

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated October 1, 2014 which denied the appellant's request for a bath mat because it was not an item set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C, and the appellant is not eligible for a supplement under 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, subsections 3 and 3.1 - 3.12, 2(1)(a),(a.1),(a.2), 2(1)(c), 2(2), 2(2.1), 2.2, 4, 4.1, 5, 6, 7, 8, and 9.

PART E – Summary of Facts

The appellant did not attend the hearing at the scheduled start time. The panel waited 15 minutes before commencing and as the appellant was notified of the date, time and location of the hearing, the hearing proceeded under s. 86(b) of the Employment and Assistance Regulation. After the hearing concluded, and the ministry representative had left, the appellant arrived, acknowledging she was late. The appellant expressed her disappointment and became verbally abusive. She was asked to leave the room and informed she would receive the decision in writing within 2 to 3 weeks.

On August 7, 2014 the ministry received a request for repairs to the appellant's commode and for a bath mat. The request was submitted by a home health products provider.

On August 21, 2014 the appellant was advised that the request for a bath mat was denied because it is not an item set out in the EAPWDR, Schedule C, subsection 3 and 3.1 - .3.12.

On September 17, 2014 the appellant submitted a Request for Reconsideration to the ministry. With the Request for Reconsideration was included a Request for Aids or Adaptions dated September 15, 2014 completed by an occupational therapist (OT). The OT reported that:

- The appellant is experiencing increased difficulty with shower transfers and mild unsteadiness with standing balance without supports. They recently applied for wall mounted grab bars in the tub shower to facilitate safe sit to stand shower transfers, but have not heard back with a decision (faxed on July 28, 2014).

- With the expectation that the appellant will be standing more in the shower once the grab bars are in place, it is essential for the appellant to have a non-slip tub mat on her tub shower surface to reduce her risk of slipping and falling. The tub is a standard steel tub which can be quite slippery when wet and soapy.
- The appellant has a bath lift in place, but would get a more thorough cleanse if she was able to stand up safely to rinse.
- Past medical history includes spastic cerebral palsy and recurrent urinary tract infections.
- The appellant required a non-slip bath mat to optimize her safety in the shower.
- The appellant was motivated to remain at home for as long as possible.

At the hearing, the ministry advised that the appellant's application for wall mounted grab bars in the tub shower had been approved. This additional information was admitted at the hearing pursuant to section 22(4) of the Employment and Assistance Act (EAA) as it was in support of the information and records before the ministry in respect in the decision appealed from.

There was no additional evidence before the panel from the appellant as she did not attend the hearing. However, in her notice of appeal the appellant stated: Tell us why you disagree with the ministry's reconsideration decision – 1: because I will probably need to get at least one crisis grant 2: The [home health products provider] says it's the only safe one for my bath lift.

The panel finds that the OT reported the appellant has difficulty with shower transfers and mild unsteadiness with standing balance without supports. The appellant requires a non-slip tub mat in her tub shower to reduce the risk of slipping and falling. The appellant will get a more through cleanse if she is able to stand up safely to rinse. A non-slip bath mat would optimize the balance safety in the shower. The appellant has been approved for the installation of the wall mounted grab bars in the tub shower to facilitate safe sit to stand shower transfers.

PART F – Reasons for Panel Decision

The issue for determination is whether the ministry's decision to deny the appellant's request for a bath mat because a bath mat is not an item that is set out under the EAPWDR, Schedule C, and the appellant is not eligible for a supplement under section 69 of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The appellant is in receipt of disability assistance. Therefore, she was eligible to receive health supplements under section 62 and Schedule C of the EAPWDR.

Schedule C of the EAPWDR, section 3, sets out the general requirements for all equipment/devices. as follows:

3. Medical equipment and devices

(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.

Sections 3.1 to 3.12 set out the specific eligibility requirements for each listed medical equipment. The panel notes that subsections 3(2), (2.1), (3), (4) and (5) do not apply to the appellant's request for a bath mat and the appellant does not assert that they do. Specific medical equipment and medical devices are listed in Schedule C of the EAPWDR as follows: canes, crutches and walkers (s. 3.1); wheelchairs (s. 3.2); wheelchair seating systems (s. 3.3); scooters (s. 3.4); wheelchairs; bathing and toileting aids (s. 3.5); hospital bed (s. 3.6); pressure relief mattresses (s. 3.7); floor or ceiling lift devices (s. 3.8); breathing devices (s. 3.9); orthoses (s. 3.10), hearing instruments (s. 3.11); and non-conventional glucose meters (s. 3.12).

