

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry) dated April 10, 2014, which held that the Appellant is not eligible for a mini magnifier glass. The Ministry found that the Appellant did not meet the criteria for provision of the mini magnifier glass because it is not an eligible health supplement as set out in Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation*, and the Ministry found that the Appellant is not eligible for a mini magnifier as a life-threatening health need under section 69 of the EAPWDR because the information provided by the Appellant does not establish that he faces a direct and imminent life-threatening health need for the mini magnifier.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 62, 69; Schedule C

PART E – Summary of Facts

The Ministry was not in attendance at the hearing. After confirming that the Ministry was notified of the date and time of the hearing, the hearing proceeded under section 86(b) of the *Employment and Assistance Regulation*.

The Appellant advised the panel that his name in the Appeal record is reversed.

Information before the Ministry at reconsideration included:

- A copy of a note from the Appellant's representative dated February 25, 2014, with copies of an order form for a "pebble mini" hand held magnifier in the amount of \$326.50 and a copy of a vision assessment dated November 26, 2013.
- A copy of an information sheet headed "Personal Supports Information" and "Equipment and Assistive Technology Initiative", undated.
- A copy of a letter from the Ministry to the Appellant dated February 26, 2014, advising the Appellant of the Ministry's decision to deny funding for the requested item.
- A copy of a letter to the Ministry from a physician dated March 17, 2014, stating that the requested mini magnifier is a medical necessity and would take the place of basic eyewear.
- A copy of a letter to whom it may concern from a CNIB Low Vision Specialist, dated March 27, 2014, stating that video magnification is a more practical solution than reading glasses for a person with the Appellant's level of vision.
- The Appellant's Request for Reconsideration, dated March 28, 2014.

At the hearing the Appellant submitted a copy of a letter from a physician dated April 29, 2014 which states that the Appellant is being followed medically "for proliferative diabetic retinopathy treated with pan retinal photocoagulation and marked diabetic macular edema OU", and that it is best not to treat at present. The Panel determined that the additional documentary evidence was admissible under section 22(4) of the EAA as it was in support of the records before the Minister at reconsideration.

The Appellant submitted an example of reading material related to kidney disease as a sample of the medical information he must read and follow. The Panel accepted this material as a submission that is argument and does not contain any evidence.

The Appellant stated that he cannot see well, but he can read very close up. He referred to the letter admitted by the Panel which is from a physician who examined him and decided that he will not be treated at present. The Appellant stated that he has frequent visits to his eye doctor, who wrote a letter recommending the mini magnifier. He stated that he went to a low vision specialist who found that a combination of a magnifying glass and reading glasses does not work for him. The best solution found was a mini-pebble viewer. The Appellant stated that he has serious kidney disease and must be able to read material related to his condition.

In response to questions from the Panel, the Appellant stated that he has a prescription for the requested device which is an electronic magnifier that would replace eyeglasses because eyeglasses are of no help. He stated that this is the least expensive option available. The Appellant argued that he has a direct and life-threatening health need because if he does not understand the dietary restrictions relating to his kidney disease it will adversely affect his health. He stated that the Ministry referred him to an organization, Equipment and Assistive Technology Initiative, which provided assistive technology, but this program stopped operating in 2013. He stated that the CNIB does not provide funding for this device.

The Ministry, in the Reconsideration Decision, stated that the Appellant is eligible to receive health

supplements provided under section 62 and Schedule C of the EAPWDR, but the information provided does not establish that the eligibility criteria of the legislation have been met.

The Ministry found that:

- The mini magnifier does not qualify as an eligible item under the definition of basic eyewear and repairs under section 2.1 of Schedule C of the EAPWDR because section 1 of Schedule C defines "basic eyewear and repairs" as "single vision or bifocal lenses and frames".
- The mini magnifier does not qualify as a medical supply under section 2(1)(a) of Schedule C, EAPWDR.
- The mini magnifier does not qualify as medical equipment under section 3 of Schedule C, EAPWDR.
- The mini magnifier is not an item set out in any of the other sections of Schedule C, EAPWDR.
- The Appellant is not eligible for a mini magnifier as a life-threatening health need under section 69 of the EAPWDR because the information provided by the Appellant does not establish that he faces a direct and imminent life-threatening health need for the mini magnifier.

The Panel makes the following findings of fact:

- The Appellant is eligible to receive health supplements provided under section 62 and Schedule C of the EAPWDR.
- The Appellant's physician stated that the requested mini magnifier is a medical necessity.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's decision which held that the Appellant is not eligible for a mini magnifier glass. The Ministry found that the Appellant did not meet the criteria for provision of the mini magnifier glass because it is not an eligible health supplement as set out in Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation*, and the Ministry found that the Appellant is not eligible for a mini magnifier as a life-threatening health need under section 69 of the EAPWDR because the information provided by the Appellant does not establish that he faces a direct and imminent life-threatening health need for the mini magnifier.

Legislation

EAPWDR

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).

Schedule C

Definitions

1 In this Schedule:

"basic eyewear and repairs" means any of the following items that are provided by an optometrist, ophthalmologist or optician:

- (a) for a child who has a new prescription, one pair of eye glasses per year consisting of the least expensive appropriate
 - (i) single-vision or bifocal lenses, and
 - (ii) frames;
- (b) for any other person who has a new prescription, one pair of eye glasses every 3 years consisting of the

least expensive appropriate

- (i) single-vision or bifocal lenses, and
- (ii) frames;

(c) for a child or other person,

- (i) new lenses at any time if an optometrist, ophthalmologist or optician confirms a change in refractive status in either eye,
- (ii) a case for new eye glasses or lenses, and
- (iii) necessary repairs to lenses or frames that come within this definition;

Optical supplements are provided under section 2.1 of Schedule C EAPWDR as follows:

Optical supplements

2.1 The following are the optical supplements that may be provided under section 62.1 [optical supplements] of this regulation:

- (a) basic eyewear and repairs;
- (b) pre-authorized eyewear and repairs.

The following medical equipment and devices, and medical supplements, are expressly set out in sections 2.2, 3.1-3.12, 4, 4.1, 5, 6, 7, 8, and 9 of Schedule C as follows:

- 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.

The Appellant's position is that the mini magnifier is the least expensive option that is available, it is prescribed by a physician and that he faces a life-threatening health need because without the mini magnifier he will not have the ability to read health-related material about managing his kidney disease.

The Ministry's position is that the requested mini magnifier is not an eligible health supplement set out in the applicable legislation and therefore it cannot be provided by the Ministry.

The Panel finds that the Ministry reasonably determined that:

- given the definition of basic eyewear and repairs, the mini magnifier does not qualify as an eligible item under Schedule C, section 2.1, EAPWDR, because section 1 of Schedule C defines basic eyewear and repairs as single vision or bifocal lenses and frames.
- The mini magnifier does not fall under the definition of medical supply under section 2(1)(a) of Schedule C, EAPWDR.
- The mini magnifier does not fall under the definition of medical equipment under section 3 of Schedule C, EAPWDR.
- The mini magnifier is not an eligible item set out in any of the other sections of Schedule C of the EAPWDR.

With respect to provision of the mini magnifier to meet a life-threatening health need under section 69 of the EAPWDR, the Panel finds that the Ministry reasonably determined that the information provided by the Appellant does not establish that he faces a direct and imminent life-threatening health need for the mini magnifier. The Appellant argued that he is unable to read the material related to management of his kidney disease; however the Panel notes that there are forms of communication other than printed material.

The Panel therefore confirms the Ministry's decision as reasonably supported by the evidence.