

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated December 19, 2014 that denied the appellant's application for funds to cover the cost of molded ear plugs. The ministry determined that the request did not meet the criteria set out in Employment and Assistance Regulation, schedule C. The ministry found that the appellant met the eligibility requirements for a health supplement however the molded earplugs are not eligible items. The ministry determined that there were less expensive options available to her. The ministry determined that there was no evidence that the molded earplugs were necessary to avoid an imminent and substantial danger to her health and that the appellant is not facing a direct and imminent life threatening health need.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disability Regulations (EAPWDR), sections 62 and 69
Employment and Assistance for Persons with Disability Regulations (EAPWDR), schedule C
Speech and Hearing Health Professionals Regulation (SHHPR) sections 1 and 5(1)

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- An audiogram report dated October 20, 2014 completed by the appellant's audiologist. The report includes the data gathered from a test performed on the appellant and includes comments from the audiologist, "moderate sensorineural hearing loss from 2khz to 8khz in both ears."
- A letter from the appellant's audiologist to the ministry undated. The letter reads, "It is recommended an ear plug for both ears. Total \$140.00."
- A letter from the appellant's audiologist dated December 4, 2014. It reads, "I recommend the above stated patient obtain molded ear plugs due to sensitivity to noise, affecting her sleep, and subsequently her headaches."
- In her request for reconsideration dated December 5, 2014 the appellant wrote:
 1. Due to her severe hearing sensitivity she has to wear earplugs because she lives in a townhome.
 2. The disposable ear plugs cause bleeding.
 3. Her audiologist has recommended molded earplugs but she cannot afford the \$140 cost.
 4. She feels that the earplugs are eligible items under the legislation.
 5. She was examined by a neurologist who confirmed her need for ear plugs.

In her Notice of Appeal dated December 31, 2014 the appellant writes:

1. Molded earplugs are an eligible device based on the legislation
2. The earplugs were prescribed by her audiologist and confirmed by her neurologist
3. She has no resources to cover the \$140 cost of the earplugs
4. The off-the-shelf earplugs cause her ears to bleed and they are less effective at eliminating noise. There are wax earplugs available for \$8 per pair that work well but they do not last more than one week resulting in a \$32 per month expense that she cannot afford
5. The molded earplugs are more effective and fit better than the other options

The appellant made a written submission to the appeal panel dated Jan 13, 2015 which reads:

1. A registered audiologist has prescribed the earplugs.
2. The earplugs meet the legislation's definition of a health supplement.
3. There are no other resources available to cover the cost.
4. The low-cost over-the-counter earplugs don't work for her. The better quality waxed earplugs cost \$8 a pair and she needs 1 pair per week making them more expensive than the molded earplugs.

The ministry did not submit any new evidence to the panel. The ministry stated that it relies on the reconsideration decision.

PART F – Reasons for Panel Decision

The decision under appeal is the reasonableness of the ministry's decision to deny the appellant's application for funds to cover the cost of molded earplugs. The ministry found that the appellant met the general eligibility requirements for a health supplement however the ministry determined that the molded earplugs are not eligible item in EAPWRD Schedule C. The ministry determined that there were less expensive options available to her. The ministry determined that there was no evidence that the molded earplugs were necessary to avoid an imminent and substantial danger to her health and that the appellant is not facing a direct and imminent life threatening health need.

Employment and Assistance for Persons with Disability Regulations (EAPWDR), section 62

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: ~~(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) in parasite care; (F) circulation care; (G) the supplies are (H) described by a medical practitioner or nurse practitioner, (I) the least expensive supplies appropriate for the purpose, and (J) there is a~~ ~~(C) ne~~ substantial danger to health; ~~there are~~ no resources available to the family unit to pay the cost of or obtain the supplies.

Employment and Assistance for Persons with Disability Regulations (EAPWDR), section 69

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).

