

PART C – Decision under Appeal

The Appellant appeals the reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry) dated March 28, 2014 in which the Ministry denied the Appellant's request for blackout curtains as a health supplement under the *Employment and Assistance for Persons with Disabilities Regulation* ("EAPWDR"). The Ministry found that the requested blackout curtains are not eligible as therapy, medical supply, medical equipment or health supplements within the criteria set out under sections 2, 2.1, 2.2, 3, or 3.1 through 3.12, 4, 4.1, 5, 6, 7, 8 and 9 of Schedule C of the EAPWDR and, further, that the requested blackout curtains do not meet the legislated criteria as a life-threatening need under section 69 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") sections 62, 69 and Schedule C, Health Supplements, sections 2(1), 2.1, 2.2, 3, 3.1-3.12, 4-9.

PART E – Summary of Facts

The evidence before the Ministry at the reconsideration included:

- A Ministry Medical Equipment Request and Justification form (request form) signed by the Appellant on January 4, 2014, with section 2 (medical or nurse practitioner recommendation) completed by the Appellant's physician on January 3, 2014. The Appellant's physician indicates that the Appellant suffers from the medical conditions of "migraine with aura – triggered by bright light" and "PTSD – severe insomnia – triggered by any light." The type of medical equipment recommended is "black out blinds." Section 3 of this form, which is an assessment to be completed by an occupational, physical or respiratory therapist, is blank.
- A January 7, 2014 response from an occupational therapy service provider to a referral request by the Appellant's physician indicating that the physician's referral has not been processed as the Appellant is not eligible, stating: "client does not meet criteria for OT services."
- A letter dated January 24, 2014 from the Appellant to the Ministry's Health Assistance Branch setting out her need for blackout curtains and referencing the Medical Equipment Request and Justification form, noting that she is unable to obtain the completion of the form by an occupational therapist for the reason given to her that "the OT cannot improve on the solution provided by the medical doctor." In her letter, the Appellant asks whether it is necessary that an OT sign off on the request form, or can she submit the form without the approval of an OT.
- Copies of quotes (3 pages) from different suppliers for custom made blackout curtains for the Appellant's apartment.
- A letter dated March 4, 2014 from the Appellant's physician to the Ministry in which the physician states that the Appellant has been her patient for almost 3 years and that the Appellant suffers from severe insomnia and migraines with aura. The physician writes, "we have exhausted all medications to treat her insomnia, and nothing has been successful. [She] requires black out liners for her windows. This will give her the best chance to alleviate her insomnia and migraines and allow her to carry out her daily activities."
- The Appellant's written submission on reconsideration (2 pages) dated March 8, 2014, discussed further below.

The Appellant is a recipient of disability assistance and the Ministry acknowledges that she meets the basic eligibility requirement for health supplements under section 62 and Schedule C of the EAPWDR.

In her submissions on reconsideration dated March 8, 2014, the Appellant writes that she "understands that blackout liners are not an eligible medical device" as described in the EAPWDR. She writes that living without blackout curtains causes her "undue/extreme hardship" and that the purpose of the blackout curtains is to block out "any and all street lights at night" so that she can sleep. She writes that the reason she cannot sleep is because she has severe insomnia due to PTSD and as a result, she is chronically sleep deprived and this has negatively compromised her health. The Appellant sets out the steps she has taken to try to improve the situation in her apartment, but these have not been successful. She also provides information about the estimates she received from suppliers for blackout curtains for her apartment.

At the hearing, the Appellant provided two letters addressed to the panel dated April 11, 2014 and May 1, 2014 as additional information. The Appellant's April 11, 2014 letter sets out her arguments (submissions) on her appeal and does not contain any evidence. In the May 1, 2014 letter, the Appellant reiterates her arguments and the submissions she made to the Ministry on reconsideration, and repeats information from a book on research regarding the effects of sleep deprivation. The Ministry did not object to the admission of the Appellant's letters. The panel notes that the letter of May 1, 2014 relates to the Appellant's expressed need for the blackout curtains, and therefore admits the letter under section 22(4)(b) of the *Employment and Assistance Act* as a written submission in support of information that was before the Ministry when the decision being appealed was made.

