



PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated February 12, 2016 made by the Ministry of Social Development and Social Innovation (the ministry) which determined that the appellant was not eligible to receive funding for Prevident Gel Toothpaste and Biotene Oral Rinse (the toothpaste and oral rinse) because the information provided did not demonstrate that the appellant requires the toothpaste and oral rinse for any of the purposes set out in section 2 of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation*.

PART D – Relevant Legislation

The relevant legislation is section 62 and section 2 of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- (1) A prescription from the appellant's physician for the toothpaste and oral rinse which was received by the ministry on November 23, 2015.
- (2) A 5-page handwritten letter from the appellant dated January 24, 2016, in which she explains that she has a very high risk of dental decay due to an extremely dry mouth caused by certain of the medications that she is required to take. The lack of saliva means that her teeth are more prone to decay and weak enamel. The appellant points out that it is much less expensive to pay for the toothpaste and oral rinse than to fill or remove teeth. She explains that she has no resources to pay for the toothpaste and oral rinse. She argues that the toothpaste and oral rinse should be considered "disposable medical supplies" for the purpose of "wound care" or a "consumable medical supply" under the relevant legislative provisions.
- (3) A letter from the dental student currently attending to the dental needs of the appellant (the dentist) in which she strongly recommends that the appellant use the toothpaste and oral rinse due to a very high risk of dental decay because the appellant has an extremely dry mouth. She explains that the appellant's an extremely dry mouth means that she has a high risk of dental decay, that there is significant decay currently and that once the cavities are filled care will need to be taken to continue to care for her teeth properly. The dentist also states that the oral rinse is required to keep the mouth moist and the toothpaste, which has a fluoride content than normal toothpaste is necessary to help fight decay and tooth loss.

At the hearing the appellant submitted a two-page document listing in detail the medications that she is currently taking. This information was not before the ministry at the time of the reconsideration decision. The panel considered the admissibility of this letter pursuant to section 22(4) of the *Employment and Assistance Act*. In order for the letter to be admissible it must be "testimony that is in support of information or records that were before the ministry at the time the reconsideration decision." In this case, the letter contains more detailed descriptions of the appellant's medications, but no new information as the ministry was aware that the appellant was taking medications that caused her dry mouth. The ministry representative did not object to the panel admitting the information. Accordingly, the panel finds that this letter is admissible.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant was not eligible to receive funding for the toothpaste and oral rinse because the information provided did not demonstrate that the appellant requires the toothpaste and oral rinse for any of the purposes set out in section 2 of Schedule C of the EAPWDR was reasonably supported by the evidence and/or a reasonable interpretation of the legislation.

The relevant legislation is sections 62 and section 2 of Schedule C of the EAPWDR.

General health supplements

62 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 disability assistance,
- (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 is a continued person.

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;

THE APPELLANT'S POSITION

In her appeal submission and at the hearing the appellant and her advocate made the following arguments:

1. The ministry should provide this supplement because it is the least expensive way to deal with the appellant's condition and will save the ministry money because they will not have to pay for dental work for the appellant.
2. Due to the delay between the appellant's dental appointments, without the toothpaste and oral rinse cavities will form in the appellant's teeth so that the toothpaste and oral rinse are required to control and minimize the impact of those cavities which qualifies as "wound care" under the legislation.
3. The ministry should interpret the legislation broadly to allow for the provision of supplements that it makes sense to provide. In this case, the appellant meets all of the eligibility criteria but the specific items in question or the specific purpose for which they will be used are not listed. A broad and compassionate reading of the legislation would, however, allow the ministry to provide this supplement.

THE MINISTRY'S POSITION

The ministry maintained that in order to be considered the toothpaste and oral rinse must be prescribed in one of subsections 2(1)(a), 2(1)(a.1) or 2(1)(a.2). The appellant meets the following legislative requirements:

- She is in receipt of disability assistance,
- The toothpaste and oral rinse:
 - have been prescribed by a medical practitioner,
 - are the least expensive appropriate to the purpose,
 - are necessary to avoid an imminent and substantial danger to the appellant's health, and
- The appellant does not have resources to pay for the toothpaste and oral rinse.

However, in order to qualify under subsection (a) the supplies must for one of the listed purposes and prevention or treatment of dental cavities is not listed. As well, the purpose of the supplies is not "wound care". In order to qualify under subsection (a.1) the supplies must for one of the listed supplies and toothpaste nor oral rinse are listed there. In order to qualify under subsection (a.2) the supplies must be required to thicken food, which toothpaste and oral rinse are not.

As the toothpaste and oral rinse are not covered by the legislation, the ministry cannot pay for them for the appellant.

THE PANEL'S DECISION

In order for the ministry to provide a supplement for an item, that item must be designated in the

relevant legislative provisions. In this case, the item is not required for any of the purposes set out in subsection 2(1)(a) of Schedule C. Cavity prevention or treatment is not listed in that section and it is not possible to conclude that the purpose of toothpaste and oral rinse could be “wound care”. Toothpaste and oral rinse are not items listed in subsection 2(1)(a.1). Toothpaste and oral rinse are not used to thicken food, as required under subsection 2(1)(a.2).

As the supplies requested by the appellant are not designated by the legislation as supplies for which a supplement can be provided, the ministry’s determination that it could not provide this supplement to the appellant was a reasonable interpretation of legislation.

The panel confirms the ministry’s decision.