

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated November 4, 2013* that denied the appellant's request for hip protectors. The ministry determined that the appellant qualified for general health supplements under Section 62 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) but that hip protectors are ineligible items under sections 2 and 3 of Schedule C of the EAPWDR. Additionally, the ministry determined that the appellant was not eligible for hip protectors under EAPWDR section 69 because the ministry concluded that the appellant was not facing a direct and imminent life threatening health need for hip protectors.

* the decision is actually dated 2012 Nov 04 but the panel recognized that this was in error and was actually 2013 Nov 04.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) section 2

Employment and Assistance for Persons With Disabilities Regulation, sections 62 and 69
Employment and Assistance for Persons With Disabilities Regulation, Schedule C

PART E – Summary of Facts

The evidence before the minister at reconsideration was:

1. A Sales Quotation dated September 9, 2013 for a pair of hip protectors at a price of \$120.
2. A letter dated October 3, 2013 from the appellant's Occupational Therapist to the Ministry of Social Development and Housing that recommends funding for hip protectors for the appellant.
3. A 2-page Medical Equipment Request and Justification form dated October 3, 2013 and completed by the appellant's Occupational Therapist which notes that the appellant has cerebral palsy, is at risk of falls due to (declining) balance, and has experienced three falls within the past year. The form recommends hip protectors for the appellant.
4. The appellant's Request for Reconsideration dated October 28, 2013. Under Reason for Request, the appellant wrote *I need hip protectors because I have C.P. and my risk of falls is greater than normal due to my difficulties with balance. They will reduce the likelihood of fracturing my hip if I have a fall. I may risk losing my independence if I have a hip fracture and have difficulty living in my own home. Hospitalization would be more costly than the cost of hip protectors (taking preventive action).*
5. A letter dated October 28, 2013 from the appellant's Occupational Therapist to the Ministry of Social Development and Housing that recommends funding for hip protectors for the appellant.
6. A letter from the appellant's Physical Therapist to the Ministry of Social Development dated October 28, 2013 that recommends hip protectors for the appellant (at a cost of \$64.99).

Following the reconsideration decision, the appellant's Occupational Therapist sent a letter dated November 7, 2013 to the Ministry of Social Development which provided a more detailed explanation for her request that the appellant be provided with hip protectors. It noted that research demonstrates that hip protectors reduce the chance of hip fractures from falls by 50% and that 26% of hip fracture patients die within one year.

At the hearing, the appellant explained that she was born with cerebral palsy. Consequently, she has difficulty with her balance and is prone to falls. She has recently suffered a number of falls – some outside of her home and many at home. She is concerned that a fall on her hip could result in a serious injury and this might mean that she would not be able to stay in her own home. She argued that hip protectors cost far less than the cost for medical care and rehabilitation that would result if she were to suffer a serious hip injury. It is very important to the appellant that she be able to live independently. She reported that she has supports but she feels that she needs the hip protectors to stay independent. She uses a walker and tries to maintain her strength but is fearful of injury when she goes outside her home. She feels she is too young to be stuck at home and that she needs and deserves to have the hip protectors.

In response to a question by the panel the appellant clarified that in the last few months (since July) she has had 3 or 4 falls while out in the community, and a number of falls at home. She uses her walker on a regular basis in and out of her home. She has had one or two falls while using the walker but it has been helpful to get her back to her feet.

The ministry noted that the appellant is eligible for health supplements under section 62 of the EAWPDR, but reviewed the list of authorized items of medical equipment and devices in sections 3.1 to 3.12 of Schedule C of the EAWPDR and stated that hip protectors are not included in that list. The ministry stated that they must abide by the legislation and may only provide those items authorized by

the legislation. The ministry explained that section 69 of the EAPWDR states that the ministry may provide any health supplements set out in section 2(1) (a) and (f) and section 3 of Schedule C, if the health supplement is provided for a person who is otherwise not eligible for the health supplement under this regulation, and if the ministry is satisfied that 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. The ministry noted that hip protectors are reported to provide a reduction of 30% or more in serious injury but they will not completely prevent such injury.

In response to a question by the panel the ministry clarified that the reconsideration decision incorrectly cited sections 3(1)(a-e) when it should have instead cited section 3(1) (a-b).

The panel admitted the appellant's testimony and the letter dated November 7, 2013 from the appellant's Occupational Therapist as being in support of the information before the ministry at reconsideration, in accordance with section 22(4) of the Employment Assistance Act (EAA).