At the hearing, the Appellant told the panel that she is a designated person with disabilities who suffers from a mental disability, post-traumatic stress disorder (PTSD). The Appellant told the panel that she lives in a small apartment in subsidized housing that is close to a major street with very bright streetlights that shine into her apartment all night. The Appellant told the panel that she has not had success with medications to alleviate her insomnia (which is also stated by her doctor in the March 4, 2014 letter). She explained that due to her apartment's small size, she cannot move her bed to an area away from the window. She told the panel she believes that having blackout curtains that completely block out the streetlights at night will help her overcome her insomnia. She is worried about the long-term effects of her severe insomnia on her general health and well-being.

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the Ministry's reconsideration decision of March 28, 2014, denying the Appellant's request for blackout curtains on the basis that the request does not meet the eligibility criteria set out in Schedule C and section 69 of the EAPWDR.

Legislation

The EAPWDR provides in section 62 that the minister may provide any health supplement set out in section 2 or 3 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. As noted, the Ministry acknowledges that the Appellant receives disability assistance, and would therefore be eligible for health supplements under section 62.

Section 69 of the EAPWDR sets out the criteria for health supplements for persons "facing a direct and imminent life threatening health need" as follows:

69. The minister may provide to a family unit any health supplement set out in section 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, 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 3.11, other than paragraph (a) of section 3(1).

The Appellant acknowledges that the requested blackout curtains or liners are not a listed health supplement in Schedule C of the EAPWDR. Accordingly, the panel has condensed the reproduction of the sections of Schedule C in this decision as follows:

General Health Supplements – Section 2

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;

...

(a.1) the following medical or surgical supplies that are ... either disposable or reusable

- (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 ...

...

(b) subject to subsection (2), a service provided by a person described opposite that service in the following table, delivered in not more than 12 visits per calendar year ...

Item	Service	Provided by	Registered with
1	Acupuncture	...	...
2	Chiropractic	...	....
3	Massage Therapy	...	....
4	Naturopathy	...	...
5	Non-surgical podiatry	...	...
6	Physical therapy	...	...

Medical equipment and devices – Section 3

- 3. (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in section 3.1 to 3.11 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 following medical equipment and devices, and medical supplements, are expressly set out in sections 2.1, 2.2, 3.1-3.12, 4, 4.1, 5, 6, 7, 8, and 9 of Schedule C as follows:

- optical supplements – section 2.1;
- eye examination supplements – section 2.2;
- canes, crutches and walkers – section 3.1;
- wheelchairs – section 3.2;
- wheelchair seating systems – section 3.3;
- scooters – section 3.4;
- bathing and toileting aids – section 3.5;
- hospital bed – section 3.6;
- pressure relief mattress – section 3.7;
- floor or ceiling lift devices – section 3.8;
- positive airway pressure devices – section 3.9;

- orthoses – section 3.10;
- hearing instruments – section 3.11;
- non-conventional glucose meters – section 3.12;
- dental supplements – section 4;
- crown and bridgework supplement – section 4.1;
- emergency dental supplements – section 5;
- diet supplements – section 6;
- monthly nutritional supplement – section 7;
- natal supplement – section 8; and
- infant formula – section 9.

Submissions

The Appellant acknowledges in her submissions on reconsideration and in her submissions to the panel that she understands that the requested blackout liners are not an eligible health supplement under the legislation. The Appellant also agreed that the blackout liners do not qualify as a form of therapy (as set out in the table under subsection 2(b) of Schedule C of the EAPWDR). The Appellant argues that her severe insomnia is life threatening and that the requested blackout curtains are for a “direct and imminent life threatening need”; that is, to alleviate her insomnia.

