



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of October 1, 2015, which denied the appellant’s request for funding for Pico Salax and Dulcolax on the basis that they were not eligible items under Schedule C of the *Employment and Assistance for Persons With Disabilities Regulation* (“EAPWDR”) or eligible pursuant to EAPWDR section 57(3) as a crisis supplement.

PART D – Relevant Legislation

EAPWDR, section 57(3), 62, and 69 and Schedule C

PART E – Summary of Facts

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

- Ministry note dated August 21, 2015 indicating that a ministry representative contacted the appellant to advise that the requested items were not eligible for funding. The note indicates that the ministry representative suggested that the appellant could purchase the items and then request a crisis grant for food if he encountered difficulty afterwards. The note further indicates that the appellant stated that he had full medical coverage and that the requested items should be covered and he would go and see his advocate.
- The appellant's Request for Reconsideration dated September 17, 2015 in which the appellant states that he was seeking a crisis supplement pursuant to section 57(1)(b)(i) so that he could clean out his colon prior to colonoscopy to remove cancer causing polyps growing in his colon. The appellant states: "I was advised by the worker at the counter to get prices for form 407, if you don't use this form you may want to inform your staff". The appellant states that if he does not have the polyps removed and they cause cancer then his health is in imminent danger of the impending cancer.
- Instruction page regarding the appellant's procedure and requirement for Pico-Salax and Dulcolax.

In his Notice of Appeal the appellant states that the removal of possibly cancerous polyps is not an investigative procedure and that his doctor told him that after a previous removal of two polyps. The appellant states that this is a medical procedure and if it is not performed he will have cancer in his bowels which is a danger to his health. He also states: "[I]ying to get food voucher is governments solution".

Prior to the hearing the appellant provided a written submission dated November 12, 2015 indicating that he contacted his physician on November 7, 2015 and was advised that he could not get an appointment until November 24, 2015. The appellant stated that at that appointment a referral will be made to a specialist possibly in 2-3 months and at that time he will be able to obtain medical information as to why the colonoscopy is required and why it is imminent to his health to perform this surgery. The appellant states that in early 2014 he had a barium enema (lower gastrointestinal examination) which showed 3 polyps in his large intestine. In late 2014 he had a colonoscopy and two polyps were removed but the third could not be removed as it was too far up in his intestine. The appellant states that these procedures require a colon cleanse prior to surgery and while his physician provided new product samples before the first procedure, that option is not available this time.

The appellant states that the ministry does not understand that without the procedure his health is in imminent danger. The appellant states that his father had his complete lower intestine removed due to colitis, 5 years ago his uncle died from colitis and last year he had 2 polyps removed from his lower intestine. The appellant states that his bowels show blood in his stool which is inconsistent in size and consistence which means that the polyp or polyps must be removed and examined to ensure that there is no cancer cells or early signs of colitis. The appellant states that this proves that this procedure, if not performed, can or will cause imminent danger to his health.

The appellant states that the ministry's suggestion that he get a food voucher to cover a portion of the

cost is not an option.

Admissibility of New Information

The panel has admitted the appellant's written submission and information in his Notice of Appeal as it is evidence in support of 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*. In particular, the new information tends to corroborate the information before the ministry regarding the appellant's medical condition and reason for his request for medication funding.

The ministry relied on the reconsideration decision.

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*.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant funding for a medications required for colon cleansing prior to a colonoscopy was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the medications are not an eligible item under EAPWDR section 62 or 69 or Schedule C and was the ministry reasonable in determining that the appellant was not eligible for a crisis supplement pursuant to EAPWDR section 57(3).

The relevant legislation is as follows:

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 recipient of disability assistance.

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 3.11, other than paragraph (a) of section 3 (1).
- (B.C. Reg. 61/2010) (B.C. Reg. 197/2012)

EAPWDR Schedule C

General health supplements

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 <i>Hea</i>
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia und
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia unde
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia unde

(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

3 (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.11 of this Schedule are the health supplements that may be provided by the minister if ...

