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PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) Reconsideration Decision dated November 14, 2016 which denied the appellant's request for funding for an aircast and crutches on the basis that the request does not meet the legislative criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule 3, Sections 62, 69 and Schedule C, specifically that:

- a) an aircast is not a health supplement for the purposes of Section 3 of EAPWDR Schedule C;
- b) the appellant failed to obtain pre-approval for the crutches or the aircast from the ministry, as required by EAPWDR Schedule C, Section 3 (1)(b) (i); and
- c) the appellant is not eligible for the crutches or aircast as a person facing direct and imminent life threatening health need under EAPWDR Section 69 because as a recipient of disability assistance she is otherwise eligible under Section 62.

PART D – Relevant Legislation

Employment and Assistance Regulation for Persons with Disabilities Regulation, (EAPWDR):

Sections 62, 69 and Schedule C, Section 3.

PART E – Summary of Facts

The appellant is a single recipient of a disability allowance (PWD).

The information before the ministry at the time of reconsideration included the following:

- appellant's Request for Reconsideration received by the ministry on October 28, 2016 to which was appended a four-page document written by the appellant's father and advocate (D). Relevant details are summarized as follows:
 - in May 2016 the appellant suffered a fractured foot as a result of a fall;
 - the attending doctor advised that the appellant required crutches and an aircast pneumatic walking boot to be worn at all times for at least 6 weeks.
- June 1, 2016 doctor's prescription slip stating that the appellant needs a below knee aircast and crutches for a fractured second metatarsal;
- June 1, 2016 receipt for purchase of aircast boot at a price of \$167.99;
- June 1, 2016 receipt for purchase of crutches at a price of \$31.00;
- June 2, 2016 letter from D to the ministry requesting recovery of costs for the crutches, aircast, and other items not included in this appeal;
- September 19, 2016 letter from the ministry to the appellant denying appellant's request for the crutches and aircast.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision which denied the appellant's request for funding for an aircast and crutches on the basis that the request does not meet the legislative criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule 3, Sections 62, 69 and Schedule C, specifically that:

- a) an aircast is not a health supplement for the purposes of Section 3 of EAPWDR Schedule C;
- b) the appellant failed to obtain pre-approval for the crutches or the aircast from the ministry, as required by EAPWDR Schedule C, Section 3 (1)(b) (i); and
- c) the appellant is not eligible for the crutches or aircast as a person facing direct and imminent life threatening health need under EAPWDR Section 69 because as a recipient of disability assistance she is otherwise eligible under Section 62.

Relevant legislation:

General health supplements

62 (1) Subject to subsections (1.1) and (1.2), 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 person in the family unit who is

- (a) a recipient of disability assistance,

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) the person's family unit is receiving 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 3.11, other than paragraph (a) of section 3 (1).

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 3.11 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) For medical equipment or devices referred to in sections 3.1 to 3.8, 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.

Schedule C

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;
- (c) a walker;
- (d) an accessory to a cane, a crutch or a walker.

(11) The following items are not health supplements for the purposes of section 3 of this Schedule:

- (a) a prosthetic and related supplies;
- (b) a plaster or fiberglass cast;
- (c) a hernia support;
- (d) an abdominal support;
- (e) a walking boot for a fracture.

The appellant argues that she was unable to obtain pre-authorization for purchase of the aircast and crutches because the ministry office was closed. She required the items immediately because she was unable to leave the hospital without them. The appellant also argues that the aircast should be included as a health supplement under Schedule C.

The appellant acknowledged that she was not facing a direct and imminent life threatening need for the crutches or aircast at the time of the injury and emergency treatment.

The ministry representative relied on the reconsideration decision, and added that the ministry pays provincial medical services premiums (MSP) on behalf of all PWD recipients. Health supplements are available for items not generally covered by MSP. The ministry representative also stated that a person in need of pre-authorization for purchase of medical equipment can contact the ministry by telephone outside of regular business hours, and that the items requested were purchased on a weekday afternoon during regular business hours, according to the receipts

Panel Decision

Crutches:

EAPWDR Schedule C, Section 3(1) states that the ministry may provide general health care supplements to an eligible recipient of PWD if all of the following criteria are met:

1. the person has received pre-authorization from the ministry for the requested medical equipment;
2. there are no resources available to the person to pay the cost or otherwise obtain the item; and
3. the requested item is the least expensive appropriate medical equipment or device.

Crutches are listed as an allowable supplement under Section 3.1(1) of Schedule C. The evidence indicates that the appellant purchased the crutches and aircast on June 1, 2016 and submitted a request for both items on June 2, 2016, without first obtaining authorization from the ministry. The panel therefore finds that the ministry reasonably determined that the appellant was ineligible for provision of the crutches as a health supplement because she failed to meet all of the legislative criteria set out in EAPWDR Schedule C, Section 3 (1), specifically because she failed to obtain pre-authorization from the ministry prior to obtaining the crutches.

Aircast:

An aircast, which is a form of walking boot used after an injury to the foot, is not specified as a health supplement for medical equipment in Section 3 of EAPWDR Schedule C. Section 3.10 (11) states that certain items are not health supplements for the purposes of Schedule C, including a “plaster or fiberglass cast” and “a walking boot for a fracture”.

The panel finds that the ministry reasonably determined that the appellant was not eligible for provision of an aircast walking boot as a health supplement because a walking boot is not an eligible health supplement item under EAPWDR Schedule C, Section 3.10 (11).

Health Supplement for Persons Facing Direct and Imminent Life Threatening Health Need:

EAPWDR Section 69 allows the ministry to provide a health supplement to a person who is not otherwise eligible for a health supplement under the EAPWDR. Because the appellant is a recipient of PWD her eligibility for a health supplement arises from EAPWDR Section 62. The panel finds that the ministry reasonably determined that because the appellant is eligible for a health supplement under Section 62 she is not eligible under Section 69.

The appellant also acknowledged that the evidence does not demonstrate that she faced a direct and imminent life threatening health need at the time of her injury and treatment. The panel therefore finds that the ministry reasonably determined that the appellant also did not meet the legislated criteria for a health supplement under EAPWDR Section 69 because she did not face a direct and imminent life threatening health need.

Conclusion:

Having reviewed the evidence and relevant legislation the panel finds that the ministry's determination that the appellant's request for funding for crutches and an aircast boot does not meet the legislated criteria for a health care supplement, and confirms the decision. The appellant is not successful in her appeal.