

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated August 28, 2015 which denied the appellant's request for funding for a health supplement, specifically, a two-month trial of a CPAP machine with mask and tubing.

In the reconsideration decision, the ministry determined as follows:

1. That the appellant did not meet the eligibility criteria for a general health supplement under section 67 of the *Employment and Assistance Regulation*;
2. That the appellant did not meet the eligibility criteria for a general health supplement under section 62 of the *Employment and Assistance for Persons With Disabilities Regulation*;
3. That the appellant did not meet the eligibility criteria for a health supplement as a life-threatening health need under section 76 of the *Employment and Assistance Regulation*; and
4. That the appellant did not meet the eligibility criteria for a health supplement as a life-threatening health need under section 69 of the *Employment and Assistance for Persons With Disabilities Regulation*.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) sections 67 and 76
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 62 and 69

PART E – Summary of Facts

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

1. The appellant's Request for Reconsideration ("RFR") dated August 14, 2015 to which is attached three pages of clinical records ("RFR Records") from a medical clinic ("Clinic"); and
2. 16 pages of records from the Clinic ("Records").

The content of the Records is found in the following summary of facts.

On March 4, 2015, the ministry received a prescription note ("Note") from the appellant's physician indicating that he required a CPAP machine for "severe sleep apnea." Included with this was an Oximetry Summary Report ("Report") concerning the appellant and dated September 26, 2014 which has written on it "Recurring cyclical destaturations [sic] consistent with moderate to severe sleep apnea."

On June 5, 2015, the ministry received the following documents relating to the appellant:

1. A fax cover sheet from a medical testing facility indicating that the appellant suffers from obstructive sleep apnea ("OSA");
2. A quote for a two-month trial of a CPAP machine with a humidifier, masking and tubing in the amount of \$725.00 and dated June 5, 2015 ("Quote");
3. A Medical Equipment Request and Justification form ("Request Form") completed by the appellant's physician dated April 2, 2015 indicating that the appellant suffers from OSA and recommending a CPAP machine; and
4. The Note and the Report.

The appellant's request for a CPAP machine was denied by the ministry on July 8, 2015.

In the RFR, the appellant states that he sleeps an average of 13 hours per day and continues to be constantly tired and fatigued. He writes that he has high blood pressure, obesity, depressive affective disorder and other psychiatric conditions for which he is under the care of a psychiatrist. He adds that he has been diagnosed with moderate sleep apnea and meets the criteria for CPAP assistance.

The RFR Records include a consultation report prepared by a psychiatrist and dated June 3, 2015 ("Psychiatrist Report"). In that report, the psychiatrist includes the diagnoses of adjustment disorder with depressive features, presently in remission, and psychosis not otherwise specified, also presently in remission. The psychiatrist adds the comment that the appellant advised that he has difficulties with sleep, that he sleeps 13 hours per night and intermittently has some sleep difficulties. The psychiatrist writes that he advised the appellant "to do as much as he can to get the CPAP and see whether or not this is going to help him with his sleep."

Also included in the RFR Records is a consultation report prepared by a physician and dated August 21, 2015 ("Physician Report"). This report refers to the aforementioned oximetry testing and confirms the appellant's diagnosed "moderate to severe sleep apnea." The physician notes that the appellant has a history of obesity, hypertension and depression and struggles with "significant daytime sleepiness due to his OSA" which, untreated, puts the appellant at risk of worsening hypertension, cardiovascular disease and pulmonary hypertension as well as mood deterioration due to poor sleep.

Evidence on Appeal

Appellant's Evidence At Hearing

At the hearing, the appellant argued that he faces a direct and imminent life threatening health need. He

discussed his co-morbidities including obesity and high blood pressure and argued that he could have a heart attack at any time. His sleep disturbance prevents him from exercising which could assist him in losing weight. The appellant referred to the Physician Report and reiterated that he finds it very hard to be tired during the day and maintain a positive attitude and a sense that he is moving forward. He does not know if the CPAP will allow him to function better but he would like to at least eliminate it as a possibility.

In response to questions, the appellant confirmed that if he was able to solve his sleep problems, it would benefit his other physical and mental conditions. The appellant indicated that he lives alone and receives monthly provincial income assistance.

