

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of August 18, 2014 which found that the appellant was not currently in receipt of income or disability and not eligible for Medical Services Only (MSO) assistance and therefore only eligible for health supplements to meet a life threatening health need under section 69 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). Additionally, the ministry determined that the appellant was not eligible for the requested prescription medication (Penicillin G 120000) because:

- Prescription medication is not any of the health supplements in Schedule C and, in particular, does not meet the criteria for medical or surgical supplies under section 2(1)(a) of Schedule C which specifically excludes prescription medications, and is not a health supplement set out in sections 2(1)(f) and s. 3 to 3.11
- A direct and *imminent* life-threatening need for the prescription medication was not established.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)
section 69 and Schedule C

Employment and Assistance Regulation (EAR)
Section 76 and Schedule C

[The ministry noted that the appellant's request could be considered under the legislation for health supplements to meet a life-threatening health need under either section 69 of the EAPWDR or section 76 of the EAR and chose to reference the EAPWDR in its decision as the appellant has disabilities and the legislation is essentially the same for both regulations.]



PART E – Summary of Facts

The evidence before the ministry was that the appellant had been diagnosed with chronic Lyme disease by a physician. In a supporting letter dated July 18, 2014, the physician wrote that without treatment the chronic Lyme disease is a life threatening condition and that the current treatment is Penicillin G 120000IU once weekly for an indefinite duration. Also before the ministry were 8 photographs of the appellant's skin.

With the appellant's consent, two ministry observers attended the hearing.

At the hearing, the appellant stated that the photos previously provided were to show the rash caused by the Lyme disease. He provided a colour copy of photographs as further evidence of this rash and described the impact of Lyme disease on his functioning. The appellant explained that he requires the requested medication as the alternative is a four-week long daily intravenous treatment provided in hospital which has short-term results. He stated that when previously in receipt of ministry assistance, he received coverage for the requested prescription medication. As evidence that he had previously received assistance from the ministry, the appellant provided a 20-page submission that included a December 17, 2013 letter to the appellant in response to his request for ministry records of assistance provided to the appellant between 1990 and 2000 and copies of documents showing assistance payments from the ministry to the appellant in 1997. The appellant explained that he had been in receipt of assistance from the ministry and subsequently moved to another province and that upon his return to BC he reapplied and received MSO assistance.

The appellant also provided a copy of a June 23, 2014 letter from the ministry that explained what information is required when applying for specific medical equipment or supplies if an applicant has a life threatening medical condition.

At the hearing, the ministry stated that the documents provided at the hearing confirm that the appellant was in receipt of ministry assistance in the past. However, since then the appellant was out of BC for a long time he would need to meet the current criteria for MSO which are very different from when the appellant was last receiving ministry assistance. In particular, the ministry stated that in order to be eligible for MSO, a person must have been on assistance at the time of the move to MSO, not some time in the past. The ministry also stated that past coverage of the requested prescription medication was through the Ministry of Health and the Pharmacare program, as the medication was previously on the Pharmacare list, but that this ministry has never provided coverage for prescription medication which is completely outside its scope. The ministry advised that as the requested prescription medication is no longer covered by Pharmacare, the appellant could ask a physician to obtain special authority from Pharmacare for coverage.

The ministry had no objection to the admissibility of the documents submitted by the appellant at the hearing, which also included an additional copy of the July 18, 2014 physician's letter and copies of various work related certificates. The panel finds that the work certificates and the evidence of receipt of prior ministry assistance are not admissible under section 22(4) of the Employment and Assistance Act because they do not corroborate any of the information before the ministry at reconsideration, having been introduced only on appeal. The panel admitted the evidence, including the colour photographs and oral testimony which further addressed the appellant's medical condition and need for the prescription medication as being in support of the information before the ministry at

reconsideration in accordance with s. 22(4) of the Employment and Assistance Act.

