



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry)'s reconsideration decision dated August 26, 2015, which denied the appellant's request for an abdominal binder as an abdominal binder is not an item provided for in the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

The relevant legislation is section 69 and sections 2 and 3.10 of Schedule C to the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART E – Summary of Facts

The appellant is in receipt of disability assistance. In a letter dated July 30, 2015 the appellant's physician states that:

The appellant has undergone a number of abdominal operations and prolonged hospitalizations over a number of years for complications from infections due to diverticulitis. She has been left with a massive abdominal wall hernia in the lower abdomen where there is a complete absence of abdominal muscle. There is only a layer of crafted skin scar tissue covering the intestines. The covering of the hernia is subject to chronic ulceration and infections because of poor blood supply to the area.

The abdominal binder is essential to support the lower abdominal hernia and contain the outward pressure from the intestines. Without the binder the hernia will progressively enlarge leading to worsening breakdown of the skin. A binder loses its elasticity over time occasionally needs to be replaced.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision dated August 26, 2015, which denied the appellant's request for an abdominal binder as an abdominal binder is not an item provided for in the legislation.

The relevant legislation is section 69 and section 2 and 3.10 of Schedule C to the EAPWDR.

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).

SCHEDULE C

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 Health Professions Act
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the Health Professions Act
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia under the Health Professions Act
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia under the Health Professions Act
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia under the Health Professions Act
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia under the Health Professions Act

(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

Medical equipment and devices — orthoses

...

3.10

(11) The following items are not health supplements for the purposes of section 3 of this Schedule:

- (a) a prosthetic and related supplies;
- (b) a plaster or fiberglass cast;
- (c) a hernia support;
- (d) an abdominal support;
- (e) a walking boot for a fracture.

(f) Repealed. [B.C. Reg. 144/2011, Sch. 2.]

(12) An accessory or supply that is medically essential to use an orthosis that is a health supplement under subsection (2) is a health supplement for the purposes of section 3 of this Schedule.

In her Reasons for Appeal the appellant writes:

I require an abdominal binder for medical reasons. Without it my hernia will get worse. I need it to prevent skin breakdown which leads to open wounds, and help with constipation.

In this reconsideration decision the ministry denied the appellant's request on the grounds that an abdominal binder is not an item provided for in the legislation.

The panel reviewed the relevant legislation. Section 62 of the EAPWDR sets out the eligibility requirements for a person to receive health supplement. Section 63 to 68 list specific items available as health supplements. Section 69 allows the minister to provide a health supplement in life-threatening situations for certain health supplements found in sections 2 and 3 of Schedule C. Schedule C sections 2 to 9 set out an exhaustive list of the health supplements available to applicants.

The vast majority of the health supplements available are not relevant in this case, e.g. dental supplements, optical supplements, etc. If abdominal binders are an available health supplements they would be found under either section 2 or 3 of Schedule C.

The ministry argued that the need for the abdominal binder does not meet the "imminent and substantial danger" criterion set out in section 2. The panel finds that the ministry's decision that the evidence does not establish that the lack of the abdominal binder would place the appellant in imminent and substantial danger to her health as the information provided by her physician regarding the progressive enlargement of the hernia does not meet the criterion of "imminent" danger.

Section 3.10(11) clearly states that "a hernia support" and "an abdominal support" are not health supplements for purposes of that section.

We are therefore left with section 2 of schedule C which lists specific conditions for which health supplements are available. These are: wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care and limb circulation care. The appellant argued that the abdominal binder is a disposable/reusable medical and surgical supply



necessary for wound care. However, the ministry is currently supplying the appellant with wound care supplies and the panel finds that an abdominal binder is not a wound care medical supply. As the appellant is not applying for the abdominal binder for the treatment of any other of these conditions, the abdominal binder is not available to the appellant under the section.

The panel finds that the lack of an abdominal binder does not place the appellant in imminent and substantial danger. It also finds that an abdominal binder is not provided for in the legislation.

Accordingly, the panel concludes that the ministry's denial of the appellant's request for an abdominal binder on the grounds that it is not provided for in the legislation was a reasonable interpretation of the legislation in the circumstances and confirms the ministry's decision.