

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”) dated July 28, 2015 that determined that the appellant was not eligible for reimbursement for prescription medicine expenses incurred by the appellant because the appellant did not meet the eligibility requirements of the Employment and Assistance Regulation (EAR) section 67, or of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 62, or of EAR section 76. Specifically, the ministry found that the appellant does not qualify as a person with persistent multiple barriers to employment (PPMB), is not a recipient of disability assistance, and does not face a direct and imminent life threatening need for reimbursement for the prescription medications. In addition, the ministry noted that prescription medications are not supplements under Schedule C.

PART D – Relevant Legislation

EAR section 67
EAR section 76
EAPWDR section 62(1)
EAR Schedule C
EAPWDR Schedule C

PART E – Summary of Facts

With the consent of both parties the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act* (EAA).

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

1. Photocopies of 9 receipts for prescription medications dated February 13, 2015 and 1 receipt for a prescription medication dated May 14, 2015. One of the receipts from February 13 does not show the cost of the medication but the appellant has written a note saying that he lost the original receipt for the first two bottles of the medication. He notes that the cost was \$14 for each of the 2 bottles and a dispensing fee of \$12.99 for a total cost of \$40.99. The receipts show that Pharmacare covered a portion of the cost of the prescription medications and the appellant has listed his total costs as \$275.
2. A letter from the ministry to the appellant dated June 3, 2015 that advises the appellant that his request for reimbursement for the prescription medications has been denied. The letter explains that the ministry has determined that the prescription medications were not pre-approved by the ministry prior to purchase. The letter also explains that the reason the appellant's request for reimbursement was denied was because "*The ministry provides MSP medical coverage which provides Pharmacare coverage, it is up to Pharmacare to determine what medications are covered. The ministry does not pay for or reimburse for medications.*"
3. A letter from the appellant to the ministry dated June 27, 2015 that outlines the appellant's reasons for seeking reconsideration. The appellant states that when he was in hospital in late 2014 and early 2015, 2 social workers (one of whom had the appellant's power of attorney) tried unsuccessfully to assist the appellant to qualify for disability assistance. He also states that he had to purchase the prescription medications on the day he was discharged from hospital because they were necessary to keep him alive. He reports that neither he nor the two social workers who were trying to assist him were advised by the ministry that prior approval is needed for reimbursement for the prescription medicine costs.
4. The appellant's *Request for Reconsideration* signed and dated by the appellant on July 14, 2015. He lists four reasons for requesting reconsideration:
 - a. the ministry refused to allow 2 social workers from 2 separate hospitals to apply for disability even though one of them had the appellant's power of attorney to do so.
 - b. The ministry failed to tell the appellant or his social workers that he had to complete all of the forms by a specific date. He notes that it is not his fault that he remained in hospital for an extended period of time because he was deathly ill.
 - c. The ministry never told the appellant or the social workers that he needed pre-approval.
 - d. The appellant asks how could he have gotten pre-approval when he didn't know what drugs he needed until they were given to him.

The appellant's *Notice of Appeal* was dated August 6, 2015. The appellant lists 3 reasons for his appeal:

- a. Because no social worker, even with full power of attorney was allowed to get the appellant on disability.
- b. Because his illness prevented him from getting disability because even after he was discharged from hospital, he was still very ill for months afterwards resulting in no energy, an inability to concentrate and excessive sleeping (day and night).
- c. Because disability does not seem to be designed to help those who are truly ill and as such do not have the energy to get government forms and to fill them out.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant reimbursement for prescription medicine expenses incurred by the appellant because the appellant did not meet the eligibility requirements of the EAR section 67, or of the EAWPDR section 62, or of the EAR section 76 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 appellant does not qualify as a person with persistent multiple barriers to employment (PPMB), is not a recipient of disability assistance, and does not face a direct and imminent life threatening need for the prescription medications which are not health supplements covered under Schedule C.

The relevant legislation is as follows:

EAR

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

(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.

(1.1) A person eligible to receive a health supplement under subsection (1) (c) (ii) or (f) 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.

(1.2) A person who was eligible to receive a health supplement under subsection (1) (c) (iv) or (h) 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) Subject to subsection (3), 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 recipient in the family unit who

(a) has received income assistance under the [BC Benefits \(Income Assistance\) Act](#) or the Act continuously from March 31, 1997 and on March 30, 1997 was eligible under section 37 (1) (a) of the BC Benefits (Income Assistance) Regulations, B.C. Reg. 272/96, as it read on March 30, 1997, for the health care services and benefits referred to in that provision, or

(b) is a dependant of a recipient referred to in paragraph (a).

(3) Subsection (2) applies only until the earlier of the following dates:

(a) the date the recipient ceases to receive income assistance;

(b) the first day of the calendar month after the minister makes a determination that the recipient, or any dependant of the recipient other than a dependent child, is capable of accepting employment.

