

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of June 5, 2015, which denied the appellant’s request for a compression bra on the basis that it was not an eligible item under Schedule C of the *Employment and Assistance for Persons With Disabilities Regulation* (“EAPWDR”).

PART D – Relevant Legislation

EAPWDR, section 62 and 69 and Schedule C

PART E – Summary of Facts

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

- Note from the appellant's physician dated April 23, 2015 indicating that the appellant requires left compression glove arm sleeve and compression bras re persisting lymphedema.
- Quote from a health equipment supplier dated April 24, 2015 indicating the cost for a compression eva bra of \$96.
- Letter from the ministry to the appellant dated April 27, 2015 advising that the compression bra is not an eligible item.
- Physiotherapist Progress Report dated May 21, 2015 indicating that the appellant requires a compression garment for her left upper extremity as well as for her chest wall. The physiotherapist states that the appellant requires a compression bra garment and this is just as important as the arm sleeve for her.
- Two pages with photographs of a compression garments, compression belt and compression bra.
- The appellant's Request for Reconsideration dated May 22, 2015 in which the appellant states that she has a pocket of fluid from her mastectomy and there is no other article she can use but a compression bra. The appellant states that although she received two bras after her mastectomy, they do not help her lymphedema. The appellant states that the ministry covers compression sleeves and she has a note from her physiotherapist and documentation from a health equipment supplier confirming that a compression bra works the same way as a compression sleeve.

Additional information provided

The appellant states that Pharmacare will not cover the compression bra because she received mastectomy bras. She states that the compression bra is just as important as a compression sleeve except it helps to control the swelling on the side of her body and chest wall. The appellant states that she does not agree with the ministry's decision because the compression bra is necessary and compression sleeves are covered but not the bra, but the compression bra does the same thing as the sleeve.

At the hearing the appellant provided oral evidence indicating that although Pharmacare had covered the two mastectomy bras she required a compression bra due to the large pocket of fluid under her arm in her chest wall resulting from lymphedema. The appellant stated that the ministry had provided her with a \$100 clothing grant which she used to purchase the compression bra but she is not eligible to apply for another clothing grant for one year and she requires clothes as she cannot afford to purchase clothes with her monthly disability income. The appellant explained that the compression bra works very much like the compression sleeve and because they both work the same way, the compression bra should also be covered by a health supplement.

Admissibility of New Information

The panel has admitted the appellant's oral testimony and information in her Notice of Appeal as it is evidence in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In

particular, the new information relates to the appellant's physical diagnosis and the process around obtaining funds for requested compression bra.

The ministry relied on the reconsideration decision. The ministry representative also stated that the crisis grant provided is not a yearly allowance, that the ministry does not provide a yearly clothing allowance but that the appellant was provided with a crisis grant of \$100 to purchase the compression bra as a clothing item because it was an unexpected need and fit the requirements necessary for a crisis grant.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant funding for a compression bra was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the compression bra is not an eligible item under EAPWDR section 62 or 69 or Schedule C.

The relevant legislation is as follows:

EAPWDR

General health supplements

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 a recipient of disability assistance.

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 3.11, other than paragraph (a) of section 3 (1).
- (B.C. Reg. 61/2010) (B.C. Reg. 197/2012)

EAPWDR Schedule C

General health supplements

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;

(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;

(b) Repealed. [B.C. Reg. 236/2003, Sch. 2, s. 2 (b).]

(c) subject to subsection (2), a service provided by a person described opposite that service in the following table, delivered in not more than 12 visits per calendar year,

- (i) for which a medical practitioner or nurse practitioner has confirmed an acute need,
- (ii) if the visits available under the Medical and Health Care Services Regulation, B.C. Reg. 426/97, for that calendar year have been provided and for which payment is not available under the *Medicare Protection Act*, and
- (iii) for which there are no resources available to the family unit to cover the cost:

Item	Service	Provided by	Registered with
1	acupuncture	acupuncturist	College of Traditional Chinese Medicine under the <i>Hea</i>
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia und
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia unde
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia und

(d) and (e) Repealed. [B.C. Reg. 75/2008, s. (a).]

