



PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development and Social Innovation ("the ministry") dated 12 November 2013 that denied the appellant's request for assistance with prescription costs of approximately \$670 per Botox treatment. The ministry held that prescriptions are not a general health supplement under Schedule C of the Employment and Assistance for Persons with Disabilities Regulation. The ministry also held that prescription costs and other health care goods and services cannot be provided as a crisis supplement under section 57 of the Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 57 and 62 and Schedule C.

Pharmaceutical Services Act, sections 1, 2 and 3.



PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

- The appellant is a recipient of disability assistance for herself and her spouse.
- The appellant's Request for Reconsideration dated 22 October 2013, to which was attached a letter from the appellant dated 21 October 2013.

In the above referenced letter, the appellant writes that, simply put, she is in medical distress and desperately in need of help to pay for her prescribed medication. This medication is the only thing that has worked so far. Since open brain surgery in December 2011 she has been in excruciating pain, with no relief from oral medication – she was in severe pain for almost 2 years until the first Botox treatment [in July 2013]. She states that the amount of pain medication needed daily/hourly that she must take just to try to get on with her very painful day is more than any human body ever wants to ingest and endure. She is not pain free but rather drugged up, confused all the time, and life is very difficult for her.

She writes that she spoke with someone who told her that the medication price was \$670. She then spoke to the Botox company and they said the price is \$759.95 per treatment. The injection appointments would be every 90 days until the pain is gone. After receiving the first free treatment provided by the Botox company, injections throughout her head and shoulders, her pain management was much better, from unbearable to almost nonexistent pain. She was actually able to yawn for the first time in almost 2 years. Her doctors/neurosurgeons and herself have found no other way – they have tried several different medications, with no success with conventional oral medication taken every 4-6 hours, in excess of 40+ daily. The side effects are debilitating. She needs help to get off this medication and onto something that actually works for her pain management. She writes that the cost is slightly higher for the Botox than for the oral medication, but much more effective and much less damaging to her body. All the medications she must take are not good for permanent chronic head pain – she is concerned that she will become dependent on these medications for life and she needs an alternative way.

She goes on to write that she has called and done everything she can. She has no way of paying back any loans from anywhere. MSP told her that they do not cover Botox, and nor does her health insurance company. Her doctor asked for exceptional special authority to prescribe it as a covered treatment and it was denied. She has contacted her MLA to see if she knows any other avenue she can explore. At the time of writing, the Botox has now dissipated completely and right now she's suffering like she did post-op. It is unbelievable the difference since the injections. She desperately wants to get her life back as much as possible.

In her Notice of Appeal, dated 19 November 2013, the appellant writes that the Botox prescription is the only thing that has relieved her brain pain in the past 24 months. She only wants to be well and pain-free and it is possible only with the ministry's support. The cost is only \$759.95 every 3 months.

At the hearing, the appellant reviewed the benefits of the Botox treatment compared with the regime that relied on oral prescription pain medication and elaborated further on her frustrations with not having the cost of her Botox treatment covered by PharmaCare. She stated that she had a second round of treatment in November 2013, with the cost of \$759.95 paid from a loan, which she must repay, from an elderly family member. As a result, she is another 23 days into being pain-free. The first treatment, at the end of July, was provided by her physician free through a "doctor's sample," but

that physician later advised her that if Pharmacare did not cover the prescription costs for subsequent treatments, she would have to find a way to pay for them.

She stated that her physician had sought a special or exceptional authority for PharmaCare coverage for her Botox prescription, but this request was denied by the Ministry Of Health. In answer to a question from the ministry representative, she said that she did not know if an appeal procedure was available but would ask her physician at her next visit. She stated that her MLA was looking into her situation with the Ministry of Health.

She stated that she had also recently applied to the ministry for a medical transportation supplement for a consultation with a specialist in another city, but this request was denied as the purpose of the consultation related to the Botox treatment – an “unproven” therapy.

The appellant stated that she was worried that if she could not continue with the Botox treatment and had to go back to using the pain-killers, she would become addicted to them.

She stated that she had been advised that she would need to have the Botox treatment every 90 days for the next 3 years, and then the treatments would be reduced in frequency, perhaps just a once-a-year “tune-up.”

The ministry stood by its position at reconsideration.

The panel finds that the new information provided by the appellant at the hearing is in support of the information before the ministry at the time of the reconsideration decision. The panel considers the new information provided by the appellant concerning her Botox treatment and the denial of coverage by PharmaCare as clarifying and updating the information contained in her 21 October 2013 letter. The panel therefore admits the appellant’s testimony pursuant to Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision to deny the appellant's request for assistance with prescription costs for Botox treatment was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. Specifically, the issue is whether the ministry reasonably determined that prescriptions are not a general health supplement under Schedule C of the EAPWDR and that prescription costs and other health care goods and services cannot be provided as a crisis supplement under section 57 of the Regulation.

The relevant legislation is from the EAPWDR:

Pursuant to Section 62 of the EAPWDR, the applicant must be a recipient of disability assistance, or be a dependant of a person in receipt of disability assistance in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has found that the requirement of Section 62 has been met as the appellant is a recipient of disability assistance.

Schedule C of the EAPWDR:

Section 1 of Schedule C contains relevant definitions.