The Appellant further argues that the legislation is inadequate – she submits that the health supplements provided under the EAPWDR are only applicable to persons with a physical disability. The Appellant argues that as a person with a mental disability, the health supplements that she requires, such as blackout curtains to alleviate chronic, severe insomnia, are not provided under the legislation. She writes in her letter to the panel of April 11, 2014, “on the one hand, the Ministry recognizes mental disabilities, by virtue of the fact that it pays disability benefits to the mentally disabled ... on the other hand, there is not even a breath of recognition that the mentally disabled require the equivalent of the physical supports and equipment that are readily supplied to the physically disabled.” The Appellant describes the lack of health supplements for persons with mental disabilities such as herself as a “glaring contradiction” and out of date.

The Ministry's position is that the denial of the appellant's request is reasonable because the requested blackout curtains do not meet the criteria set out in the EAPWDR as they are not eligible as therapy, medical supply, medical equipment or health supplements within the criteria set out under sections 2, 2.1, 2.2, 3, or 3.1 through 3.12, 4, 4.1, 5, 6, 7, 8 and 9 of Schedule C.

The Ministry also argued that the Appellant has not established that she requires the blackout curtains to prevent a life-threatening need, one of the criteria set out under section 69 of the EAPWDR. The Ministry points to the letter from the Appellant's physician of March 4, 2014, in which the physician indicates that medication to treat insomnia has not been successful for the Appellant and writes that the blackout liners, “will give her the best chance to alleviate her insomnia and migraines and allow her to carry out her daily activities.” The Ministry argues that the information from the Appellant's physician does not establish that the Appellant faces a direct and imminent life threatening need for the requested blackout curtains. The Ministry also points to the fact that in order to meet the criteria of section 69 “direct and imminent life threatening health need”, the requested health supplement must also be listed as a health supplement in sections 2(1)(a) and (f) and section 3 of Schedule C of the EAPWDR, and the blackout curtains are not a health supplement under these

sections.

Panel's Decision

As the panel explained to the Appellant at the hearing of her appeal, the jurisdiction (powers) of the Employment and Assistance Appeal Tribunal panel is set out in the *Employment and Assistance Act* (EAA). Section 24(1) of the EAA provides that, after holding a hearing, the panel must determine whether the decision being appealed is reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. If the panel finds that the decision under appeal is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of an appellant, section 24(2)(a) of the EAA expressly states that the panel must confirm the decision under appeal. If the panel finds that the decision under appeal is not reasonably supported by the evidence or is not a reasonable application of the enactment to the appellant's circumstances, section 24(2)(b) of the EAA expressly states that the panel must rescind the decision.

The panel has no jurisdiction under its enabling legislation, the EAA, to rescind a decision under appeal on the basis that the legislation is inadequate, as argued by the Appellant. Further, the panel has no jurisdiction under the EAA to order the provincial legislature to revise or amend provisions in the EAPWDR, or to order the Minister to make an exception to the criteria set out in the EAPWDR in favour of the Appellant. As well, although the panel acknowledges that it is the Appellant's position that the omission of health supplements for mental conditions/disabilities under the EAPWDR is contrary to human rights legislation, under section 19.1 of the EAA and section 46.3 of the *Administrative Tribunals Act*, the panel does not have the authority to apply the *Human Rights Code*.

In this case, the Appellant acknowledges that the requested blackout curtains are not within the criteria for eligible health supplements set out in Schedule C of the EAPWDR. The panel finds that the Ministry's determination that the requested blackout curtains are not an eligible health supplement under Schedule C of the EAPWDR is a reasonable application of the criteria set out in Schedule C. Further, the panel finds that the Ministry reasonably determined that the Appellant has not provided information to satisfy the minister that she faces a direct and imminent life threatening need for the requested blackout curtains, as required by section 69 of the EAPWDR and that even if she had provided information from her physician confirming such a need, the blackout curtains are not included in the list of eligible health supplements under Schedule C provided under section 69. Accordingly, the panel finds that the Ministry's denial of the appellant's request for blackout curtains as a health supplement is a reasonable application of the legislation to the circumstances of the Appellant. The panel confirms the Ministry's reconsideration decision.