

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 June 15, 2016 which denied the appellant's request for diabetic supplies and internet fees because the legislative requirements of Schedule C, Section 2(1) of the Employment and Assistance Regulation (EAR) were not met.

The ministry found that the appellant does not have Persons With Disabilities (PWD) or Persons with Persistent Multiple Barriers (PPMB) designation and therefore, she is not eligible to receive medical supplies and equipment under Schedule C of the EAR as per Section 67 of the EAR. The appellant's request was therefore assessed under Section 76 [Health supplement for persons facing direct and imminent life threatening health need] of the EAR.

The ministry was not satisfied that the evidence established:

A direct and imminent life-threatening need for internet access fees, medical tape, shower packs and sensors while the ministry was satisfied that there are no resources available to meet the need - Section 76(a); and
The health supplement is necessary to meet the need – Section 76(b).

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Sections 67, 76 and Schedule C, Subsection 2.

PART E – Summary of Facts

Information before the ministry at reconsideration:

The appellant's Request For Reconsideration dated May 27, 2016 which included the following:

- A support letter dated October 2, 2015 from the appellant's diabetologist indicating her critical need for an insulin pump. The appellant has been under the diabetologist's care for several years in regards to her type 1 diabetes which was diagnosed in 1969. The appellant has been noted to have allergies to beef and porcine insulin, leading to severe hives and throat constriction with Lantus, Levemir and NPH insulin, and without some form of basal insulin activity she is at a severe risk for hospitalization with diabetic ketoacidosis and complications of her hyperglycemia such as renal failure. "As none of the covered insulins can be tolerated with potentially life threatening reactions documented to each", the diabetologist believes the only option to effectively manage her blood glucose is to deliver a rapid acting insulin via a pump. This request is considered urgent as she is believed to be at significant risk.
- A Special Authority Request by a health insurance provider for a continuous subcutaneous infusion (Insulin Pump) indicating approval on March 14, 2016 with a note that "Coverage has been provided in this highly exceptional case as a last resort option: Not precedent setting."
- A letter dated April 9, 2016 from the appellant's health insurance provider advising that diabetic sensor supplies are not a benefit under the program. A hand written note under the letter indicates that reservoirs are covered.
- A letter noted "Urgent" and dated April 21, 2016 from the appellant's physician who provides an update on the appellant's diabetic status, indicating that she is at risk of serious medical complications without proper diabetic control. The physician reports that the appellant has no extended medical benefits and is on assistance so is unable to afford to purchase the diabetic equipment herself. It states that the appellant has been working with a diabetologist on her sugars and is getting adequate control with an insulin pump. It is noted that the appellant urgently needs a 1 month supply and will have an ongoing need for; infusion sets, sensors, reservoirs, medical tape, shower packs and internet access for weekly reports and review with the diabetologist and the diabetic pump registered nurse.
- A prescription for "Ensure" dated April 21, 2016 from the appellant's physician.
- A support letter dated May 20, 2016 from the appellant's mental health counselor, who has known her for several years and seen the impact that diabetes has had on her physical and emotional wellbeing. Without the necessary supplies, the appellant will not be able to effectively use the pump and the counselor indicates that the costs are beyond the appellant's limited income. The counselor states that the appellant has complications of type 1 diabetes such as neuropathy in her limbs and feet causing poor circulation, numbness, skin breakdown and pain. She also struggles with anxiety, panic attacks and has had recent suicidal ideation.
- An undated letter from the appellant which provides her arguments for her request for diabetic supplies and internet access fees. The appellant also lists her complications as tooth and gum

decay, diabetic stomach, numbness in fingers, hands, legs and feet, cannot feel heat on hands, poor circulation in left leg, celiac, cannot feel high or low blood sugars, leaking blood vessels in eyes, extreme high and low blood sugars and extreme high blood sugar from stress.

- The appellant included general information from the Canadian and American Diabetes Associations, the Mayo Clinic and a series of hand written personal records indicating times over months of blood sugar results.

In the Notice of Appeal dated June 28, 2016, the appellant indicates that she has applied for PWD and the process can take up to 6 months and she needs the supplies before that time frame ends.

