

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 22, 2016 which held that the appellant is not eligible for funding for crutches because the following requirements set out in the Employment and Assistance Regulation (EAR) were not met:

- The appellant’s family unit does not include a “qualifying person” as defined in section 66.1 and is therefore not eligible for health supplements under section 67.
- A life-threatening need for the crutches has not been established as required under section 76.
- The minister is not satisfied that the crutches have been prescribed by a medical or nurse practitioner, which is a requirement of section 3(2)(a) of Schedule C.
- The minister is not satisfied that the crutches are medically essential to achieve or maintain basic mobility, which is a requirement of section 3.1(1)(b) of Schedule C.

PART D – Relevant Legislation

EAR - sections 66.1, 67, and 76, and sections 3 and 3.1 of Schedule C

PART E – Summary of Facts

Information before the ministry at reconsideration

The appellant is a recipient of income assistance who is exempt from employment obligations because he is a sole recipient with a dependent child who has not yet reached 3 years of age. The appellant has not qualified as a person with persistent multiple barriers to employment (PPMB). On November 21, 2015, the appellant submitted an invoice in the amount of \$31.00 from a hospital for a pair of crutches.

The appellant's evidence in his January 2, 2016 Request for Reconsideration submission is that a medical professional in a hospital emergency department demanded that the appellant needed crutches in order to have any form of mobility during ever increasingly frequent acute attacks of gout. The appellant writes that the attacks severely limit movement in his joints – particularly in his feet and knees, for periods of 7 to 10 days for each bi-monthly occurrence – leaving him unable to walk without the assistance of crutches during these ongoing acute attacks. Not having the use of crutches would mean that he may fall and badly injure himself and he is therefore very limited in his ability to walk, play, or even feed his child. More importantly, without crutches he is unable to catch his erratic toddler if she runs off while they are outside, which puts her life at risk from being hit by cars at cross walk intersections or from falling over and hurting herself.

Information provided on appeal

Prior to the hearing, the appellant provided a 48-page submission which included the following:

1. Information relating to interactions between the ministry and the appellant respecting his application for early CPP benefits.
2. Ambulance and emergency department reports, including x-ray results, respecting the appellant's attendance at hospital on October 13, 2015, due to right knee pain for which he was given crutches.
3. Emergency department reports respecting the appellant's attendance on October 15, 2015. Care provider notes include "right knee pain – min swelling – lab and x-ray reassuring, tap not c/w infection."
4. A March 2, 2016 letter from a physician at the medical clinic the appellant has visited since 2012, stating that the appellant has been suffering from recurrent gout attacks since 2015 and "to maintain basic mobility he has been in need of crutches."
5. A February 17, 2016 physician's letter stating that when seen in the emergency department on October 13, 2015, a prescription order was placed for crutches. The appellant "required crutches because they were essential to his mobility. Given the fact he is also the sole caregiver of a two year old, he could not effectively function without them."
6. Blood and urine lab results for testing done on October 28, 2015.
7. A pharmacy history of medications prescribed to the appellant from October 13, 2015 – February 3, 2016.
8. General information respecting crutches, uric acid in blood, negative effects and medical complications from immobility, and risks arising when a senior falls.

At the hearing, the appellant submitted the following documents:

9. 2 pages from an October 2009 report on homelessness entitled "Understanding Canada's Streets."
10. 2 pages from a BC HealthLink report respecting gout.
11. A printout showing a balance of less than \$10 in the appellant's bank account.

At the hearing, the appellant stated that he would have provided his appeal submissions for reconsideration if the ministry's original decision had been clearer and actually included copies of the legislation that were identified as having been attached. The appellant also stated that his ability to provide information was limited by the ministry not providing him with its decision until 5 days after the decision was made. The appellant also questions the thoroughness of the ministry given that it mistakenly identified the location of the hospital the appellant attended and has erroneously included two references to air cast boots on the first page of its reconsideration decision.

Respecting his medical condition, the appellant stated that he was first diagnosed with gout 30 years ago but that the frequency of his attacks has increased, now occurring monthly, since moving to Canada, due to the change in climate. He reiterated that he has no mobility for 7-10 days with each attack. The appellant explained that the hospital did not provide him with a copy of the prescription for the crutches, as the matter is dealt with internally. The appellant stated that because he has not applied for early CPP, which will lock him into a lower monthly rate by \$30, his income assistance will be discontinued later this week, which will result in homelessness which is a threat to life. He also stated that the mother of his child is abusive, thus placing him and their child at risk.