Ministry's Evidence At Hearing

At the hearing, the ministry representative stated that while it was sympathetic to the appellant's situation, he had not met the eligibility criteria in the applicable legislation. The appellant is an "expected to work client" who receives basic income assistance on a monthly basis. He does not qualify as a person with persistent and multiple barriers ("PPMB") and he does not have the Person With Disabilities ("PWD") designation.

In response to questions, the ministry representative indicated that if the appellant does not qualify as a PPMB or have PWD designation his request would be considered under the *EAPWDR*. With respect to the issue of a direct and imminent life threatening need, the ministry argued that the medical evidence, including the Physician Report, does not establish the foundation for the legislative criteria as it does not suggest an immediate health risk.

The appellant's Notice of Appeal is dated September 18, 2015 and in it, he writes that he requires a CPAP machine to address a direct and life-threatening health need and that he intends to apply to the ministry for Persons With Disabilities ("PWD") and Persons With Persistent and Multiple Barriers ("PPMB") designations.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which denied the appellant's request for funding for a health supplement, specifically, a two-month trial of a CPAP machine, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The appellant's request was considered by the ministry under the provisions of the *EAR* and the *EAPWDR*.

Section 67 of the *EAR* enables the ministry to provide health supplements to those who meet certain criteria. The provision in force at the time of the appellant's application was as follows:

General health supplements

67 (1) Subject to subsection (1.1), 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

(a) is a recipient of income assistance under section 2 [monthly support allowance], 4 [monthly shelter allowance], 6 [people receiving room and board] or 9 [people in emergency shelters and transition houses] of Schedule A if

- (i) any person in the family unit is a person who has persistent multiple barriers to employment, and
- (ii) the recipient does not receive a federal spouse's allowance or guaranteed income supplement benefits.

(iii) Repealed. [B.C. Reg. 57/2007, s. 1.]

(b) is a recipient of income assistance under section 8 [people receiving special care] of Schedule A,

(c) is a dependant of a person referred to in

(i) paragraph (b),

(ii) paragraph (f), if the dependant was a dependant of the person on the day the person reached 65 years of age and remains a dependant of that person,

(iii) paragraph (g), if the dependant was a dependant of the person on the day the person's family unit ceased to be eligible for income assistance as a result of a payment made to the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry, or

(iv) paragraph (h), if the dependant was a dependant of the person on the day the person's family unit ceased to be eligible for income assistance as a result of an award of compensation under the Criminal Injury Compensation Act or an award of benefits under the Crime Victim Assistance Act made to the person or another member of the person's family unit, and

(A) if the dependant is under age 65, the family unit is receiving premium assistance under the Medicare Protection Act, or

(B) if the dependant is aged 65 or more, any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,

(d) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]

(e) is a dependent child of a recipient of income assistance or hardship assistance,

(f) was on the day the person reached 65 years of age

(i) a recipient of income assistance under section 2 [monthly support allowance], 4 [monthly shelter allowance], 6 [people receiving room and board], 8 [people receiving special care] or 9 [people in emergency shelters and transition houses] of Schedule A, and

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- (ii) eligible for health supplements under section 2 [general health supplements] or 3 [medical equipment and devices] of Schedule C,
 - (g) meets the following requirements:
 - (i) has not reached 65 years of age;
 - (ii) is a part of a family unit that ceased to be eligible for income assistance as a result of a payment made to the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry;
 - (iii) was eligible for health supplements under section 2 or 3 of Schedule C on the day the person's family unit ceased to be eligible for income assistance, or
 - (h) meets all of the following requirements:
 - (i) is part of a family unit that ceased to be eligible for income assistance as a result of an award of compensation under the Criminal Injury Compensation Act or an award of benefits under the Crime Victim Assistance Act made to the person or another member of the person's family unit;
 - (ii) was eligible for health supplements under section 2 or 3 of Schedule C on the day the person's family unit ceased to be eligible for income assistance;
 - (iii) either
 - (A) if the person is under age 65, the family unit is receiving premium assistance under the Medicare Protection Act, or
 - (B) if the person is aged 65 or more, any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement. ...

