

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated April 17, 2015 which denied the appellant's request for a supplement to cover the cost of a Fleet Enema. The ministry found that the item requested is not listed as an eligible item in Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) and the eligibility criteria were not met for a life threatening health need 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, Sections 2, 2.1, 2.2, 3, 3.1 to 3.12, 4, 4.1, 5, 6, 7, 8, 9

PART E – Summary of Facts

The appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Prescription dated March 26, 2015 in which the physician wrote that the appellant “is going for upper and lower GT [gastrointestinal tract] scopes. Required Fleet Enema X 2 for preparation”; and,
- 2) Request for Reconsideration dated April 7, 2015.

In his Request for Reconsideration, the appellant wrote:

- The sigmoidoscopy is a life and death test as for the last 4 plus months he has not been able to have a bowel movement (BM).
- This procedure is to be done and the doctor is doing a test that is to open the appellant’s bowel. Because the appellant has had so many surgeries, scar tissue has grown so much that his bowel is blocked.
- The test is to stretch the appellant’s bowel enough for him to have a normal BM.
- This is a non-invasive surgery that is done to save the appellant having another invasive surgery, cutting into his abdomen area and cutting a portion of his bowel where the blockage is. With this surgery, it will take at least 90 days to start having a regular BM.

Prior to the hearing, the appellant provided his Notice of Appeal dated May 5, 2015 in which he expressed his disagreement with the ministry’s reconsideration decision. In his Notice of Appeal, the appellant wrote:

- He had the bowel exams but this is part of legislation rights as he should not have had to pay for the enemas for the tests.
- He has had 8 bowel surgeries and has lost a good majority of muscle function due to so many bowel surgeries.
- He had a doctor’s prescription and a surgeon’s prescription for the enemas.

The ministry relied on its reconsideration decision, as summarized at the hearing.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of a Fleet Enema because the item requested is not listed as an eligible item in Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) and the eligibility criteria for a life threatening health need were not met, as required by Section 69 of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Pursuant to Section 62 of the EAPWDR, the applicant must be a recipient of disability assistance, or be a dependent of a person in receipt of disability assistance in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has found that the requirement of Section 62 has been met in that the appellant is a recipient of disability assistance.

At issue is whether the requested Fleet Enema is an eligible item under Schedule C of the EAPWDR, including:

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. ...

Further, Section 2(1.1) of Schedule C, provides that "medical or surgical supplies" do not include nutritional supplements, food, vitamins, minerals or prescription medications.

Section 2(1)(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.

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

- (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. . . .

Section 3.1 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a cane, a crutch, a walker, an accessory to a cane, a crutch or a walker.

Section 3.2 provides that the following items are health supplements for the purposes of section 3 if the other criteria of the section are met: a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair.

Section 3.3 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a wheelchair seating system, an accessory to a wheelchair seating system.

Section 3.4 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a scooter, an upgraded component of a scooter, an accessory attached to a scooter.

Section 3.5 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a grab bar in a bathroom, a bath or shower seat, a bath transfer bench with hand held shower, a tub slide, a bath lift, a bed pan or urinal, a raised toilet seat, a toilet safety frame, a floor-to-ceiling pole in a bathroom or bedroom, a portable commode chair, a standing frame or a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility, and a transfer aid for a person for whom the transfer aid is medically essential.

Section 3.6 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed, and a positioning item on a hospital bed.

Section 3.7 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a pressure relief mattress.

Section 3.8 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a floor or ceiling lift device.

Section 3.9 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: breathing devices.

Section 3.10 provides that the following items are an orthosis which is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a custom-made or off-the-shelf foot orthotic, custom-made footwear, a permanent modification to footwear, off-the-shelf footwear for a specific purpose, off-the-shelf orthopaedic footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, a hip brace, an upper extremity brace, a cranial helmet, a torso or spine brace, a foot abduction orthosis, or a toe orthosis.

Section 3.11 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hearing instrument.

Section 3.12 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a non-conventional glucose meter.

Section 69 of the EAPWDR provides as follows:

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).