- (f) the least expensive appropriate mode of transportation to or from
 - (i) an office, in the local area, of a medical practitioner or nurse practitioner,
 - (ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,
 - (iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or
 - (iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*,
provided that
 - (v) the transportation is to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital

service under the *Hospital Insurance Act*, and

(vi) there are no resources available to the person's family unit to cover the cost.

(g) Repealed. [B.C. Reg. 75/2008, s. (a).]

(1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

(2) No more than 12 visits per calendar year are payable by the minister under this section for any combination of physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services.

(2.1) If eligible under subsection (1) (c) and subject to subsection (2), the amount of a general health supplement under section 62 of this regulation for physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services is \$23 for each visit.

(3) If the minister provided a benefit to or for a person under section 2 (3) of Schedule C of the Disability Benefits Program Regulation, B.C. Reg. 79/97, the Income Assistance Regulation, B.C. Reg. 75/97 or the Youth Works Regulation, B.C. Reg. 77/97, as applicable, for the month during which the regulation was repealed, the minister may continue to provide that benefit to or for that person as a supplement under this regulation on the same terms and conditions as previously until the earlier of the following dates:

- (a) the date the conditions on which the minister paid the benefit are no longer met;
- (b) the date the person ceases to receive disability assistance.

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 3.11 of this Schedule are the health supplements that may be provided by the minister if ...

Medical equipment and devices – canes, crutches and walkers

3.1 (1) Subject to subsection (2) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:

- (a) a cane;
- (b) a crutch;
- (c) a walker;
- (d) an accessory to a cane, a crutch or a walker.

(2) A walking pole is not a health supplement for the purposes of section 3 of this Schedule.

Medical equipment and devices – wheelchairs

3.2 (1) In this section, "**wheelchair**" does not include a stroller.

(2) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:

- (a) a wheelchair;
- (b) an upgraded component of a wheelchair;

(c) an accessory attached to a wheelchair.

Medical equipment and devices – wheelchair seating systems

3.3 (1) The following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain a person's positioning in a wheelchair:

- (a) a wheelchair seating system;
- (b) an accessory to a wheelchair seating system.

Medical equipment and devices – scooters

3.4 (1) In this section, "**scooter**" does not include a scooter with 2 wheels.

(2) Subject to subsection (5) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (3) of this section are met:

- (a) a scooter;
- (b) an upgraded component of a scooter;
- (c) an accessory attached to a scooter.

Medical equipment and devices – bathing and toileting aids

3.5 (1) The following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to facilitate transfers of a person or to achieve or maintain a person's positioning:

- (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;
- (j) a portable commode chair.

Medical equipment and devices – hospital bed

3.6 (1) Subject to subsection (3) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to facilitate transfers of a person to and from bed or to adjust a person's positioning in bed:

- (a) a hospital bed;
- (b) an upgraded component of a hospital bed;
- (c) an accessory attached to a hospital bed.

Medical equipment and devices – pressure relief mattresses

3.7 (1) A pressure relief mattress is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that the pressure relief mattress is medically essential to prevent skin breakdown and maintain

skin integrity.

Medical equipment and devices – floor or ceiling lift devices

3.8 (1) In this section, "**floor or ceiling lift device**" means a device that stands on the floor or is attached to the ceiling and that uses a sling system to transfer a person.

(2) A floor or ceiling lift device is a health supplement for the purposes of section 3 of this Schedule if the following requirements are met:

- (a) the minister is satisfied that the floor or ceiling lift device is medically essential to facilitate transfers of a person in a bedroom or a bathroom;
- (b) the cost of the floor or ceiling lift device does not exceed \$4 200 or, if the cost of the floor or ceiling lift device does exceed \$4 200, the minister is satisfied that the excess cost is a result of unusual installation expenses.

Medical equipment and devices – positive airway pressure devices

3.9 (1) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (2) of this section are met:

- (a) a positive airway pressure device;
- (b) an accessory that is required to operate a positive airway pressure device;
- (c) a supply that is required to operate a positive airway pressure device.

