



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated September 1, 2015 which denied the appellant's request for a supplement to cover the cost of delivery services for IV (intravenous) medication. The ministry found that the item requested is not listed as an eligible item in Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) or eligible as a crisis supplement pursuant to section 57 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – Section 57, 62 and Schedule C

PART E – Summary of Facts

The appellant did not attend the hearing and was represented by her husband.

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

1. Request for reconsideration signed and dated August 16, 2015;
2. Letter signed by the appellant's husband which provides a description of why this particular IV medication is needed, why it is only produced by a pharmacy that is located outside of the appellant's home city, and states in part:
 - The family is not in a position to add the delivery cost to its monthly budget;
 - The ministry has been paying for the delivery cost for 6 years; and
 - The family is saving the ministry several thousands of dollars annually by the willingness to be trained by the home nursing staff to change dressings and administer the IV medication;
3. Note from the appellant's physician which states that the IV medication is only available at one specific pharmacy and that the medication will be needed for the foreseeable future; and
4. 4-page fax from the pharmacy to the ministry dated June 8, 2015. The first page is a summary of the delivery cost from June 1, June 5 and June 30, 2015 and the following 3 pages are the actual invoices for the delivery cost for the respective dates.

In the Notice of Appeal signed and dated September 22, 2015, the appellant states: "we cannot get this medication anywhere else and cannot afford to pay to obtain it ongoing".

At the hearing the appellant's representative (her husband) described her medical conditions, why the IV medication is necessary and that there are no viable alternatives, the improvements to her condition since using the IV medication and the harm it would cause if the IV medication was discontinued. It was also explained why the pharmacy that provides the IV medication is the only one qualified to do so and that due to the distance from the appellant's home and the fact that it is not a retail pharmacy, and therefore not open to the public the IV medication must be delivered. However, the pharmacy has offered special considerations to the appellant and will allow pick-up service. But it is uncertain how long the pharmacy will allow this arrangement. It was also added that asking for help is demoralizing but necessary as the family has done everything it can to cover the cost of delivery including charging the cost to a credit card.

At the hearing the ministry relied on its reconsideration decision and added that it had no legislative authority to issue funds for the delivery cost of medication. The ministry also stated that even if the cost of delivering medication met the legislative requirements of a crisis supplement, the ministry could only cover the cost one time as a crisis and only in the month in which it is requested. Ongoing expenses are not covered under crisis supplements.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of delivery services for IV medication because the item requested is not listed as an eligible item in Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) or as a crisis supplement pursuant to section 57 of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

The legislation states:

Pursuant to Section 62 of the EAPWDR, the applicant must be a recipient of disability assistance, or be a dependant of a person in receipt of disability assistance in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has found that the requirement of Section 62 has been met in that the appellant has been approved as a recipient of disability assistance.

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. ...

Further, Section 2(1.1) of Schedule C, provides that "medical or surgical supplies" do not include nutritional supplements, food, vitamins, minerals or prescription medications.

Section 2(1)(c) provides that the following items are health supplements if the other criteria of the section are met: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy.

Section 2(1)(f) of Schedule C provides that the following items are health supplements if the other criteria of

the section are met: the least expensive appropriate mode of transportation.

Section 2.1 of Schedule C provides that the following are the optical supplements that may be provided under Section 62.1 of the EAPWDR: basic eyewear and repairs, pre-authorized eyewear and repairs.

Section 2.2 of Schedule C provides that the minister may pay a health supplement under Section 62.2 of the EAPWDR for an eye examination if the other criteria of the section are met.

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

- (a) the supplements are provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation, and
- (b) all of the following requirements are met:
 - (i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;
 - (ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
 - (iii) the medical equipment or device is the least expensive appropriate medical equipment or device. . . .

Section 3.1 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a cane, a crutch, a walker, an accessory to a cane, a crutch or a walker.

Section 3.2 provides that the following items are health supplements for the purposes of section 3 if the other criteria of the section are met: a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair.