Section 2(1) of Schedule C of the EAPWDR

The ministry's position is that the appellant is eligible to receive health supplements under Section 62 of the EAPWDR but that the requested item, a Fleet Enema, is not an eligible item as a medical or surgical supply set out in Section 2(1)(a) of Schedule C of the EAPWDR as it does not meet all of the criteria. The ministry argued that information has not been provided to establish that the Fleet Enema is a disposable or reusable medical or surgical supply required for one of the purposes set out in the section, specifically "ongoing bowel care," as the appellant's physician explained that it will be used to prepare the appellant's bowel for a GT scope only. The ministry argued that the appellant's physician did not confirm that the Fleet Enema is required due to loss of muscle function. The ministry also argued that although the physician prescribed the Fleet Enema to prepare the appellant for a GT scope, there is no indication that the Fleet Enema is necessary to avoid an imminent and substantial danger to health.

The appellant's position is that the Fleet Enema is covered by Section 2(1)(a) of Schedule C of the

EAPWDR since it is required for the purpose of ongoing bowel care required due to loss of muscle function. In his Notice of Appeal, the appellant argued he has a doctor's prescription and a surgeon's prescription for the enemas and he has had 8 bowel surgeries and has lost a good majority of muscle function due to so many bowel surgeries. In his Request for Reconsideration, the appellant argued that the sigmoidoscopy is a life and death test because for the last 4 plus months he has not been able to have a BM. The appellant argued that the build-up of scar tissue has caused a blockage in his bowel and the test is used to stretch the appellant's bowel enough for him to have a normal BM. The appellant argued that this is a non-invasive surgery that is done to save him from having another invasive surgery involving cutting into his abdomen area and cutting a portion of his bowel where the blockage is.

Panel decision

The panel finds that the evidence from the physician, as set out in the prescription dated March 26, 2015, demonstrates that the Fleet Enema is required to prepare for upper and lower GT scopes. Although the appellant argued that both his physician and the surgeon prescribed the Fleet Enema, there was only one prescription available on the appeal and the appellant did not attend the hearing to provide further information about the other prescription. Therefore, the purpose of the Fleet Enema as stated by the physician is to prepare the bowel for a one-time examination by "GT scopes," which may include the sigmoidoscopy procedure described by the appellant. The appellant argued that he has lost muscle function and developed scar tissue due to multiple bowel surgeries and the sigmoidoscopy is a non-invasive surgery that stretches his bowel enough to allow him to have a normal BM, but he did not argue that the requested Fleet Enema allows him to have a normal BM on an ongoing basis or for "ongoing bowel care." The panel finds that the ministry reasonably determined that there is not sufficient information to establish that the Fleet Enema is required for "ongoing bowel care required due to loss of muscle function," pursuant to Section 2(1)(a)(i)(B) of Schedule C of the EAPWDR.

The appellant argued that the sigmoidoscopy is a "life and death" test because of the extended length of time he has not been able to have a BM; however, he did not argue that the Fleet Enema is required to allow him to have a normal BM and the physician did not indicate any danger to the appellant's health without the Fleet Enema. The panel finds that the ministry reasonably determined that there is not sufficient information to establish that the Fleet Enema is necessary to avoid an imminent and substantial danger to health, pursuant to Section 2(1)(a)(ii)(C) of Schedule C of the EAPWDR. Therefore, the panel finds that the ministry's decision, which concluded that the Fleet Enema does not meet all of the legislative criteria as set out in Section 2(1)(a) of Schedule C of the EAPWDR, was reasonable.

Section 3 and 3.1 through 3.12 of Schedule C of the EAPWDR

The ministry's position is that the appellant is eligible to receive health supplements under Section 62 of the EAPWDR but the Fleet Enema, is not an eligible item as medical equipment specifically set out in 3.1 through 3.12 of Schedule C of the EAPWDR.

The appellant does not argue that the Fleet Enema is listed as an eligible item of medical equipment but, rather, the appellant's position is that his physician has prescribed the Fleet Enema and he should not have to pay for the tests.

