

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated October 23, 2013 which denied the appellant's request for face masks for his caregivers. The ministry found that the item requested did not meet the eligibility criteria as set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, section 2(1)(a)(i) because the masks are not used directly for the purposes of incontinence or section 2(1)(a)(ii)(d) because they are not necessary to avoid an imminent and substantial danger to the appellant's health.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation, section 62
Employment and Assistance for Persons with Disabilities Regulation, Schedule C, subsection 2(1)(a)

PART E – Summary of Facts

The evidence before the ministry at reconsideration were:

- The appellant's request for reconsideration dated October 8, 2013 with a note stating that he has incontinence of urine and stools and his caregivers require face masks when changing him.
- A letter from the appellant's sister dated October 8, 2013, which states that the appellant has a staff of caregivers who provide 24/7 support for him at home. The sister states that the caregivers have repeatedly requested face masks because of the foul smell of the appellant's bowel movements. She states in her letter that the appellant's medical practitioner has written a prescription for face masks which is a commonly used product for Pericare.
- A prescription from a medical practitioner dated 2013/07/31 for 24 face masks per month.
- Health Assistance Branch Medical Supply Decision Summary dated 2013/09/17
- Letter from Ministry of Social Development, Health Assistance Branch, Adjudicator, dated 2013/09/17 denying the appellant's request for Health Supplements.
- A letter to the appellant from the Ministry of Social Development, Health Assistance Branch dated July 6, 2013 approving the appellant's request for supplies to manage his incontinence. The letter states that the products approved are used directly to maintain the appellant's hygiene and to keep the appellant's perineal area and bedding clean, dry and sanitary, thus reducing the risk of infection and skin breakdown; and avoiding an imminent and substantial danger to the appellant's health

The appellant and the ministry did not attend the hearing. The panel received confirmation from the Tribunal that the appellant and the ministry had been notified of the hearing. Accordingly, under s.(86)(b) of the Employment and Assistance Regulation, the panel heard the appeal in the appellant's and ministry's absence.

Evidence was submitted after the reconsideration decision but before the date of the hearing which consisted of:

- A letter dated November 5, 2013 from the appellant's sister that provided further information regarding the denial of the medical supplies for the appellant. The letter states that an interpretation of the law that separates caregivers from the client denies the reality that the caregiver acts as an extension of the client by performing tasks that a normally healthy person would be able to do on their own. Most caregivers have more than one vulnerable client and are exposed to illness more than the average population. The letter adds that to deny the caregivers and the clients the protection of face masks is to deliberately deny the ministry client the right to germ-free care. She states in her letter that there is no question that disposable face masks are needed and refusing to provide the caregivers with face masks that supports the well being of both parties, is taking a narrow interpretation of the existing legislation without taking into consideration the particular symbiotic nature of client and caregiver.

The panel agreed that the additional information was in support of the information available at the time of reconsideration. Therefore the panel admitted this additional evidence pursuant to section 22(4) of the Employment and Assistance Act.

The ministry's position is set out in the reconsideration decision reaffirming that the appellant did not meet the eligibility requirement as set out in the legislation. The ministry stated that the information

submitted with the Request for Reconsideration indicates that the face masks were requested by the caregivers to be used by the caregivers to use when changing the appellant's malodorous stools and urine. The ministry stated that the face masks are not used to maintain the appellant's hygiene thus it cannot be determined that the face masks are required to manage the effects of the appellant's incontinence or to avoid an imminent and substantial danger to the appellant's health. The face masks are used solely for the caregivers comfort and hygiene. The ministry also stated that they have provided the appellant a number of supplies to assist in helping to maintain the hygiene of the appellant and keep his perineal area and bedding clean, dry and sanitary thus reducing the risk of infections and avoiding an imminent and substantial danger to his health.

The appellant states that the disposable face masks are required by his caregivers when changing him and that failing to provide them present a risk to the appellant's caregivers due to air borne particles caused by bacteria-laden bowel movements. If caregivers expose themselves to bacteria or infections on a daily basis without the protection of a disposable face mask then the appellant is put at risk by courting illness in the caregiver's, particularly in the flu and cold seasons when there is more risk.

From the documents that were before the ministry at reconsideration the panel finds the following to be facts:

- The appellant is a recipient of disability assistance and is eligible to receive health supplements provided under Section 62 and Schedule C of the EAPWDR.
- The appellant requested face masks for his caregivers on July 31, 2013.
- The appellant's medical practitioner provided a prescription for face masks (24/month for one year) on July 31, 2013.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision at reconsideration, which denied the appellant's request for face masks for his caregiver's was a reasonable application of the applicable enactment in the circumstances of the appellant. At reconsideration the ministry denied the appellant's request for face masks for the appellant's caregivers because the ministry found that the request does not meet the legislative eligibility criteria as set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 62 and Schedule C Health Supplements

The EAPWDR General Health Supplements- Section 62(1) empowers the ministry, subject to conditions, to "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 recipient of disability assistance".

The EAPWDR, Schedule C, section 2(1)(a) sets out that the ministry may provide either disposable or reusable medical or surgical supplies if:

- (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.

The EAPWDR, Schedule C, subsection 2(1)(a.1) sets out that the following medical or surgical supplies may be paid for by the minister 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;

The EAPWDR, Schedule C, subsection 2(1)(a.2) sets out that consumable medical supplies may be paid for by the minister if the minister is satisfied that the following requirements are met:

- i the supplies are required to thicken food;
- ii all the requirements described in paragraph 2(ii) and (iii) are met in relation to the supplies.

Section 2(1.1) sets out that for the purposes of subsection (1)(a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals, or prescription medications.

The ministry's position is that disposable or reusable medical supplies can be provided if they are medically necessary to treat one of the medical conditions listed under EAPWDR, Schedule C, section (2)(1)(a). Although 24 face masks per month are requested, there is no indication that they

are required for one of the purposes listed in the above legislation. The ministry also argued that there is no information provided to indicate the face masks requested are necessary to avoid an imminent and substantial danger to the appellant's health.

The appellant's position is that he has incontinence of urine and stools and requires facemasks for his caregiver's due to the foul smell of his bowel movements and the risk of exposing the caregivers to bacteria or infection.

The panel finds that the ministry reasonably determined that there is no indication that the face masks are necessary to avoid an imminent and substantial danger to the appellant's health EAPWDR, Schedule C, subsection 2(1)(a)(ii)(C). As well the ministry reasonably determined that the requested face masks are not required for one of the purposes as listed in EAPWDR, Schedule C, subsection 2(1)(a)(i).

The panel finds there is no evidence the face masks requested by the appellant are used directly to maintain the appellant's hygiene. Therefore, it cannot be determined that they are required to manage the effects of the appellant's incontinence or to avoid an imminent and substantial danger to the appellant's health.

Accordingly, the panel finds that the ministry's decision at reconsideration was reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel confirms the ministry's reconsideration decision.