APPEAL #

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated 7 April 2015 determined the appellant was not eligible for injections of sodium tetradecyl sulfate (the injections) as they are not:

- a medical supply under s. 2(1) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR);
- a medical device or medical equipment under sections 3, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11 or 3.12 of Schedule C of the EAPWDR;
- a therapy or health supplement set out in any other section of the EAPWDR;

and because there was no evidence she faced a direct and imminent life threatening need and, even if she did, it is not one of the items that she could obtain under s. 69 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 62 and 69.
Employment and Assistance for Persons with Disabilities Regulation, Schedule C.

APPEAL #

PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- The appellant was a recipient of disability assistance and is eligible to receive health supplements provided under s. 62 and Schedule C of the EAPWDR.
- On 14 December 2014, the appellant submitted a prescription dated 4 December 2014 by her physician for the injections to be administered in his office.
- A 1-page letter dated 16 December 2014 by the ministry to the appellant indicated that injections were not eligible for funding and that her request was denied.
- A request for reconsideration completed and signed by the appellant's physician on 6 March 2015, countersigned by the appellant and submitted to the ministry on 20 March 2015 indicated that the appellant had chronic venous insufficiency with ulceration to the left medial calf and that her varices were being treated by sclerotherapy using the injections.
- A fax dated 2 April 2015 sent by the ministry to the appellant's physician posed 5 questions to which the physician replied the same day, also by fax:
    - Is this injection performed by a physician in a doctor's office? Yes
    - Is this covered under pharma care / MSP? If no, what is the cost that you are requesting from this patient? [*No answer with respect to the injections*.]
    - Is it considered a cosmetic procedure? No
    - Is this injection necessary to avoid an imminent and substantial danger to her health? The injection is do deal with the venous insufficiency – the cause of her ulcer.
    - How many injections are required? I have no idea but I would guess four sessions […] depending on how quickly her ulcers heal.

In her Notice of Appeal dated 20 April 2015, the appellant through her advocate indicated that it was her understanding that the injections would address the root causes of the ulcer and allow healing without the continued risk of losing a limb. The treatment costs are relatively inexpensive compared to the risk of losing a limb and that the appellant was going through emotional distress and extremely worried with the prospect of losing a limb and facing a long recovery with the associated loss of life quality.

In her Notice of Appeal, the appellant provided new evidence to the effect that she was at risk of losing a limb if she did not obtain that item but that evidence was not supported by any medical evidence. At the hearing the appellant presented new, additional oral evidence to the effect that she had received an eviction notice from her landlord because she is using a scooter to access her residence and the landlord decided to remove the ramp and prevent access with a scooter; the appellant testified that if she had the injections her ulcer would heal and she would not need a scooter anymore. She also testified that the ulcer is a result of an injury she sustained approximately 15 years ago when she got a piece of metal that formed an ulcer in her leg and that eventually healed but in 2013 she had a small scratch in this area and the ulcer came back. The panel determined that this additional oral and documentary evidence was not admissible under s. 22(4) of the Employment and Assistance Act (EAA) as it was not in support of the records before the minister at reconsideration, it had no bearing on, was irrelevant to the issue before the panel and did not corroborate the evidence before the reconsideration officer.

APPEAL #

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant was not eligible for the injections as they were not: a medical supply under s. 2(1) of Schedule C of the EAPWDR; a medical device or medical equipment under sections 3, 3.1, to 3.12 of Schedule C of the EAPWDR; a therapy or health supplement set out in any other section of the EAPWDR; and, because there was no evidence she faced a direct and imminent life threatening need and, even if she did, it is not one of the items that she could obtain under s. 69 of the EAPWDR, was either a reasonable application of the legislation or reasonably supported by the evidence.

S. 62 of the EAPWDR provides the authority to the minister to provide health supplements or medical equipment and devices:
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 (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)
(a) a recipient of disability assistance,…

Schedule C provides for what specific items the minister may approve. S. 2(1) deals with 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.
(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;
Subsection (c) deals with acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physical therapy and subsection (f) deals with transportation. S. 2.1 and 2.2 deal with optical and eye examination supplements…
(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 are dealt with in s. 3(1) of Schedule C of the EAPWDR:
3 (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.11 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…

Eligible medical equipment and health supplements are listed at s. 3.1 to 3.12 of Schedule C of the EAPWDR:
3.1: Cane, crutch, walker and accessory to a walker.
3.2: Wheelchair or its upgraded components or accessories;
3.3: Wheelchair seating system & accessories;
3.4: Scooter or its upgraded components or accessories;
3.5: Grab bar in bathroom; bath or shower seat; bath transfer bench with hand held shower; tub slide; bath lift; bed pan or urinal; raised toilet seat; toilet safety frame; floor-to-ceiling pole in bathroom; portable commode chair;
3.6: Hospital bed or its upgraded components or accessories;
3.7: Pressure relief mattress;
3.8: Floor or ceiling lift device;
3.9: Positive airway pressure device, its accessories or supplies;
3.10: Orthoses;
3.11: Hearing aids;
3.12: Non-conventional glucose meter.

