

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of July 7, 2015 wherein the ministry denied the appellant’s request for cloth first aid tape because cloth tape is not a medical or surgical supplies that are, at the minister’s discretion, either disposable or reusable and are required for one of the purposes set out in section 2(1)(a)(i) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR); and

Further, that the ministry is not satisfied that the supplies are necessary to avoid an imminent and substantial danger to the appellant’s health as set out in Schedule C, section 2(1)(a)(ii)(C) of the EAPWDR.

PART D – Relevant Legislation

EAPWDR - Schedule C, section 2

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Health Assistance Branch (HAB) Decision Summary dated June 8, 2015 – 2 pages;
- Letter to appellant dated June 8, 2015 from the ministry denying his request for cloth tape;
- One page of transactions on the appellant's bank account which indicates a purchase of \$7.84 from his local pharmacy;
- Quote of \$90.00 from the appellant's local pharmacy for 30 rolls of cloth first aid tape;
- Invoice from local pharmacy for 2 rolls of paper tape @ \$4.50; 1 roll of cloth tape @ \$3.00 and one package of cream @ \$5.99; total of invoice is \$15.11 incl. tax.
- Note from appellant's medical doctor (MP) dated 20/5/15 on a prescription pad stating "(appellant) needs tape to tape his (L) foot daily for plantar fasciitis" other notation on same paper – paid \$23.00;
- Note from MP dated 16/6/15 on a prescription pad stating, "(appellant) needs cloth tape for dly (daily) strapping of both feet for plantar fasciitis. He is having an allergic skin reaction to the tape he is currently using";
- Letter from orthotic clinic explaining the appellant's current foot condition;
- Request for Reconsideration dated June 23, 2015.
- On the Request for Reconsideration under Section 3 - Reason for Request for Reconsideration the following is noted, "I require cloth tape because of allergy. (MP) has confirmed that I am allergic to the current tape which is required for daily strapping of both feet due to plantar [fascitus] fasciitis".

The appellant had submitted a sales slip to the ministry for cloth tape because he needs to strap both his feet due to a problem with plantar fasciitis. The ministry requested the appellant also submit a note from his MP for the tape. The appellant submitted a note from his MP prescribing the cloth tape that stated "(the appellant) is having an allergic reaction to the tape he is currently using. The appellant needs to tape his (L) [left] foot on a daily basis." In addition, the appellant had submitted a quote from his local pharmacy for 30 rolls of cloth tape for \$100.80; and, an invoice from the same pharmacy for paper tape, cloth tape and a cream in the amount of \$15.11 and a bank statement showing a purchase of \$7.84 at the same pharmacy for the cloth tape. The appellant's expense for cloth tape was \$11.20 (incl. tax).

On the Notice of Appeal under Reason for Appeal the appellant noted "I am diabetic and already have circulatory problems. See my new doctor information attached." The appellant attached the following:

1. three pages of the appellant's personal and medical history;

The panel finds pages 1 and 2 of item #1 contains background medical information on the appellant and page 3 of Item #1 provides the appellant's reasoning for taping his feet. The panel finds these documents do contain information that is in support of the information and record that was before the ministry at the time of the reconsideration decision and therefore is admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

2. one page showing his monthly budget;

The panel finds this page does not contain new evidence and does not contain information that is in support of the information and record that was before the ministry at the time of reconsideration and therefore is not admissible under section 22(4) EAA.

3. 2 page letter dated April 9, 2015 from the ministry to the appellant informing him that a number of medical supplies have been approved, effective April 9th, 2015.

The panel accepts this letter as new evidence because the letter was written by the ministry to the appellant approving various medical supplies that would be provided for the appellant's use and, although this letter was not in the Appeal Record, the letter does support the appellant's position on the issuance of medical supplies and the supplies that he does receive, and therefore does contain information that is in support of the

information and record that was before the ministry at the time of reconsideration and is admissible under section 22(4) EAA.

4. 2 page letter dated April 13, 2015 from Ministry informing the appellant that a number of medical supplies, which includes 24 rolls of tape described as hypoallergenic, have been approved effective April 9th, 2015;

The panel accepts this letter as new evidence because the letter was written by the ministry to appellant advising him that his request for hypoallergenic tape has been approved and although the letter was not included in the Appeal Record, the letter does contain information that is in support of the information and record that was before the ministry at the time of reconsideration and is admissible under section 22(4) EAA.

