ministry") dated May 7, 2013 in which the Ministry denied the appellant's request for a TENS machine and a heating pad (the "Requested Items") as health supplements under the *Employment and Assistance for Persons with Disabilities Regulation* ("EAPWDR"). The Ministry found that the eligibility criteria set out in the legislation had not been met, as follows:

- 1) The Requested Items are not a disposable or reusable medical or surgical supply, as set out in Schedule C, subsection 2(1)(a);
- 2) The Requested Items are not directly required for one of the purposes listed under Schedule C, subsection 2(1)(a)(i);
- 3) The appellant did not provide information to establish that the Requested Items are necessary to avoid an imminent and substantial danger to health as required by Schedule C, subsection 2(1)(a)(ii)(C);
- 4) The Requested Items are not among the medical or surgical supplies listed in Schedule C, subsections 2(1)(a.1) or 2(1)(a.2);
- 5) The Requested Items are not among the listed medical equipment and devices in sections 3.1 through 3.12 of Schedule C of the EAPWDR;
- 6) The Requested Items do not meet the criteria as a therapy, as set out in Schedule C, subsections 2(1)(c), 2(2) and 2(2.1);
- 7) The Requested Items do not meet the criteria for "any other health supplement" as set out in Schedule C, subsections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9; and
- 8) The Requested Items do not meet the legislated criteria as health supplements for persons facing a direct and imminent life-threatening health need under section 69 of the EAPWDR.

### PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Regulation* ("EAPWDR") sections 62 and 69 and Schedule C, Health Supplements, sections 1, 2(1), 2.1, 2.2, 3, 3.1-3.12, and 4-9.

## PART E – Summary of Facts

The evidence before the Ministry at reconsideration included:

- A prescription note from the appellant's physician dated April 2, 2013 stating, "Would you please provide T.E.N.S. as patient has ODD cervical & electric heating pad";
- A quotation for purchase from a pharmacy dated April 2, 2013 indicating the cost for a Tens Intensity Digital with Preset Programs as \$119.99 plus HST and the cost for a Thermaphore Electric Heating Pad Standard Auto-Off 14"X27" as \$129.99 plus HST; and
- The appellant's written submission on reconsideration dated May 24, 2013 (the panel notes that this date should be April 24, 2013), in which the appellant wrote that she has severe osteoporosis and degenerative disc disease which has greatly limited her activities, that she used her neighbour's TENS machine and heating pad for one night and it alleviated a lot of her pain, that she is disabled and her income does not allow her to buy these devices for herself.

The reconsideration decision notes that appellant receives disability assistance (she has been designated a person with disabilities) and is thus eligible to receive health supplements under section 62 and Schedule C of the EAPWDR.

The hearing was based on written submissions. The Ministry indicated that its submission is the reconsideration decision. In the appellant's notice of appeal, she wrote, "My muscle pain in neck, back and shoulder is severe, intense and excruciating. I can't function this way anymore having used the TENS machine I get relief which becomes so much better. I really must have one to use at home on a daily basis. Thank you." The appellant also provided written submissions on appeal dated May 29, 2013, in which she wrote the following:

I have applied for a TENS machine and a heating pad and have been rejected twice. ... I have been dealing with severe back pain for several years. I had no idea that such a machine existed until my neighbor ... offered to let me borrow her machine for a night ... After one use of the TENS machine, I found my pain to alleviate and I could manage to get a good night sleep without complaining. ... I went to see my doctor and my physiotherapist and they both recommended that I get the TENS machine and heating [pad] to be able to help with alleviating the pain and prescribed this to the ministry. ... I am disabled and receive funding by the ministry. I cannot afford to buy the TENS machine or heating pad with my own money because I do not make enough to be able to. ... please help me get this machine to alleviate my pain. It is very hard for me to sit, walk, or do anything due to the severe pain my discs have been giving me. ...

Submitted with the appellant's notice of appeal was a copy of a radiology report of bilateral shoulder x-ray dated April 19, 2013 for the appellant indicating "focal intramuscular masses growing for a few years." Included in the appeal materials was a letter from the appellant's physiotherapist dated May 2, 2013 in which the physiotherapist wrote,

Please consider [the appellant's] request for a TENS machine and heating pad to assist with her neck and radiating arm symptoms attributable to her cervical spondylosis. It is part of her management strategy in controlling her osteoarthritic and muscle pain involvement. Thank you for the consideration.

The panel notes that although the radiology report and physiotherapist's letter are dated prior to the reconsideration decision, the Ministry did not refer to this evidence in the reconsideration decision and the panel assumes that they were not before the Ministry at reconsideration. The Ministry did not object to these documents in its written submissions. The panel accepts this additional evidence, as well as the written submissions of the appellant, under section 22(4)(b) of the *Employment and Assistance Act*, as written testimony in support of the information and records that were before the minister when the decision being appealed was made.

## PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the Ministry's reconsideration decision of May 7, 2013, denying the appellant's request for financial assistance to purchase the Requested Items (a TENS machine and a heating pad) on the basis that the appellant's request does not meet the eligibility criteria set out in Schedule C and section 69 of the EAPWDR.

