

## PART C – Decision under Appeal

This is an appeal of a reconsideration decision by the Ministry of Social Development and Social Innovation ('the ministry') dated July 22, 2013, in which the ministry denied the appellant incontinence supplies.

The ministry relied on section 67 of the *Employment and Assistance Regulation* (EAR), finding that the appellant did not have a qualification as a Person With Persistent Multiple Barriers (PPMB). Nor did it find the other criteria of section 67 applied.

The ministry also considered section 62 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), finding the appellant ineligible as he is not in receipt of disability assistance, nor did the other criteria contained in this section apply.

The ministry further considered the appellant under section 76 of the EAR, finding him ineligible as it was not satisfied that he did not face a direct and imminent life threatening need, nor that the remaining tests in this section had been met, including those in EAR Schedule C section 2(1)(a)(ii), namely that the supplies were necessary to avoid an imminent and substantial danger to health.

## PART D – Relevant Legislation

*Employment and Assistance Regulation* (EAR) sections 67, 76 and Schedule C section 2(1)(a)(ii)

*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) section 62

## PART E – Summary of Facts

The following evidence was before the ministry at the time of its reconsideration:

- A prescription for the appellant for adult male diapers, dated June 17, 2013.
- A receipt for adult diapers dated July 10, 2013.

Information received after the reconsideration decision:

- An application for PPMB in the name of the appellant, dated July 12, 2013.
- In the appellant's appeal submission he lists a number of health conditions, including difficulty managing bowel or bladder functions.

Under section 22(4)(b) of the Employment and Assistance Act, the Panel admitted the additional evidence as it is in support of information and records which were before the Ministry when the decision being appealed was made. The panel finds it relates to the appellant's argument with respect to his health condition and his status before the ministry, and therefore his eligibility.

## PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's decision to deny the appellant's request to be reimbursed for incontinence supplies in accordance with the EAR sections 67, 76 and Schedule C section 2(1)(a)(ii) and the EAPWDR section 62, was reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

The ministry examined the appellant's request under the relevant sections of the EAR and EAPWDR:

Pursuant to section 67 of the EAR, the ministry found that the appellant did not have a PPMB qualification, he did not receive income assistance under section 8 of schedule A, nor did sections 67(1)(c-h), (2) or (3) apply.

The relevant portions of EAR section 67 state:

- 67 (1)** Subject to subsection (1.1), 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
- (a) is a recipient of income assistance under section 2 [*monthly support allowance*], 4 [*monthly shelter allowance*], 6 [*people receiving room and board*] or 9 [*people in emergency shelters and transition houses*] of Schedule A if
    - (i) any person in the family unit is a person who has persistent multiple barriers to employment, and
    - (ii) the recipient does not receive a federal spouse's allowance or guaranteed income supplement benefits.
    - (iii) Repealed. [B.C. Reg. 57/2007, s. 1.]
  - (b) is a recipient of income assistance under section 8 [*people receiving special care*] of Schedule A,

The ministry stated that the remaining subsections of section 67 are not applicable to the appellant. The balance of subsection (1) addresses dependants of those eligible under this subsection, those over 65 who were eligible for health supplements on their 65<sup>th</sup> birthday and those under 65 who received settlements from the government. The ministry was reasonable to find these sections did not apply in the appellant's circumstances.

The appellant argues that he believes he has both PPMB and PWD status. He lists a number of conditions in addition to his incontinence. He also states that he cannot afford the incontinence supplies or a care aid, and his wife is very sick and unable to care for him.

Contained in the appeal record is a copy of an application for PPMB in the appellant's name. In support of this the appellant listed the conditions which afflict him. The panel notes that the status of the appellant before the ministry is not set out, i.e. what form of assistance, if any, of which he is in receipt. Nonetheless, the panel gives weight to the ministry's statement that he does not have qualification as a PPMB. The PPMB application contained in the appeal record is dated July 12, 2013 and the status of this application is not before the panel.

Section 67 (1)(b) refers to section 8 of Schedule A and relates to a person "who receives accommodation and care in a special care facility or a private hospital or who is admitted to a hospital because

he or she requires extended care..." The ministry was reasonable in finding this was not the appellant's circumstance as the appellant is not in a special care facility or private hospital.

The panel finds the ministry reasonable in denying the appellant on the basis that he does not have a PPMB qualification, nor is he in a facility referenced in section 8 of Schedule A.

Next the ministry examined section 62 of the EAPWDR; the relevant portion of which states:

- 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,

The ministry stated that the remaining subsections of section 62 are not applicable to the appellant. This is a reasonable conclusion given that the remaining subsections deal with being in receipt of disability assistance currently or in the past, or being the dependant of a person who meets that criteria, or is a dependant of someone in receipt of hardship assistance.

The ministry contends that the appellant does not have a PWD designation.

The appellant argues that he believes he has this designation because of his multiple ailments.

Again the panel places reliance on the ministry's records with respect to whether or not the appellant has a designation as a Person With Disabilities. In the absence of evidence to the contrary the panel finds the ministry reasonable in coming to this conclusion and in denying him a benefit under this section.

Finally, the ministry considered the appellant's situation under section 76 of the EAR.

Section 76 states:

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 ministry found the appellant ineligible as the appellant did not face a direct and imminent life-threatening health need, and because the incontinence supplies are not necessary to avoid imminent and substantial danger to his health.

The appellant argues that he cannot walk to the bathroom because of his weak legs, he is fully

incontinent, his wife is too weak to assist him, nor can he afford the supplies.

The panel finds the ministry was reasonable in its finding: the appellant's incontinence, while clearly very troublesome, is not "a direct and imminent life threatening need." Nor does his condition meet the "imminent and substantial danger to health" requirement in 2(1)(a)(ii)(C) of Schedule C.

In conclusion, the panel finds the decision was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision

The panel confirms the ministry's decision.