5. The MP's note, "(the appellant) suffers from plantar fasciitis both feet. He had bilateral club feet surgery, has cerebral palsy, and is diabetic. His fasciitis does respond to taping but unfortunately he seems to be allergic to conventional tape. It causes dermatitis and especially with him being diabetic this could lead to infection. He has however responded well to cloth tape and he is hoping to continue with this." The note is not signed by the MP.

The panel accepts the letter from the MP as new evidence as the letter provides additional information on the appellant's need for cloth tape as opposed to the conventional tape he is currently using. The letter provides further information on the need for the cloth tape which is information that was before the ministry at the time of Reconsideration. The panel finds the note from the MP is admissible under section 22(4) EAA.

At the hearing the appellant called one witness. The witness told the panel she has been the appellant's caregiver for several years. She testified that last February she noticed the skin on the sole of the appellant's feet was red, peeling and appeared infected. She took the appellant to his MP who examined the feet and determined he was having an allergic reaction to the tape she was using to tape his feet. The doctor recommended the appellant change to a cloth based tape. The witness testified that they had been taping the appellant's feet with a plastic type adhesive tape provided monthly by the pharmacy designated by the ministry. The witness stated she and the appellant went to the local pharmacy where they purchased some cloth tape. She stated the pharmacist showed her how to properly tape the appellant's feet so to avoid wasting tape. She told the panel they have been using the cloth tape on the appellant's feet for 3 to 4 months and he hasn't had a problem.

The panel finds the witness' testimony regarding the condition of the appellant's feet, the use and kind of tape provided on a monthly basis by HAB (through the dedicated pharmacy) and the use of the cloth tape substantiates the appellant's need for cloth tape and provides additional information to the information and record that was before the ministry at the time of the reconsideration decision. Therefore, the panel finds the witness testimony does contain evidence and is admissible under section 22(4) EAA.

The appellant testified that his request to the ministry was for cloth tape and not cloth first aid tape as stated in the reconsideration decision. The appellant stated that his feet had developed an itch and so he would scratch them which resulted in the skin on the sole of his feet turning red, peeling and becoming infected. The appellant stated that after having his feet examined by his MP and being taped by the pharmacist at his local drug store, the itch and pain in his feet were gone. He stated the cream took care of the redness and the infection. The appellant told the panel that he took the sales slips from the pharmacy for the cloth tape and cream into the ministry office and was told the invoice would be sent to HAB for payment. The ministry also requested the appellant obtain a prescription letter from his MP which he submitted to the ministry. The appellant stated he contacted the pharmacy who provides his monthly supplies and was told they do not sell cloth tape and can't provide it. The appellant testified that because of the foot condition if his feet are not treated properly this could put his health in danger and if he gets an infection it could lead to loss of limb(s).

In response to questions from the panel, the appellant clarified that:

- He was told he could not go elsewhere to get any of the approved supplies, that the supplies approved by the ministry had to come from this specific pharmacy;
- He has been taping his feet for several months using the tape provided by HAB and until recently did not have any problems;
- He has been using the cloth tape for 3 to 4 months now without any sign of itchiness, soreness or redness;
- He receives 2 rolls of plastic adhesive tape each month from the pharmacy specified by HAB;
- He received a letter from the ministry that he would receive 24 rolls of hypoallergenic tape annually (2 rolls per month) but he uses/needs 3 rolls of cloth tape per week to tape his feet.
- He is not using the cloth tape for ongoing bowel care, catheterization, incontinence, skin parasite care;
- The cloth tape is not needed to avoid imminent and substantial danger to his health;
- Does not have resources available to purchase the cloth tape that he needs to tape his feet.

The panel finds the appellant's testimony regarding his need for cloth tape does provide additional support to substantiate his request to the ministry and supports the information and record that was before the ministry at the time of the reconsideration decision. Therefore, the panel finds the appellant's testimony is admissible as evidence under section 22(4) EAA.

The ministry relied on the facts as stated in the reconsideration decision.