A bath mat is not an item enumerated in subsections 3.1 – 3.12.. In particular, subsection 3.5 [*bathing and toileting aids*] describes items that are medically essential to facilitate toileting or transfers of a person or to achieve or maintain a person's positioning, as follows:

- (a) a grab bar in a bathroom;
- (b) a bath or shower seat;
- (c) a bath transfer bench with hand held shower;

- (d) a tub slide;
- (e) a bath lift;
- (f) a bed pan or urinal;
- (g) a raised toilet seat;
- (h) a toilet safety frame;
- (i) a floor-to-ceiling pole in a bathroom or bedroom; (B.C. Reg. 197/2012)
- (j) a portable commode chair.
- (k) a standing frame for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility; (B.C. Reg. 197/2012)
- (l) a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility; (B.C. Reg. 197/2012)
- (m) a transfer aid for a person for whom the transfer aid is medically essential to transfer from one position to another. (B.C. Reg. 197/2012)

2. General Health Supplement

The EAPWDR, Schedule C, section 2(1)(a) sets out that the ministry may provide either disposable or reusable medical or surgical supplies if:

- (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.

The EAPWDR, Schedule C, subsection 2(1)(a.1) sets out that the following medical or surgical supplies may be paid for by the minister 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;

The EAPWDR, Schedule C, subsection 2(1)(a.2) sets out that consumable medical supplies be paid for by the minister if the minister is satisfied that the following requirements are met:

- (i) the supplies are required to thicken food;
- (ii) all the requirements described in paragraph 2(ii) and (iii) are met in relation to the supplies.

Section 2(1) sets out that for the purposes of subsection (1)(a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

Section 2(1)(c) of Schedule C provides that the following items are health supplements if the other criteria of the section are met: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy.

Section 2(1)(f) of Schedule C provides that the following items are health supplements if the other criteria of the section are met: the least expensive appropriate mode of transportation.

Section 2.1 of Schedule C provides that the following are the optical supplements that may be provided under Section 62.1 of the EAPWDR: basic eyewear and repairs, pre-authorized eyewear and repairs.

Section 2.2 of Schedule C provides that the minister may pay a health supplement under Section 62.2 of the EAPWDR for an eye examination if the other criteria of the section are met.

Section 4 of Schedule C provides that the health supplement that may be paid under section 63 [dental supplements] are basic dental services, if the other criteria of the section are met.

Section 4.1 provides that the health supplement may be paid under section 63.1 for crown and bridgework, if the other criteria of the section are met.

Section 5 of Schedule C provides that the health supplement that may be paid for under Section 64 [emergency dental and denture supplement] of the EAPWDR are emergency dental services.

Section 6 of Schedule C provides that the amount of a diet supplement that may be provided under section 66 [diet supplements] is set out for various conditions, if the other criteria of the section are met.

Section 7 of the Schedule provides as follows:

7 The amount of a nutritional supplement that may be provided under section 67 [nutritional supplement] of this regulation is the sum of the amounts for those of the following items specified as required in the request under section 67 (1) (c):

- (a) for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to \$165 each month;
- (b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]

(c) for vitamins and minerals, up to \$40 each month.

Section 8 of Schedule C provides that the amount of a natal supplement that may be provided under section 68 [natal supplements] is set out, if the other criteria of the section are met.

Section 9 of Schedule C provides that the minister may provide infant formula under section 67.1 of the EAPWDR if the other criteria of the section are met.

Health Supplements for Persons Facing Life Threatening Health Need

Section 69 of the EAPWDR states that the minister may provide to a family unit any health supplements set out in Schedule C, sections 2(1)(a) [*medical supplies*] and (f) [*medical transportation*] and 3 [*medical equipment and devices*], 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 *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 ministry concluded that the information provided to it did not meet the eligibility criteria set out in the legislation.

The ministry concluded that a bath mat is not a health supplement the ministry is authorized to provide under the EAPWDR, Schedule C, sections 3 and 3.1 to 3.12.

In addition, the ministry found that the information provided did not establish the other legislated criteria set out in these sections, for each of these health supplements, had been met.

The ministry therefore concluded that the appellant was not eligible for a bath mat as a medical supply.