The ministry did not object to the admissibility of any of the documents provided on appeal. The panel admitted the medical information, items 2 through 8, and 10, pursuant to section 22(4) of the Employment and Assistance Act as information in support of the information available at reconsideration. The medical information substantiates the previous information respecting the appellant's attendance at hospital due to a gout attack, the acquisition of crutches, and the impact of the gout attacks. The panel did not admit items 1, 9 and 11, which included information respecting homelessness and CPP benefits, nor the appellant's oral information about these topics or threats of abuse, as none of these matters were before the ministry at reconsideration.

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 funding for crutches because the requirements set out in the EAR were not met is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. That is, was the ministry reasonable in determining that:

- the appellant was not eligible under section 67 because his family unit does not include a “qualifying person” as defined in section 66.1;
- a life-threatening need for the crutches had not been established as required by section 76;
- it was not satisfied that the crutches have been prescribed by a medical or nurse practitioner as required by section 3(2)(a) of Schedule C; and
- it was not satisfied that the crutches are medically essential to achieve or maintain basic mobility as required by section 3.1(1)(b) of Schedule C?

Relevant Legislation

Definitions

66.1 In this Division:

"qualifying person" means a person who

- (a) has persistent multiple barriers to employment, or
- (b) is a recipient of income assistance who is described in section 8 (1) [*people receiving special care*] of Schedule A.

General health supplements

67 (1) 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) a family unit in receipt of income assistance, if
 - (i) the family unit includes a qualifying person, or
 - (ii) the health supplement is provided to or for a person in the family unit who is a dependent child,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is a dependent child, or

(c) a family unit, if the health supplement is provided to or for a person in the family unit who

- (i) is a continued person under section 66.3 (1) or (2) [*access to medical services only*], or
- (ii) is a continued person under section 66.4 (1) [*access to transitional health services*] and was, on the person's continuation date, a qualifying person or part of a family unit that then included a qualifying person, or
- (iii) is a continued person under section 66.4 (2).

Health supplement for persons facing direct and imminent life threatening health need

76 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).

Schedule C

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 (B.C. Reg. 197/2012)

- (a) the supplements are provided to a family unit that is eligible under section 67 [*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.

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.....

Eligibility requirements of section 67

The appellant's position at the time he requested reconsideration was that he saw nothing in section 67 of the EAR which precludes him from consideration as a recipient of income assistance who is exempt from seeking work as the sole care provider of a young child.

The ministry argues that the eligibility requirements of section 67 were not met because the appellant's family unit does not include a "qualifying person" which is defined in section 66.1 as either a person who has qualified as a PPMB or is a recipient of income assistance as a person receiving special care as described in section 8(1) of Schedule A. While the appellant is exempt from the consequences of failing to meet employment-related obligations because he is a sole recipient who has a dependent child who has not yet reached 3 years of age, this is not the same as having PPMB status.

Panel Decision

Section 67(1) sets out which recipients of assistance, including income assistance and hardship assistance, may be provided with health supplements under this section. Paragraph (a) provides that the eligibility of adult recipients of income assistance is limited to those who are part of a family unit that includes a "qualifying person." Section 66.1 defines "qualifying person" as a person who has PPMB status or is a recipient of income assistance who is described in section 8(1) of Schedule A – someone receiving accommodation and care in a special care facility or private hospital or who is

admitted to hospital because he or she requires extended care.

The appellant's circumstances are that he has not qualified as a PPMB and he is not a person receiving income assistance as described in section 8(1) of Schedule A. As the ministry notes, although the appellant is exempt from employment-related obligations as a sole recipient of income assistance with a dependent child who has not yet reached 3 years of age, this is not the same as qualifying as a PPMB. As the appellant is not in the categories of persons defined as a "qualified person" in section 66.1, the panel finds that the ministry reasonably determined that he is not eligible for health supplements under section 67.

Eligibility requirements of section 76

Respecting eligibility for crutches to meet a life-threatening health need under section 76, the appellant argues that the primary threat to his life results from the impact of high uric acid in the blood, and the complications that arise from immobility, which include pneumonia and skin sores, all of which is documented by the sources included in his submission. The appellant also points to the fact that crutches are one of the Schedule C health supplements that may be provided to meet a life-threatening health need, which indicates that the legislators understood the risks of immobility. That the hospital understood the risks of immobility is evidenced by the direction to immediately obtain crutches.

The appellant also argues that as he is unable to walk without crutches during his ongoing acute gout attacks, he could injure himself badly and furthermore, his child's life is put at risk from being hit by cars or from falling if he is unable to assist her because he doesn't have crutches.

The ministry argues that the eligibility requirements of section 76 were not met because the ministry had received no information from the appellant's physician confirming that the crutches were required to avoid a life-threatening risk. The ministry did not accept that the invoice for the crutches was sufficient to establish a life-threatening risk. The ministry also did not accept the appellant's argument that both he and his child could face a life-threatening situation if the appellant does not have crutches and his child runs across the street. The ministry argues that section 76 requires that the minister be satisfied that the appellant faces a direct and imminent life-threatening need for crutches, which does not include possible scenarios which could potentially happen if he didn't have the crutches.

