

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated December 21, 2016 which denied the appellant's request for prescription medication (Butrans patches). The ministry found that the item requested is not listed as an eligible item in Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR). Specifically, pursuant to section 2(1.1) of Schedule C, the ministry is not authorized to provide prescriptions medications, and that the requested item does not meet the requirements for sections 2 or 3 of Schedule C as it is not a medical supply, equipment or device.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), Sections 62, 69 and Schedule C sections 2, 3, and 3.1 to 3.12.

## PART E – Summary of Facts

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

1. Health supplement information sheet – extended medical therapies form which is signed by the appellant's physician and includes comments from the appellant. The physician stated "She has chronic pain and requires daily analgesia. The patch allows for strict control and will significantly reduce the risk of abuse. This is the only safe analgesia for her, given her history";
2. 1-pg note from the appellant, signed and dated December 18, 2016, in which she requests an extension for her reconsideration deadline;
3. Request for reconsideration, signed and dated November 22, 2016, in which the appellant requests an extension for her reconsideration deadline. She also stated that she uses a walker and cannot get around in the snow or find an advocate.

### **Evidence on Appeal**

Notice of appeal, which is not signed or dated. It stated "disagree with decision".

### **Evidence at the Hearing**

Note: the appellant decided to go ahead with the hearing despite not finding an advocate for her appeal.

At the hearing the appellant stated that:

- She had accidents in 2002, 2004, 2007 and 2012, all of which were not her fault, and it is not fair that she has to pay for pain medication from her pocket;
- She was taking morphine for her chronic pain but her physician advised her that the BC government wants all patients off of opioids and he recommended the patches (Butrans patch);
- The patch does not take away her pain and morphine works best for her and with sweat the patch falls off and she must secure it with packing tape;
- Due to her depression, her physician suspects that she will abuse medication so recommended the patch. However, she has been on lower doses of morphine in the past and functioned fine and therefore she knows she is not addicted to morphine;
- She is on disability assistance. Her rent is \$400 and it costs \$240 per month for the patches. She simply cannot afford to purchase them on her own. Paying for them means she does not have enough to eat and she has lost 20lbs;
- The government will pay for other opioids but not the one she needs;
- She took the morphine orally for several years and started the patches in September 2016;
- With the morphine she feels more energetic which allows her to walk to town and function until night time. With the patches she is still in pain and does not have energy even though she is on the strongest dosage.

At the hearing the ministry relied on its reconsideration decision and emphasized that the ministry is not authorized to provide prescription medication and that the appellant should contact BC PharmaCare via her physician.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for prescription medication (Butrans patches) because the item requested is not listed as an eligible item in Schedule C of the EAPWDR is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Pursuant to Section 62 of the EAPWDR, the applicant must be a recipient of disability assistance, or be a dependent of a person in receipt of disability assistance in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has found that the requirement of Section 62 has been met in that the appellant has been approved as a recipient of disability assistance.

At issue is whether the requested prescription medication (Butrans patches) is an eligible item under Schedule C of the EAPWDR.

### **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).

### **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.

Section 2(1)(c) provides that the following items are health supplements if the other criteria of the section are met: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy.

Section 2(1)(f) of Schedule C provides that the following items are health supplements if the other criteria of the section are met: the least expensive appropriate mode of transportation.

**2 (1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.**

Section 2.1 of Schedule C provides that the following are the optical supplements that may be provided under Section 62.1 of the EAPWDR: basic eyewear and repairs, pre-authorized eyewear and repairs.

Section 2.2 of Schedule C provides that the minister may pay a health supplement under Section 62.2 of the EAPWDR for an eye examination if the other criteria of the section are met.

**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 3.12 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. . . .

Section 3.1 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a cane, a crutch, a walker, an accessory to a cane, a crutch or a walker.

Section 3.2 provides that the following items are health supplements for the purposes of section 3 if the other criteria of the section are met: a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair.

Section 3.3 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a wheelchair seating system, an accessory to a wheelchair seating system.

