

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the “Ministry”) May 2, 2013 reconsideration decision denying the Appellant’s request for a supplement for a TENS machine because the Ministry found that the information provided did not establish that the criteria in the Employment and Assistance for Persons with Disabilities Regulation were met, and specifically that:

- The Appellant is not eligible for a TENS machine as a medical supply as provided for in Schedule C, section 2;
- The Appellant is not eligible for a TENS machine as medical equipment as provided for in Schedule C, section 3;
- A TENS machine is not a supplement provided for in any other section of Schedule C; and
- The Appellant is not eligible for a TENS machine as a health supplement for a life-threatening health need under section 69.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), Sections 62, 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

The Panel notes that the Ministry's reconsideration decision is dated May 2, 2012. However, based on all of the documents in the record and the dates in the background portion of that decision, the Panel finds that is a typographical error and the reconsideration decision was made on May 2, 2013.

For its reconsideration decision the Ministry had the following evidence:

1. Information from its files that:

- The Appellant is on Medical Services Only ("MSO") and was previously a recipient of disability assistance.

2. Medical Equipment Request and Justification form with Part 3 - assessment section completed on March 20, 2013 by a therapist recommending a TENS machine with 4 pads (long & square) and Part 2 – medical or nurse practitioner recommendation section completed by the same therapist on March 20, 2013 describing the Appellant's medical condition as long standing history of low back, neck pain and fibromyalgia pain following a motor vehicle accident in 1996, and poor tolerance to manual therapy. A TENS machine with 2 leads and 4 pads was recommended.

3. Letter dated March 21, 2013 from the Ministry to the Appellant requesting additional information about her annual income, bank statements, utility costs and a completed Medical Equipment Request form.

4. Medical Equipment Request and Justification form with Part 3 – assessment section completed by the same therapist on March 28, 2013 recommending a TENS machine with 4 pads and Part 2 – medical or nurse practitioner section completed by someone else on March 29, 2013 describing the Appellant's medical condition as chronic back pain and fibromyalgia, and recommending a TENS machine.

5. Appellant's request for reconsideration in which she wrote that when her account balance was viewed, her monthly bill payments had yet to be paid. She wrote that her monthly income is only \$500 from disability pension and her husband's is \$1200. After their mortgage, car insurance phone/cable, electric, strata payments and groceries, she is left with only \$100-200 which is needed for emergencies. The Appellant stated that she also has a daughter who lives with her and is dependent on them as she has been diagnosed as having a moderate learning disability. The Appellant submitted that at the end of the month she really does not have any surplus money to afford the TENS machine.

In her notice of appeal, the Appellant wrote that with her disability she can definitely use a TENS machine. Her family income simply does not allow her to buy one. She wrote that after day to day expenses there is not enough money left for anything and she already forwarded proof of income and expenses.

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

The Panel makes the following findings of fact:

1. The Appellant is currently on Medical Services Only assistance.
2. A therapist recommended a TENS machine with 4 pads.
3. There is no information from a medical practitioner confirming a life-threatening health need for the item.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for a supplement for a TENS machine because the information provided did not establish that the criteria in the EAPWDR were met, and specifically that:

- The Appellant is not eligible for a TENS machine as a medical supply as provided for in Schedule C, section 2;
- The Appellant is not eligible for a TENS machine as medical equipment as provided for in Schedule C, section 3;
- A TENS machine is not a supplement provided for in any other section of Schedule C; and
- The Appellant is not eligible for a TENS machine as a health supplement for a life-threatening health need under section 69.

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,
- (b) a person with disabilities who has not reached 65 years of age and who has ceased to be eligible for disability assistance because of
 - (i) employment income earned by the person or the person's spouse, if either the person or the person's spouse (A) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or (B) is aged 65 or more and a person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
 - (ii) a pension or other payment under the *Canada Pension Plan* (Canada).

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;
 - (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

Eye examination supplements 2.2

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.

3.1 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 supplements; 5 emergency dental supplements; 6 diet supplements; 7 monthly nutritional supplements; 8 natal supplements; 9 infant formula; 10 transitional – nutritional supplement for bottled water.

The Parties' Positions

The Ministry's position is that, although it is sympathetic to 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 a TENS machine did 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 with her disability she can definitely use a TENS machine. Her family income simply does not allow her to buy one. She did not address the different EAPWDR criteria.

The Panel's Findings

In its reconsideration decision, the Ministry determined that as a recipient of MSO assistance, the Appellant is eligible for health supplements under section 62 of the EAPWDR. It then considered whether the TENS machine is an eligible supplement under Schedule C of the EAPWDR. The Panel finds that the Ministry reasonably determined that, in accordance with the provisions of EAPWDR section 62, it could provide the Appellant with a supplement for the TENS machine only if that item qualified as one of the specific supplements itemized in Schedule C. The Ministry made a number of separate findings based on its consideration of whether different sections of Schedule C 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.

The Ministry considered whether the TENS machine is one of the medical supplies which may be provided for under Schedule C section 2. Based on the information provided, the Panel finds that the Ministry reasonably determined that the TENS machine is not a disposable or reusable medical or surgical supply that is required for any of the purposes set out in section 2(1)(a)(i) set out above, is not a medical or surgical item listed in section 2(1)(a.1), is not a consumable medical supply provided for in section 2(1)(a.2) and is not one of the services provide for in section 2(c).

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

The Ministry determined that the TENS machine is not one of the listed therapies which may be provided under Schedule C sections 2(1)(c), 2(2) and 2(2.1) and that the information provided did not establish that the other criteria in these sections was met. The Panel finds that, based on the information provided, the Ministry reasonably determined that the requested item is not one of these therapies and there was no information to satisfy the regulatory criteria.

The Ministry also determined that the requested item did not meet the criteria for the other supplements listed in Schedule C, namely sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, 9 and 10. Based on the evidence, the Panel finds that the Ministry reasonably determined that the requested item does not qualify under these regulations, which provide for optical supplements, 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.

Finally, the Ministry considered whether the Appellant is eligible for a supplement for the requested item under 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, as discussed above, 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 TENS machine. The Appellant submitted only that with her disability she could use the TENS machine. The Panel finds that the information provided by the Appellant establishes that she can use the item; however, there is no information that without the TENS machine she 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.