

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) reconsideration decision dated February 4, 2014 which held that the Appellant was not eligible for funding for a compression pump with leg garments as the items do not comply with Schedule C of the Employment and Assistance for Persons with Disability Regulation (“EAPWDR”).

PART D – Relevant Legislation

Sections 62 and 69 of the EAPWDR
Schedule C of the EAPWDR

PART E – Summary of Facts

The evidence before the Ministry at reconsideration was as follows:

- 1) Letter from the Appellant's medical practitioner to the Ministry dated May 30, 2013 stating that the Appellant has recurrent leg edema secondary to a post phlebitis limb and that the Appellant must wear stockings continuously and have them replaced every three to four months. The medical practitioner suggested that the Appellant would benefit from the leg wrap.
- 2) Form from the Health Rehabilitation Services dated April 10, 2013 recommending that the Appellant take a home compression program. The form states that the Appellant has severe bilateral leg edema.
- 3) Letter from the Appellant's medical practitioner to another medical practitioner dated April 11, 2013 stating that the Appellant has still not received compression treatment for her legs with the compression devices ordered in November of the previous year.
- 4) Email from a maker of Circulation Improving Leg Wraps to an unknown recipient with attached reviews for the product. The email stated the gross cost of the product is \$262.84.
- 5) Medical Equipment Request and Justification dated August 29, 2013 completed by the Appellant's practitioner stating that the medical condition the Appellant has is severe edema of the legs which affects her walking. The practitioner states that the compression device is necessary to keep her walking.
- 6) Letter from the Ministry to the Appellant dated December 24, 2013 stating that the Appellant's request for the health supplement has been denied. The Ministry stated that the eligibility requirements were not met. Under explanation the Ministry concluded: "The requested Flowtron Hydroven Intermittent Pneumatic Compression Pump is not listed under section 3.1 to 3.11."
- 7) Quote from a local garment store dated October 3, 2013 for one (1) flowtron compression pump and two (2) hydroven leg garments in the total amount of \$3,312.98
- 8) Request for Reconsideration form dated January 21, 2014 (the "Request for Reconsideration"):

Section 3 of the Request for Reconsideration signed by the Appellant on January 21, 2014 stating the following:

- i) the garment is the appropriate 3 stage pump and the cheapest one available in Canada;
- ii) the one suggested was from a US based company that the Ministry said they could not deal with and she was told to "[f]ind someone to get it from the US and we will reimburse you.";
- iii) the device is a single stage compression and not what is needed to be effective as stated by her doctor;
- iv) ongoing therapy is needed to keep her walking and the swelling is persistent; and

v) the Appellant has no means of purchasing the inferior garment and pump from the US.

For the hearing, the appellant provided the following additional written submission and documentary evidence:

- 1) Notice of Appeal dated February 18, 2014 (the "NOA") completed and signed by the Appellant which stated the following:
 - a. the Ministry approved the "garment" portion of this device and that the garment is "useless" without the pump.
 - b. the Appellant's physician supplied his support of the "necessary item" as the Appellant suffers "gross swelling which occurs and cause pain and extreme difficulty in movement" and
 - c. increased mobility causes and increase in her symptoms;
 - d. the "cheapest" garment is not available in Canada;
 - e. the non-Canadian garment does not feature the "stages" of compression needed;
 - f. the Appellant needs the compression pump "almost nightly;" and
 - g. the compression program available to the Appellant is available only intermittently and only on three day intervals.

At the hearing, the Appellant reiterated the information in her submissions.

The Panel finds that the additional evidence provided by the Appellant clarified her current situation and was admissible under section 22(4) of the *Employment and Assistance Act* as it was in support of the records before the Ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue is whether the Ministry's decision, which held that the Appellant was not eligible for funding for a compression pump with leg garments as the health supplement did not fall under Schedule C of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstance of the Appellant.

Section 62(1)

Section 62(1) of the EAPWDR allows the Ministry to provide any health supplements that are set out in sections 2 (general health supplements) and 3 (medical equipment and devices) of Schedule C of the EAPWDR to or for a family unit if the health supplement is provided to or for a person in the unit who meets the legislative requirements of the relevant section.

Section 62(1) of the EAPWDR states 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,

(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)*,

(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, or (B.C. Reg. 92/2005)

(iv) money or value received by the person or the person's spouse that is maintenance under a maintenance order, maintenance agreement or other agreement, 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 any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement

Section 62(1) of the EAPWDR provides coverage to or for a family unit if the health supplement is

provided to or for a person in the unit who is a recipient of disability assistance, not yet 65 years of age and has not ceased to be eligible for disability assistance because of employment income earned by the applicant or their spouse.

