

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 January 7, 2016 which held that the appellant is not eligible for coverage for prescription medication and related supplies, DDAVP Melt tablets and Botox injections administered with Coloplast needles, for the treatment of overactive bladder, because the requirements of Schedule C and section 69 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) are not met.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C and section 69

PART E – Summary of Facts

The ministry was not in attendance at the hearing. After confirming that the ministry was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

Information before the ministry at reconsideration

The appellant is a recipient of disability assistance. In a June 30, 2015 letter from her urologist and an August 18, 2015 letter from her general practitioner (GP), the appellant is diagnosed with overactive bladder. Unresponsive to other treatments, the appellant has been prescribed daily DDAVP melt tablets and Botox injections approximately every 6 months. The GP writes that the appellant is unable to work due to chronic pain related disability and that the cost of Botox treatment is a financial hardship. A July 21, 2015 letter from a pharmacy indicates that the appellant has been taking the prescribed melt tablets since October 2014 at a monthly cost of \$74.23. A letter of the same date from another pharmacy sets out the costs of the injection needles (\$62.52 per needle) and of the Botox, which varies from a low of \$384.85 for 100 units in August 2014 to a high of \$1,134.55 for 300 units in both January and May of 2015.

In her November 2015 Request for Reconsideration submission, the appellant writes that although many of her prescription drug costs are paid for, it is an undue hardship for her to have to pay for the drug costs not covered and that she would not have been able to access this needed treatment, which has an annual cost of \$3,285.00, without some help from her father. She is not sure how much longer her father can continue to support her.

The appellant writes that before undertaking Botox injections, she had to urinate two to three times an hour, day and night, and consequently got little rest and was confined to the house for a large part of the day. Since starting treatment, she has been able to resume a normal life.

Information provided on appeal

At the hearing, the appellant stated that she wants to be productive and that in order to function normally she requires the prescribed medications. Prior to taking this medication, she was depressed to the point of almost being suicidal, suffered from sleep deprivation, and was unable to help her dad as she used to. She takes one melt tablet at night, which slows her kidneys down, and is now on a regular twice yearly course of Botox injections. As a result of this treatment, she only gets up once during the night and is able to leave her home without having to accommodate for the need to urinate frequently. The appellant stated that the costs of her medical treatments have been a burden on her father and that she reimburses him when she can but it is difficult due to her limited income. When asked about possible funding from the Ministry of Health, the appellant replied that she believed that her physicians had requested such funding but were unsuccessful.

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PART F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry decision which held that the appellant is not eligible for coverage for prescription medication and related supplies, the melt tablets and Botox administered with injection needles, for the treatment of overactive bladder, because the requirements of Schedule C and section 69 of the EAPWDR are not met, is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

Relevant Legislation – Schedule C and section 69 of the 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;

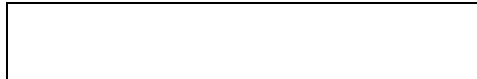
(ii) the supplies are

- (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:

- (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;.....

(1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

Subsection (1)(c) sets out the requirements for specified services from listed health care providers and subsection (1)(f) sets out the requirements for medical transportation.

Sections **2.1, 2.2, 3, 3.1-3.12**, and **4** through **9** of Schedule C set out the requirements for optical, medical equipment and devices (canes, wheelchairs and other specified equipment and devices), dental and natal health supplements.

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).

Appellant's position

The appellant's position is that she requires both the daily melt tablets and the twice yearly Botox injections in order to live a normal and productive life and that the cost of providing this treatment is unaffordable for her and has been a hardship on her father.

Ministry's position

The ministry's position is that the appellant is not eligible for the requested prescription medications and the injection needles because the requirements for a health supplement set out in Schedule C and for a health supplement to meet a life-threatening need set out in section 69 are not met.

Respecting Schedule C, the ministry argues that the prescription medications and injection needles are not any of the health supplements set out in subsections (1)(c) and (1)(f) of section 2 which allow for the provision of various medical services and medical transportation, or any of the health supplements set out in sections 3, 3.1-3.12, or 4 through 9.

When considering the appellant's request under subsection (1)(a) of section 2 – disposable or reusable medical or surgical supplies – the ministry's position is that:

- Subsection (1.1) expressly states that prescription medication is not a medical or surgical supply for the purposes of subsection (1)(a).
- Prescription medications for the treatment of overactive bladder are not medical supplies used for one of the purposes set out in paragraph (a)(i).
- While needles are included in the medical supplies which may be provided under subsection (1)(a.1), information is not provided to establish that either the injection needles or the prescription medications meet the requirements of paragraphs (a)(ii) [necessary to avoid imminent and substantial danger to health] and (a)(iii) [no resources available to the family unit to pay the cost]. The ministry argues that the principle that it is a payer of last resort is embedded in the legislation and there is no evidence that other funding options were explored. In particular, there is no evidence that the appellant has requested an exception from the Ministry of Health, which has the discretion to authorize payment for drugs, devices and services even if not listed on a formulary.

