

PART C – Decision under Appeal

The appellant appeals the reconsideration decision of the Ministry of Social Development and Social Innovation (“ministry”) dated October 15, 2014, which denied her request for hip protectors on the basis it did not meet the criteria set out in the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”). The ministry determined that the appellant’s request for the hip protectors did not meet the legislative criteria for the following reasons: hip protectors are not a medical supply, as set out in section 2(1)(a) of Schedule C of the EAPWDR; hip protectors are not medical equipment, as set out in sections 3 and 3.1-3.11 of Schedule C of the EAPWDR; hip protectors are not a therapy, a health supplement or a nutritional supplement, as set out in sections 2(1)(c), 2(2), 2(2.1), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9 of Schedule C of the EAPWDR; and the request for hip protectors does not meet the requirements set out in section 69 of the EAPWDR (the hip protectors are not a listed medical supply or equipment and information was not provided to demonstrate that the hip protectors are necessary to meet a direct and imminent life threatening health need).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 62, 69 and Schedule C – Health Supplements, sections 2, 2.1, 2.2, 3, 3.1-3.12, 4, 4.1, 5, 6, 7, 8 and 9.

PART E – Summary of Facts

The information before the ministry at reconsideration consisted of the following documents:

- The appellant's request for reconsideration dated October 6, 2014;
- A copy of a ministry Medical Equipment Request and Justification form signed by the appellant on June 5, 2014, with section 2 completed by the appellant's physician June 5, 2014, indicating "hip protectors orthotics and bracing" are the recommended equipment, and section 3 completed by the appellant's occupational therapist ("OT") on June 4, 2014 in which the OT indicates that "hip protectors with soft shell padding ... Requires 2 pr as they should be worn 24/7 and a clean pair must be available when they are laundered. Walks with a walker ... high risk for falls";
- A copy of a two-page pamphlet describing the requested hip protectors with a two-page price list/order form for hip protectors indicating the cost of one pair of hip protectors is \$64.99; and
- A one-page fax cover sheet from the appellant's social worker to the ministry dated June 5, 2014 regarding the appellant's request for the hip protectors; and
- A one-page letter dated June 23, 2014 from the appellant's OT to the ministry (discussed below).

The ministry confirms that the appellant is a designated person with disabilities in receipt of disability assistance.

The appellant lives in a long-term care facility. She suffers from cerebral palsy, among other conditions, and uses a walker. In the June 23, 2014 letter, the appellant's OT wrote that the appellant is at high risk of falls and requires hip protectors "to help reduce her risk of hip fracture while ambulating independently." The OT indicates that the appellant requires a minimum of 2 pairs so that one clean pair is always available. The appellant's OT wrote, "I understand that these items [the hip protectors] are not normally on a list of ministry funded medical supplies; however, they are an essential medical item from the ... medical team's perspective (Dr., OT, PT, RN) and clinical research has proven them to be effective at reducing hip fractures when worn as directed."

The appellant attended the hearing with her OT and her social worker, who both work at the appellant's care facility. The appellant and her OT told the panel at the hearing that because of her medical conditions, the appellant is at high risk of falling and the appellant told the panel she has fallen and dislocated her hip. The appellant's OT described the hip protectors to the panel, indicating that the requested hip protectors are in the form of a padded garment that the appellant would wear and are not the same thing as a hip brace (which the appellant has and uses).

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant's request for the hip protectors was reasonable based on the evidence or a reasonable application of the legislation in the appellant's circumstances. The ministry denied the appellant's request for the hip protectors on the basis that it did not meet the legislative criteria for the following reasons: hip protectors are not a classified medical supply (as set out in section 2(1)(a) of Schedule C of the EAPWDR); hip protectors are not indicated as medical equipment (as set out in sections 3 and 3.1-3.12 of Schedule C of the EAPWDR); hip protectors are not a therapy, a health supplement or a nutritional supplement (as set out in sections 2(1)(c), 2(2), 2(2.1), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9 of Schedule C of the EAPWDR); and the hip protectors are not medical supply or medical equipment and information provided has not established that the hip protectors are necessary to meet a direct and imminent life threatening health need (as required by section 69 of the EAPWDR).

Legislation

The following is a summary of the relevant provisions of the legislation applicable to the appellant's request for hip protectors. Although the ministry referred to several sections of the EAPWDR and Schedule C of the EAPWDR in its reconsideration decision (as discussed below), the panel has only reproduced in full the most relevant provisions.

62. General health supplements

- (1) Subject to subsections (1.1) and (1.2), the minister may provide any health supplement set out in section 2 [*general health supplements*] ... 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,

...