S. 4 to 9 set out other health supplements including dental, diet, nutritional and natal.

Finally, health supplements may be provided in exceptional circumstances, for persons facing direct and imminent life threatening health needs:
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).

The ministry acknowledged that the appellant is a recipient of disability assistance and is eligible to receive health supplements under s. 62 of the EAPWDR. However, the ministry argued that the injections could not be considered as a medical supply since it is a medication that is not directly for any of the purposes set out under s. 2(1)(a)(i) and is not part of the list of medical supplies that the ministry could provide under s. 2(1)(a.1) or (a.2) of Schedule C of the EAPWDR, that it is not the least expensive appropriate item as there was no evidence whether it could be covered by the MSP and that it was not necessary to avoid an imminent and substantial danger to the appellant's health. The ministry also argued that the injections did not qualify as an eligible medical equipment since it is not in the list of equipment / devices that the ministry could provide under s. 3.1 to 3.12 of Schedule C of the EAPWDR. Additionally, the ministry indicated that the injections were not an item set out in any of the other sections of the EAPWDR for therapy or any remaining health supplements. Finally the ministry argued that s. 69 of the EAPWDR did not apply as the appellant was otherwise eligible to the health supplements of Schedule C, that there was no evidence based on the information submitted by the appellant that she faced direct and imminent danger to her life if she did not receive those injections and that even if this evidence was provided, the injections were not a health supplement or medical equipment and devices set out in s. 2(1)(a) and (f) and 3 of Schedule C of the EAPWDR.

The appellant argued that the injections could be considered as "medical supplies" that would be required for wound care (s. 2(1)(a)(i)(A) EAPWDR) or limb circulation care (s. 2(1)(a)(i)(F) EAPWDR) since the treatment could address both of those issues and that reestablishing circulation in her leg was important for her wellbeing. She also argued that the wording used by the physician "to deal with venous insufficiency" was not accurate as this treatment is aimed at restoring blood circulation in her leg and improve her quality of life. Additionally, she argued that the treatment would address the root cause of the ulcer and allow healing without the continued risk of losing the limb, which was very stressful for her and caused emotional distress and anxiety.

Decision:

Medical supply:

S. 2(1) of the EAPWDR allows the ministry to provide medical supplies for some of the purposes raised by the appellant, wound care and limb circulation care, but the issue is to determine whether the injections qualify as a medical supply. There are some examples of what a medical supply may be at subsections (a.1) and (a.2) - lancets, needles, syringes, ventilator and tracheostomy supplies - or consumable items to thicken food. Further, subsection (1.1) determined that "prescription medications" are not included in the eligible supplies. Thus, the issue is whether the ministry could reasonably determine that the injections were not eligible given the legislation. The panel finds that the ministry reasonably determined that the injections were not eligible under that section since it can

reasonably be determined they are not a disposable or reusable medical supply and because they may be considered as “prescription medication”. There is an issue as to whether the injections are the least expensive appropriate supply and if other public plans like MSP or Pharma Care could pay for it; the panel notes that no evidence was presented to the effect that the appellant presented a claim to those plans or whether she would be eligible for them and the panel concludes that the ministry reasonably determined that there was not enough evidence to demonstrate that there were no other resources available to the appellant to pay for the injections.

Medical equipment and devices:

The appellant did not argue that the injections could be provided under any of the items eligible for funding under “Medical equipment and devices”, s. 3.1 to 3.12 of Schedule C of the EAPWDR and the panel finds that none of those items includes the injections and concludes that the ministry reasonably determined that it was not authorized to provide the injections as a health supplement under s. 3, 3.1 to 3.12 of Schedule C of the EAPWDR.

Other items:

The other items for which the ministry could provide a heath supplement do not include injections; they deal with medical transportation, optical and eye examination supplements, dental supplements including crown, bridgework and emergency dental supplements, diet and monthly nutritional supplements, natal supplements and infant formulas. The panel finds that none of those supplements include the injections and concludes that the ministry reasonably determined the injections were not an eligible health supplement under any of those other items.

Persons facing life threatening health need:

The panel notes there was some evidence provided by the appellant to the effect that she was facing direct and imminent danger for her health because she could lose a limb. Yet, there was no medical evidence to that effect from the physician who filled the prescription and the documentation submitted to the ministry and, if such a danger was demonstrated, no evidence of how imminent it was. Even if it was the case, s. 69 of the EAPWDR does not allow the ministry to provide any supplement, equipment or device other than those authorized under s. 2 or 3 of Schedule C of the EAPWDR which, as the panel found, did not include the injections. In other words, if the device is not listed in the EAPWDR, the ministry does not have the authority to provide it to a recipient under s. 69 of the EAPWDR.

Conclusion:

Thus the panel finds the ministry reasonably determined the item requested by the appellant, the injections, was not an item that is included in s. 2 or 3 of Schedule C of the EAPWDR and that consequently, the appellant was not eligible for the injections under s. 62 or 69 if the EAPWDR. For those reasons, the panel finds the ministry’s decision was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.