

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated March 11, 2014 which denied the appellant's request for a supplement to cover the cost of custom compression stockings because:

- there is insufficient information provided to show that there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device, as required by Section 3(1)(b)(ii) of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR); and,
- the eligibility criteria for a life threatening health need were not met, as required by Section 69 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 62 and 69, and Schedule C, Sections 2 and 3

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Ministry file notes relating to the appellant for the period September 27, 2013 through February 19, 2014;
- 2) Monthly Expenses and Recent Purchases for the appellant dated August 2013 indicating in part that the appellant's monthly expenses total \$1,101 (including rent of \$880, meals, laundry, cable TV, telephone, and power) and "As Required" expenses totaling \$2,331;
- 3) Bank statements for January showing cheques drawn in the amounts of \$20 and \$31.30 and an end balance of \$834.67, and for February 2014 showing cheques drawn in the amounts of \$80 and \$700, and an end balance of \$101.18;
- 4) Quote dated February 15, 2014 by a health supply company for 2 custom stockings at the total cost of \$754.20;
- 5) Undated letter from a physician 'To Whom It May Concern' stating in part that the appellant requires bilateral leg compression stockings for peripheral edema and prevention of deep vein thrombosis. She has tried off-the-shelf compression stockings but the fit is unsuitable due to body habitus. She requires custom compression stocking of 30-40 mmHg compression;
- 6) Letter dated February 19, 2014 from the ministry to the appellant denying her request for the stockings; and,
- 7) Request for Reconsideration- Reasons dated March 11, 2014.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Letter from the appellant dated April 17, 2014 in which she wrote that the \$167.34 disposable income is actually closer to \$150.00 considering most of the 'as needed expenses' are subject to PST and GST. She has not included the special clothing requirements, as noted in previous correspondence, or motorized wheelchair maintenance requirements in the list of 'as needed expenses.' The rent as of April 1, 2014 is now \$1,129.13, up \$35 since previous correspondence. With the cost of needed items and services, \$150 per month disposable income is a juggling act and does not go very far, let alone [provide for] any luxuries.
- 2) Statement of monthly income and expenses showing total monthly income of \$1,401.90, total fixed monthly expenses of \$1,199.56, including rent of \$1,094.13, telephone, bottled water, hearing aid batteries, contents insurance, and cable TV box, leaving a balance of \$202.34 (\$167.34 after April 1 rent increase) disposable income to cover all other 'as needed expenses.' These expenses include toiletries, haircuts, clothing, bedding, towels, glasses, optometrist, dentist, HandyDART and taxi savers, foot care, vitamins, and long distance telephone;
- 3) Statement of Account dated January 16, 2014 breaking down the payment of \$1,094.13 for rent (\$929.13), laundry (\$50), meals (\$75), hydro (\$15), and cable (\$25); and,
- 4) Account Activity Statements for March 2014 showing in part monthly income of \$1,299.40 from Old Age Security and \$49.30 from the province as well as other \$53.20, and pre-authorized debits in the sums of \$1,094.13, \$3.31 (cable TV), \$31.79 (telephone) and other cheque amounts for \$20, \$36 and \$141.92 that are not identified. The end balance for March 31, 2014 is \$1,524.63.

In her Request for Reconsideration, the appellant wrote that when she tried to get the cost of her compression stockings covered, she was denied because of sufficient assets. As shown in her bank

statements, she does not have the money to cover the costs as she had to pay for rent (\$1,094.13) and cable/telus (total approximately \$35). She also had to pay for HandyDART tickets (\$90), as well as other toiletries, batteries for her hearing aids, dentist costs, and bottled water she is required to drink. She also pays for tenant insurance. Therefore, this money went towards these bills/necessities which means she cannot afford the costs of the stockings, which she needs.

In her Notice of Appeal dated April 4, 2014, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she is unable to afford the cost [of the stockings]. Her monthly rent is \$1,094.13 and her income monthly is \$1,348.70, leaving \$254.57 left over. Food/laundry are \$85 per month and additional expenses previously provided in letter dated/received March 24, 2014 by Tribunal.

The ministry did not raise an objection to the admissibility of the information in the appellant's letter or attached statements and the panel admitted them, pursuant to Section 22(4) of the *Employment and Assistance Act*, as providing further detail regarding the appellant's resources and being in support of information that was before the ministry on reconsideration.

The ministry relied on the reconsideration decision, which included the following facts:

- The appellant is an MSO [Medical Services Only] client and is not currently in receipt of income assistance from the ministry.
- On November 12, 2013 the ministry received a request for funding for two pair of custom compression stockings, which included the Quote dated February 15, 2014 and the Letter from the physician ("prescription").
- The Account Activity statement for February 2014 does not categorize the withdrawals made from the appellant's account.
- The Monthly Expenses and Recent Purchases statement dated August 2013 shows rent at \$880, food at \$90 and utilities of \$131, totaling \$1,101.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of custom compression stockings because there is insufficient information provided to show that there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device, as required by Section 3(1)(b)(ii) of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) and the eligibility criteria for a life threatening health need were not met, as required by Section 69 of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

Pursuant to Section 62 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the applicant must be a recipient of disability assistance or be a person in receipt of disability assistance (or a dependant) 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 not disputed that the requirement of Section 62 has been met in that the appellant has been approved as a recipient of medical services only.

The ministry considered the appellant's request for the cost of custom compression stockings under Section 3 of Schedule C of the EAPWDR, which provides:

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. . . .