69. Health supplement for persons facing direct and imminent life threatening need.

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 – Health Supplements

2. General health supplements

(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:
[subsections A – F set out the list of wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care or 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.

Subsection 2(1)(a.1) of Schedule C of the EAPWDR provides that the following medical or surgical supplies (lancets, needles and syringes, ventilator supplies or tracheostomy 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. Subsection 2(1)(a.2) sets out the requirements for supplements that are consumable medical supplies (supplies required to thicken food). Subsection 2(1)(c) sets out the requirements for medical supplements that are therapy services (acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, and physical therapy). The number of allowable visits and the amounts payable for visits are set out in subsections 2(2) and 2(2.1). Provisions for health supplements that are for optical, eye examination, dental, crown and bridgework, denture, emergency dental, diet, monthly nutritional supplements, natal and infant formula, are set out in sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9 of Schedule C of the EAPWDR.

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:
 - (iv) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;
 - (v) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
 - (vi) the medical equipment or device is the least expensive appropriate medical equipment or device.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
- (b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

Subsection 3(2.1) applies to medical equipment or devices referred to in section 3.9 – breathing

devices. Subsection 3(3) sets out the requirements for replacement of medical equipment previously provided by the minister under this section, subsection 3(4) sets out the requirements for the repair of medical equipment previously provided by the minister, and subsection 3(5) sets out the requirements for repairs of medical equipment not previously provided by the minister.

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); 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); hearing instruments (s. 3.11); and non-conventional glucose meters (s. 3.12). Section 3.10 provides for orthoses, and includes in subs. 3.10(1)(j) a "hip brace." However, the panel notes that the appellant's OT testified that the requested hip protectors are not the same as a hip brace provided for in subs. 3.10(1)(j).

Submissions

The appellant is a designated person with disabilities in receipt of disability assistance and she meets the requirement set out in section 62(1)(a) of the EAPWDR.

The appellant and her advocates acknowledge that the requested hip protectors are not listed as medical supply or medical equipment in Schedule C of the EAPWDR and agreed that the requested hip protectors are not the same as a hip brace (which is an orthosis included under subs. 3.10(1)(j) of Schedule C of the EAPWDR). The appellant and her advocates argue that the ministry should provide funding for the hip protectors to the appellant (and persons who have similar disabilities and are at high risk of falling) as the hip protectors are effective preventative measures that will save the ministry money in the long run. The appellant's advocates argued that the requested hip protectors have been shown to prevent hip fractures and that without the hip protectors, the appellant is at greater risk of injury to her hips (including fracturing her hips) which could lead to her requiring the use of a wheelchair, which would be much more expensive for the ministry to fund than the cost of the requested hip protectors.

The ministry's position is that hip protectors do not meet the criteria set out in the legislation as hip protectors are not listed in any of the relevant sections of Schedule C of the EAPWDR (health supplements) and the ministry cannot make an exception to the legislative provisions for individual applicants. In its reconsideration decision, the ministry determined that the requested hip protectors are not eligible under subs. 2(1)(a) of Schedule C of the EAPWDR as a "medical supply" because the hip protectors are not a disposable or reusable medical or surgical supply required for one of the listed reasons (wound care, ongoing bowel care due to loss of muscle function, catheterization, incontinence, skin parasite care or limb circulation care). The ministry also determined that hip protectors do not meet the requirements of subs. 2(1)(a.1) as one of the listed medical or surgical supplies (lancets, needles and syringes, ventilator supplies, or tracheostomy supplies), hip protectors are not a consumable medical supply as provided for in subs. 2(1)(a.2) (supplies required to thicken food), and hip protectors are not directly required for one of the purposes set out in section 2(1)(a)(i) of Schedule C of the EAPWDR.

The ministry also determined that the requested hip protectors are not eligible as medical equipment as hip protectors are not one of the supplements listed in sections 3.1 through 3.12 of Schedule C of the EAPWDR (3.1 - canes, crutches and walkers; 3.2 – wheelchairs; 3.3 – wheelchair seating

systems; 3.4 – scooters; 3.5 – bathing and toileting aids; 3.6 – hospital bed; 3.7 – pressure relief mattresses; 3.8 – floor or ceiling lift devices; 3.9 – positive airway pressure devices; 3.10 – orthoses; 3.11 – hearing instruments; or 3.12 – non-conventional glucose meters). The Ministry also determined that the information provided with the appellant's request for hip protectors did not establish the other legislated criteria set out in these sections.