Information provided on appeal and admissibility

At the hearing, the appellant stated that she lives in a small town, needs transport, can't drive, has lost vision in her right eye, needs glasses, can only eat one meal a day (dinner) which is not good for a diabetic and the reason for her physician to prescribe "Ensure", has had stomach problems for many years, cannot tell if her blood sugars are high or low, and has reapplied for PWD status as of May 12, 2016. The appellant is without a family doctor and for advice is always directed to the diabetic clinic. The appellant indicates that she plugs in the insulin pump, phones in to make an appointment to get instructions for adjustments and has to wait 2-3 weeks when she could have help immediately with internet access. In response to a question about public access to the internet, the appellant stated that she requires steady access for ½ hour and has been cut off at the public facilities. The appellant stated that she did receive a computer for direct reporting when she received the insulin pump.

At the hearing, the ministry asked if the appellant had considered applying for PPMB designation as a potential alternative to PWD. The ministry representative indicated that both of these designations would provide similar health benefits for an applicant. The ministry representative did not have a response to a question about the supplies requested by the appellant being directly required for limb circulation care as defined in the legislation.

The panel has admitted the balance of the oral testimony of the appellant as corroborating the information at reconsideration under Section 22(4)(b) of the EAA.

The ministry did not provide additional evidence on appeal, relying on its reconsideration decision.

PART F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry's reconsideration decision which denied the appellant's request for diabetic supplies and internet fees because the legislative requirements of Schedule C, Section 2(1) of the EAR were not met, was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

The ministry found that the appellant does not have Persons With Disabilities or Persons with Persistent Multiple Barriers designation and therefore, she is not eligible to receive medical supplies and equipment under Schedule C of the EAR as per Section 67 of the EAR. The appellant's request was therefore assessed under Section 76 [Health supplement for persons facing direct and imminent life threatening health need] of the EAR and that the evidence did not establish:

A direct and imminent life-threatening need for internet access fees, medical tape, shower packs and sensors while the ministry was satisfied that there are no resources available to meet the need - Section 76(a); and
The health supplement is necessary to meet the need – Section 76(b).

Relevant Legislation

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).

(1.1) and (1.2) Repealed. [B.C. Reg. 145/2015, Sch. 1, s. 8 (b).]

(2) Subject to subsection (3), 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 recipient in the family unit who

(a) has received income assistance under the BC Benefits (Income Assistance) Act or the Act continuously from March 31, 1997 and on March 30, 1997 was eligible under section 37 (1) (a) of the BC Benefits (Income Assistance) Regulations, B.C. Reg. 272/96, as it read on March 30, 1997, for the health care services and benefits referred to in that provision, or

(b) is a dependant of a recipient referred to in paragraph (a).

(3) Subsection (2) applies only until the earlier of the following dates:

(a) the date the recipient ceases to receive income assistance;

(b) the first day of the calendar month after the minister makes a determination that the recipient, or any dependant of the recipient other than a dependent child, is capable of accepting employment.

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, Subsection 2

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 67 [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.

Eligibility criteria - Section 67 of the EAR**Ministry's Position**

The ministry found that the appellant does not have Persons With Disabilities or Persons with Persistent Multiple Barriers designation and therefore, she is not eligible to receive medical supplies and equipment under Schedule C of the EAR as per Section 67 of the EAR.

Appellant's Position

The appellant testified that she had reapplied for PWD designation on May 12, 2016 and stated that she was not familiar with PPMB designation.

Panel Decision

The panel confirmed that the appellant does not have Persons With Disabilities or Persons with Persistent Multiple Barriers designation and therefore, she is not eligible to receive medical supplies and equipment under Schedule C of the EAR as per Section 67 of the EAR. The panel found that the ministry reasonably assessed the appellant's request under Section 76 [Health supplement for persons facing direct and imminent life threatening health need] of the EAR.

Eligibility criteria - Section 76(a) of the EAR**Ministry's Position**

The ministry's position is that while the minister is satisfied that the appellant does not have the resources to meet her need; the minister has determined that her request is not considered a life threatening health need. The ministry has also determined that an alternate resource for reservoirs and infusion sets has already been established. The minister is not satisfied that the appellant's request for internet access fees, medical tape, shower packs and sensors is considered a life threatening health need. The ministry recognizes that sensors for a continuous glucose monitoring system would benefit the appellant in assessing trends in her blood glucose as it tests her blood sugars every 5 minutes; however, it is not explained that the appellant would face a direct and imminent life threatening health need without the sensors considering a glucometer could be used to test her blood glucose levels to determine hypoglycemic and hyperglycemic episodes and make necessary insulin pump adjustments based on information from those results. In regards to internet access fees, the minister has determined that that the appellant does not face a direct and imminent life threatening health need without the internet as there are other ways of communicating her blood glucose trends with her physician. In regards to medical tape and shower packs, the minister is not satisfied that the appellant requires these items to avoid facing a direct and imminent life threatening health need. The ministry argues that the insulin pumps are waterproof and the appellant also has the option to disconnect from the pump (depending on her pump type). Also the appellant does not explain why medical tape is required to avoid a life threatening health need as her infusion set stick to her body. While the ministry recognizes that batteries are required to run the insulin pump, batteries do not meet the requirements of Section 76(d)(i) and Schedule C, Section 2(1) of the EAR.