Employment and Assistance for Persons with Disability Regulations (EAPWDR), schedule C

Definitions

1 In this Schedule:

"audiologist" means an audiologist registered with the College of Speech and Hearing Health Professionals of British Columbia established under the *Health Professions Act*;

General health supplements (Medical supplies)

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;

3 Medical equipment and device

- (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.
- (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.
- (2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section 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 a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.
- (3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if
- (a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and
 - (b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.
- (4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.
- (5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if
- (a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and
 - (b) it is more economical to repair the medical equipment or device than to replace it.
- (6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

3.1 Medical equipment and devices – canes, crutches and walkers

3.2 Medical equipment and devices – wheelchairs**3.3 Medical equipment and devices – wheelchair seating systems****3.4 Medical equipment and devices – scooters****3.5 Medical equipment and devices – bathing and toileting aids****3.6 Medical equipment and devices – hospital bed****3.7 Medical equipment and devices – pressure relief mattresses****3.8 Medical equipment and devices – floor or ceiling lift devices****3.9 Medical equipment and devices – positive airway pressure devices****3.10 Medical equipment and devices – orthoses:****3.11 Medical equipment and devices – hearing instruments**

A hearing instrument is a health supplement for the purposes of section 3 of this Schedule if

- (a) the hearing instrument is prescribed by an audiologist or hearing instrument practitioner, and
- (b) an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument.

4 Dental supplements**4.1 Crown and bridgework supplement****5 Emergency dental supplements****6 Diet supplements****7 Monthly nutritional supplement****8 Natal supplement****9 Infant Formula****Speech and Hearing Health Professionals Regulation****Section 1: Definitions****1 In this regulation:**

"audiologist" means a registrant who is authorized under the bylaws to practise audiology;

"hearing instrument" means an appliance or a device designed or offered for a hearing condition,
 (a) including any ear molds, boots or other acoustic couplers and any parts or accessories for the appliance or device intended to affect the sound pressure level at the eardrum, and
 (b) excluding direct audio input accessories, batteries and any accessories that are attachable to the appliance or device by the wearer and not intended to affect the sound pressure level at the eardrum;

Restricted activities

5 (1) An audiologist in the course of practising audiology may do any of the following:

- (a) make a diagnosis identifying, as the anatomical cause of behavioural, psychological or language-

- related signs or symptoms of an individual, an auditory or related communication disorder;
- (b) put an instrument or a device or finger into the external ear canal, up to the eardrum;
- (c) put into the external ear canal, up to the eardrum and for the purposes of cerumen management or tympanometry, air that is under pressure;
- (d) put into the external ear canal, up to the eardrum and for the purposes of cerumen management or assessment of vestibular system dysfunction, water that is under pressure;
- (e) put into the external ear canal, up to the eardrum, a substance that subsequently solidifies;
- (f) prescribe a wearable hearing instrument;
- (g) fit a wearable hearing instrument.

The argument of the appellant is that she requires the molded earplugs for her general health and quality of life. The appellant argues that they meet the definition of a hearing instrument of EAPWDR, schedule C, 3.11 and that the earplugs are the least expensive option available.

The argument of the ministry is that the appellant does not qualify to have the cost of the molded earplugs covered by the ministry because they don't meet the definition of a health supplement as defined in the legislation, they are not the least expensive option, and because there was no evidence that the molded earplugs were necessary to avoid an imminent and substantial danger to her health. The ministry maintains the appellant is not facing a direct and imminent life threatening health need.

Accepted Criteria

The ministry determined that the appellant met the general eligibility criteria in EAPWDR, section 62 as well that the appellant has no other resources available to pay for the earplugs. The panel will determine the reasonableness of the criteria the ministry determined the appellant did not meet.

Qualifying Medical Equipment/Device

EAPWDR, schedule C, 3.11 states that a hearing instrument is a health supplement if it is prescribed by an audiologist and the audiologist has performed an assessment. The ministry makes two arguments as to why the appellant does not meet these criteria.