Medical equipment and devices – canes, crutches and walkers

3.1 (1) Subject to subsection (2) 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 achieve or maintain basic mobility:

- (a) a cane;
- (b) a crutch;
- (c) a walker;
- (d) an accessory to a cane, a crutch or a walker.

(2) A walking pole is not a health supplement for the purposes of section 3 of this Schedule.

Medical equipment and devices – wheelchairs

3.2 (1) In this section, "**wheelchair**" does not include a stroller.

(2) Subject to subsection (4) 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 achieve or maintain basic mobility:

- (a) a wheelchair;

- (b) an upgraded component of a wheelchair;
- (c) an accessory attached to a wheelchair.

Medical equipment and devices – wheelchair seating systems

3.3 (1) 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 achieve or maintain a person's positioning in a wheelchair:

- (a) a wheelchair seating system;
- (b) an accessory to a wheelchair seating system.

Medical equipment and devices – scooters

3.4 (1) In this section, "**scooter**" does not include a scooter with 2 wheels.

(2) Subject to subsection (5) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (3) of this section are met:

- (a) a scooter;
- (b) an upgraded component of a scooter;
- (c) an accessory attached to a scooter.

Medical equipment and devices – bathing and toileting aids

3.5 (1) 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 or to achieve or maintain a person's positioning:

- (a) a grab bar in a bathroom;
- (b) a bath or shower seat;
- (c) a bath transfer bench with hand held shower;
- (d) a tub slide;
- (e) a bath lift;
- (f) a bed pan or urinal;
- (g) a raised toilet seat;
- (h) a toilet safety frame;
- (i) a floor-to-ceiling pole in a bathroom;
- (j) a portable commode chair.

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 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.

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.

Medical equipment and devices – floor or ceiling lift devices

3.8 (1) In this section, "**floor or ceiling lift device**" means a device that stands on the floor or is attached to the ceiling and that uses a sling system to transfer a person.

(2) A floor or ceiling lift device is a health supplement for the purposes of section 3 of this Schedule if the following requirements are met:

- (a) the minister is satisfied that the floor or ceiling lift device is medically essential to facilitate transfers of a person in a bedroom or a bathroom;
- (b) the cost of the floor or ceiling lift device does not exceed \$4 200 or, if the cost of the floor or ceiling lift device does exceed \$4 200, the minister is satisfied that the excess cost is a result of unusual installation expenses.

Medical equipment and devices – positive airway pressure devices

3.9 (1) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (2) of this section are met:

- (a) a positive airway pressure device;
- (b) an accessory that is required to operate a positive airway pressure device;
- (c) a supply that is required to operate a positive airway pressure device.

Medical equipment and devices – orthoses

3.10 (1) In this section:

"**off-the-shelf**" , in relation to an orthosis, means a prefabricated, mass-produced orthosis that is not unique to a particular person;

"**orthosis**" means

- (a) a custom-made or off-the-shelf foot orthotic;
- (b) custom-made footwear;
- (c) a permanent modification to footwear;
- (d) off-the-shelf footwear required for the purpose set out in subsection (4.1) (a);
- (e) off-the-shelf orthopaedic footwear;
- (f) an ankle brace;
- (g) an ankle-foot orthosis;
- (h) a knee-ankle-foot orthosis;
- (i) a knee brace;
- (j) a hip brace;
- (k) an upper extremity brace;
- (l) a cranial helmet used for the purposes set out in subsection (7);
- (m) a torso or spine brace.

Medical equipment and devices – hearing instruments

3.11 A hearing instrument is a health supplement for the purposes of section 3 of this Schedule if

- (a) the hearing instrument is prescribed by an audiologist or hearing instrument practitioner, and
- (b) an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument.

Medical equipment and devices — non-conventional glucose meters

3.12 (1) In this section, "non-conventional glucose meter" includes

- (a) a continuous glucose monitoring meter, and
- (b) a talking glucose meter.

EAPWDR section 57 - 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*.
- (2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.
- (3) A crisis supplement may not be provided for the purpose of obtaining
- (a) a supplement described in Schedule C, or
 - (b) any other health care goods or services.