The panel finds as fact that:

- 1) The appellant has requested coverage of the cost for prescription medication.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry decision that the appellant is only eligible for health supplements to meet a life-threatening health need and that his request for coverage for prescription medication does not meet the legislated requirements as it is not a Schedule C health supplement and a life-threatening need has not been established, is reasonably supported by the evidence or a reasonable application of the legislation.

Relevant Legislation – 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,
- (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
 - (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

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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,

(c) a person who was a recipient of disability assistance on the day he or she became 65 years of age and a dependant of that person, if the dependant was a dependant of the person on that day and remains a dependant of that person,

(d) a dependant of a person referred to in paragraph (a) or (b) (iii),

(d.1) a dependant of a person referred to in paragraph (b) (i) or (iv), if any person in the family unit

(i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(ii) 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,

(d.2) a dependant of a person referred to in paragraph (b) (ii),

(d.3) a dependant of a person referred to in paragraph (f), if any person in the family unit

(i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(ii) 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,

(e) a dependent child of a recipient of hardship assistance,

(f) a person with disabilities who has ceased to be eligible for disability assistance because of an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or the person's spouse, if

(i) the person is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(ii) the person 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, or

(g) a person whose family unit ceases to be eligible for disability assistance because of financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*, during the term of the agreement.

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).

Schedule C

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;

(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, Sch. 2, s. 2 (b).]

(c) 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,

(i) for which a medical practitioner or nurse practitioner has confirmed an acute need,

(ii) if the visits available under the Medical and Health Care Services Regulation, B.C. Reg. 426/97, for that calendar year have been provided and for which payment is not available under the *Medicare Protection Act*, and

(iii) for which there are no resources available to the family unit to cover the cost:

Item	Service	Provided by	Registered with
1	acupuncture	acupuncturist	College of Traditional Chinese Medicine under the <i>Health Professions Act</i>
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the <i>Health Professions Act</i>
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia under the <i>Health Professions Act</i>
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia under the <i>Health Professions Act</i>
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia under the <i>Health Professions Act</i>
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia under the <i>Health Professions Act</i>

(d) and (e) Repealed. [B.C. Reg. 75/2008, s. (a).]

(f) the least expensive appropriate mode of transportation to or from

(i) an office, in the local area, of a medical practitioner or nurse practitioner,

(ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,

(iii) the nearest suitable general hospital or rehabilitation

hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or

(iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*,

provided that

(v) the transportation is to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, and

(vi) there are no resources available to the person's family unit to cover the cost.

(g) Repealed. [B.C. Reg. 75/2008, s. (a).]

(1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

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.....

Sections **3.1** to **3.12** set out the following health supplements: canes, crutches and walkers; wheelchairs; wheelchair seating systems; scooters; bathing and toileting aids; hospital bed; pressure relief mattresses; floor or ceiling lift devices; breathing devices; orthoses; hearing instruments; and, non-conventional glucose meters.

The parties' positions

The ministry argues that the appellant is not currently a recipient of disability or income assistance and as there is no record of being a recipient of disability assistance in the past, the appellant is also not eligible for MSO assistance. Therefore, the appellant is not eligible to apply for health supplements under section 62 of the EAPWDR [or section 67 of the EAR] and may only apply for a health supplement under section 69 of the EAPWDR [or section 76 of the EAR] which provides certain Schedule C health supplements to meet a direct and imminent life threatening health if the

requirements of section 69 are met.

The ministry argues that prescription medication is not any of the health supplements set out in Schedule C and further, that prescription medication is not medical or surgical supplies [section 2(1)(a)], medical transportation [section 2(1)(f)], or medical equipment and devices [section 3] which are the only Schedule C supplements that may be provided under section 69 to meet a life threatening health need. In particular, the ministry argues that prescription medication is not a medical or surgical supply under section 2 of Schedule C because the following legislated requirements are not met:

- the prescription medication is not required for one of the listed purposes under section 2(1)(a)(i);
- the information does not establish that the prescription medication is necessary to avoid an imminent and substantial danger to health as required by section 2(1)(a)(ii)(C);
- the prescription medication is not one of the items listed in section 2(1)(a.1); and
- section 2(1.1) states that medical and surgical supplies do not include prescription medications.