Respecting section 69, the ministry's position is that:

- The appellant does not require a remedy under section 69, because she is eligible to apply for health supplements as a recipient of disability assistance;
- The information provided does not establish that she has a direct and imminent life-threatening need for the requested items; and
- The requested items are not health supplements set out in sections 2(1)(a) and (f) or section 3 of Schedule C and do not meet all the requirements set out in those sections, and that those are the only health supplements that may be provided under section 69.

Panel Decision

Eligibility under section 2 of Schedule C

Subsection (1)(a) allows for the provision of unspecified medical or surgical supplies if certain other conditions are also met, including that the supplies are required for one of the purposes listed in paragraph (a)(i), which do not include overactive bladder. Additionally, subsection (1.1) places limitations on what may be considered as medical or surgical supplies by expressly excluding some items, one of which is prescription medication. Consequently, the panel finds that the ministry reasonably determined that prescription medications for the treatment of overactive bladder are not disposable or reusable medical or surgical supplies that are used for one of the set out purposes and that the requirements of section 2(1)(a) of Schedule C have not been met.

Subsection (1)(a.1) lists “needles” as medical or surgical supplies which may be provided if the requirements of paragraphs (a)(ii) and (a)(iii) are met. These requirements also apply to the requested prescription medications. Paragraph (a)(ii) requires that the requested supplies be necessary to avoid an imminent and substantial danger to health and paragraph (a)(iii) requires that there are no resources available to the family unit to pay the cost or obtain the supplies. The ministry determined that these requirements were not met for both the prescription medications and the injection needles.

The panel finds that although the appellant and her physicians have clearly set out the need for the prescription medications and injection needles to control the appellant’s overactive bladder, with the appellant describing the great improvement the treatment has made to her daily life, neither physician has described consequences to the appellant’s health if she does not receive the medication, imminent or otherwise. Therefore, the panel finds that the ministry reasonably determined that the information provided does not establish that the items requested are necessary to avoid an imminent and substantial danger to health and that the requirements of paragraph (a)(ii) were not met for both the prescription medications and the injection needles.

Respecting the requirement that the family unit have no resources available to pay for or obtain the requested items, the panel finds that there was no information before the ministry at reconsideration to indicate that alternative funding, in the form of an exception from the Ministry of Health, had been sought. The appellant’s general practitioner states that the cost of Botox treatment represents a substantial financial hardship, but neither he nor the urologist indicate that the Ministry of Health was approached for funding. The appellant stated that she believed both physicians had sought such funding but she provided little detail and no supporting documentation. Therefore, in the absence of substantiating information, the panel finds that the ministry reasonably determined that it had not been established that there are no resources available to the family unit to pay the cost or obtain the supplies as required by paragraph (a)(iii).

As the panel finds that the ministry reasonably determined that the above criteria were not met, the panel finds that the ministry reasonably determined that the appellant was not eligible for coverage for the prescription medications and injection needles under section 2 of Schedule C.

Eligibility under the remaining sections of Schedule C

The requested prescription medications and injection needles clearly do not fall within any of the health supplements set out in section 2(1)(c) [therapies and other services], 2(1)(f) [medical transportation], or sections 3 and 3.1-3.12 through section 9, which include specific devices and equipment as well as supplements ranging from dental to natal. Therefore, the panel finds that the ministry reasonably determined that the request for coverage for prescription medications and injection needles did not meet requirements for health supplements under these sections.

Eligibility under section 69

Section 69 allows for the provision of certain health supplements set out under sections 2 and 3 of Schedule C where a life-threatening health need exists and the applicant is not otherwise eligible for a health supplement under the EAPWDR. The appellant's circumstances are that she is able to receive health supplements under the EAPWDR because she is a recipient of disability assistance. Accordingly, the ministry has reasonably determined that she does not require a remedy under section 69.

In the discussion of eligibility under section 2 of Schedule C, the panel found that the ministry reasonably determined that the information provided did not establish an imminent and substantial danger to health. For the same reasons, the panel finds that the ministry reasonably determined that the information does not meet the higher test under section 69 of a direct and imminent life-threatening need for the prescription medications and injection needles.

Section 69 also requires that the requirements of sections 2(1)(a) and (f) and 3 to 3.12 of Schedule C, as applicable, are met. As discussed above, the ministry reasonably determined that the requirements of sections 3 to 3.12 were not met as the requested items are none of the health supplements set out in those sections, the prescription medications are not eligible supplies under section 2, and neither the prescription medications nor the injection needles met the requirements of paragraphs (a)(ii) or (iii) of section 2(1) of Schedule C.

Therefore, the panel finds that the ministry reasonably determined the appellant is not eligible for the requested items under section 69 of the EAPWDR.

Conclusion

For the above reasons, the panel finds that the ministry's reconsideration decision that determined that the appellant's request for funding for prescription medications and injection needles does not meet the legislated requirements set out in Schedule C and section 69 of the EAPWDR is a reasonable application of the legislation in the circumstances of the appellant. The ministry's reconsideration decision is confirmed.