The appellant's position is that he requires the requested items to cleanse his colon prior to surgery; that the necessary procedure is not investigative and given his and other family members' health history of cancer, he requires the requested items so that he can proceed with the surgery and prevent imminent danger to his health.

Eligibility for requested items as a medical supply

The ministry's position is that as the appellant is a recipient of disability assistance he is eligible to receive health supplements provided under section 62 and Schedule C of the EAPWDR. The ministry is also satisfied that the requested items were prescribed by the appellant's physician, are the least expensive appropriate item for their purpose, and there are no resources available to the appellant to meet the cost as required by Schedule C, section (2)(1)(a)(ii)(a) and (b) and 2(1)(a)(iii) of the EAPWDR.

However, the ministry found that the appellant is not eligible for the requested items as a medical supply pursuant to EAPWDR section 2(1)(a)(i)(A-F) as they are not items required for wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care or limb circulation care. In particular, the reconsideration decision notes that the minister is not satisfied that the items requested are required due to loss in muscle function as the appellant's physician has not confirmed this.

The ministry's position is that the requested items are not necessary to avoid an imminent and substantial danger to the appellant's health as required in EAPWDR section 2(1)(a)(ii)(c). The ministry notes that although the appellant's physician prescribes the requested items to prepare for a colonoscopy, there is no indication that it is necessary to avoid an imminent and substantial danger to health.

The ministry found that the requested items do not meet the requirements for a medical or surgical supply as set out in Schedule C section 2(1)(a.1) as they are not one of the specified items such as a lancet, needle or syringe, ventilator supplies, or tracheostomy supplies.

The ministry's position is that the requested items are not consumable medical supplies that are required to thicken food and meet the other requirements in relation to medical supplies as required by EAPWDR, Schedule C, section 2(1)(a.2).

The ministry's position is that pursuant to EAPWDR, Schedule C, section 2(1.1) medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications so the requested items are not approved under that section of the legislation either.

Panel Decision:

The EAPWDR, Schedule C, section 2(1)(a)(i) sets out that the ministry may provide either disposable or reusable medical or surgical supplies for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care or limb circulation care if the supplies are prescribed by a medical practitioner, the least expensive supplies appropriate for the purpose and necessary to avoid an imminent and substantial danger to health, and there are no resources available to the family unit to pay the cost of or obtain the supplies.

The panel finds that the ministry was reasonable in determining that the requested items are not a supply required for one of the legislated purposes, being wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care or limb circulation care. The panel also finds that although the appellant's concerns about cancer is entirely understandable given his own health history and his familial health history, and while it would be preferable to have the colonoscopy as soon as possible there is no information provided to indicate that the requested items are necessary to avoid an imminent and substantial danger to health as required by EAPWDR Schedule C, section 2(1)(a)(ii)(c). In particular the appellant, in his submission, indicates that at a medical appointment on November 24, 2015 a referral will be made to the specialist possibly in 2-3 months at which time he will be able to get the medical information as to why the colonoscopy is required and why it is imminent to his health to perform the surgery.

The panel also finds that the ministry was reasonable in determining that the requested items are not

[]

a medical or surgical supply for any of the purposes prescribed by EAPWDR, Schedule C, section 2(1)(a.1), (a.2) or 2(1.1) as the requested items are not lancets, needles and syringes, ventilator supplies, tracheostomy supplies, or required to thicken food.

The panel finds that the ministry's decision that the appellant was not eligible to receive the requested items as a medical supply was reasonable.

Eligibility for the requested items as medical equipment

The EAPWDR Schedule C, sections 3.1 to 3.12 specifies that medical equipment and devices include items such as a cane, crutch, walker and accessories, wheelchair, scooter, various assistive devices, hospital bed, pressure relief mattress, lift devices, positive airway pressure device, orthotics, hearing instrument, or a non-convention glucose meter.