Finally, the ministry argues that in addition to prescription medication not being one of the health supplements available under section 69 to meet a life threatening health need, the other requirements of section 69 have not been met because the information does not establish that the appellant faces a direct and *imminent* life threatening health need and the requirements specified in sections 2(1)(a), (f) or 3 to 3.12 of Schedule C were not met.

The appellant argues that the prescribed medication is a health supplement under section 2 of Schedule C because it is a “disposable” treatment prescribed by a medical practitioner, the least expensive supply, there are no other resources available to meet the cost, and is necessary to avoid imminent health danger. Additionally, the medication is required for the purpose of skin parasite care and circulation because without the treatment, his skin and circulation are impacted. The appellant also argues that he was a recipient of disability assistance from 1995 to 1997 and eligible for health supplements under MSO assistance.

The Panel's Decision

Eligibility to apply for health supplements

Given the information available to the ministry at the time of reconsideration, the panel finds that the ministry reasonably determined that the appellant was not eligible to apply for health supplements as a recipient of income, disability or MSO assistance. Whether the appellant would be eligible for MSO assistance on the basis of having been a former recipient of assistance must first be decided by the ministry. The panel's jurisdiction is limited to reviewing the reasonableness of the ministry's reconsideration decision not making a new decision; that is the role of the ministry. The appellant would need to put this information before the ministry so that it could make a decision respecting all of the eligibility criteria for MSO assistance.

Is the prescription medication a Schedule C health supplement

Regardless of whether the appellant is eligible to apply for health supplements as a recipient of MSO assistance, or only under the life threatening health needs section, the legislation only allows for the provision of health supplements set out in Schedule C and only if the criteria specific to a particular Schedule C health supplement are met.

In this case, the ministry found, and the appellant does not dispute, that the requested prescription medication is not any of the Schedule C health supplements set out in section 2(1)(f) [medical transportation], sections 3 – 3.12 [medical equipment and devices] or sections 4 through 9 [includes dental, natal and nutritional supplements]. The panel finds that the ministry was reasonable in reaching this conclusion.

In considering whether the prescription medication is a medical supply within the meaning of section 2(1)(a) of Schedule C, section 2(1.1) expressly states that prescription medication is not a medical or surgical supply for the purposes of subsection (1)(a) and therefore the panel finds that the ministry has reasonably concluded that prescription medication is not a disposable or reusable medical or surgical supply for any of the set out purposes or necessary to avoid an imminent and substantial danger to health.

Life threatening health need

In considering the appellant's eligibility under the life threatening health needs legislation, the panel notes that section 69 only allows for the provision of some of the health supplements set out in Schedule C – medical and surgical supplies under section 2(1)(a), medical transportation under section 2(1)(f) and the medical equipment and devices identified in sections 3 to 3.11.

For the reasons above, the panel finds that the ministry reasonably determined that prescription medication is none of those health supplements and, consequently, the panel also finds that the ministry reasonably determined that the appellant is not eligible to receive coverage for prescription medication under section 69. Although that finding alone is determinative of ineligibility under section 69, the ministry also considered whether a direct and imminent life-threatening need was established and appears, by virtue of the italicization of *imminent*, to have determined that the threat was not imminent. The appellant argued that the information in the physician's letter was sufficient to meet this requirement. The panel finds that although the physician states that untreated Lyme disease is a life threatening condition, the ministry has reasonably viewed this information as falling short of conveying the degree of immediacy required to be considered imminent and that the appellant is not eligible under section 69 on this additional basis.

Conclusion

In conclusion, the panel finds that the ministry's decision that the appellant is not eligible for a health supplement for prescription medication is a reasonable application of the legislation in the circumstances of the appellant and confirms the reconsideration decision.