

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision dated September 28, 2015 wherein the ministry denied the appellant’s request for funding for a soft mattress topper. The appellant is a recipient of disability assistance, and the ministry determined that the appellant was not eligible for the soft mattress topper:

- as medical equipment or devices, as provided in sections 3 to 3.12 of Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (“EAPWDR”). In particular the ministry determined that the soft mattress topper is not a hospital bed or accessory under section 3.6 of Schedule C, that it is not a pressure relief mattress under section 3.7 of Schedule C, and that it is not any of the other medical equipment or devices prescribed in sections 3.1 through 3.12 of Schedule C;
- as a medical supply, as provided in sections 2(1)(a), (a.1) or (a.2) of Schedule C; or
- as a health supplement for a person facing a direct and imminent life threatening need under s. 69 of the EAPWDR.

PART D – Relevant Legislation

EAPWDR section 69 [*health supplement for persons facing direct and imminent life threatening health need*]; and Schedule C.

PART E – Summary of Facts

The appellant did not attend the hearing. Having confirmed that the appellant was notified, the panel proceeded with the hearing in accordance with section 86(b) of the Employment and Assistance Regulation.

The appellant is a recipient of disability assistance and she owns a hospital bed.

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

- An assessment of the appellant performed by an occupational therapist (the “OT”) dated July 27, 2015. In the assessment the OT described the appellant’s diagnosis as “Primary CNS diffuse large B-cell lymphoma. Incurable. Lesions located in frontal cortex.” The OT went on to explain that “[The appellant] is a woman [with] brain cancer which is currently in remission after intense whole brain radiation. Cancer lesions and radiation have caused a brain injury which has affected her cognition, memory, insight and balance... She has chronic back pain... [having] been diagnosed with sciatica and an L4-L5 disc bulge with a narrow central canal in that region. Despite frequent review of pain and sleep medications, [the appellant] continues to have insomnia related to back pain and discomfort while in bed. [The appellant’s] current mattress is firm, and does not provide adequate cushioning and support for her joints. Sleep deprivation causes [the appellant’s] behavioural symptoms to escalate. Provision of a foam overlay would provide [the appellant] with a softer layer for comfort and to support her back, while still allowing the firm mattress structure to promote better bed mobility. Brain injury behaviours could be reduced by addressing insomnia and uncontrolled pain.”
- A quote from a supplier for a soft mattress topper in the amount of \$348.00.
- A letter from the appellant’s physician dated March 11, 2015 stating in part that “This letter is to verify that [the appellant] needs ...a soft bed cover to compensate for a mattress that is too hard...”
- A letter from the appellant’s physician dated July 21, 2015 stating in part that “This letter is to verify that [the appellant] needs a foam mattress to help her sciatica...”
- The appellant’s written submission from her Request for Reconsideration dated September 10, 2015 wherein she wrote that all her nerves, including her spinal cord, are affected since her CNS lymphoma is in her central nervous system. She stated that she needs the soft mattress topper for relief of pain so as to get some proper rest, and that lack of sleep leads to depression which makes her feel as though she hates her life now. The appellant wrote that “...I wish I was the same person as I was before cancer. The cancer has change[d] my life in many many way[s]. I don’t want to be in pain any more please help.”

In a written submission provided to the Employment and Assistance Appeal Tribunal with her Notice of Appeal in October 2015, the appellant stated that she has tried a foam topped overlay and experienced no pain so she knows the requested soft mattress topper “will help in a big way.” The appellant indicated that pain causes sadness, depression, and irritable suicidal thoughts. She also indicated that lack of sleep prevents her from thinking well which causes problems in her everyday life.

The panel assessed the appellant's written appeal submission as being consistent with and tending to corroborate her previous evidence regarding her health condition and the expected benefits of using a soft mattress topper. The panel has accepted this written testimony as evidence in support of the information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision and provided no new information.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision to deny the soft mattress topper is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was it reasonable for the ministry to determine that the appellant was not eligible for the requested item:

- as medical equipment or devices, as provided in sections 3 to 3.12 of Schedule C of EAPWDR, in particular because of its determination that the soft mattress topper is not a hospital bed or accessory under section 3.6 of Schedule C, that it is not a pressure relief mattress under section 3.7 of Schedule C, and that it is not any of the other medical equipment or devices prescribed in sections 3.1 through 3.12 of Schedule C;
- as a medical supply, as provided in sections 2(1)(a), (a.1) or (a.2) of Schedule C; or
- as a health supplement for a person facing a direct and imminent life threatening need under s. 69 of the EAPWDR?

EAPWDR 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:

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- (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; ...

Section 2(1.1) of Schedule C, provides that for the purposes of subsection 2(1)(a), "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(3) of Schedule C provides that "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.

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.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
- (b) an assessment by an occupational therapist or physical therapist confirming the medical need for the 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, a portable commode chair, a standing frame, a positioning frame, a transfer aid.

Medical equipment and devices — hospital bed

3.6 (1) Subject to subsection (3) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to facilitate transfers of a person to and from bed or to adjust or maintain a person's positioning in bed:

- (a) a hospital bed;
- (b) an upgraded component of a hospital bed;
- (c) an accessory attached to a hospital bed;
- (d) a positioning item on a hospital bed.

(2) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is 5 years from the date on which the minister provided the item being replaced.