Appellant's Position

The appellant's position is the diabetic supplies requested are urgently needed to control her type 1 diabetes, she has many highs and lows that are not detected, a large part of her stress is due to

dealing with the ministry, sensors test her blood sugars every 5 minutes 24-7 which sets off an alarm so she can adjust and make changes as needed, low and high blood sugars cause many health factors some of which the appellant has had for 48 years, she takes medication for diabetic stomach and has dental health problems. The appellant argues that the batteries for the pump are expensive as is the internet which she needs to inform the diabetic clinic of any and all changes. The sensors alert the appellant to the highs and lows which she can't otherwise detect. The appellant's physician supports her request and reports that the appellant has no extended medical benefits and is on assistance so she is unable to afford to purchase the diabetic equipment herself.

Panel Decision

Section 76 applies where a person faces a direct and imminent life threatening health need and a health supplement is necessary to meet that need. The term "imminent" requires a degree of immediacy.

The panel finds that the appellant has significant difficulty managing her diabetes and that receiving the insulin pump and computer have provided the appellant with a means to regularly detect, monitor, adjust and control her blood glucose levels. The panel accepts that the appellant does not have the capacity to determine whether her glucose levels are high or low which can be very serious. The panel also notes the counselor's statement that without the necessary supplies, the appellant will not be able to effectively use the pump and that she struggles with anxiety, panic attacks and has had recent suicidal ideation. However, while the information establishes that the diabetic supplies and internet access fees are vital to the operation of the insulin pump, the information provided does not establish the requisite degree of immediacy to demonstrate that the appellant faces a direct and imminent life threatening health need. For example, an alternate resource for reservoirs and infusion sets has already been established and a glucometer could be used to test her blood glucose levels to determine hypoglycemic and hyperglycemic episodes and make necessary insulin pump adjustments based on information from those results. The panel finds that the ministry reasonably determined that the appellant's request for internet access fees, medical tape, shower packs and sensors are not considered a life threatening health need as it is not explained that the appellant would face a direct and imminent life threatening health need without them. While the panel accepts that it would be preferable for the appellant to have all the diabetic supplies requested on an ongoing basis, the panel finds that the ministry reasonably determined that the information provided does not establish that the appellant faces a direct and imminent life-threatening health need as required by Section 76.

The panel also finds that the ministry reasonably determined that the appellant does not have the resources to meet her need and that the provision of the insulin pump was provided as a last resort option by the appellant's health insurance provider and her counselor indicates that the diabetic costs are beyond the appellant's limited income.

Eligibility criteria - Section 76(d)(i) and Schedule C, Section 2(1) of the EAR.

Ministry Position

The ministry's position is that the legislation specifically requires that the requested medical supplies must be required for one of the following purposes: wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care or limb circulation care. The ministry concludes that all of the items requested by the appellant are not required for any of the

purposes listed and therefore she is not eligible under this legislation.

Appellant’s Position

The appellant’s mental health counselor, a registered nurse has reported that the appellant has complications of type 1 diabetes such as neuropathy in her limbs and feet causing poor circulation, numbness, skin breakdown and pain. The appellant argues that she suffers from numbness in fingers, hands, legs and feet, that she cannot feel heat on her hands and has poor circulation in her left leg.

Panel Decision

The panel notes that the legislation specifically requires that the requested medical supplies must be required for one of the listed purposes. The panel finds that the appellant’s need for diabetic supplies does include direct treatment for “limb circulation care” as confirmed by a registered nurse who is also her mental health counselor meets the requirement of Schedule C, Section 2(1) of the EAR. The panel finds that the ministry did not reasonably determine that the appellant has met this requirement.

Conclusion

The panel finds that the ministry’s determination that the appellant’s request for diabetic supplies and internet access fees did not meet all of the criteria for the provision of a health supplement to meet a direct and imminent life threatening health need under section 76 and Schedule C, Section 2(1) of the EAR, was reasonably supported by the evidence. Accordingly, the panel confirms the reconsideration decision and the appellant is not successful on appeal.