First, the ministry suggests the audiologist is working outside of their approved scope. The ministry referred to the HPA section 5 stating that the appellant's earplugs are not used in the treatment, rehabilitation, and prevention of an auditory and related communication disorder and condition, and peripheral and central auditory system dysfunction and related peripheral and central vestibular system dysfunction. The panel reviewed the HPA section 5 and found that it allows the audiologist to 5(1)(a) make a diagnosis identifying, as the anatomical cause of behavioral, psychological or language-related signs or symptoms of an individual, an auditory or related communication disorder and to 5(1)(f) prescribe a wearable hearing instrument. In the audiologist's report dated October 20, 2014 the audiologist diagnoses a "moderate sensorneural hearing loss from 2khz to 8khz in both ears." In the accompanying letter to the ministry, the audiologist writes the appellant has a "hypersensitivity reaction to loud sounds due to her high frequency loss." The panel considers it could be reasonably concluded that the audiologist's diagnosis falls within the parameters set out in the HPA section 5. The panel finds that the ministry was unreasonable to determine the audiologist was working out of their prescribed scope when they made the prescription for the molded earplugs.

Secondly, the ministry argues that the molded earplugs are not piece of medical equipment or a medical device as defined by the legislation. The definition the ministry used is the HPA section 1. It defines a hearing instrument as an appliance or device, including any ear molds, designed for a

hearing condition intended to affect the sound pressure level at the eardrum. The appellant's audiologist conducted tests on the appellant and determined that due to her moderate sensorineural hearing loss she has a "hypersensitivity reaction to loud sounds due to her high frequency loss." And therefore requires earplugs. The panel interprets the audiologist's prescription for earplugs as a means to reduce the sound level that the appellant hears. According to the evidence the earplugs affect the sound pressure level at the eardrum therefore reducing the sound she experiences. The panel finds that the ministry was unreasonable to determine that the prescribed earplugs are not a hearing instrument.

Qualifying Medical Supply Item

The ministry determined that the earplugs do not qualify as a medical supply. The list of purposes for medical supply contained in EAPWDR, schedule C is unambiguous and the appellant's need for earplugs do not fall into any of the listed purposes. The panel finds the ministry was reasonable to determine the earplugs do not qualify as a medical supply.

Qualifying as Item in Any Other EAPWDR schedule C Category

The ministry determined that the earplugs are not an item set out in any other section of EAPWDR, schedule C. The panel notes that the appellant does not disagree with this determination. Upon review of the other sections of EAPWDR, schedule C, the panel finds the ministry was reasonable to determine that earplugs are not a qualifying item set out in any other section of the legislation.

Qualifying as Item to Meet a Life Threatening Need

The ministry determined that the appellant's need for earplugs does not meet the legislated criteria, as a life-threatening health need. The panel notes that the appellant does not make the argument that she requires the earplugs to meet a life-threatening need. Upon review of EAPWDR, section 69, the panel finds the ministry was reasonable to determine that the need for earplugs do not meet the legislated criteria, as a life threatening health need.

Least Expensive Option

Regarding the criterion, EAPWDR, schedule C, section 3(1)(b)(iii), that the device or equipment be the least expensive option, the panel considered the evidence about the earplug costs and options before the appellant. The panel acknowledges that there will be cost, performance, and durability differences between the earplug options available to the appellant. The panel notes that there was no comparative data evidence submitted such as quotes, performance differences, or prices from the audiologist. As the appellant stated, the waxed earplugs function well, however there was no evidence that the appellant explored ways of reducing the cost for these plugs such as buying them in bulk from a local medical supply company or an on-line retailer. Although the molded earplugs may last longer and be better value in the long-term, there is no evidence presented to support this position. Without reliable, independent details of the costs for each option the ministry cannot determine if the molded earplugs are in fact the least expensive option. The panel finds that the ministry was reasonable to determine that the requested molded earplugs are not the least expensive option available.

The panel finds that the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.