Schedule C Section 2 – General Health Supplements

Schedule C section 2 of the EAPWDR lists the 'general' health supplements that may be paid for the Ministry to a family unit that is eligible under section 62. Section 2 states the following:

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;

(b) Repealed (B.C. Reg. 236/2003)

Section 2(1)(a)(i) defines medical and surgical supplies that are either disposable or reusable. The EAPWDR states that the purpose of the supplies has to be for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care or limb care.

Section 2(1)(a)(ii)(iii) states that the medical and surgical supply must additionally be prescribed by a medical or nurse practitioner, the least expensive supplies appropriate for the purpose and necessary to avoid imminent and substantial danger to health. There must also be no resources available to the family unit to pay the cost of the supplies.

Section 2(1)(a.1) further lists acceptable 'medical or surgical supplies' that may be paid for providing the Ministry finds the supply requested is reusable or disposable which include lancets, needles and syringes, ventilator supplies, tracheostomy supplies and the requirements in section 2(1)(a)(i)(ii) are satisfied. Section 2(1)(a.2) lists acceptable 'consumable medical supplies' that may be paid for providing the Ministry is satisfied the supplies are required to thicken food and sections 2(1)(a)(i)(ii) are satisfied.

Section 2(1)(c) further addresses acceptable services supplied by various therapists including acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physical therapy. Section 2(1)(2.1) (2.2) are related to optical and eye related supplements.

Schedule C Section 3 – Medical Equipment and Devices

Schedule C section 3 of the EAPWDR lists the 'medical equipment and devices' health supplements that may be paid for by the Ministry to a family unit that is eligible under section 62, general health supplements, under of the EAPWDR. Section 3 states the following:

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.

The medical equipment or device may be provided by the Ministry if the supplement is listed in section 3.1 to 3.12 and the family unit has received a pre-authorization of the Ministry for the health supplement, there are no resources available to pay the cost of or obtain the medical equipment or device and the medical equipment and device is the least expensive appropriate of its kind.

Schedule C section 3.1 to 3.12 of the EAPWDR lists the health supplements that may be provided for by the Ministry if all the relevant sections of the EAPWDR have been satisfied. The medical equipment and devices that may be provided by the Ministry include the following:

- 3.1. canes, crutches, walkers;
- 3.2. wheel chairs;
- 3.3. wheel chair seating systems;
- 3.4. scooters;
- 3.5. bathing and toilet aids;
- 3.6. hospital bed;
- 3.7. pressure relief mattress;
- 3.8. floor or ceiling lift devices;
- 3.9. positive airway pressure devices;
- 3.10. orthosis;
- 3.11. hearing instrument; and
- 3.12. non-conventional glucose meter.

Section 69 of the EAPWDR

Section 69 of the EAPWDR applies to health supplements for person facing direct and imminent life threatening health need and states the following:

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).

Section 69 allows the Ministry to provide any health supplements set out in sections 2(1)(a) and (f) (health supplements) and 3 (medical equipment and devices of Schedule C if the recipient is not eligible for the health supplement under the EAPWDR and the person is facing direct and imminent life threatening need and there are no resources available to the recipient to meet that need; the health supplement is necessary to meet that need; the person's family is receiving premium assistance under the Medicare Protection act, and the requirement in Schedule C (2)(1)(i)(a) or (f) are met.

Discussion

The Ministry determined that the Appellant was eligible under section 62 of the EAPWDR for health supplements that are set out in section 2 and/or section 3 of Schedule C, but that the compression pump and leg garments were not listed under Schedule C sections 2 and 3 of the EAPWDR.

The Ministry also determined that the Appellant was not eligible for the compression pump and leg garments under section 69 of the EAPWDR.

Schedule C section 2 of the EAPWDR

In finding that the compression pump with leg garments did not comply with section 2(1)(2) the Ministry stated the following:

The ministry finds that [t]he item requested is not a disposable or reusable medical supply, such as compression stockings. It is medical device. The information provided does not establish that the item requested is necessary to avoid an imminent and substantial danger to health. The item requested in not set out in the EAPWD Regulation, Schedule C, subsection 2(1)(a.1) or 2(1)(a.1)

The Ministry submitted that the item requested was not a disposable or reusable medical supply arguing that the compression pump with leg garments was a "medical device." The Ministry also stated that the Appellant did not provide any evidence to substantiate the item was necessary to avoid imminent and substantial danger to her health.

The Appellant stated that she needs the compression pump "almost nightly" due to her excessive swelling which makes it extremely difficult, if not impossible, for the Appellant to get out of bed. She claimed that ongoing therapy is needed to keep her walking as her swelling is persistent and

increased mobility causes her symptoms to flare up.

The seriousness of the Appellant's condition is substantiated by the practitioner in letters and forms the Appellant submitted. The practitioner confirmed that the Appellant has severe leg edema which affects her walking.