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

- (a) an automatic turning bed;
- (b) a containment type bed.

Medical equipment and devices — pressure relief mattresses

3.7 (1) A pressure relief mattress is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that the pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity.

(2) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is 5 years from the date on which the minister provided the item being replaced.

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: specified breathing devices.

Section 3.10 provides that each of the following items is 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 required for the prescribed 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, a toe orthosis.

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.

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

Section 4 of the Schedule provides that the health supplement that may be paid under section 63 [*dental supplements*] are basic dental services, if the other criteria of the section are met.

Section 4.1 provides that the health supplement may be paid under section 63.1 for crown and bridgework, if the other criteria of the section are met.

Section 5 of Schedule C provides that the health supplement that may be paid for under Section 64 of the EAPWDR is emergency dental services.

Section 6 of the Schedule provides that the amount of a diet supplement that may be provided under section 66 [*diet supplements*] is set out for various conditions, if the other criteria of the section are met.

Section 7 of the Schedule provides as follows:

- 7 The amount of a nutritional supplement that may be provided under section 67 [*nutritional supplement*] of this regulation is the sum of the amounts for those of the following items specified as required in the request under section 67 (1) (c):
- (a) for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to \$165 each month;
 - (b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]
 - (c) for vitamins and minerals, up to \$40 each month.

Section 8 of the Schedule provides that the amount of a natal supplement that may be provided under section 68 [*natal supplements*] is set out, if the other criteria of the section are met.

Section 9 of the Schedule provides that the minister may provide infant formula under section 67.1 of the EAPWDR if the other criteria of the section are met.

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) 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).

The appellant's position, as set out in her Notice of Appeal, is that she disagrees with the ministry's reconsideration decision because she lives in pain every day and every night. The appellant relied on evidence from her physician and OT to argue that pain and lack of sleep prevent her from thinking well and cause her to be irritable, depressed, and suicidal. She also argued that she has slept on a foam device and experienced no pain, so she is certain the requested soft mattress topper will greatly help her health problems.

The ministry, while expressing sympathy for the appellant's circumstances, took the position that the soft mattress topper requested by the appellant does not meet the criteria for any of the medical equipment and devices or medical/surgical supplies prescribed in Schedule C. The ministry did acknowledge that the soft mattress topper could arguably be considered an upgraded component of a hospital bed or an accessory attached to a hospital bed as contemplated by section 3.6 of Schedule C, but stated that it doesn't satisfy the legislative criteria that it be medically essential to facilitate transfers to and from bed or to adjust or maintain the appellant's positioning in bed. The ministry also specifically argued that the soft mattress topper is not a pressure relief mattress as contemplated by section 3.7 of Schedule C since there is no evidence that it is medically essential to prevent skin breakdown and maintain skin integrity. Finally, the ministry argued that the evidence does not establish that the appellant faces a direct and imminent life-threatening need as required by section 69 of the EAPWDR.

Panel Decision

The ministry is only authorized to provide health supplements as provided by the legislation. This means that a requested health supplement, such as the soft mattress topper, must fall into one of the categories set out in legislation and must satisfy any relevant statutory criteria.

While the soft mattress topper could conceivably meet the description of a health supplement prescribed in section 3.6 of EAPWDR Schedule C, the evidence of the appellant, the physician and the OT indicates that the primary purpose of the soft mattress topper is for relief of insomnia related to back pain and discomfort. There is insufficient evidence before the panel to demonstrate that it is medically essential for transfers to/from bed or for adjusting/maintaining the appellant's positioning in bed. Similarly, there is no evidence to indicate that the soft mattress topper is medically essential to prevent skin breakdown and maintain skin integrity as required by section 3.7 in respect of pressure relief mattresses. In the panel's view, the soft mattress topper does not reasonably meet the definition or criteria for any of the other health supplements prescribed in Schedule C. Accordingly, the panel finds that the ministry reasonably determined that it could not supply the soft mattress topper as a health supplement under Schedule C.

With respect to coverage under section 69 of the EAPWDR, the legislation expressly applies to medical supplies and medical transportation as set out in sections 2(1)(a) and (f) respectively of Schedule C of the EAPWDR, and to medical equipment and devices as identified in section 3 of Schedule C. Section 69(d) specifies that the requirements prescribed in those provisions must be satisfied. As found by the panel above, the requested soft mattress topper does not satisfy the requirements of section 3.6 of Schedule C since it is not medically essential for transfers or positioning, and it does not satisfy the requirements of section 3.7 since it is not medically essential to prevent skin breakdown and maintain skin integrity. The soft mattress topper does not fit any other

category of prescribed health supplement and so is not covered by section 69. The panel also notes that there is no medical evidence indicating that the appellant faces a direct and imminent life threatening need and that the soft mattress topper is necessary to meet that need. Accordingly, the panel finds the ministry reasonably concluded that the appellant was not eligible for the soft mattress topper under section 69 of the EAPWDR.

Conclusion

The panel acknowledges that the soft mattress topper would likely provide the appellant with some degree of well-being and relief from her medical issues; however this panel is bound to apply the legislation as it stands. Based on the foregoing reasons and analysis, the panel concludes that the ministry's reconsideration decision is a reasonable application of the applicable enactment in the circumstances of the appellant. Accordingly, the ministry's decision is confirmed.