

PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “Ministry”) May 28, 2014 reconsideration decision in which the Ministry denied the Appellant’s request for a health supplement for custom orthotics. The Ministry determined that the Appellant did not meet the requirements in section 67 or 76 of the Employment and Assistance Regulation, or the requirements in section 62 of the Employment Assistance for Persons With Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance Act (“EAA”) Section 4.
Employment and Assistance Regulation (“EAR”) Sections 2, 67 and 76.

Employment and Assistance for Persons with Disabilities Act (“EAPWDA”) Section 2 and 5.
Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) Section 62.

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 EAA.

Because the Panel found it difficult to sort out what information the Ministry relied on in its reconsideration decision, the Panel will list the documents in the Ministry's records as follows:

1. Appellant's orthoses request and justification with the following information:

- April 10, 2014 information from a doctor describing the Appellant's medical condition as left and right bunions and left ankle valgus.
- A certified pedorthist occupational therapist's specification for standard functional orthotics and shoes with a stiff forefoot rocker.

2. Letter dated April 29, 2014 from the Ministry to the Appellant stating that the Appellant's request for foot orthotics and supportive shoes was denied because she did not meet the criteria in EAR section 67, Schedule C sections 3(1) and 3.10(1). The Ministry provided no explanation to the Appellant as to why she did not meet these criteria.

3. Appellant's request for reconsideration in which she stated that:

- She meets the requirements in Schedule C section 3(1) because she has no other resources.
- She meets the requirements in Schedule C section 3.10 (1) because the requested orthotics are not off the shelf. The items requested are specific to her feet and needs as prescribed by her physician and they are fitted by a certified pedorthist/occupational therapist.
- The cost of her orthotics is \$425, which is less than the amount allowed for orthotics and the requested footwear costs \$125, which is the amount allowed for footwear.
- She has a chronic, degenerative disease of the muscles – Fascioscaptohumeral muscular dystrophy ("FSH").
- Because of upper body weakness, she is unable to lift her arms over her shoulders, unable to lift normal household items like a skillet ,and is experiencing 'foot drop', another common symptom of the disease, which causes uneven gait.
- The uneven gait can be helped by stabilizing her ankles with lightweight orthotics and exercise; the requested orthotics help her with the basics of walking; walking is essential to her health and physical wellbeing by trying to build her bone mass and lower body strength to help offset the degeneration of her upper body muscles.

4. Ministry's reconsideration decision in which it stated that it found that the Appellant:

- Does not have qualification as a person with persistent multiple barriers to employment.
- Does not receive income assistance under section 8 of Schedule A of the EAR.
- Is not receiving disability assistance.

The Panel reviewed the Appellant's appeal submissions and summarizes them as follows:

- The Ministry's denial in its reconsideration decision was based on sections of legislation not cited in its original denial and this is patently unfair as she has to try to predict what legislation she will have to reply to.
- As a person with muscular dystrophy, a chronic and degenerative disease, she has persistent multiple barriers to employment. The disease precludes her from having any retail or restaurant jobs, any jobs requiring lifting, or any jobs as an education assistant because she could not deal with a physically or behaviorally challenged child.
- She received income assistance for at least 12 of the preceding 15 months.

- She described the effects of FSH as she did in her request for reconsideration, and she provided an abstract regarding FSH and the effects of custom lower limb orthoses and an article about FSH, including treatments available.

Pursuant to section 22(4) of the EAA, the Panel admits the information in the Appellant's appeal statements and supporting documents because that information is consistent with and therefore in support of the evidence the Ministry had at reconsideration.

The Ministry made no submissions for this appeal and indicated that it relied on its reconsideration decision.

The Panel makes the following findings of fact:

1. There is no information in the record that the Appellant has qualified as a "person with persistent multiple barriers to employment" under provincial legislation.
2. There is no information in the record that the Appellant has been designated as "person with disabilities" under provincial legislation.
3. There is no information in the record that the Appellant receives a federal spouse's allowance or guaranteed income supplement benefits.
4. There is no information in the record that the Appellant receives income assistance under section 8 of Schedule A of the EAR.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably denied the Appellant's request for a health supplement for custom orthotics on the basis that the Appellant did not meet the requirements in section 67 or 76 of the EAR, or section 62 of the EAPWDR.