Section 76 of the *EAR* enables the ministry to provide health supplements for persons facing a direct and imminent life threatening health need as follows:

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

76 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) a person in the family unit is eligible to receive 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 62 of the *EAPWDR* enables the ministry to provide health supplements to persons or dependents of persons who are in receipt of disability assistance. The provision in force at the time of the appellant's application was as follows:

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) a recipient of disability assistance,
 - (b) a person with disabilities who has not reached 65 years of age and who has ceased to be eligible for disability assistance because of
 - (i) employment income earned by the person or the person's spouse, if either the person or the person's spouse
 - (A) is under age 65 and the family unit is receiving premium assistance under the Medicare Protection Act, or
 - (B) is aged 65 or more and a person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
 - (ii) a pension or other payment under the Canada Pension Plan (Canada),
 - (iii) money received by the person or the person's spouse under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry, or
 - (iv) money or value received by the person or the person's spouse that is maintenance under a maintenance order, maintenance agreement or other agreement, if either the person or the person's spouse
 - (A) is under age 65 and the family unit is receiving premium assistance under the Medicare Protection Act, or
 - (B) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
 - (c) a person who was a recipient of disability assistance on the day he or she became 65 years of age and a dependant of that person, if the dependant was a dependant of the person on that day and remains a dependant of that person,
 - (d) a dependant of a person referred to in paragraph (a) or (b) (iii),
 - (d.1) a dependant of a person referred to in paragraph (b) (i) or (iv), if any person in the family unit
 - (i) is under age 65 and the family unit is receiving premium assistance under the Medicare Protection Act, or
 - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
 - (d.2) a dependant of a person referred to in paragraph (b) (ii),
 - (d.3) a dependant of a person referred to in paragraph (f), if any person in the family unit
 - (i) is under age 65 and the family unit is receiving premium assistance under the Medicare Protection Act, or
 - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
 - (e) a dependent child of a recipient of hardship assistance,
 - (f) a person with disabilities who has ceased to be eligible for disability assistance because of an award of compensation under the Criminal Injury Compensation Act or an award of benefits under the Crime Victim Assistance Act made to the person or the person's spouse, if
 - (i) the person is under age 65 and the family unit is receiving premium assistance under the Medicare Protection Act, or
 - (ii) the person is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, or
 - (g) a person whose family unit ceases to be eligible for disability assistance because of financial assistance provided through an agreement under section 12.3 of the Child, Family and Community Service Act, during the term of the agreement.
- (1.1) A person eligible to receive a health supplement under subsection (1) (b) (ii) or (d.2) may receive the supplement
- (a) while any person in the family unit is
 - (i) under age 65 and receiving a pension or other payment under the Canada Pension Plan, or
 - (ii) aged 65 or more and receiving the federal spouse's allowance or the federal guaranteed income supplement, and
 - (b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services

only.

(1.2) A person eligible to receive a health supplement under subsection (1) (c) may receive the supplement (a) while any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, and (b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(1.3) A person who was eligible to receive a health supplement under subsection (1) (b) (i) or (iv), (d.1), (d.3) or (f) but ceases to be eligible for medical services only may continue to receive the supplement for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(2) A person referred to in subsection (1) (b) or (f) and his or her dependants and a person referred to in subsection (1) (c) cease to be eligible for any supplement under this Division if the person's family unit takes up residence outside British Columbia.

Section 69 of the *EAPWDR* enables the ministry to provide health supplements for qualified persons facing a direct and imminent life threatening health need 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) a person in the family unit is eligible to receive 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).

Positions of the Parties

The appellant argues that he suffers from OSA and that he qualifies for a health supplement in the form of a two month CPAP machine trial as a health supplement to address a direct and imminent life-threatening health need.

The ministry argues that the appellant does not meet the eligibility criteria in the *EAR* or the *EAPWDR* for a CPAP machine either as a general health supplement or as a person facing a direct and imminent life threatening health need. With respect to basic eligibility for health supplements, the ministry referred to section 67 of the *EAR* and noted that the appellant did not meet the criteria of section 67(1)(a) or (b) as he does not qualify as a PPMB or was not in special care and that he did not qualify under any of the remaining sub-sections, 67(1)(c)-(h). The ministry further referred to section 76 of the *EAR* and stated that the appellant did not meet the criteria under this provision because the evidence did not support a finding that the appellant faced a direct and imminent life threatening health need as provided in section 76(a) or that the health supplement, the CPAP, was necessary to meet that need as provided by section 76(b). The ministry argued that the word "imminent" suggests immediacy and that the loss of life is more likely than not going to occur very soon and that scenario cannot be supported by the evidence in the appellant's case. The ministry stated further that as the appellant does not qualify as a PPMB or have the PWD designation, the applicable

provisions of the *EAPWDR* do not apply.