The ministry found that:

- The item requested was not a disposable or reusable medical or surgical supply.
- The item requested was not prescribed by a medical practitioner or nurse practitioner.
- The item request was not *directly* required for one of the purposes set out in the EAPWDR, Schedule C, subsection 2(1)(a)(i).
- Information had not been submitted to establish that the item requested is necessary to avoid *imminent* and *substantial* danger to health.
- The item requested was not set out in the EADWPR Schedule C, subsections 2(1)(a.1) or 2(1)(a.2).

The ministry found that a bath mat is not set out in any of the other sections of the EAPWDR, Schedule C.

In particular, a bath mat does not meet the criteria as a therapy and does not meet the criteria of one of the enumerated health supplements.

- Section 69 applies to health supplements set out under Schedule C, sections 2(1)(a) to (f) [*general health supplements*] and section 3 [*medical equipment and devices*]. It is intended to provide a remedy for those persons who are facing a direct and imminent life-threatening health need for these supplements and who are not otherwise eligible to receive them
- Information submitted with the application and Request for Reconsideration did not establish that the appellant faced a direct and *imminent* life-threatening health need for a bath mat.
- A bath mat is not a health supplement set out in Schedule C, sections 2(1)(a) and (f) or *section 3*. Further, the request had not met all the requirements specified in the EAPWDR, Schedule C, sections 2(1)(a) and (f) and 3 to 3.12.

Therefore, as the request did not meet the legislated criteria, the ministry found that the appellant was not eligible for a bath mat under section 69 of the EAPWDR.

At the hearing of the appeal the ministry reviewed the legislation and argued that no provisions of the EAPWDR, Schedule C, applied to the appellant's request and further argued that there were no circumstances which would meet the eligibility requirements in section 69 of the EAPWDR.

As the appellant did not attend the hearing no submissions were made by her or on her behalf. Her Notice of Appeal stated that she disagreed with the ministry's reconsideration decision because she would probably need to get at least one crisis grant and because the home health products provider said the bath mat was the only safe one for her bath lift.

The panel noted that the ministry undertook a comprehensive review of the EAPWDR. In particular the ministry reviewed in detail the medical equipment and devices provided for in section 3 of Schedule C of the EAPWDR and went further to review the legislation to determine whether other subsections of Schedule C, or other sections of the EAPWDR, applied. The ministry determined that the legislation did not apply.

The panel considered the analysis of the ministry and reviewed the legislation. In particular, the panel reviewed sections 3.1 to 3.12 of the EAPWDR, Schedule C (and in particular subsection 3.5 - bathing and toileting aides). A bath mat is not an eligible item as enumerated in Schedule C and is not a health supplement or a therapy.

The ministry's position is that the appellant's request for a supplement to cover the cost of a bath mat does not meet the criteria of the other sections of Schedule C of the EAPWDR, including sections 2(1)(c), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9, since a bath mat is not any of the items covered, namely: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physiotherapy; optical supplements; eye examination supplements; a dental supplement; a crown and bridgework supplement; emergency dental supplements; diet supplements; monthly nutritional

supplements; natal supplements; or infant formula. The appellant did not maintain a position that the requested bath mat falls within any of these other sections of Schedule C. The panel finds that the ministry's determination, which concluded that the bath mat is not an item listed in the other sections of Schedule C of the EAPWDR, was reasonable.

The panel finds that the ministry reasonably determined that the appellant is eligible for health supplements under section 62 of the EAPWDR, whereas section 69 applies to provide a health supplement to a person in the family unit who is otherwise not eligible for the health supplement under the EAPWDR. The panel also finds that the ministry reasonably determined that the requirements of section 69(d) are not met as a bath mat is not set out under Schedule C, section 2(1)(a) as medical or surgical supplies or under section 2(1)(f) as a mode of medical transportation, or under sections 3 to 3.12, as detailed above. While the OT reported that a non-slip bath mat would optimize the appellant's balance safety in the shower, the appellant has been approved for the installation of the wall mounted grab bars in the tub shower to facilitate safe sit to stand shower transfers, and there was no information that the appellant faces a life threatening health need for the bath mat. Therefore, the panel finds that the ministry's decision, which concluded that section 69 of the EAPWDR does not apply to the appellant's circumstances, was reasonable.

The panel finds the ministry's determination that the request for a bath mat did not meet the legislated criteria set out in the EAPWDR was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.