The following legislation applies to the Appellant's circumstances in this appeal.

EAA

Income assistance and supplements

4. Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

EAR

Persons who have persistent multiple barriers to employment

2 (1) To qualify as a person who has persistent multiple barriers to employment, a person must meet the requirements set out in (a) subsection (2) and (b) subsection (3) or (4).

General health supplements

67 (1) Subject to subsection (1.1), 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

(a) is a recipient of income assistance under section 2 [*monthly support allowance*], 4 [*monthly shelter allowance*], 6 [*people receiving room and board*] or 9 [*people in emergency shelters and transition houses*] of Schedule A if

(i) any person in the family unit is a person who has persistent multiple barriers to employment, and
(ii) the recipient does not receive a federal spouse's allowance or guaranteed income supplement benefits.

(b) is a recipient of income assistance under section 8 [*people receiving special care*] of Schedule A.

76 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.

Schedule A

People receiving special care

8 (1) For a person who receives accommodation and care in a special care facility or a private hospital or who is admitted to a hospital because he or she requires extended care, the amount referred to in section 28 ..

(2) If the special care facility is an alcohol or drug treatment centre, the minister may, in addition, pay either or both of the following while the applicant or recipient is in the alcohol or drug treatment centre.

EAPWDA

Person with disabilities

2(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment...

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

EAPWDR**General health supplements**

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.

The Parties' Positions

In its reconsideration decision, the Ministry wrote that the Appellant did not meet the criteria in EAR section 67 because the Ministry determined that the Appellant:

- Does not have qualification as a person with persistent multiple barriers to employment.
- Does not receive income assistance under section 8 of Schedule A of the EAR.
- Is not a person otherwise described in section 67.

The Ministry also determined that the Appellant did not meet the criteria in section 62(1) of the EAPWDR because the Appellant does not receive disability assistance and is not a person otherwise described in section 62 of that regulation. In addition, the Ministry considered the Appellant's request under section 76 of the EAR. It found that the information provided by the Appellant did not establish that she is facing a direct and imminent life-threatening health need or that the requested items are necessary to meet such a need.

The Appellant submitted that she meets the requirements for the supplement because her request falls within the provisions of EAR Schedule C section 3(1) and 3.10. In addition, she stated that because of the effects of her chronic, degenerative disease she is a person with persistent multiple barriers to employment. She also submitted that she received income assistance for 12 out of the past 15 months.

The Panel's Findings and Conclusion

The Ministry may provide health supplements for items, such as the orthotics requested by the Appellant, if the person requesting the supplements first meets the specific threshold requirements set out in legislation. Therefore, to be eligible under section 67 of the EAR for any supplement provided for in Schedule C of the EAR, the Appellant must fall within one of the requirements listed in that section. Those include having been qualified as a person with persistent multiple barriers to employment under section 2 of the EAR, receiving a federal spouse's allowance or guaranteed income supplement benefits, or receiving income assistance under section 8 of Schedule A of the EAR. To be eligible for any supplement provided for in the EAPWDR, the Appellant must first be designated as a Person with Disabilities under the EAPWDA.

In this case, the Panel finds that there is no evidence that the Appellant:

- Has qualified as a person with persistent multiple barriers under section 2 of the EAR.
- Receives a federal spouse's allowance or guaranteed income supplement benefits.
- Receives income assistance under section 8 of Schedule A of the EAR.
- Has been designated as a Person with Disabilities under the EAPWDA; or,

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- Faces a direct and imminent life threatening need for the requested items and that there are no resources available to her meet that need.

Therefore, the Panel finds that the Ministry reasonably determined that the Appellant was not eligible for a health supplement for the requested orthotic items because she did not meet the requirements in section 67 or 76 of the EAR, or in section 62 of the EAPWDR.

Having considered all of the evidence and the applicable legislation in the Appellant's circumstances, the Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence. Therefore, the Panel confirms that decision.