The remaining sections deal with specific categories of health supplements, with category-specific criteria relating to such matters as exclusions, limits, purpose and replacement. These sections and the categories of supplement covered are listed below:

Section	Category
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2(1) General health supplements

(a) Medical or surgical supplies that are disposable or reusable and 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;

(c) The following services: acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy.

(f) Travel for the purposes of medical care.

2(1.1) Medical or surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

2.1 Optical supplements

2.2 Eye examination supplements

3 Medical equipment and devices – general provisions

3.1 Canes, crutches and walkers

3.2 Wheelchairs

3.3 Wheelchair seating systems

3.4 Scooters

3.5 Bathing and toileting aids: (a) a grab bar in a bathroom;(b) a bath or shower seat;(c) a bath transfer bench with hand held shower;(d) a tub slide; (e) a bath lift; (f) a bed pan or urinal;(g) a raised toilet seat;(h) a toilet safety frame;(i) a floor-to-ceiling pole in a bathroom;(j) a portable

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- 3.6 commode chair; (k) a standing frame; (l) a positioning frame; (m) a transfer aid
 - 3.6 Hospital beds: (a) a hospital bed; (b) an upgraded component of a hospital bed; (c) an accessory attached to a hospital bed; (d) a positioning item on a hospital bed
 - 3.7 Pressure relief mattresses
 - 3.8 Floor or ceiling lift devices
 - 3.9 Positive airway pressure devices
 - 3.10 Orthoses: (a) a custom-made or off-the-shelf foot orthotic; (b) custom-made footwear; (c) a permanent modification to footwear; (d) off-the-shelf footwear required for the purpose set out in subsection (4.1)(a); (e) off-the-shelf orthopaedic footwear; (f) an ankle brace; (g) an ankle-foot orthosis; (h) a knee-ankle-foot orthosis; (i) a knee brace; (j) a hip brace; (k) an upper extremity brace; (l) a cranial helmet used for the purposes set out in subsection (7); (m) a torso or spine brace; (n) a foot abduction orthosis; (o) a toe orthosis
 - 3.11 Hearing instruments
 - 3.12 Non-conventional glucose meters
 - 4 Dental supplements
 - 4.1 Crown and bridgework supplement
 - 5 Emergency dental supplements
 - 6 Diet supplements
 - 7 Monthly nutritional supplement
 - 8 Natal supplement
 - 9 Infant formula
 - 10 Transitional nutritional supplement for bottled water.

Section 57 provides for a supplement in a crisis situation; the relevant parts of this section read:

Crisis supplement

57 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if

- (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and
- (b) the minister considers that failure to meet the expense or obtain the item will result in
 - (i) imminent danger to the physical health of any person in the family unit, or
 - (ii) removal of a child under the *Child, Family and Community Service Act*.

(3) A crisis supplement may not be provided for the purpose of obtaining

- (a) a supplement described in Schedule C, or
- (b) any other health care goods or services.

The position of the ministry is that clients of the ministry are covered by Plan C of BC PharmaCare, which provides prescription medications with no deductions. Decisions regarding what prescription medications are eligible for coverage are the responsibility of the Ministry of Health. The applicable legislation for which the ministry is responsible, specifically the EAPWDR, Schedule C of which does

not include prescription medications as an eligible health supplement. Further, health care goods and services cannot be provided as a crisis supplement.

The appellant's position is that due to their disabilities, she and her husband must now rely on the ministry to meet their financial needs, especially the costs of her unexpected stroke and the resulting medical costs. She submits that the conventional approach of treating her post-brain surgery pain with powerful pain medication has simply not worked for her, and will leave her addicted to prescription drugs. By comparison, the Botox treatment has left her pain-free and able to get on with her life. This treatment needs to be repeated every 90 days, for 3 years or so, and then less frequently thereafter. She notes that every successful medical treatment (e.g. insulin for diabetes) was at one point considered "unconventional" and "unproven." She argues that her request is reasonable considering the ministry's responsibilities for persons with disabilities and the negative consequences of her not being able to afford the Botox treatment and having to try to manage by going back to the pain-killers.

Panel findings

The panel notes that under provincial legislation, there is a clear division of ministerial responsibility regarding health care assistance for recipients of income assistance or disability assistance. Regarding prescription medications, under the *Pharmaceutical Services Act*, the Minister of Health is responsible for BC PharmaCare. This includes the responsibility to establish and maintain a formulary for each drug plan (for instance Plan C, the beneficiaries of which are those in receipt of income assistance or disability assistance and their dependants). In establishing the formulary – that is a list of drugs, devices and substances that are benefits for the purposes of a drug plan -- the Minister may consider a number of matters, including information on the clinical efficacy, effectiveness and safety of a drug. At the same time, the Minister of Social Development and Social Innovation has the legislative authority to provide certain health care-related supplements – but only those listed under Schedule C of the EAPWDR (and of the Employment and Assistance Regulation). However, Schedule C explicitly excludes prescription medications (section 2(1.1)). And as the ministry pointed out in its reconsideration decision, section 57 of the EAPWDR states that no health care goods or services may be provided by way of a crisis supplement. Further, the panel notes that the EAPWDR, including Schedule C, has no "catch-all" or "notwithstanding" provision that would authorize the minister in unusual or exceptional circumstances to provide a supplement not otherwise specified in the legislation.

While the panel sympathizes with the appellant's situation, based on a review of the evidence and applicable legislation, the panel finds that the ministry's decision to deny the appellant's request for assistance with Botox treatment was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.