

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry)'s reconsideration decision dated October 8, 2013, denying the Appellant's request to receive funding to purchase a TENS device because a TENS device is not an eligible item under ss: 62 and 69, and Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation (EAPDR)*.

PART D – Relevant Legislation

The relevant legislation is section 62 and 69 of the EAPDR and sections 2(1)(a) and 3 of Schedule C of the EAPDR.

PART E – Summary of Facts

The Appellant receives disability assistance. He suffers from a number of conditions the most serious of which is a glycogen storage disease which makes it extremely difficult for the Appellant to function due to a number of debilitating symptoms. One of these symptoms is extreme swelling of his lower legs and feet.

At some point in time one of the Appellant's friends lent him a TENS device in the hope that it would help alleviate the swelling in his feet and the pain caused thereby. (A TENS device is an over-the-counter medical device which uses electrical impulses to increase circulation, reduce swelling and block or reduce pain. The model used by the Appellant is designed specifically to be applied to the feet.)

The Appellant used the borrowed TENS device for about a month and was pleased with the results. He then went to two drug stores to get quotes on the cost of the machine (about \$260.00) and on August 23 submitted these to the ministry along with a request for funding the purchase.

On September 3 the local ministry office received notification from the Health Assistance Branch that the TENS machine was not an eligible item under the legislation meaning that the Appellant's request was denied.

On September 5 the Appellant submitted a prescription for a TENS device dated August 20 to the ministry.

On September 16 the Appellant attended the local ministry offices where he was informed that his request had been denied.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry's finding that the Appellant is not eligible to receive funding for the purchase of a TENS device because it is not an eligible item under the EAPDR.

The relevant legislation is sections 62 and 69 and sections 2(1)(a) and 3 of Schedule C of the EAPDR:

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), or
 - (iii) money received by the person or the person's spouse under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,
 - (c) a person who was a recipient of disability assistance on the day he or she became 65 years of age and a dependant of that person, if the dependant was a dependant of the person on that day and remains a dependant of that person,
 - (d) a dependant of a person referred to in paragraph (a) or (b) (iii),
 - (d.1) a dependant of a person referred to in paragraph (b) (i), if any person in the family unit
 - (i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
 - (d.2) a dependant of a person referred to in paragraph (b) (ii),
 - (d.3) a dependant of a person referred to in paragraph (f), if any person in the family unit
 - (i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
 - (e) a dependent child of a recipient of hardship assistance,
 - (f) a person with disabilities who has ceased to be eligible for disability assistance because of an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or the person's spouse, if
 - (i) the person is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (ii) the person is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, or
 - (g) a person whose family unit ceases to be eligible for disability assistance because of financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*, during the term of the agreement.
- (1.1) A person eligible to receive a health supplement under subsection (1) (b) (ii) or (d.2) may receive the supplement
- (a) while any person in the family unit is
 - (i) under age 65 and receiving a pension or other payment under the *Canada Pension Plan*, or

- (ii) aged 65 or more and receiving the federal spouse's allowance or the federal guaranteed income supplement, and
 - (b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.
- (1.2) A person eligible to receive a health supplement under subsection (1) (c) may receive the supplement
- (a) while any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, and
 - (b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.
- (1.3) A person who was eligible to receive a health supplement under subsection (1) (b) (i), (d.1), (d.3) or (f) but ceases to be eligible for medical services only may continue to receive the supplement for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.
- (2) A person referred to in subsection (1) (b) or (f) and his or her dependants and a person referred to in subsection (1) (c) cease to be eligible for any supplement under this Division if the person's family unit takes up residence outside British Columbia.

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

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;

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.
- (2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:
- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
 - (b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.
- (2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:
- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
 - (b) an assessment by a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.
- (3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if
- (a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and
 - (b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.
- (4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.
- (5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if
- (a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and
 - (b) it is more economical to repair the medical equipment or device than to replace it.
- (6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

At the hearing the Appellant described his medical conditions in some detail and how the TENS device that he had borrowed for one month helped to reduce the swelling in his feet and alleviate the pain associated with that swelling. He stated that he considers that the TENS device is an economical alternative to other measures and to the possibility of his having to attend hospital in the case of an accident or continued complications. The Appellant also stated that he considers that he has followed ministry requirements in applying to obtain the TENS device by providing two quotations and a prescription to the ministry.

The Ministry referred the panel to the legislation, indicating that it could not provide funding to the Appellant to purchase a TENS device as it is not an eligible item under the legislation and the ministry can only provide funding for eligible items identified in the regulations. The Ministry reviewed all of the provisions of Schedule 'C' that could possibly apply to this request in coming to its conclusion that the TENS device is not an eligible item. Specifically, under section 62, none of the items described in

sections 2(1) and 3 of Schedule C can be read as including a TENS device. Under section 69 it is the Ministry's position that the Appellant does not meet the criteria in that section as he is not facing "a direct and imminent life threatening need".

The panel finds that the issues to be resolved are whether the TENS device is an eligible item under the applicable legislation, which is sections 2(1) and 3 of Schedule 'C' the EAPDR, and whether the Appellant qualifies under section 69 of the EAPDR.

Upon careful review of Schedule 'C', the panel concludes that the TENS device is not an eligible item because none of the items described in sections 2(1) and 3 of Schedule 'C' can be read as including a TENS device.

The panel also agrees with the Ministry that the Appellant does not qualify under section 69 because, as distressing as his condition is, he is not, in the opinion of the panel, facing "a direct and imminent life threatening need".

Accordingly, the Panel finds that the Ministry's determination that the TENS device is not an eligible item and so cannot be funded by the ministry is a reasonable application of the relevant legislation and confirms the ministry's decision pursuant to sections 24(1)(b) and 24(2)(a) of the Employment and Assistance Act.