

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of September 21, 2016 wherein the ministry determined the appellant’s request for a health supplement to replace a CPAP machine did not meet the eligibility requirements set out in *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) Schedule C, sections 3(1)(b)(ii), 3(1)(b)(iii), 3(3) and 3.9(3)(a).

In addition, the ministry determined the appellant’s request did not meet the legislated criteria set out in section 69 EAPWDR that the health supplement was needed for persons facing a direct and imminent life threatening health need.

PART D – Relevant Legislation

Employment and Assistance For Persons with Disabilities Regulation (EAPWDR), section 62 and Schedule C section 3 and 3.19

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Letter to appellant from ministry requesting for a current price quote for CPAP machine and written confirmation that his content insurance will not cover his loss;
- Health Assistance Branch decision summary for Positive Airway Pressure Device dated August 23, 2016;
- Request for Reconsideration dated September 5, 2016.

On August 9, 2016 the appellant requested the ministry replace his CPAP machine that was destroyed in a house fire which the ministry had provided to him in March 2016. The appellant indicated his residence and contents were destroyed by a fire when he was out of town. The appellant had content insurance but the insurance company is refusing to issue benefits because it's a suspicious fire and a criminal investigation is underway. The appellant declined local fundraising efforts to obtain assistance because he did not want to be in the "public eye". The ministry requested the appellant provide a police file number and details of the fire including the personal items that were destroyed by the fire. The appellant was also requested to provide confirmation on the status of his insurance claim which he has declined to do on his lawyer's instructions. The appellant did provide the police file number but no further details were given. On August 17, 2016 the ministry sent a letter to the appellant with an Equipment Request and Justification Form attached explaining what he needed to submit including confirmation that his insurance company will not provide coverage for replacement of the items damaged in the fire. As of September 21, 2016, the date of the Reconsideration decision, the ministry had not received the completed form or any additional information confirming that his insurance company would not provide coverage for replacement items or what information was reported to the police. The ministry stated they have not received any information or documents confirming that the CPAP machine was destroyed or damaged in the fire.

On the Notice of Appeal the appellant stated, "Necessary for direct and imminent life threatening need. All past med things done and submitted to worker. All test done Jan. Condition does not go away, prescription by medical practitioner for device plus assessment by therapist original destroyed by fire."

The panel finds the appellants statements go to argument and do not contain new evidence.

At the hearing the appellant submitted a letter from Driver Fitness Program of Province of BC dated April 3, 2002 and photocopied for him on the date of the hearing. The letter states that the appellant must ensure he continues to meet a number of conditions, one of which is that he must use a nasal CPAP machine on a regular basis, to remain fit to drive.

The ministry had no objection to the panel receiving this document.

The panel finds the letter's reference to the appellant's regular use of a CPAP machine as a condition of being fit to drive is new information that was not before the ministry at the time of reconsideration and therefore is not admissible as evidence under section 22(4) *Employment and Assistance Act* (EAA) as the information is not in support of the information and record that was before the ministry at the time of the Reconsideration decision.

At the hearing the appellant stated he disagreed with many points on the HAB report. He stated that many of the items on the report, i.e. is the medical device the least expensive, had been responded to in January or February 2016 and submitted to the ministry when he was approved for the CPAP machine in March 2016. The appellant stated that he had some pictures of the fire he was intending to bring to the panel but they got discarded with some papers. He stated the pictures showed all that was left was a pile of ash. He stated that without the CPAP machine he didn't get a good sleep; that feelings of depression were setting in and the most painful, are the leg cramps. The appellant stated that initially he didn't provide any additional information to the ministry regarding the cost of the CPAP machine, assessment by respiratory therapist, et cetera because he had just given that information to the ministry in March 2016 and he felt everything needed should be on his file. He stated that the fire is being investigated by the police and the Fire Marshall and the police have told him the investigation is a low priority and the investigators are waiting for lab results. He stated he has also provided the ministry with the name of his insurance company and the insurance adjuster.