The ministry further determined that the requested hip protectors do not meet the criteria as a therapy under sections 2(1)(c), 2(2) and 2(2.1) of Schedule C of the EAPWDR and that the information provided did not establish the other legislated criteria set out in these sections had been met. The ministry also determined that the requested hip protectors were not a health supplement as set out in sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9 of Schedule C of the EAPWDR (supplements for optical, eye examination, dental, crown and bridgework, denture, emergency dental, diet supplements, monthly nutritional supplements, natal and infant formula). The ministry also determined that the requested hip protector does not meet the criteria as nutritional supplement for an acute short-term need under section 67(3) of the EAPWDR.

In its reconsideration decision, the ministry also determined that the appellant was not eligible to receive the requested hip protectors under section 69 of the EAPWDR that can be provided for a person facing a direct and imminent life threatening health need. The Ministry found that the information submitted in the appellant's application and request for reconsideration did not establish that she faces a direct and imminent life-threatening health need for the hip protectors and, even if this were established, the appellant would not be eligible for hip protectors as they are not a health supplement set out in sections 2(1)(a) and (f) or 3 of Schedule C of the EAPWDR.

At the hearing, the ministry reiterated its position that the appellant's request for the requested hip protectors does not meet the legislative criteria – hip protectors do not fit within any of the listed items that the Ministry can provide as health supplements under Schedule C of the EAPWDR and the ministry cannot make exceptions to the legislation.

Panel Decision

The panel notes that the appellant does not challenge the ministry's determinations regarding her request for the hip protectors: that the hip protectors do not meet the legislative criteria for medical supplies set out in subsections 2(1)(a), 2(1)(a.1) or 2(1)(a.2) of Schedule C of the EAPWDR; that the hip protectors do not meet the legislative criteria for a therapy set out in subsections 2(1)(c), 2(2) and 2(2.1) of Schedule C of the EAPWDR; that the hip protectors are not a health supplement as set out in sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9 of Schedule C of the EAPWDR (supplements for optical, eye examination, dental, crown and bridgework, denture, emergency dental, diet supplements, monthly nutritional supplements, natal and infant formula); or that the hip protectors are not a nutritional supplement for an acute short-term need under section 67(3) of the EAPWDR.

Under section 3(1)(b) of Schedule C of the EAPWDR, the minister may provide the medical equipment and devices listed in sections 3.1 through 3.12, if the minister is satisfied that all of the following requirements are met: the family unit has received the pre-authorization of the minister for the medical equipment or device requested; there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device; and the medical equipment or device is the least expensive appropriate medical equipment or device. Further, subsection 3(2) of Schedule C of

the EAPWDR provides that in addition to the requirements set out under section 3(1)(b), for requested medical equipment or devices referred to in sections 3.1 to 3.8 and 3.12, the family unit must provide to the minister one or both of the following, as requested by the minister: a prescription of a medical practitioner or nurse practitioner for the medical equipment or device; and/or an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

The panel stresses that the legislation requires that the requested medical equipment or device must fall within the listed medical equipment and/or devices set out in sections 3.1 through 3.12 of Schedule C of the EAPWDR.

As acknowledged by the appellant and her advocates, the requested hip protectors are for the purpose of preventing the appellant from suffering harm to her hips (such as a hip fracture) if she were to fall. The appellant and her advocates agree that the requested hip protectors are not listed as a medical equipment or device in any of sections 3.1 through 3.12 of Schedule C of the EAPWDR - the requested hip protectors are not the same thing as a hip brace and subs. 3.10(1)(j) does not apply to the appellant's request for hip protectors. As acknowledged by the ministry, the ministry cannot fund medical equipment that is not listed under sections 3.1 through 3.12 of Schedule C of the EAPWDR and cannot make individual exceptions to the legislated provisions. Accordingly, the panel finds that the ministry's determination that the requested hip protectors do not meet the requirements as medical equipment or devices under sections 3.1 through 3.12 of Schedule C of the EAPWDR is a reasonable application of the legislation in the appellant's circumstances.

The ministry found that there was no information to establish that the appellant faces a direct and imminent life threatening need for the requested hip protectors, which is the requirement set out in section 69 of the EAPWDR, and that even if the information were provided, the requested hip protectors are not a health supplement set out in Schedule C, sections 2(1)(a) and (f) or 3 as required by section 69. Although the appellant referred to a previous dislocated hip injury she sustained in a fall, there is no information to establish that the hip dislocation injury is direct and imminently life threatening. Accordingly, the panel finds that the ministry's determination that the appellant has not met the requirement set out in section 69 of the EAPWDR is reasonable based on the evidence and a reasonable application of the legislation in the appellant's circumstances.

Therefore, the panel confirms the ministry's decision to deny the appellant's request for the hip protectors as the legislative requirements set out in section 69 and Schedule C of the EAPWDR were not met.