Section 3.4 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a scooter, an upgraded component of a scooter, an accessory attached to a scooter.

Section 3.5 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a grab bar in a bathroom, a bath or shower seat, a bath transfer bench with hand held shower, a tub slide, a bath lift, a bed pan or urinal, a raised toilet seat, a toilet safety frame, a floor-to-ceiling pole in a bathroom or bedroom, a portable commode chair, a standing frame or a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility, and a transfer aid for a person for whom the transfer aid is medically essential.

Section 3.6 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed, and a positioning item on a hospital bed.

Section 3.7 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a pressure relief mattress.

Section 3.8 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a floor or ceiling lift device.

Section 3.9 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: breathing devices.

Section 3.10 provides that the following items are an orthosis which is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a custom-made or off-the-shelf foot orthotic, custom-made footwear, a permanent modification to footwear, off-the-shelf footwear for a specific purpose, off-the-shelf orthopaedic footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, a hip brace, an upper extremity brace, a cranial helmet, a torso or spine brace, a foot abduction orthosis, or a toe orthosis.

3.10(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.
- (f) Repealed. [B.C. Reg. 144/2011, Sch. 2.]

Section 3.11 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hearing instrument.

Section 3.12 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a non-conventional glucose meter.

### **Position of the Parties**

The appellant argues that the patches cost too much for her to afford on her disability income. She also argues that the government provides opioids for others and should for her too.

The ministry argues that the Butran patch is a prescription medication which the ministry is not authorized to provide pursuant to section 2(1.1) of Schedule C of the EAPWDR. It further argues that the patches are not items the ministry is legislatively permitted to provide as they are not medical supplies, equipment or devices pursuant to Schedule C sections 2, 3 and 3.1 to 3.12 of the

EAPWDR. Finally it argues that the evidence provided does not establish that the appellant is in direct and imminent danger if the prescription medication is not provided or that the appellant does not have the resources to meet the need for the prescription medication pursuant to section 69 of the EAPWDR.

*Panel's Decision*

The appellant argues that her physician recommends the use of Butrans patches in replacement of morphine for chronic pain relief. She did not dispute that the patches are prescription medication. Schedule C, section 2(1.1) of the EAPWDR specifically states that prescription medications are not included in the definition of medical or surgical supplies that can be provided by the ministry. The panel finds that the ministry reasonable determined that the Butrans patches are not medical or surgical supplies that can be provided by the ministry pursuant to Schedule C, section 2(1.1) of the EAPWDR.

Section 69 of the EAPWDR states that the ministry may provide general health supplements or medical equipment or devices if a recipient is otherwise ineligible and if there is a direct and imminent life threatening need. The ministry argues that although prescription medication is not a health supplement or medical equipment or device, the evidence provided does not establish that failure to provide prescription medication (Butrans patches) to the appellant will cause her to face direct and imminent threat to her life. The appellant and her physician argued that she is in chronic pain and but did argue or present evidence to establish that she faces a direct and imminent threat to her life if she does not obtain the Butran patches. The panel finds that the ministry reasonably determined that the evidence does not establish that failure to obtain the prescription medication (Butrans patches) will cause the appellant to face a direct and imminent threat to her life, pursuant to section 69 of the EAPWDR.

The ministry argues that the prescription medication (Butrans patches) is not an item the ministry can provide pursuant to Schedule C, sections 2 ( general health supplements), 3 (medical equipment or devices) and 3.1 to 3.12 of the EAPWDR. After review of the legislation the panel finds that the ministry reasonably determined that the prescription medication (Butrans patches) is not an item the ministry can provided pursuant to Schedule C, sections 2, 3 and 3.1 to 3.12 of the EAPWDR.

**Conclusion:**

The panel finds that the ministry's decision to deny the request for prescription medication (Butrans patches) as not meeting the legislated criteria of section 69 and Schedule C, Sections 2, 3, and 3.1 to 3.12, of the EAPWDR, was a reasonable application of the applicable enactment in the circumstances of the appellant and, therefore, confirms the decision. The appellant is not successful in her appeal.