He stated that after a couple of weeks he did go to see his family doctor and his doctor told him he would provide a letter to the ministry outlining the cost to replace the CPAP machine. The appellant stated that he also went to see his respiratory therapist who agreed to rent him a CPAP machine; it was understood the rental costs would be charged to his credit card or paid by the insurance company. The appellant stated the therapist told him that the ministry had said that the fire at his residence was arson. The appellant objected to this term being used to categorize the fire and stated the therapist loaned him a CPAP machine anyway. He stated that to date he hasn't made any rental payments.

In response to questions the appellant stated that he has spoken with the insurance adjuster and the insurance company will cover the loss of his personal items including replacing the CPAP machine. He stated he has not filed a claim of loss to his insurance company because he has been too busy doing other things. He stated that he will not get an advance from the insurance company until the fire investigation is completed and he doesn't know when that will be. He stated he left his CPAP machine at home plugged in beside his bed and it was destroyed in the fire. He stated he didn't take the machine with him on his trip because he was only going to be gone for a couple of days and was planning to sleep in his vehicle, that the machine can't operate off the electrical current from a cigarette lighter. He told the panel he was told that when the fire investigation is completed the insurance company will issue an advance to him on his loss. The appellant stated that he has lost a number of valuable items that were not insured and understands that because he was planning a garage sale the insurance company only wants to compensate him 25 cents on the dollar for his losses. The appellant stated the planned fundraiser was only for clothing and he wasn't interested and wasn't walking around hat in hand to get anything.

The panel finds the oral testimony provided by the appellant is in support of the information and record that was before the ministry at the time the reconsideration decision was made and is admissible as evidence under section 22(4) of the EAA.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration of September 21, 2016 wherein the ministry determined the appellant's request for a health supplement to replace the CPAP machine did not meet the eligibility requirements set out in EAPWDR sections Schedule C, subsections 3(1)(b)(ii), 3(1)(b)(iii), 3(3) and 3.9(3)(a).

In addition, the ministry determined the appellant's request did not meet the legislated criteria set out in section 69 EAPWDR that the health supplement was needed for persons facing direct and imminent life threatening health need.

The legislation considered:

General health supplements

Section 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.

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

Section 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).

Schedule C

Health Supplements

Medical equipment and devices

Section 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.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section 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:

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- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
 - (b) an assessment by a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if

- (a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and
- (b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

Medical equipment and devices — breathing devices

Section 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;

(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.

(3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is as follows:

- (a) in the case of an item referred to in subsection (1) (a) (i), 5 years from the date on which the minister provided the item being replaced;

No Recourses Available – Schedule C section 3(1)(b)(ii)

Ministry's Position

The ministry argued that on August 9, 2016, following the fire, the ministry was advised that a local community store offered to conduct a fundraiser for the appellant, but he declined as he did not want to be in the “public eye”. The ministry also argued that the appellant has content insurance to replace his CPAP machine which the appellant advised was destroyed in the fire. The ministry argued he has failed to provide any information to confirm that the insurance company will not provide coverage for the cost of replacing his CPAP machine. The ministry's position is the ministry considers they are the payer of last resort.

Appellant's Position

The appellant's position is that the fundraiser was only for clothing and not a CPAP machine. He went on to state that his insurance company would not provide him with any funds until the fire investigation was completed which he had no idea when that would happen.

Panel Decision

The evidence is that the appellant has content insurance to replace damaged or destroyed items

and his insurance will cover any losses, with the payment or advance payment(s) not being issued until after the fire investigation is completed. The evidence from the appellant is that he has not filed a claim of loss with his insurance company. The evidence as presented by the appellant that he was able to have his respiratory therapist rent him a CPAP machine is contrary to his position that he does not have alternate resources.

The panel finds the ministry's decision that the appellant has alternate resources to replace his CPAP machine was reasonable.

