

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated 22 February 2016 determined the appellant was not eligible for funding for light therapy as it is not:

- an extended therapy or medical supply under s. 2(1) of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*;
- a medical device or medical equipment under sections 3, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11 or 3.12 of Schedule C of the *EAPWDR*;
- a therapy or health supplement set out in any other section of the *EAPWDR*;

and because there was no evidence she faced a direct and imminent life threatening need and, even if she did, it is not one of the therapies that she could obtain under s. 69 of the *EAPWDR*.

PART D – Relevant Legislation

EAPWDR section 62 and 69 and Schedule C.

PART E – Summary of Facts

At the hearing one of the panel members realized that while he didn't know her by name, he knew the appellant when he saw her at the hearing venue. It appeared that the appellant is a volunteer for a program that also involves that panel member but while they met in passing, they were not friends or even acquaintances. The appellant and the ministry were informed of the situation and both considered that the member was not in a situation of conflict of interest and agreed to proceed to the hearing with the panel as formed. Consequently, the panel determined that since the panel member did not know the appellant personally or by name, that they had no particular relationship or friendship, it was not a situation of conflict of interest and the hearing proceeded.

The following evidence was before the ministry at the time of reconsideration:

- The appellant is a recipient of disability assistance and is eligible to receive health supplements provided under s. 62 and Schedule C of the *EAPWDR*.
- A letter dated 10 December 2015 by a specialist, a dermatologist, indicating the appellant needs light treatment 3 times/week for 16 weeks starting that day for a medical condition requiring light therapy.
- On 14 December 2015, the appellant submitted the dermatologist's letter to the ministry.
- On 5 January 2016 the ministry denied the appellant's request.
- A Request for Reconsideration dated 1 February 2016 signed by the appellant indicating she had been covered through the ministry for this treatment over the previous 2 years and that this treatment is required for her allergy to the sun's rays as exposure causes a painful rash. She could not understand why a treatment that had been covered already was being denied.
- With the reconsideration decision dated 22 February 2016, the ministry provided a series of documents indicating that in May 2015 the ministry had approved the appellant's request for medical transportation to the dermatologist's office in order to receive light therapy for appointments taking place during the month of May 2015.

In her Notice of Appeal dated 4 March 2016, the appellant indicated that she disagreed with the ministry reconsideration decision since these treatments had been covered during the previous 2 years and are helping her. She added that she was allergic to sunrays and that before these treatments, she was suffering severe rashes and was getting strange looks and people were not coming close to her for fear of contagion and that she couldn't even get employment when it was noticeable. Since she is getting this treatment, it really works and she hasn't had a really bad outbreak.

At the hearing the appellant reiterated the evidence that was before the reconsideration officer and added that her condition was really severe, with severe burns, regardless of whether she was covered with garments or applied sun block and that the treatment has worked for her. She did not know how much the treatments cost, was never charged for them and the dermatologist never asked her any money or never indicated to her that she would have to pay for them. She was under the impression that her application to the ministry was similar to the ones she had made in the past, for non-local medical transportation assistance, and she actually indicated she had completed the form called "Request for Non-Local Medical Transportation Assistance" that she deposited at the ministry's office along with the dermatologist's letter of 10 December 2015.

The appellant's witness testified that she had known her for 20 – 25 years and noticed how severe was her allergy to the sun: she had burns and was red but she found the treatment was phenomenal and it really worked for the appellant.

The ministry relied on the reconsideration decision for the appeal and stated there was no indication on file that the appellant had completed a Request for Non-Local Medical Transportation for this matter.

The panel determined that this additional oral evidence was admissible under s. 22(4) of the *Employment and Assistance Act (EAA)* as it was in support of the records before the minister at reconsideration, providing more information on the appellant's request, her medical condition, the effect of the light treatment and corroborating that evidence.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant was not eligible for light therapy was either a reasonable application of the legislation or reasonably supported by the evidence. The ministry determined it was not: an extended therapy or medical supply under s. 2(1) of Schedule C of the *EAPWDR*; a medical device or medical equipment under sections 3, 3.1, to 3.12 of Schedule C of the *EAPWDR*; a therapy or health supplement set out in any other section of the *EAPWDR*; and, because there was no evidence she faced a direct and imminent life threatening need and, even if she did, it is not one of the items that she could obtain under s. 69 of the *EAPWDR*.

S. 62 of the *EAPWDR* provides the authority to the minister to provide health supplements or medical equipment and devices:

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,...

Schedule C provides for what specific items the minister may approve. S. 2(1) deals with medical supplies and extended treatments:

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;...

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

As mentioned above, subsection (c) deals only with acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physical therapy. Subsection (f) deals with transportation.
 (1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

S. 2.1 and 2.2 deal with optical and eye examination supplements.

Medical equipment and devices are dealt with in s. 3(1) of Schedule C of the *EAPWDR*:

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...

Eligible medical equipment and health supplements are listed at s. 3.1 to 3.12 of Schedule C of the *EAPWDR*:

3.1: Cane, crutch, walker and accessory to a walker.

3.2: Wheelchair or its upgraded components or accessories;

3.3: Wheelchair seating system & accessories;

3.4: Scooter or its upgraded components or accessories;

3.5: Grab bar in bathroom; bath or shower seat; bath transfer bench with hand held shower; tub slide; bath lift; bed pan or urinal; raised toilet seat; toilet safety frame; floor-to-ceiling pole in bathroom; portable commode chair;

3.6: Hospital bed or its upgraded components or accessories;

3.7: Pressure relief mattress;

3.8: Floor or ceiling lift device;

3.9: Positive airway pressure device, its accessories or supplies;

3.10: Orthoses;

3.11: Hearing aids;

3.12: Non-conventional glucose meter.

