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PART C – Decision under Appeal

In a reconsideration decision dated 02 July 2013, the Ministry denied the Appellant 's request for a lympha press pump, lympha press pants and a lympha press jacket (lymphopress unit) because it found the lymphopress unit does not meet the legislated criteria as a medical supply, medical equipment, a health supplement, therapy, or other health supplements as set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 69 or in Schedule C.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 62 and 69
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C

PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision included:

- A letter dated June 13, 2013 from a physiotherapist at the local hospital that explains the Appellant attends outpatient physiotherapy two times a week for lymphopress treatments, that she would benefit from more frequent sessions and that she occasionally struggles to attend sessions due to other medical problems. The letter concludes that the outpatient department does not have the capacity to increase the frequency of the service and that funding the lymphopress unit would allow the Appellant to perform the treatments at home.
- A letter dated June 18, 2013 from a family physician that states the Appellant has been his patient for 5 years, that she suffers from significant medical conditions and that the most significant one is severe lymphedema. It concludes that because of the limited availability of the lymphopress treatments that some consideration be given to funding her with a lymphopress unit for her own home treatments.
- A quote for a lymphopress unit at $11,990, dated March 14, 2013 and a brochure describing the unit.
- A letter dated June 25, 2013 from a certified therapist that states she has been treating the Appellant with manual lymphatic drainage massage in conjunction with the outpatient lymphopress treatments. The letter concludes the Appellant would benefit from more frequent access to the treatment and asks that funding for a lymphopress unit be considered to decrease her symptoms and aid in a return to more independence.
- Three pictures showing the Appellant's swelling in her extremities.

In the Request for Reconsideration, the Appellant states in a letter dated June 24, 2013 that in 2003 she had a mastectomy on her left side with 18 lymph nodes removed and a right mastectomy in 2006 with no lymph nodes removed. From 2004 to 2012 she experienced weight gain and numbness and was diagnosed with about 9 different illnesses before a diagnosis of severe overall lymphedema was made. She concludes that she requires treatments at least 5 times a week and the hospital can only accommodate twice a week. Furthermore her other health issues make it difficult to attend the hospital.

In her reasons for appeal, the Appellant states she disagrees with the Ministry's decision because she does not have the funds to pay for the expensive equipment and it is not something she wants, rather it is an urgent need. Because the local hospital is not equipped to treat her more than twice a week, she does not want to be a patient that falls through the cracks because no one is willing to bend the rules and see fit to fund the lymphopress unit.

In the Reconsideration Decision, the Ministry states the Appellant is a recipient of disability assistance and therefore eligible to receive the health supplements provided for in Section 62 and Schedule C of the EAPWDR however the lymphopress unit requested does not meet the eligibility criteria set out in that legislation.

At the hearing the Appellant referred the Panel to the letter from her family physician and stated the letter specifies that she has a rare, severe lymphedema that went undiagnosed for many years. She further explained that symptoms of this condition began immediately after her mastectomies therapy and went undiagnosed by 17 medical doctors over a period of many years. She stated these immediate symptoms were loss of feeling in her limbs, however the current treatments have

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alleviated this symptom but the limited mobility caused by the swelling, the chronic pain and the breathing difficulty due to too much fluid around her lungs continue. She concluded that if she cannot obtain more treatments to alleviate the swelling and excess fluid caused by the lymphedema she will soon be bedridden and needing full time care.

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PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the Ministry's decision to deny the Appellant 's request for a lymphopress unit because it found the lymphopress unit does not meet the legislated criteria as a medical supply, medical equipment, a health supplement, therapy, or other health supplements as set out in EAPWDR, Section 69 or in Schedule C.

The criteria for health supplements are set out in the EAPWDR, Section 62, 69 and Schedule C (relevant parts) as follows:

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,

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,

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;

(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;

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,

***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.

The Appellant argues she has an urgent need for the lymphopress unit and her symptoms will not improve unless she has access to lymphopress treatments more often than is currently available at the local hospital, and that if she does not get more frequent treatments, her health will drastically decline. The Advocate argues the lymphopress unit alleviates symptoms related to limb circulation care and without this care the Appellant faces a further decline and a substantial danger to her health, therefore the Appellant is facing an imminent and life threatening need.

The Ministry argues the Appellant's letter from her doctor does not specify the requested equipment is needed for limb circulation nor do any of the letters from the medical practitioners specify that the Appellant faces an imminent and life threatening need without the lymphedema unit as per the criteria in the EAPWDR, Section 69. The Ministry also noted that the treatment is available, although not at the availability that is suggested as optimum by the Appellant's various medical practitioners.

The Ministry also argues that the lymphopress unit does not meet the eligibility under any sections of Schedule C in the EAPWDR, specifically it does not fit the criteria as defined as a medical supplies, medical equipment, health supplements or any of the other items set out in the remaining sections.

The Panel finds the medical information submitted by the Appellant's family physician, physiotherapist and therapist do confirm the Appellant would benefit from additional lymphopress treatments but do not specify that the Appellant faces a direct and imminent life threatening need without the additional treatments she could have with her own lymphopress unit. Therefore the Panel finds the Ministry was reasonable to find the Appellant ineligible for a health supplement under Section 69 of the EAPWDR in the Reconsideration Decision.

Section 69 of the EAPWDR only provides for any health supplements as set out in Section 2(1)(a) and (f) and Sections 3 to 3.12 of Schedule C.

Section 2(1)(a)(i) of Schedule C specifies that medical supplies must be required for specific purposes as defined in Section 2(1)(a)(i)(A) through (F). The brochure about the lymphopress unit describes its purpose as moving lymph fluid to reduce swelling and symptoms of lymphedema. The medical information submitted by the Appellant's family physician, physiotherapist and therapist does

not specify the purpose of the lymphopress unit is to aid in limb circulation care.

The Panel finds from the medical description of the lymphopress treatments that the lymphopress unit is not a medical supply required for limb circulation care as defined in Subsection (F) or wound care, ongoing bowel care, catheterization, incontinence or skin parasite care as defined in Subsection (A) through (E) and that the Ministry reasonably determined the lymphopress unit is not an eligible supply as defined in Subsections (A) through (F).

The Panel finds the Ministry reasonably determined that the lymphopress unit does not fall into the description of therapy or one of the remaining health supplements such as lancets, needles and syringes, ventilator supplies, tracheostomy supplies or consumable medical supplies as defined in EAPWDR, Schedule C, Section 2.

The Panel finds the Ministry reasonably determined that the lymphopress unit is not within the eligible criteria because it does not fall into the description of medical equipment such as a cane, a crutch, a walker, a wheelchair, a scooter, a grab bar, bath or shower seat or bench, a bath lift, a bed pan, a urinal, a raised toilet seat, a bathroom pole, a portable commode chair, a hospital bed, a pressure relief mattress, a floor or ceiling lift device, a positive airway pressure device, a custom-made or off-the-shelf foot orthotic, a hearing aid or a non-conventional glucose meter as defined in EAPWDR, Schedule C, Section 3.1 – 3.12.

The Panel also finds the lymphopress unit does not fall into the descriptions of supplements described as dental supplements, emergency dental supplements, diet supplements, monthly nutritional supplement, natal supplement or infant formula in Sections 4 through 9, and that the Ministry reasonably determined the lymphopress unit is not eligible as one of the remaining supplements as set out in EAPWDR, Schedule C, Sections 4 – 9.

The Panel finds the Ministry decision was a reasonable application of the applicable enactment in the circumstances of the Appellant and confirms the decision.