Section 3.3 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a wheelchair seating system, an accessory to a wheelchair seating system.

Section 3.4 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a scooter, an upgraded component of a scooter, an accessory attached to a scooter.

Section 3.5 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a grab bar in a bathroom, a bath or shower seat, a bath transfer bench with hand held shower, a tub slide, a bath lift, a bed pan or urinal, a raised toilet seat, a toilet safety frame, a floor-to-ceiling pole in a bathroom or bedroom, a portable commode chair, a standing frame or a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility, and a transfer aid for a person for whom the transfer aid is medically essential.

Section 3.6 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed, and a positioning item on a hospital bed.

Section 3.7 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a pressure relief mattress.

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Section 3.8 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a floor or ceiling lift device.

Section 3.9 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: breathing devices.

Section 3.10 provides that the following items are an orthosis which is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a custom-made or off-the-shelf foot orthotic, custom-made footwear, a permanent modification to footwear, off-the-shelf footwear for a specific purpose, off-the-shelf orthopaedic footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, a hip brace, an upper extremity brace, a cranial helmet, a torso or spine brace, a foot abduction orthosis, or a toe orthosis.

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.]

Section 3.11 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hearing instrument.

Section 3.12 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a non-conventional glucose meter.

Crisis supplement

57 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if

(a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and

(b) the minister considers that failure to meet the expense or obtain the item will result in

- (i) imminent danger to the physical health of any person in the family unit, or
- (ii) removal of a child under the *Child, Family and Community Service Act*.

Section 2(1)(a) of Schedule C of the EAPWDR

The ministry's position is that the appellant is eligible to receive health supplements under Section 62 of the EAPWDR but that the requested item, the delivery service cost for IV medication, is not an eligible item as a medical or surgical supply set out in Section 2(1)(a) of Schedule C of the EAPWDR as it does not meet all of the criteria. The requested item is not a supply. It is service and it is not a disposable or reusable medical or surgical supply that is *directly* required for one of the purposes set out in the section, namely: wound care, ongoing bowel care, catheterization, incontinence, skin parasite care, or limb circulation care. The ministry conceded that failure to meet the expense or obtain the item will result in imminent danger to the physical health of the appellant.

The appellant's representative argued that:

- The delivery cost of the IV medication was unexpected expense because for the past 6 years the ministry paid for it and then stopped. Therefore it meets the requirements of section 57 of the EAPWDR as a cost was unexpected;
- The IV medication meets the requirement under schedule C, section 2(1)(a)(i)(b) of the EAPWDR as it is required for "ongoing bowel care required due to loss of muscle function", it is prescribed by a medical practitioner, it is the least expensive alternative because there are no other alternatives and the medication is necessary to avoid imminent danger; and
- The IV medication delivery meets the requirement under schedule C, section 2(1)(a)(iii) of the EAPWDR because in order to obtain the medication it must be delivered.

Panel Decision

Section 2(1) of Schedule C

In the case of the appellant, the ministry's decision is strictly limited to the **delivery service cost** for IV medication and not the medication itself. Schedule C, section 2(1)(a) of the EAPWDR states that the health supplements that may be paid for by the ministry are medical or surgical supplies that are either disposable or reusable. When asked, the appellant's representative stated that the delivery of the IV medication includes ice packs, a large pouch which contains smaller pouches with 250ml of the medication. No medical or surgical supplies that are either disposable or reusable are included in the delivery of the IV medication. The panel finds that the delivery services cost is a not a medical or surgical supply that is either disposable or reusable, and that the ministry reasonably determined that it is a service. The panel finds that the ministry reasonably determined that the delivery cost is not an item set out in sections 2(1)(a.1) and 2(1)(a.2) of the EAPWDR as it is not lancets, needles and syringes, ventilator supplies required for the essential operation or sterilization of a ventilator; tracheostomy supplies or supplies required to thicken food.