S. 4 to 9 set out other health supplements including dental, diet, nutritional and natal.

Finally, health supplements may be provided in exceptional circumstances, for persons facing direct and imminent life threatening health needs and who, otherwise, would not be eligible for health supplements:

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 3.12, other than paragraph (a) of section 3 (1).

The ministry acknowledged that the appellant is a recipient of disability assistance and is eligible to receive health supplements under s. 62 of the *EAPWDR*. However, the ministry argued that the light treatment was not included in the extended therapy the ministry could fund and that it could not be considered as a medical supply or medical equipment under the legislation. Finally the ministry argued that s. 69 of the *EAPWDR* did not apply as the appellant was otherwise eligible for the health supplements of Schedule C, that there was no evidence based on the information submitted by the appellant that she faced direct and imminent danger to her life if she did not get the light therapy and that even if this evidence was provided, it was not a health supplement or medical equipment and

devices set out in s. 2(1)(a) and (f) and 3 of Schedule C of the *EAPWDR* that the ministry could provide.

The appellant argued that light therapy was essential for her wellbeing and that it really worked to limit the damages done by sunrays and alleviated her allergy. She took the position that since the ministry had paid for said treatments in the past, she could not understand why it was now denied and that decision was unreasonable.

Panel decision:

At the outset, the panel accepts the appellant's testimony that she intended to request non-local medical transportation assistance, like she had done in the past. She never had to pay for the treatment, the dermatologist never told her its cost and her request had been for transportation assistance. There is no indication on the ministry file as to what happened in this matter and why for this application the ministry dealt with it as a request for extended therapy and not for non-local medical transportation. However, the panel's jurisdiction is limited to determining whether that specific reconsideration decision is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

Extended therapy:

S. 2 (1)(c) of the *EAPWDR* allows the ministry to provide coverage for extended therapies that are listed in that section (acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physical therapy). The panel finds the ministry correctly determined that light therapy is not one of the therapies that are listed in that section and is not administered by any of the prescribed professionals described in the section – the appellant's therapist is a dermatologist. Since the appellant never had to pay for those treatments and the ministry indicated it had only funded the non-local medical transportation in the past, it was reasonable for the ministry to question whether these treatments could be covered under other plans or programs and to determine it was not satisfied there were no resources available to the appellant to cover the costs of the treatments.

Medical supply:

The other parts of s. 2(1) of the *EAPWDR* allow the ministry to provide disposable or reusable medical or surgical supplies for the purposes listed. There are examples of medical supplies at subsections (a.1) and (a.2) that are clearly medical items (lancets, needles, syringes, ventilator and tracheostomy supplies) or consumable items to thicken food. None of the purposes allowing the ministry to provide these supplies (wound care, ongoing bowel care, catheterization, incontinence, skin parasite care and limb circulation care) apply to light therapy. The panel finds that the ministry reasonably determined that the light therapy does not qualify as medical supply under that section.

Medical equipment and devices:

The ministry may provide medical equipment and devices according to s. 3 Schedule C of the *EAPWDR* but it has to be one of the items described at s. 3.1 to 3.12, Schedule C of the *EAPWDR* and that are listed above in this decision. The panel finds that light therapy does not qualify as one of

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the items listed in those sections and finds that the ministry reasonably determined it was not authorized to provide this therapy as health supplements under s. 3, 3.1 to 3.12, Schedule C of the *EAPWDR*.

Other items:

The other items for which the ministry could provide a health supplement do not include light therapy; they deal with medical transportation, optical and eye examination supplements, dental supplements including crown, bridgework and emergency dental supplements, diet and monthly nutritional supplements, natal supplements and infant formulas. The panel finds that none of those supplements include light therapy and concludes that the ministry reasonably determined that they were not an eligible health supplement under any of those other items with the caveat that if the decision had been based on the appellant's requesting non-local medical transportation, the situation could have been different.

Persons facing life threatening health need:

The panel notes that because the appellant is eligible for health supplements, the ministry reasonably determined that s. 69 of the *EAPWDR* did not apply. As well, the ministry reasonably determined that there was no evidence that the appellant was facing a direct and imminent life-threatening need if she did not receive the treatment. But even if the appellant met the "direct and imminent life threatening need" requirement, s. 69 of the *EAPWDR* does not allow the ministry to provide any supplement, equipment or device other than those authorized under s. 2 or 3 of Schedule C of the *EAPWDR* which, as the panel found, did not include light therapy. In other words, if the device or treatment is not listed in the *EAPWDR*, the ministry does not have the authority to provide it to a recipient under s. 69 of the *EAPWDR*.

Conclusion:

While the panel understands the appellant's need for the light therapy, the panel must analyze the reconsideration decision as is and refer to the legislation and how the ministry applied it. As well, although it appears that for unknown reasons the ministry dealt with this matter as a request for extended medical therapy instead of a request for non-local medical transportation and rightly determined the issue, the panel is not making a determination on the non-local medical transportation assistance request that the appellant indicated she made.

Thus, the panel finds the ministry reasonably determined the light therapy requested by the appellant was not one of the items that are included in s. 2 or 3 Schedule C of the *EAPWDR* and that consequently, the appellant was not eligible for therapy assistance under s. 62 or 69 of the *EAPWDR*. For those reasons, the panel finds the ministry's decision was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.