Section 2 of Schedule C of the EAPWDR provides:

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. . . .

Section 69 of the EAPWDR provides as follows:

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).

No resources available:

Ministry's position

The ministry's position is that as a medical services only recipient the appellant is eligible to receive health supplements under Section 62 of the EAPWDR, but the appellant's request for a supplement to cover the cost of custom compression stockings does not meet all of the applicable criteria of Section 3 of Schedule C of the EAPWDR. The ministry stated specifically that the requirements in Section 3(1)(b)(ii) have not been met as there is insufficient information to show that there are no resources to the family unit to pay the cost or obtain the medical equipment or device. The ministry pointed out in the decision that the appellant's financial documents are lacking some vital information regarding credits to her bank account (income or other assets) to allow the ministry to determine the appellant's monthly income and identification of the withdrawals from her account to allow the ministry to determine if the expenditures are to provide for basic living necessities. The ministry pointed out that the Monthly Expenses and Recent Purchases statement dated August 2013 shows rent at \$880 which is different from the withdrawal of \$1,094.13 on February 1, 2014, which is presumed to be for rent, and since the rent has changed it is uncertain if the monthly expense statement is still accurate. The ministry stated that the appellant has sufficient resources to meet her general health supplement costs through her own resources as she had a balance of over \$800 in her bank account in January 2014. The ministry also stated that while the appellant requested two pair of stockings, accommodation could be made by purchasing one pair of stockings at \$377.10 and alternating with off-the-shelf stockings until a second pair could be purchased.

Appellant's position

The appellant position, as set out in her Notice of Appeal, is that she is unable to afford the cost of the stockings which she needs. The appellant argued that her rent as of April 1, 2014 is now \$1,129.13, up \$35 since her previous correspondence, and with the cost of needed items and services, \$150 per month disposable income does not go very far. The appellant argued that she has additional expenses, as set out in the statement provided, which include toiletries, haircuts, clothing, bedding, towels, glasses, optometrist, dentist, HandyDART and taxi savers, foot care, vitamins, and long distance telephone and these are bills/necessities.

Panel's decision

While the ministry considered the appellant's request under Section 3 of Schedule C of the EAPWDR, the panel finds that compression stockings are not any of the medical equipment and devices as detailed in Section 3.1 to 3.12 of the Schedule; however, the ministry also referred to the appellant meeting her "general health supplement" costs, which are covered under Section 2 of Schedule C and includes the same criteria in Section 2(1)(a)(iii), namely that there are no resources available to the family unit to pay the cost of or obtain the supplies, as that in Section 3(1)(b)(ii). The appellant requested a supplement to cover the cost of two pair of custom stockings and it is not

disputed that the total cost is \$754.20. The appellant argued that her rent as of April 1, 2014 is \$1,129.13 and, with the cost of needed items and services, she has \$150 per month disposable income available to cover a number of expenses and she does not have the resources to pay for the two pair of custom stockings. The ministry pointed out in the decision that the appellant's financial documents are lacking some vital information regarding the withdrawals from her account, such as those in the February 2014 statement in the amounts of \$80 and \$700, to allow the ministry to determine if these expenditures are to provide for basic living necessities. The panel finds that the appellant has not explained these expenditures in February 2014, nor provided full information regarding the nature of the withdrawals as set out in the March 2014 statement, which shows an end balance in her bank account of \$1,524.63. The panel finds that the ministry reasonably concluded that there is not sufficient information provided for the ministry to determine that the appellant's expenditures are to provide for basic living necessities, as opposed to non-essential costs.

The ministry also stated that while the appellant requested two pair of stockings, accommodation could be made by purchasing one pair of stockings at a cost of \$377.10 to start until a second pair could be purchased, and there was no information provided by the appellant to show that she had explored this, or other options, as an alternate way to meet her need for the compression stockings. The panel finds that the ministry reasonably concluded that there was not sufficient evidence to establish that there are no resources available to the family unit to pay the cost of or to obtain the supplies, thereby not meeting the requirement in Section 2(1)(a)(iii) of Schedule C of the EAPWDR.

Life-threatening health need:

Ministry's position

The ministry's position is that there is no evidence of a direct and life-threatening need for custom compression stockings, or evidence of any comorbidities that would substantiate a direct and imminent danger to life.

Appellant's position

The appellant's position, as stated in her Request for Reconsideration, is that she needs the compression stockings. The appellant provided a prescription letter from a physician in which he wrote that the appellant requires bilateral leg compression stockings for peripheral edema and prevention of deep vein thrombosis and that she has tried off-the-shelf compression stockings but the fit is unsuitable due to body habitus.

Panel's decision

While the appellant argued that she needs the compression stockings, she did not directly advance a position that the custom compression stockings are required because she faces a direct and imminent life threatening need. Although the physician's letter indicated that the appellant requires the custom compression stockings to prevent deep vein thrombosis, which is a serious health condition, the panel finds that the ministry reasonably concluded that there is insufficient information provided to demonstrate a 'direct and imminent' life-threatening need for the stockings, as required under Section 69 of the EAPWDR.

Conclusion

In conclusion, the panel finds that the ministry's decision which denied the appellant's request for a supplement to cover the cost of custom compression stockings because the requirement in Section 2(1)(a)(iii) of Schedule C of the EAPWDR was not met, was reasonably supported by the evidence and, therefore, confirms the ministry's reconsideration decision.