Medical equipment and devices – orthoses

3.10 (1) In this section:

"**off-the-shelf**" , in relation to an orthosis, means a prefabricated, mass-produced orthosis that is not unique to a particular person;

"**orthosis**" means

- (a) a custom-made or off-the-shelf foot orthotic;
- (b) custom-made footwear;
- (c) a permanent modification to footwear;
- (d) off-the-shelf footwear required for the purpose set out in subsection (4.1) (a);
- (e) off-the-shelf orthopaedic footwear;
- (f) an ankle brace;
- (g) an ankle-foot orthosis;
- (h) a knee-ankle-foot orthosis;
- (i) a knee brace;
- (j) a hip brace;
- (k) an upper extremity brace;
- (l) a cranial helmet used for the purposes set out in subsection (7);
- (m) a torso or spine brace.

Medical equipment and devices – hearing instruments

3.11 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.

Medical equipment and devices — non-conventional glucose meters

3.12 (1) In this section, "**non-conventional glucose meter**" includes

- (a) a continuous glucose monitoring meter, and
- (b) a talking glucose meter.

The appellant's position is that although she received two mastectomy bras, they do not help with the lymphedema causing swelling in her chest wall and the compression bra is necessary as it is the only item that will help her condition. The appellant argues that as the compression bra works the same way as a compression sleeve, which is considered an eligible item, the ministry should cover the cost of her compression bra as required.

The ministry's position is that as the appellant is a recipient of disability assistance she is eligible to receive health supplements provided under section 62 and Schedule C of the EAPWDR. The ministry is also satisfied that the compression bra was prescribed by the appellant's physician, is the least expensive appropriate item for its purpose, and is necessary to avoid imminent and substantial danger to the appellant's health as required by Schedule C, section (2)(1)(a)(ii) of the EAPWDR.

However, the ministry found that the appellant is not eligible for a compression bra as a medical supply pursuant to EAPWDR section 2(1)(a)(A-F) as it is not an item required for wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care or limb circulation care. In particular, the ministry argues that a limb is an extremity (arms and legs) and a bra fits the trunk of the body and is not used for the purposes of compression of a limb, so the ministry was not satisfied that the appellant's request for a compression bra met the legislated criterion.

The ministry found that the compression bra does not meet the requirements for a medical or surgical supply as set out in Schedule C section 2(1)(a.1) as it not one of the specified items such as a lancet, needle or syringe, ventilator supplies, or tracheostomy supplies.

The ministry also argues that the compression bra is not an item set out in the EAPWDR sections 3.1 to 3.12 as it is not a cane, crutch, walker, wheelchair, wheelchair seating system, scooter, mobility aid, hospital bed, pressure relief mattress, floor or ceiling lift device, positive airway pressure device, foot orthotic, hearing instrument or non-convention glucose meter.

The ministry also argues that a compression bra does not meet the criteria as a therapy under EAPWDR Schedule C, sections 2(1)(c), 2(2) or 2(2.1) as it is not acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry or physiotherapy treatment.

The ministry also argues that a compression bra does not meet the criteria as one of the other remaining health supplements set out in EAPWDR Schedule C, sections 2(1)(f), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 or 9 as it is not a dental supplement, crown and bridgework supplement, emergency dental supplement, diet supplement, monthly nutritional supplement, natal supplement or infant formula.

The ministry also argues that the appellant's request for a compression bra does not meet the legislated criteria as a life-threatening health need under EAPWDR section 69. The ministry states that section 69 applies to health supplements set out under Schedule C, sections 2(1)(a) to (f) and section 3 and 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. The ministry states that the appellant does not require a remedy under section 69 as she is eligible to receive health supplements set out under Schedule C, sections 2 and 3 but that the information submitted with the RFR does not establish that the appellant faces a direct and imminent life-threatening health need for a compression bra. In addition the ministry states that the compression bra is not a health supplement set out in Schedule C, sections 2 and 3 and does not meet the requirements of EAPWDR Schedule C, sections 2(1)(a) and (f) and 3 to 3.11.