The appellant argues that the medication is necessary for ongoing bowel care required due to loss of muscle function. The panel finds that the evidence presented on this appeal did not establish that the appellant requires **delivery service** for ongoing bowel care due to loss muscle function or any other purposes set out in section 2(1)(a.1) of the EAPWDR.

The panel finds that the ministry reasonably determined that the evidence establishes that, in the case of the appellant, all of the criteria set out in Schedule C, section 2(1) of the EAPWDR have not been met.

Other sections of Schedule C of the EAPWDR

The ministry's position is that the appellant is not eligible to receive health supplements under Section 62 of the EAPWDR because the delivery service costs for IV medication, is not an eligible item specifically set out in any other sections of Schedule C of the EAPWDR. The appellant did not advance an argument regarding the other sections of the schedule C of the EAPWDR.

Panel Decision

The panel finds that the ministry reasonably determined that the requested delivery service costs for IV medication is not specifically set out in Schedule C of the EAPWDR. The panel finds that the ministry reasonably determined that the delivery service cost of the IV medication is not included as a

health supplement that may be provided by the ministry.

Section 57 of the EAPWDR

The ministry's position is that the appellant is not eligible to receive a crisis supplement under Section 57 of the EAPWDR because the delivery service cost for IV medication is not an unexpected expense or an item that is unexpectedly needed because she has been receiving delivery of this medication for 5 years, and there is no indication that alternative resources, such as picking it up or delivery that can be covered by a community program or service like home care nursing or the health authority, have been explored to meet the need of the item as specifically set out in section 57 of the EAPWDR.

The appellant's position is that the delivery cost of the IV medication was unexpected expense because for the past 6 years the ministry paid for it and then stopped. Therefore it meets the requirements of section 57 of the EAPWDR. She also argues that she does not have the resources to pay for the delivery cost.

Panel Decision

Section 57 of the EAPWDR sets out that the ministry may provide a crisis supplement for items that are either an unexpected expense or unexpectedly needed. If a need is on-going, it cannot be established that the item, in the case the delivery cost of medication, is unexpectedly needed. The appellant argues that ministry stopped paying for the delivery costs and therefore the item qualifies as an unexpected expense. The panel notes that the ministry reviewed the appellant's file on July 2, 2015 and on that same date the appellant was informed that the ministry would no longer cover the ongoing delivery cost of medication effective August 1, 2015 thus providing the appellant one month to make arrangements for the additional expense she may incur or explore other options to acquire her IV medication. The panel also notes that crisis supplements are not intended for ongoing expenses but to meet unexpected needs and finds that the ministry reasonably determined that the appellants need for delivery service was an ongoing expected need.

The appellant argues that there are no other resources available to her to meet the expense or obtain the item and that if she was to pick-up the medication directly from the pharmacy it would add gas and bridge toll expenses to her already stretched budget. The panel finds that the evidence failed to establish that the appellant exhausted all available resources within her community. Although she did unsuccessfully explore whether or not the medication could be produced locally or delivered to local health agencies it is not clear she exhausted all available resources in her area as her search was limited to delivery to health agencies. Additionally the appellant did not provide evidence that she had approached friends and family or local charity groups for help in either covering the cost of delivery services or that she utilized the special considerations that the pharmacy was willing to make on her behalf to offset the cost of delivery services; namely the pick-up service that was offered to her. Furthermore the appellant's husband stated that he has managed to pay for delivery cost since August 2015 by charging it to his credit card and that his credit card is paid in full every month. The panel finds that the ministry reasonably determined that the evidence establishes that, in the case of the appellant, the criteria set out in section 57 of the EAPWDR have not been met.



Conclusion

In conclusion, the panel finds that the ministry's decision to deny the request for a supplement to cover the delivery cost of IV medication as not meeting the legislated criteria of Schedule C or section 57 of the EAPWDR, was a reasonable application of the applicable enactment in the circumstances of the appellant and, therefore, confirms the decision.