Panel decision

Section 3(1) of Schedule C of the EAPWDR stipulates that the medical equipment and devices

described in Sections 3.1 to 3.12 of Schedule C are the health supplements that may be provided by the ministry. The panel finds that the ministry reasonably determined that the requested Fleet Enema is not specifically set out in Section 3.1 through 3.12 of Schedule C of the EAPWDR as it is not: a cane, a crutch or a walker; a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair; a wheelchair seating system, an accessory to a wheelchair seating system; a scooter, an upgraded component of a scooter, an accessory attached to a scooter; a grab bar in a bathroom, a bath or shower seat, a bath transfer bench, a tub slide, a bath lift, a bed pan or urinal, a raised toilet seat, a toilet safety frame, a floor-to-ceiling pole in a bathroom or bedroom, or a portable commode chair, a standing frame or a positioning chair, or a transfer aid; a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed, or a positioning item on a hospital bed; a pressure relief mattress; a floor or ceiling lift device; a breath device, a custom-made or off-the-shelf foot orthotic, custom-made footwear, a permanent modification to footwear, off-the-shelf footwear, off-the-shelf orthopaedic footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, a hip brace, an upper extremity brace, a cranial helmet, a torso or spine brace, a foot abduction orthosis, or a toe orthosis; a hearing instrument; or a non-conventional glucose meter. Section 3 stipulates that only the items described in Section 3.1 to 3.12 are the health supplements that may be provided, and the Section does not allow for items other than those specifically listed. The panel finds that the ministry reasonably determined that the Fleet Enema is not included in Sections 3.1 to 3.12 of Schedule C of the EAPWDR.

Remaining Sections of Schedule C

The ministry's position is that the appellant's request for a supplement to cover the cost of a Fleet Enema does not meet the criteria of the other sections of Schedule C of the EAPWDR, including sections 2, 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9, since a Fleet Enema 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 does not dispute that the requested Fleet Enema does not fall within any of these other sections of Schedule C.

Panel decision

The panel finds that the ministry's decision, which concluded that the Fleet Enema is not an item listed in the other sections of Schedule C of the EAPWDR, was reasonable.

Life-threatening Health Need

With respect to Section 69 of the EAPWDR, the ministry's position is that this section is intended to provide a remedy for those persons who are facing a direct and imminent life-threatening need for these supplements and who are not otherwise eligible to receive them. The ministry argued that the information submitted does not establish that the appellant will face a direct and imminent danger to his health if the Fleet Enema is not made available to him. The ministry further argued that even if this was established, information has not been provided to demonstrate that the requirements of Section 69(d) are met as a Fleet Enema is not set out under Schedule C, Section 2(1)(a) [*medical supplies*] or Section 2(1)(f) [*medical transportation*] or in Sections 3 to 3.12.

The appellant's position is that he faces a direct and imminent life threatening need for the Fleet Enema. In his Request for Reconsideration, the appellant argued that the sigmoidoscopy is a life and death test since for the last 4 plus months he has not been able to have a BM. The appellant argued that this procedure is to be done and the doctor is doing a test that is to open the appellant's bowel.

The appellant argued that because he has had so many surgeries, scar tissue has grown so much that his bowel is blocked. The appellant argued that this is a non-invasive surgery that is done to save him having another invasive surgery that will take at least 90 days to start having a regular BM.

Panel decision

The panel finds that since it is not disputed that the appellant is eligible for health supplements under Section 62 of the EAPWDR, Section 69 does not apply as it is intended to provide a health supplement to a person in the family unit who is otherwise not eligible for the health supplement under the EAPWDR. As well, while the appellant's doctor provided a prescription for the Fleet Enema to prepare for upper and lower GT scopes, the doctor did not provide an opinion that the appellant faces a direct and imminent life-threatening need for the Fleet Enema. The panel finds that the ministry's conclusion that the information submitted does not establish that the appellant faces a direct and imminent life-threatening health need for the Fleet Enema, pursuant to Section 69(a), was reasonable. The panel also finds that the ministry reasonably determined that the requirements of Section 69(d) are not met as a Fleet Enema 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. Therefore, the panel finds that the ministry's decision, which concluded that all of the criteria in Section 69 of the EAPWDR are not met, was reasonable.

Conclusion

In conclusion, the panel finds that the ministry's decision to deny the request for a supplement to cover the cost of a Fleet Enema as not meeting the legislated criteria of Schedule C, Section 2, 2.1, 2.2, Sections 3, 3.1 to 3.12, 4, 4.1, 5, 6, 7, 8, and 9 or Section 69 of the EAPWDR, was a reasonable application of the applicable enactment in the circumstances of the appellant and, therefore, confirms the decision.