The CPAP Machine is the Least Expensive and Appropriate – Schedule C section 3(1)(b)(iii)

Ministry's Position

The ministry argued they requested the appellant to complete and submit an Equipment Request and Justification form which he did not do. The ministry stated that the appellant was provided with a CPAP machine in March 2016. The ministry argued that the appellant did not provide any information or documents to establish that his CPAP machine was destroyed in the fire or that his insurance company will not provide coverage to replace the CPAP machine. The ministry also argued that the appellant did not provide a quote from a medical supplier to replace the CPAP machine and therefore the ministry cannot determine that the equipment is the least expensive.

Appellant's Position

The appellant's position is all that information was provided to the ministry when he was approved for the CPAP machine in March 2016. The appellant argued he did go and see his MP who told him he would write a letter and provide an estimate of the replacement cost of the CPAP machine. The appellant argued that the fire was reported in the local paper, including pictures of the fire scene, and further that all the cost estimates should be on his file.

Panel Decision

The evidence is that the appellant initially failed to provide any information to the ministry regarding the fire that would establish that his CPAP machine was destroyed in the fire. The Appellant's position is that the information the ministry needed was in the local paper or was in his ministry file. The evidence supports the ministry's position as reasonable because without proper estimates on what is needed the ministry cannot determine if the CPAP machine requested is the least expensive appropriate medical equipment or device.

The panel finds the ministry's decision that the appellant did not meet the legislated criterion was reasonable.

Replacement of Medical Equipment Previously Provided – Schedule C section 3(3)(b)

Ministry's Position

The ministry argued the appellant failed to provide any information or documents to confirm that his CPAP machine was destroyed in the fire and therefore it cannot be determined if it is more economical to repair or replace the CPAP machine. The ministry also argued the appellant does not meet the criteria in this legislation as the time period of five years for replacing medical equipment that is damaged or not functioning has not passed.

Appellant's Position

The appellant argued all the information the ministry needed was submitted in January or February 2016 when he was approved for a CPAP machine which he received in March 2016. The appellant also argued there were pictures of the fire and the fire was reported in the local paper and broadcast on local television.

Panel Decision

The legislation states that the ministry may provide a replacement of medical equipment, previously provided by the ministry that is damaged, worn out or not functioning if it is more economical to replace than repair the medical device and the period of time has passed. The evidence is that the ministry provided the appellant with a CPAP machine in March 2016; that the appellant's residence was destroyed by a fire in late July 2016 but the appellant has failed to provide any information to the ministry regarding the fire and evidence that the CPAP machine provided by the ministry was damaged or destroyed beyond repair in the fire.

The evidence supports the ministry's position because without all the requested information being provided by the appellant the ministry cannot reasonably determine what is fact and what is not; nor can the ministry determine if the CPAP machine was destroyed in the fire without evidence from the appellant. The panel finds it is the appellant's responsibility to provide the ministry with any and all information needed so they can make a proper determination on the facts. Without the evidence needed the ministry is unable to determine whether the CPAP machine was destroyed, needs to be replaced or if it is more cost effective to repair it.

The panel finds the ministry's decision that the appellant has not met the legislated criterion was reasonable.

Eligibility Due to Life Threatening Health Need – Section 69

Ministry's Position

The ministry position is that this legislation is intended to provide a remedy to those persons who are not otherwise eligible to receive health supplements. The ministry argued that the appellant is eligible to receive these health supplements and therefore this legislation is not applicable to him.

Appellant's Position - The appellant's position is that he does meet this legislation.

Panel Decision

The evidence is the appellant has a Persons with Disabilities designation and is therefore eligible to receive health supplements under Schedule C and section 69 only applies to a person who is not eligible to receive health supplements set out in Schedule C sections 2(1)(a) to (f) and 3 EAPWDR.

The panel finds the ministry's decision that section 69 EAPWDR does not apply to the appellant is supported by the EAPWDR legislation because he is entitled to receive health supplements.

Conclusion

Based on the foregoing, the panel finds that the ministry's decision to deny the appellant a replacement CPAP machine was reasonably supported by the evidence and confirms the decision.