### 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.

Subsection 2(1)(c) sets out the requirements for the provision of the following therapies: acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, and physical therapy, and subsections 2(2) and 2(2.1) provide that an individual is only allowed 12 visits per calendar year for these therapies, at a cost of \$23 for each visit.

#### Medical equipment and devices

- 3.(1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in section 3.1 to 3.11 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.

.....

The following medical equipment and devices, and medical supplements, are expressly set out in sections 2.1, 2.2, 3.1-3.12, 4, 4.1, 5, 6, 7, 8, and 9 of Schedule C as follows:

- optical supplements – section 2.1;
- eye examination supplements – section 2.2;
- canes, crutches and walkers – section 3.1;
- wheelchairs – section 3.2;
- wheelchair seating systems – section 3.3;
- scooters – section 3.4;
- bathing and toileting aids – section 3.5;
- hospital bed – section 3.6;
- pressure relief mattress – section 3.7;
- floor or ceiling lift devices – section 3.8;
- positive airway pressure devices – section 3.9;
- orthoses – section 3.10;
- hearing instruments – section 3.11;
- non-conventional glucose meters – section 3.12;
- dental supplements – section 4;
- crown and bridgework supplement – section 4.1;
- emergency dental supplements – section 5;
- diet supplements – section 6;
- monthly nutritional supplement – section 7;
- natal supplement – section 8; and
- infant formula – section 9.

The EAPWDR provides the following criteria regarding health supplements for persons facing a direct and imminent life threatening health need in section 69:

69. The minister may provide to a family unit any health supplement set out in section 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, 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 3.11, other than paragraph (a) of section 3(1).

The appellant indicates in her written submissions that she feels the Ministry's decision to deny her request for the Requested Items (a TENS machine and a heating pad) is unfair, that her doctor and her physiotherapist have recommended the Requested Items to help alleviate her severe back pain, that she is disabled and cannot afford to purchase the Requested Items herself.

The Ministry determined that the information provided by the appellant regarding the Requested Items did not establish that the eligibility criteria set out in the legislation had been met.

The Ministry found on reconsideration, that the Requested Items are not required for one of the purposes set out in section 2(1)(a) of Schedule C (disposable or reusable medical or surgical supplies), and are not directly required for one of the purposes set out in section 2(1)(a)(i) of Schedule C (wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care, or limb circulation care). The ministry further found that there is no information from the appellant that the Requested Items are necessary to avoid an imminent and substantial danger to health (as required by section 2(1)(a)(ii)(C) of Schedule C), and the Requested Items are not set out in Schedule C, subsections 2(1)(a.1) (which lists lancets, needles and syringes, ventilator supplies required for the essential operation or sterilization of a ventilator, or tracheostomy supplies), or 2(1)(a.2) (which provides for consumable medical supplies).

The Ministry determined in the reconsideration decision that the Requested Items – a TENS machine and a heating pad - are not among the listed health supplements set out in sections 3.1 to 3.12 of Schedule C of the EAPWDR, which expressly provides for canes, crutches and walkers, wheelchairs, wheelchair seating systems, scooters, bathing and toileting aids, a hospital bed, pressure relief mattresses, floor or ceiling lift devices, positive airway pressure devices, orthoses, hearing instruments and non-conventional glucose meters. The Ministry also determined that the Requested Items do not meet the criteria as therapy, as provided in Schedule C, subsections 2(1)(c), 2(2) and 2(2.1). Further, the Ministry determined that the Requested Items are not among the items listed as health supplements in Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9 (optical supplements, eye examination supplements, dental supplements, crown and bridgework supplements, emergency dental supplements, diet supplements, monthly nutritional supplements, natal supplements and infant formula).

The Ministry also determined that there is no information from the appellant to satisfy the minister that she requires the Requested Items as a health supplement for a person facing a direct and imminent life threatening need under section 69 of the EAPWDR. Section 69 sets out that the minister may provide any health supplement set out in Schedule C, sections 2(1)(a) through (f) (general health supplements) and 3 (medical equipment and devices), if the health supplement is provided for a person who is otherwise not eligible and if the minister is satisfied that the person faces a direct and imminent life threatening need and there are no resources available with which to meet that need. The Ministry determined that the Requested Items do not meet the criteria as health supplements under Schedule C, s. 2(1)(a)-(f) and 3 and that the information submitted does not establish that she faces a direct and imminent life-threatening need for the Requested Items.

APPEAL #

The panel finds that the appellant has not provided any information to establish that the Requested Items (a TENS machine and a heating pad) meet the criteria set out in the applicable sections of Schedule C and section 69 of the EAPWDR. The panel finds that the Ministry reasonably determined that the Requested Items do not meet the legislative criteria as health supplements listed in sections 2(2), 2.1, 2.2, 3.1-3.12, 4, 4.1, 5, 6, 7, 8, and 9 of Schedule C as the Requested Items do not correspond to any of the listed supplements. The panel finds that the Requested Items do not meet the criteria required by section 2(1)(a) of Schedule C. The panel also finds that the appellant has not provided any evidence that she faces a direct and imminent life threatening need for the Requested Items as required by section 69 of the EAPWDR. Accordingly, the panel finds that the Ministry's denial of the appellant's request for financial support to obtain the Requested Items is reasonably supported by the evidence and is a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the ministry's reconsideration decision.