(4) A person referred to in subsection (1) (c) (ii), (iii) or (iv), (f), (g) or (h) ceases to be eligible for any supplement under this Division if the person's family unit takes up residence outside British Columbia.

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) 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).

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) 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,

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- (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.

The Appellant's Position

The appellant argues that he (or the social worker to whom he gave power of attorney) should have been allowed to apply for disability assistance. In addition, he argues that he could not have applied for approval from the ministry to purchase the prescription medications because on the day he was discharged from hospital he had to have the drugs that were keeping him alive and prior to his discharge he didn't know what medications he would be prescribed.

The Ministry's Position

In the *Reconsideration Decision* the ministry argues that the appellant does not meet the legislated criteria in EAR section 67 because the appellant does not qualify as a person with persistent multiple barriers to employment and does not receive income assistance under section 8 of Schedule A of the EAR. In addition, the appellant is not a person otherwise described in section 67. The appellant does not meet the legislated criteria in the Employment and Assistance for Persons with Disabilities Regulations (EAPWDR) section 62(1) because the appellant is not a recipient of disability assistance and is not a person otherwise described in section 62 of the EAPWDR. The ministry notes that the appellant does not meet the criteria in section 76 of the EAR because there is no indication that he faced a direct and life threatening health need for reimbursement for the prescription medications and prescription medication is not a medical supply, medical transportation or medical equipment under Schedule C, sections 1(a), (f) or 3 which are the supplements eligible under section 76 of the EAR for a life-threatening health need.

The ministry states that reimbursement for prescription medication is not a supplement under Schedule C of the EAR. Specifically, the ministry reviewed all of the supplements under Schedule C of the EAR and concluded that prescription medications are not any of the supplements listed under that Schedule.

The ministry states that it “does not provide reimbursement for prescriptions” and in its letter to the appellant dated June 3, 2015 the ministry stated “*The ministry provides MSP medical coverage which provides Pharmacare coverage, it is up to Pharmacare to determine what medications are covered. The ministry does not pay for or reimburse for medications.*”

Conclusion

The panel appreciates the appellant’s frustration regarding his unsuccessful attempts to apply for disability assistance but notes that this is not directly relevant to his eligibility for reimbursement. In addition, the panel appreciates the appellant’s arguments insofar as why he was unable to seek pre-approval for his purchase of the prescription medications but notes that the *Reconsideration Decision* does not list this as one of the reasons for denying the appellant’s request for reimbursement (except insofar as it is mentioned in the background statement – but not in the actual decision). The essence of the ministry’s argument is that the appellant does not meet the eligibility requirements of sections 67 or 76 of the EAR or of section 62(1) of the EAPWDR and that it does not pay for or reimburse for the costs of prescription medications.

The panel notes that the ministry has confirmed that the appellant has not qualified as a PPMB and is not a person otherwise described in section 67 of the EAR. Accordingly, the panel concludes that the ministry reasonably determined that the appellant does not meet the eligibility requirements of section 67.

For persons who don’t meet the eligibility requirements of section 67 of the EAR, certain health supplements may be provided under s 76 of the EAR to meet a life threatening health need if the requirements of that section are met. The panel recognizes that the appellant claimed that upon discharge from the hospital he did face a direct and imminent life-threatening need for the prescription medications he purchased. Nonetheless the appellant has not provided any medical evidence to support his claim that he faced a direct and imminent life-threatening need for the prescription medications. In addition, the panel notes that Schedule C does not cover prescription medications. Accordingly the panel concludes that the ministry reasonably determined that the

appellant does not meet the requirements of section 76 of the EAR. Nonetheless, the panel notes that the *Reconsideration Decision* stated that “there is no indication that you face a direct and imminent life-threatening health need *for reimbursement* (italics added) for the prescription medications.” It is not the need for reimbursement that the appellant considered to be life-threatening but the prescription medications themselves.

The panel notes that the appellant makes reference to attempts to apply for disability assistance but the ministry states that he is not a recipient of disability assistance. Accordingly, the panel concludes that the ministry reasonably determined that the appellant does not meet the requirements of section 62(1) of the EAWPDR. Once again, the panel notes that Schedule C does not cover prescription medications even if the eligibility criteria of section 62 were met.

Finally, the panel notes that the ministry does not pay for or reimburse for the costs of prescription medications. In its letter of June 3, 2015 to the appellant, the ministry advised that it provides Pharmacare coverage with the MSP. Accordingly, the panel finds that the ministry reasonably determined that the appellant is not eligible for reimbursement for his prescription medicine expenses.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry’s determination that the appellant has not met the eligibility requirements of sections 67 or 76 of the EAR or of section 62(1) of the EAPWDR for reimbursement of his prescription medicine expenses was a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel therefore confirms the ministry decision.