Findings of Fact

The appellant is in receipt of disability assistance and is eligible to receive health supplements provided under section 62 and Schedule C of the EAPWD Regulation.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant was not eligible for hip protectors as medical equipment, or as health supplements, or under a life-threatening health need under sections 62, 69 and Schedule C of the EAWPDR because the criteria were not met.

The relevant legislation is the following:

From the EAPWDR:

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,

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; (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; (f) the least expensive appropriate mode of transportation to or from (i) an office, in the local

area, of a medical practitioner or nurse practitioner,(ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,(iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or(iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*, provided that (v) the transportation is to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, and (vi) there are no resources available to the person's family unit to cover the cost.

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.

The appellant argued that as a consequence of having cerebral palsy she is at risk of falls and has in recent months suffered several falls outside of her home and a number of additional falls while at home. She fears the possibility of a fall causing a serious hip injury, and both her occupational therapist and her physical therapist have recommended that she use hip protectors to reduce the likelihood of incurring such an injury. The appellant worries that a serious hip injury could threaten her ability to live independently. She further argues that the cost of hip protectors is minor compared to the costs that would be necessary for medical treatment and rehabilitation in the event that she incurred a serious hip injury as the result of a fall.

The ministry agreed that the appellant was eligible to receive health supplements provided under Section 62 and Schedule C of the EAPWDR since she is a recipient of disability assistance, but presented three arguments for their decision to deny the appellant's request for hip protectors:

1. *You are not eligible (for) hip protectors as medical equipment.*

The ministry found that hip protectors are not items included in those set out in sections 3.1 to 3.12 of the EAPWDR. Moreover, all the legislated requirements related to each type of equipment in sections 3.1 to 3.12 have not been met. In addition, the ministry found that the information provided does not establish the legislated criteria for each of these items, as set out in section 3(1) of the EAPWDR.

2. *You are not eligible for hip protectors as health supplements.*

The ministry listed all of the medical equipment and devices set out in sections 3.1 to 3.12 of Schedule C of the EAPWDR and concluded that hip protectors are not one of these. In addition, the ministry found that the information provided does not establish the other legislated criteria set out in sections 3.1 to 3.12 have been met.

3. *You are not eligible for hip protectors under life-threatening health need.*

The ministry noted that section 69 applies to health supplements set out under section 2 (1) (a) and (f) and section 3 of Schedule C. It is intended to provide a remedy for those persons who are facing a direct and imminent life threatening need for these supplements and who are not

otherwise eligible to receive them. The ministry concluded that the information submitted by the appellant in her application and her request for reconsideration did not establish that she faced a direct and imminent life threatening health need for hip protectors. In addition, the ministry stated that hip protectors are not health supplements as set out in Schedule C sections 2(1) (a) and (f) and 3 to 3.12. Further, the ministry concluded that the appellant had not met all the requirements specified in sections 2(1)(a) and (f) and 3 to 3.12 of Schedule C of the EAPWDR.

The panel reviewed the medical and surgical supplies listed as health supplements under section 2 of Schedule C of the EAPWDR and found that hip protectors are not among the items listed. In addition, the panel's review of the medical equipment and devices listed in sections 3.1 to 3.12 of Schedule C of the EAWPDR similarly found that hip protectors are not among the items listed. The panel noted that the appellant did not argue that either section 2 or section 3 of Schedule C of the EAWPDR specify hip protectors as an eligible item. The panel therefore concluded that the ministry had reasonably determined that hip protectors are not an eligible item under the legislation.

The panel noted that a second argument provided by the ministry stated: "All the other legislated requirements related to each type of equipment in Sections 3.1 to 3.12 have not been met." As written, the panel considered this requirement was not a reasonable one, but concluded that it was not the intention of the ministry to require that the requirements for all items be satisfied in order to qualify for a single item.

Finally, the panel noted that the ministry had argued that no evidence has been provided by the appellant to confirm that she faced a direct and imminent life-threatening health need for hip protectors. The panel recognized that the appellant's occupational therapist and physical therapist had both recommended hip protectors to reduce the risk of serious injury in the event of a fall, but the panel concluded that this risk did not constitute a direct and imminent life-threatening health need. Accordingly, the panel concluded that the ministry reasonably determined that that the appellant did not face a life-threatening health need.

Having reviewed and considered all of the available evidence and the relevant legislation, the panel found that the ministry's decision that denied the appellant hip protectors was a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel therefore confirms the ministry decision.