

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 February 23, 2016 which held that the appellant is not eligible for funding for HEPA filters and hypoallergenic encasements because:

- the requested items are not any of the health supplements set out in sections 2(1)(a.1), (c) or (f), 2.1, 3.1 to 3.12, and sections 4 through 9 of Schedule C of the Employment for Persons with Disabilities Regulation (EAPWDR);
- although the requested items are disposable or reusable medical supplies under section 2(1)(a) of Schedule C, they are not required for any of the purposes set out in subsection (1)(a)(i); and
- the requirements of section 69 of the EAPWDR are not met.

PART D – Relevant Legislation

EAPWDR, Schedule C and section 69

PART E – Summary of Facts

Information before the ministry at reconsideration

In support of her request for funding from the ministry, the appellant submitted a November 3, 2015 letter from her physician. The physician diagnoses the appellant with severe, uncontrolled allergic eosinophilic asthma for which she has had excessive courses of oral prednisone this year, hospital admissions, and continues to have profound daily life limiting symptoms while administering high-dose inhaled corticosteroids. The appellant requires specific environmental controls including hypoallergenic encasements for her mattress and pillows for house dust mites and HEPA filters for aeroallergen control. The appellant's residence has conditions which permit profound aeroallergen exposures as a stimulus for her asthma. The appellant's lung function is at 47%, and both environmental and medical options need to be exhausted to improve her health.

The appellant explains that she is very allergic to dust and the building in which she lives is 37 years old with very inadequate ventilation and forced air heating. Additionally, some residents smoke and others use chemical sprays to mask marijuana and cigarette smoke odors. The appellant has no choice to live elsewhere and although her building is presently non-smoking, some residents retain a "grandfathered" right to smoke. In addition to asthma, she also suffers from pulmonary hypertension and COPD.

Information provided on appeal

At the hearing, the appellant explained that she did not need ministry assistance to obtain the encasements which she now has, just the HEPA filters. She further described the various air pollutants from sources including smoke, carpeting, pets, and mold that impact her health and how the HEPA filter acts to remove the impurities to improve her breathing and health. She would not be able to find more affordable accommodation than her present home, noting that wherever she might live, there will be people who smoke.

At the hearing, the ministry relied on its reconsideration decision, explaining that the decision is quite long because the ministry conducted a thorough review of the EAPWDR to ascertain if the requested items were included in any of the health supplements set out in the legislation.

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 HEPA filters and hypoallergenic encasements 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 requested items are not any of the health supplements set out in sections 2(1)(a.1), (c) or (f), 2.1, 3.1 to 3.12, and sections 4 through 9 of Schedule C of the EAPWDR;
- although the requested items are disposable or reusable medical supplies under section 2(1)(a) of Schedule C, they are not required for any of the purposes set out in subsection (1)(a)(i); and
- the requirements of section 69 of the EAPWDR are not met?

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:

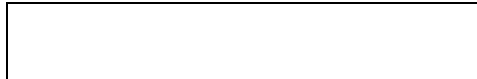
- (A) wound care;
- (B) ongoing bowel care required due to loss of muscle function;
- (C) catheterization;
- (D) incontinence;
- (E) skin parasite care;
- (F) limb circulation care;

(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.

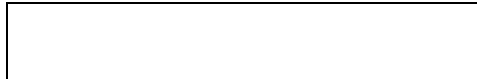
Subsection (1)(c) sets out the requirements for specified services from listed health care providers and subsection (1)(f) sets out the requirements for medical transportation.

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.

Medical equipment and devices — breathing 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:

- (a) if all of the requirements set out in subsection (2) of this section are met,
 - (i) a positive airway pressure device,
 - (ii) an accessory that is required to operate a positive airway pressure device, or
 - (iii) a supply that is required to operate a positive airway pressure device;
- (b) if the minister is satisfied that the item is medically essential to monitor breathing,
 - (i) an apnea monitor,
 - (ii) an accessory that is required to operate an apnea monitor, or
 - (iii) a supply that is required to operate an apnea monitor;
- (c) if the minister is satisfied that the item is medically essential for clearing respiratory airways,
 - (i) a suction unit,
 - (ii) an accessory that is required to operate a suction unit, or
 - (iii) a supply that is required to operate a suction unit;



- (d) if the minister is satisfied that the item is medically essential for clearing respiratory airways,
 - (i) a percussor,
 - (ii) an accessory that is required to operate a percussor, or
 - (iii) a supply that is required to operate a percussor;
- (e) if the minister is satisfied that the item is medically essential to avoid an imminent and substantial danger to health,
 - (i) a nebulizer,
 - (ii) an accessory that is required to operate a nebulizer, or
 - (iii) a supply that is required to operate a nebulizer;
- (f) if the minister is satisfied that the item is medically essential to moisturize air in order to allow a tracheostomy patient to breathe,
 - (i) a medical humidifier,
 - (ii) an accessory that is required to operate a medical humidifier, or
 - (iii) a supply that is required to operate a medical humidifier;
- (g) if the minister is satisfied that the item is medically essential to deliver medication,
 - (i) an inhaler accessory device,
 - (ii) an accessory that is required to operate an inhaler accessory device, or
 - (iii) a supply that is required to operate an inhaler accessory device.