In response to questions from the panel the ministry clarified that:

- the appellant has been approved to receive 24 rolls of hypoallergenic tape annually;
- the reconsideration decision may be in conflict with the appellant's previously approved medical supplies;
- Not sure if HAB treated the appellant's request as a "new" request and didn't consider that he has prior approval for hypoallergenic tape;
- Is not aware that hypoallergenic tape comes in many forms, i.e. cloth, plastic, silk;
- In reference to the notation at the bottom of page 2 of ministry's letter dated April 13, 2015 referencing Product Distribution Center, is not aware how items approved by ministry are obtained, under contract, by sole supplier, because he has not worked in this area;
- Is not aware if the appellant could go elsewhere to obtain the item(s) he needs if the provider can't supply the item.

The panel finds the information from the ministry does provide further information and clarification on the ministry's position at the time of the Reconsideration decision in support the information and record that was before the ministry at the time the reconsideration decision was made. Therefore, the panel finds the ministry's testimony is admissible as evidence under section 22(4) EAA.

The panel makes the following finding of fact:

- a. The appellant has received approval from ministry to receive 24 rolls of hypoallergenic tape annually;
- b. The appellant was having an allergic reaction to the plastic type tape being provided by the pharmacy approved by HAB;
- c. The appellant purchased cloth tape at his local pharmacy at a cost of \$11.20.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration of July 7, 2015 wherein the ministry denied the appellant's request for cloth first aid tape because cloth tape is not a medical or surgical supplies that are, at the minister's discretion, either disposable or reusable and are required for one of the purposes set out in section 2(1)(a)(i) of Schedule C of the EAPWDR; and

Further, that the ministry is not satisfied that the supplies are necessary to avoid an imminent and substantial danger to the appellant's health as set out in Schedule C, section 2(1)(a)(ii)(C) of the EAPWDR legislation.

The legislation considered: EAPWDR

Health supplement for persons facing direct and imminent life threatening health need

General health supplements

Section 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.

Ministry's Position

The ministry argued the appellant does not need the cloth tape for the purpose of wound care, ongoing bowel care required due to loss of muscle function, catheterization, skin parasite care or limb circulation care as set out in Schedule C, section 2(1)(i) EAPWDR. The ministry argued that although the appellant provided a prescription from his MP that the cloth tape is required on a daily basis to tape the appellant's left foot because of his plantar fasciitis, his condition does not meet any of the purposes listed in Schedule C, section 2(1)(a)(i) EAPWDR. The ministry argued there is no evidence that the cloth tape is necessary to avoid an imminent and substantial danger to the appellant's health. The ministry did agree that the appellant does not have the resources to purchase the cloth tape that he needs to tape his feet.

Appellant's Position

The appellant argued that he did as the ministry asked and got a prescription letter from his MP and submitted it to the ministry office. The appellant argued the tape he was provided on a monthly basis to tape his feet resulted in his feet becoming itchy and painful when he walked, so he went to see his MP. The appellant argued his MP prescribed a cloth tape be used to tape his feet because the skin on his feet was having an allergic reaction to the tape he was using. The appellant argued that since he began using the cloth tape his feet are not itchy and don't hurt when he walks. The appellant argued that he uses 3 rolls of cloth tape each week to tape his feet (150 rolls annually) and the ministry should provide this tape because if he uses the tape

provided by the HAB pharmacy his previous condition (the itchiness, redness, pain and infection) will return. The appellant argues the ministry should also pay the \$11.20 for the cloth tape he purchased because the HAB pharmacy could not supply the cloth tape and HAB told him he could not go elsewhere to obtain the approved medical supplies. The appellant argued using the cloth tape does meet the EAPWDR legislated criteria because what he is doing is preventative medicine – prevents wounds to his feet and assists with limb circulation (feet).

The evidence before the panel is that the appellant had been taping his feet because of a foot condition known as plantar fasciitis and was using a plastic type tape provided by the pharmacy under contract with HAB. The evidence from the MP indicates the tape the appellant was using caused an allergic skin reaction and he prescribed a cloth tape. The evidence is that on April 13, 2015 the appellant received a letter from the ministry that his request for hypoallergenic tape had been approved and that he would receive 24 rolls of tape annually. The letter from the ministry does not specify what type of hypoallergenic tape, i.e. plastic or cloth, is to be provided nor does it state the purpose for which the tape is provided. The reconsideration decision did not state that the Reconsideration officer had considered the ministry's approval of April 16, 2015 when the appellant's request for cloth tape and for his expenses to purchase the cloth tape were considered and denied. At the hearing, the ministry could not provide any clarification to the panel on this issue, except, to comment that the appellant's request for cloth tape must have been considered as a new request. The evidence is that the MP had previously prescribed hypoallergenic tape for the appellant that was approved by the ministry but the tape provided by the HAB pharmacy caused an allergic reaction. The evidence is that the pharmacy, who supplies the appellant with his monthly medical supplies does not sell hypoallergenic "cloth" tape and told the appellant they could not get this product, however, the appellant testified that he was able to purchase this type of tape from his local pharmacy.