Panel Decision:

Eligibility for compression bra as a medical supply

The EAPWDR, Schedule C, section 2(1)(a) sets out that the ministry may provide either disposable or reusable medical or surgical supplies for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care or limb circulation care if the supplies are prescribed by a medical practitioner, the least expensive supplies appropriate for the purpose and necessary to avoid an imminent and substantial danger to health, and there are no resources available to the family unit to pay the cost of or obtain the supplies.

The panel finds that as the compression bra is not a supply required for one of the legislated purposes, being wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care or limb circulation care. In particular the panel finds that it is not required for limb circulation care as set out in EAPWDR section 2(1)(a)(i)(f) as the bra is required for the trunk of the appellant's body as opposed to a limb, being an arm or a leg.

Although the physiotherapist states that the compression bra is just as important as the arm sleeve and the appellant argues that the compression bra works the same as other compression garments and should be covered, the panel finds that the compression bra does not meet the legislated requirements for eligibility as a health supply under EAPWDR Schedule C, section 2(1)(a).

The panel also finds that the compression bra is not a medical or surgical supply for any of the purposes prescribed by EAPWDR, Schedule C, section 2(1)(a.1) or (a.2) so the panel finds that the ministry's decision that the appellant was not eligible to receive a compression bra as a medical supply was reasonable.

Eligibility for compression bra as medical equipment

The EAPWDR Schedule C, sections 3.1 to 3.12 specifies that medical equipment and devices include

items such as a cane, crutch, walker and accessories, wheelchair, scooter, various assistive devices, hospital bed, pressure relief mattress, lift devices, positive airway pressure device, orthotics, hearing instrument, or a non-convention glucose meter.

The panel finds that the compression bra does not fit in the criteria listed in EAPWDR Schedule C, sections 3.1 to 3.12 and concludes that the ministry's decision that the appellant was not eligible for a compression bra as medical equipment was reasonable.

Eligibility for health supplements under EAPWDR Schedule C, sections 2.1 to 9

EAPWDR, Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, and 9 set out that the ministry may provide: optical supplements, eye examination supplements, dental supplements, crown and bridgework supplements; emergency dental supplements, diet supplements; monthly nutritional supplements; natal supplements; and infant formula. EAPWDR section 67(3) sets out that the ministry may provide a nutritional supplement for an acute short-term need.

The panel finds that as a compression bra is not one of the other health supplements specified in EAPWDR Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 or 9, the ministry's decision that the appellant was not eligible for funding for a compression bra as a health supplement was reasonable.

Eligibility for compression bra as a therapy

EAPWDR, Schedule C, sections 2(1)(c), 2(2) and 2(2.1) set out that the ministry may provide no more than 12 visits per calendar year in the amount of \$23 for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physiotherapy treatments but as a compression bra is not one of these therapies it is not eligible for funding under these sections of the EAPWDR.

The panel finds that as a compression bra is not one of the specified therapies under EAPWDR Schedule C, sections 2(1)(c), 2(2) and 2(2.1), the ministry's decision that the appellant is not eligible for a compression bra as a therapy was reasonable.

Health supplement for persons facing direct and imminent life threatening health need – EAPWDR section 69

Section 69 of the EPAWDR applies to health supplements set out under Schedule C, sections 2(1)(a) to (f) and section 3, and 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.

As the appellant is eligible to receive health supplements under Schedule C, sections 2 and 3 she is not eligible for a remedy under EAPWDR section 69 even though her request for a compression bra does not meet the legislated requirements for a health supplement under Schedule C, sections 2 and 3.

The appellant has a large pocket of fluid under her arm for which she requires a compression bra. Although the compression bra is prescribed by the appellant's physician and although the appellant's

physiotherapist states that the appellant requires a compression bra which is just as important as the arm sleeve, there is no information indicating that the appellant faces a direct and imminent life threatening health need for which the compression bra is required. Accordingly, the panel finds that the ministry's decision that the appellant was not eligible for a compression bra pursuant to EAPWDR Section 69 was reasonable.

Conclusion

The panel acknowledges that a compression bra has been recommended by the appellant's physiotherapist and physician and would be beneficial for her condition. However, having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for coverage for a compression bra is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.