The panel finds that the requested items do not fit in the criteria listed in EAPWDR Schedule C, sections 3.1 to 3.12 and concludes that the ministry's decision that the appellant was not eligible for the requested items as medical equipment was reasonable.

Eligibility for health supplements under EAPWDR Schedule C, sections 2.1 to 9

EAPWDR, Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, and 9 set out that the ministry may provide: optical supplements, eye examination supplements, dental supplements, crown and bridgework supplements; emergency dental supplements, diet supplements; monthly nutritional supplements; natal supplements; and infant formula. EAPWDR section 67(3) sets out that the ministry may provide a nutritional supplement for an acute short-term need.

The panel finds that as the requested items are not one of the other health supplements specified in EAPWDR Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 or 9, the ministry's decision that the appellant was not eligible for funding for the requested items as a health supplement was reasonable.

Eligibility for the requested items as a therapy

EAPWDR, Schedule C, sections 2(1)(c), 2(2) and 2(2.1) set out that the ministry may provide no more than 12 visits per calendar year in the amount of \$23 for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physiotherapy treatments but as a compression bra is not one of these therapies it is not eligible for funding under these sections of the EAPWDR.

The panel finds that as the requested items are not one of the specified therapies under EAPWDR Schedule C, sections 2(1)(c), 2(2) and 2(2.1), the ministry's decision that the appellant is not eligible for the requested items as a therapy was reasonable.

Health supplement for persons facing direct and imminent life threatening health need – EAPWDR section 69

Section 69 of the EPAWDR applies to health supplements set out under Schedule C, sections 2(1)(a) to (f) and section 3, and is intended to provide a remedy for those persons who are facing a direct and imminent life-threatening health need for these supplements and who are not otherwise eligible

to receive them.

As the appellant is eligible to receive health supplements under Schedule C, sections 2 and 3 he is not eligible for a remedy under EAPWDR section 69 even though his request for funding for the requested items does not meet the legislated requirements for a health supplement under Schedule C, sections 2 and 3.

In his submission the appellant states that he had a previous colonoscopy in late 2014 at which time two polyps were removed but the third was too far up in his intestine to remove in the time allotted for the procedure. The appellant states that he has blood in his stool and inconsistent stool which means that the polyp must be removed and examined to ensure that there is no cancer cells or early signs of colitis. The appellant's position is that this proves that if this procedure is not performed it can or will cause imminent danger to his health.

While the information provided by the appellant certainly indicates that he has a serious health condition, there is no information indicating that the appellant faces a direct and imminent life threatening health need for which the requested items are required. The word imminent requires a degree of urgency and at this time the only information provided is that he will have the colonoscopy at some point in a few months. There is no further information from the appellant's physician indicating that the appellant faces a direct and imminent life threatening health need. Accordingly, the panel finds that the ministry's decision that the appellant was not eligible for the requested items pursuant to EAPWDR Section 69 was reasonable.

Eligibility for the requested items pursuant to EAPWDR section 57(3)

The appellant's position is that he should not have to apply for a crisis grant for food when what he is seeking is funding for a health item. The appellant's position is that to do so would be lying and he does not want to do that. The appellant also states that he has medical coverage and the requested items should be covered under Schedule C.

The ministry's note of August 21, 2015 indicates that a ministry representative had suggested that the appellant could purchase the requested items from his support allowance then request a crisis grant for food if he encountered difficulty. However, the ministry's position is that the appellant is not eligible for a crisis supplement pursuant to section 57(3) as the legislation states that a crisis grant may not be provided for the purpose of obtaining a supplement described in Schedule C or any other health care goods or services.

The panel finds that as EAPWDR section 57(3) states that a crisis supplement may not be provided for the purpose of obtaining a supplement described in Schedule C or any other health care goods or services, the ministry was reasonable in determining that the appellant was not eligible to receive a crisis supplement for the requested items as they are health care goods.

Conclusion

The panel acknowledges that the requested items of Pico Salax and Dulcolax have been prescribed by the appellant's physician and are required prior to the colonoscopy. However, having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for funding for the requested items is a reasonable application



of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.