Panel Decision

Section 76 allows for the provision of health supplements set out in sections 2(1)(a) and (f) and 3 of Schedule C, which includes crutches, for persons who are otherwise not eligible, such as someone who has not met the eligibility requirements of section 67. However, eligibility under section 76 is contingent upon additional criteria, including that the minister be satisfied that the person faces a direct and imminent life-threatening health need for the health supplement.

While the need for crutches, on the face of it, arises due to mobility limitations and the appellant has provided information substantiating the loss of mobility during these attacks, the panel finds that the

ministry reasonably determined that the information does not establish that the appellant faces a direct and imminent life-threatening need for the crutches. While there is information respecting life-threatening complications that can arise from immobility, the information does not establish that the appellant is experiencing any of these complications from his gout attacks, and therefore any risk is not reasonably viewed as imminent. The panel also finds that the ministry has reasonably viewed the potential scenarios involving the appellant's daughter as not establishing either a "direct" or an "imminent" life-threatening need, because they are possible scenarios arising from circumstances beyond risks *directly* associated with the appellant's health which might or might not happen. Therefore, the panel finds that the ministry has reasonably determined that a direct and imminent life-threatening need for the crutches has not been established and that the eligibility criteria of section 76 were not met.

Eligibility requirement of section 3(2)(a) of Schedule C

The appellant argues that a medical professional in a hospital emergency department demanded the use of crutches thereby satisfying the requirement of a prescription from a medical or nurse practitioner. Additionally, the appellant argues that the prescription for the crutches was handled internally by the emergency department, not via a hard copy prescription. Additional evidence establishing that the crutches were prescribed by a physician is included in the February 17, 2016 letter from an emergency department physician.

The ministry argues that the eligibility requirement of section 3(2)(a) of Schedule C was not met because the minister was not satisfied that the appellant has a prescription from a medical or nurse practitioner for the crutches. The ministry argues that the invoice from the hospital does not, in and of itself, qualify as a prescription, though the ministry acknowledges that the appellant's doctor likely recommended the use of crutches while the appellant's gout is causing him pain.

Panel Decision

The panel finds that the evidence before the ministry at reconsideration established that the appellant was directed to obtain crutches as a result of his attendance at the hospital emergency department and that, on this basis, it is reasonable to conclude that the crutches were prescribed by an attending physician. The panel also accepts the appellant's explanation that the process for prescribing medical equipment within the emergency department is conducted via internal means rather than the provision of a prescription on paper to be taken elsewhere to have filled. Therefore, even in the absence of the February 17, 2016 letter from the emergency physician confirming that the crutches were prescribed, the panel finds that the ministry was not reasonable to conclude that the requirement for a prescription under section 3(2)(a) of Schedule C was not met.

Eligibility requirement of section 3.1(1)b) of Schedule C

The appellant argues that the ministry has not given due weight to his medical circumstances. He had to attend the emergency department via ambulance due to immobility and he and his physician have confirmed that the crutches were required in order to mobilize during his gout attacks.

The ministry argues that the eligibility requirement of section 3.1(b) of Schedule C was not met because although the appellant would no doubt benefit from crutches due to his gout, the minister is not satisfied that they are medically essential to achieve or maintain basic mobility as there is no information from a medical practitioner to confirm this.

Panel Decision

While the ministry did not have the benefit of the information submitted on appeal, the available evidence was that the appellant's attendance at the emergency department resulted in the direction to obtain crutches, which is reasonably viewed as a requirement for crutches in order to better mobilize. The subsequent letters from the emergency department physician and the clinic physician further substantiate this view. While "basic mobility" is not defined, there is no evidence to suggest that the crutches were required to perform tasks other than generally moving about, which is reasonably characterized as basic mobility. For these reasons, the panel finds that the ministry was not reasonable to conclude that the crutches were not medically essential to achieve or maintain basic mobility as required by section 3.1(b) of Schedule C.

Conclusion

In order to be eligible for a health supplement for crutches, the requirements of section 67 or section 76 of the EAR and the applicable requirements set out in Schedule C must be met. While the panel has found that the ministry was unreasonable in determining that the requirements of sections 3(2)(a) and 3.1(b) of Schedule C were not met, the panel also concluded that the ministry reasonably determined that the criteria of section 67 and 76 of the EAR were not met. Therefore, the panel finds that the ministry decision that the appellant is not eligible for a health supplement for crutches is a reasonable application of the legislation in the circumstances of the appellant. The ministry's reconsideration decision is confirmed.