The practitioner suggested that the Appellant wear stockings continuously and claimed that the Appellant would benefit from a leg wrap. The practitioner also recommended that the Appellant receive compression treatments offered by health rehabilitation program.

The Appellant explained that she needed the three stage pump compressor with the garments not the leg wrap as the three stage pump compressor is the superior product and the three stage motion allows for better circulation. The Appellant was opposed to the less expensive leg wraps recommended by her practitioner and explained that the wraps were not as effective as the compression pump.

In order for the compression pump with leg garments to be covered under section 2 of Schedule C as a general health supplement, the supplement must be, among other things, a disposable or reusable medical/surgical supply and necessary to avoid an imminent and substantial danger to health.

The Ministry argued that they did not have the legislative authority to cover the compression pump with leg garment because it did not fall under section 2 of Schedule C and the item was a medical device under section 3 not a medical supply under section 2.

Upon examination of section 2 it appears that this section was intended to cover items that are in relation to disposable or reusable supplies such as bowel care products, lancets, needles or syringes, not necessarily a compression pump with leg garments. As argued by the Ministry, this item more resembles a "medical device" that would be found in Schedule C section 3 as opposed to section 2 which deals with supplies.

The Ministry also argued that the Appellant did not establish that the item was needed to avoid imminent and substantial danger to the Appellant's health. The Appellant gave evidence that she is in extreme discomfort and the compression pump with leg garments would significantly reduce the swelling in her legs allowing her to be more mobile. The Appellant's practitioner also confirmed that the Appellant had severe leg edema.

While the item would undoubtedly improve the Appellant's condition, the evidence does not establish "imminent and substantial danger" to the Appellant's health. There is no denying that the Appellant is in tremendous pain on a daily basis but this does not amount to "imminent and substantial danger."

Section 2(1)(a.2) lists acceptable 'consumable medical supplies' that may be paid for providing the Ministry is satisfied the supplies are required to thicken food and sections 2(1)(a)(i)(ii) are satisfied while section 2(1)(c) addresses acceptable services supplied by various therapists including acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physical therapy. Sections (2.1) (2.2) are related to optical and eye related supplements.

The compression pump with leg garments cannot be characterized as a consumable medical supply nor is it related to therapy treatments or optical and eye related supplements and does not fall within section 2(1)(a.2) or sections 2.1 and 2.2.

Schedule C section 3 of the EAPWDR

In finding that the compression pump with leg garments did not comply with section 3 of Schedule C, the Ministry noted items 3.1 to 3.12 and stated that the “compression pump with leg garments is not one of these [listed medical equipment or devices].” The Ministry further found that the Appellant did not provide any information to “establish the other legislative criteria set out in these sections.”

On review of the items listed under medical equipment and devices, it is clear that a compression pump and leg garments do not fall under any of the equipment and devices. The categories are specific and the Ministry is not given discretionary authority to expand or broaden the existing categories. The compression pump and leg garments cannot be characterized as any of the items listed in section 3.1 to 3.12 and therefore do not fall under Schedule C section 3, medical equipment and devices as items that are covered by the Ministry.

Section 69 of the EAPWDR

Section 69 sets out that the Ministry may provide to a recipient any health supplement set out in sections 2(1)(a) medical supplies and (f) medical transportation and 3 medical equipment and devices of Schedule C providing the recipient is facing a direct and imminent life-threatening health need and who are not eligible to receive it under the regulation.

The Ministry found that Appellant was not eligible under section 69 of the EAPWDR as the section was intended for those individuals who are facing a direct and imminent life-threatening health need for those supplements and who are not otherwise eligible to receive them.

The Ministry stated that the Appellant does “not require a remedy under section 69” as the Appellant “is eligible to receive health supplements under sections 2(1)(a) and (f) and section 3.” The Ministry further argued that the compression pump with leg garment is not a health supplement set out in Schedule C, section 2(1)(a) and (f) and section 3.

The Appellant as already discussed is eligible under section 62 for health supplements listed in Schedule C. The compression pump and leg garments, however, are not listed in any of the relevant sections in Schedule C.

The evidence also does not support that the Appellant is in a direct and imminent life threatening situation if she does not obtain the compression pump with leg garments pursuant to section 69.

While the seriousness of the Appellant’s condition is confirmed by both the Appellant and the practitioner and the compression pump with leg garments would likely improve the Appellant’s condition there is nothing to support the failure to obtain the device is a “direct and life threatening need.”

The Panel therefore finds the Ministry’s decision which held that the Appellant was not eligible for funding for a compression pump with leg garments as the health supplement did not fall under

Schedule C or section 69 of the EAPWDR is reasonably supported by the evidence in the circumstance of the Appellant and confirms the decision.