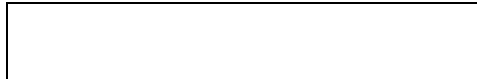
(2) The following are the requirements in relation to an item referred to in subsection (1) (a) of this section:

- (a) the item is prescribed by a medical practitioner or nurse practitioner;
- (b) a respiratory therapist has performed an assessment that confirms the medical need for the item;
- (c) the minister is satisfied that the item is medically essential for the treatment of moderate to severe sleep apnea.

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 her physician has confirmed that the HEPA filters are needed to protect the appellant's health from the various air pollutants in her building and suite which exacerbate her asthma, allergies and COPD. She needs a danger free living environment and is unable to afford the HEPA filters.

Ministry's position

The ministry's position is that although the information provided by the appellant and her physician establishes that the requested items are essential for the appellant's medical well-being, the appellant is not eligible for the requested items because they are not any of the health supplements it may provide, all of which are set out in Schedule C. The ministry also found that the requirements set out in section 69 are not met.

Respecting Schedule C, the ministry argues that the requested items are not any of the health supplements set out in sections 3.1-3.12, noting specifically that they are not any of the breathing devices (or accessories or components thereof) set out in section 3.9, which include positive airway pressure devices and apnea monitors, and that there is no evidence that the items are directly and medically essential for the treatment of moderate to severe sleep apnea. Additionally, the ministry argues that the requested items are not therapies set out in section 2(1)(c), the items set out in section 2(1)(a.1), or any of the supplements set out in sections 2.1 through 9.

The ministry accepts that the requested items are disposable or reusable medical or surgical supplies under section 2(1)(a) and that they are necessary to avoid an imminent and substantial danger to the appellant's health and are the least expensive appropriate supplies. However, they are not required for any of the purposes set out in paragraph (a)(i) which is also a requirement for eligibility under this section.

Respecting section 69, the appellant does not require a remedy under section 69, because she is eligible to apply for health supplements as a person who was a recipient of disability assistance on the day she turned 65.

Panel Decision

Under the EAPWDR, the only health supplements which may be provided by the ministry are those set out in Schedule C.

Eligibility under section 2(1)(a) of Schedule C

Section 2(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). There is no information identifying that the requested items are required for any of these purposes - wound care, ongoing bowel care due to loss of muscle function, catheterization, incontinence, skin parasite care, or limb circulation care. Consequently, the panel finds that the ministry reasonably determined that although the requested items are disposable or reusable medical supplies, because they are not required for one of the set out purposes the requirements of section 2(1)(a) have not been met and the appellant is not eligible under this section.

Eligibility under the remaining sections of Schedule C

The requested items clearly do not fall within any of the health supplements set out in section 2(1)(a.1) [lancets, needles and syringes, ventilator and tracheostomy supplies], (c) [therapies and other services], 2(1)(f) [medical transportation], or sections 3.1-3.12 through section 9. In reaching this conclusion, the panel finds that the ministry reasonably determined that neither the hypoallergenic encasements nor the HEPA filters are any of the breathing devices (or accessories or supplies) set out under section 3.9 – positive airway pressure device, apnea monitor, suction unit, percussor, nebulizer, medical humidifier, and inhaler accessory device. Therefore, the panel finds that the ministry reasonably determined that the appellant is not eligible for the requested items under the remaining sections of Schedule C.

Eligibility under section 69

Section 69 allows for the provision of health supplements set out under sections 2(1)(a) and (f) and 3 of Schedule C where a life-threatening health need exists, the requirements of sections 2 or 3 applicable to the specific health supplement are met, 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. Accordingly, the panel finds that the ministry has reasonably determined that she does not require a remedy under section 69 and that the appellant is not eligible for the requested items under section 69 of the EAPWDR.

Conclusion

Based on the above analysis, the panel finds that the ministry's reconsideration decision that determined that the appellant is not eligible for the requested items because the requirements set out in Schedule C and section 69 of the EAPWDR are not met is a reasonable application of the legislation in the circumstances of the appellant. The ministry's reconsideration decision is confirmed.