At the bottom of page 2 of the April 13, 2015 of the ministry's letter to the appellant that approved the 24 rolls of Hypoallergenic tape the following note was found: "Additional Comments if required. This approval is valid for one year. It will not be automatically renewed. If you require these items beyond the expiry date, please have your physician write a new prescription indicating the items you need, the medical justification for the items and the amounts required per day, week or month. If you receive your products from a Product Distribution Center they can be delivered to you and there is no need to renew your approval. If you choose to use a different supplier you will be required to submit a new prescription and price quote from the supplier of your choice each year. Please ensure this is submitted at least three weeks prior to the expiry of this approval."

Panel's Decision

In reference to Schedule C, section 2(1)(a)(i) EAPWDR:

The panel finds that the ministry had approved that the appellant would receive 24 rolls of hypoallergenic tape annually and the tape provided to the appellant by the HAB pharmacy caused an allergic skin reaction on his feet and so his MP prescribed a cloth type tape. The evidence is the appellant contacted the HAB pharmacy regarding the cloth tape and was told they do not sell cloth tape and cannot supply it and the appellant understood that he could not utilize another source for his medical supplies. The panel finds the evidence supports the plastic hypoallergenic tape supplied by the HAB pharmacy was causing an allergic skin reaction on the appellant's feet so his MP prescribed a cloth type tape which is available on the market but not available at the pharmacy under contract with HAB. Although the appellant argued the cloth tape to tape his feet was a preventative measure for wound and limb circulation care, there is no medical evidence before the panel, and the appellant agreed, that his condition of plantar fasciitis is not listed in the legislated criteria under schedule C section 2(1)(a)(i) EAPWDR.

The panel finds that the Ministry's approval to provide the appellant with the hypoallergenic tape does not expire or come under review until April 2016 and there is no evidence the ministry (Reconsideration officer) considered the ministry's letter of April 13, 2015 when deciding on the appellant's request.

The panel finds that since there is a current contract in place to provide the appellant with hypoallergenic tape, which comes in cloth form, and that this information conflicts with the reconsideration decision not to provide the appellant with cloth tape, the panel finds the ministry's decision not to provide the appellant with hypoallergenic cloth tape is not supported by the evidence and was not reasonable.

Reference to Schedule C, section 2(1)(a)(ii) EAPWDR- Avoid Imminent and Substantial Danger to Health

The ministry position is that although the tape may be beneficial to the condition of the appellant's feet, there is no indication that the cloth tape (supplies) is necessary to avoid an imminent and substantial danger to the appellant's health.

At the hearing the appellant testified that he agreed that the cloth tape was not necessary to avoid an imminent and substantial danger to his health.

The panel finds there is no medical evidence to support that the cloth tape (supplies) is necessary to avoid an imminent and substantial danger to the appellant's health and therefore the ministry's decision that the appellant's request does not meet the criteria set out in Schedule C, section 2(1)(a)(ii)(C) EAPWDR was reasonable.

In reference to the appellant's out of pocket expense - \$10.81 for cloth tape

The panel finds that the appellant's request for cloth tape is supported by the ministry's letter of April 16, 2015 that the appellant would be provided with hypoallergenic tape which comes in cloth form. The panel finds that if the pharmacy under contract with HAB could not provide the cloth type hypoallergenic tape then it is reasonable to permit the appellant to go elsewhere and be compensated for his out-of-pocket expense until the ministry or HAB has found another supplier who can meet the ministry's commitment to the appellant in the letter of April 16, 2015.

Therefore, the panel finds the ministry's decision to deny that the appellant be provided with cloth tape was not supported by the evidence and rescinds the decision.

The ministry's decision is rescinded in favour of the appellant.