Discussion

General Health Supplement Under the *EAR*

Section 67 of the *EAR* provides that the minister may provide any health supplement set out in sections 2 or 3 of Schedule C to or for a family unit if the supplement is provided to or for a person in the family unit who meets the eligibility criteria in one of sub-paragraphs (a) through (h).

The evidence indicates that the appellant receives income assistance but that he does not qualify as a PPMB and he does not receive accommodation in a special care facility as provided by section 8 of Schedule A to the of the *EAR* and as such, the panel finds that the ministry was reasonable in its determination that the appellant did not meet the legislative criteria for a health supplement under section 67(1)(a) or (b) of the *EAR*. Further, the panel finds that the ministry was reasonable in its determination that the appellant did not satisfy the legislative criteria for the provision of a health supplement under section 67(1)(c), (d), (e), (f), (g) or (h).

The panel therefore finds that the ministry was reasonable in its determination that the appellant was not eligible for a health supplement under section 67 of the *EAR*.

Direct and Imminent Life Threatening Need Under the *EAR*

Section 76 of the *EAR* provides that a health supplement may be provided to a person who is not otherwise eligible under the *EAR* if the minister is satisfied that the applicant has satisfied each of the requirements in sub-paragraphs (a) through (d).

Sub-paragraph (a) provides that the person must face a direct and imminent life threatening need and that there are no resources available to the person's family unit with which to meet that need. On review of the medical evidence, the panel notes that the Psychiatrist Report and the Physician Report set out the physical and mental health conditions that the appellant suffers from. However, while the authors of those reports indicate that the appellant would likely benefit from the use of a CPAP machine, the panel finds that neither express the view that the appellant faces a "direct and imminent life threatening need" as required under the legislation.

In the Psychiatrist Report, the appellant's psychiatrist writes that he advised the appellant "to do as much as he can to get the CPAP and see whether or not this is going to help him with his sleep." In the Physician Report, after setting out the appellant's health history, the physician writes that "having untreated OSA does put him at increased risk [of] worsening hypertension, cardiovascular disease, pulmonary hypertension" as well as a risk of mood deterioration.

Given the medical evidence as set out above and in particular, the advice of the psychiatrist and physician, the panel finds that the ministry was reasonable in its determination that the appellant did not satisfy the legislative criteria in section 76 of the *EAR* for a health supplement on the basis that he faced a direct and imminent life threatening need.

General Health Supplement and Direct and Imminent Life Threatening Need Under the *EAPWDR*

Section 62 of the *EAPWDR* provides that the minister may provide any health supplement set out in sections 2 or 3 of Schedule C to or for a family unit if the supplement is provided to or for a person in the family unit who meets the eligibility criteria in one of sub-paragraphs (a) through (h). To be eligible under section 62 however, the applicant seeking the health benefit must be a recipient of, or eligible for disability assistance or a dependent of a person who is a recipient of or eligible for disability assistance. The appellant gave evidence that he had not applied for the PWD designation and as such, the panel finds that the ministry's position that the appellant was not eligible for a health supplement under section 62 of the *EAPWDR* was reasonable.

Similarly, the panel finds that on review of the medical evidence as set out above and in particular, the advice of the psychiatrist and physician, the ministry was reasonable in its determination that the appellant did not satisfy the legislative criteria in section 69 of the *EAPWDR* for a health supplement on the basis that he faced a direct and imminent life threatening need.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's decision to deny the appellant a health supplement in the form of funding for a two-month trial of a CPAP machine on the basis that the appellant did not meet the legislative criteria as set out in sections 67 and 76 of the *EAR* and sections 62 and 69 of the *EAPWDR* was a reasonable application of the legislation in the circumstances of the appellant and the panel therefore confirms the ministry's reconsideration decision.



PART G – Order