

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated November 30, 2016 which denied the appellant's request for a blood pressure monitor (BPM). 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 listed medical supply, equipment or device. Additionally the ministry found that the evidence did not establish that failure to obtain the BPM will result in an imminent life threatening need pursuant to section 69 of the EAPWDR.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), Sections 59(3), 62, 69 and Schedule C sections 2, 3, and 3.1 to 3.12.

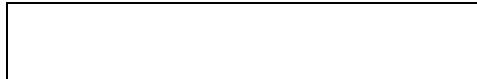
## PART E – Summary of Facts

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

1. Letter from the appellant's physician, signed and dated June 29, 2016, which states that the appellant "has a new diagnosis of hypertension and it would be very helpful if she had a BP monitor at home to measure her blood pressure on a regular basis";
2. Letter from the appellant's social worker, signed and dated November 21, 2016, which states in part that though the BPM is not part of the standard list of funded equipment for health, an exception is requested in this case. The appellant's "health is compromised and she is currently unable to mobilize to a facility on a daily basis where she could get the blood pressure monitoring done. The cost of the equipment is prohibitive and beyond her means. Perhaps a crisis grant to cover the cost is in order";
3. Letter from the appellant to her landlord, signed and dated November 8, 2016, which describes a noise complaint against her neighbor and the affect noise has on her health;
4. Rehabilitation referral for physiotherapy dated August 15, 2009 ;
5. Advertisement for a wearable wrist health monitor;
6. Email letter from the appellant to her Member of Legislative Assembly, dated October 18, 2016, in which she describes her disappointment regarding her inability to acquire rehabilitation services at her local hospital; and
7. Request for reconsideration, signed and date November 23, 2016, in which the appellant points to federal and international standards, describes the underlying cause of her hypertension, discusses socio-economic issues the disabled community faces, provides statistical information, cites international legislation and conventions, cites federal legislation, and cites provincial legislation which includes the Public Health Act, and the BC Human Rights Act and Code.

### Evidence on Appeal

1. Notice of Appeal, signed and dated, December 8, 2016, in which the appellant states that reversal of the ministry's decision would demonstrate the government's commitment to upholding the principles found in international legislation; and
2. Prior to the panel's convening, the appellant submitted a 3-page letter, signed and dated December 30, 2016, which includes the appellant's reference to:
  - Errors and omissions made in the ministry's reconsideration decision and in her submissions at reconsideration;
  - Her inability to secure legal counsel for her appeal which she states is indicative of services not being available in her rural community;
  - Her landlord not responding to her complaint of a noisy neighbor which she states is indicative of the concerns of persons with disabilities being disregarded;
  - The denial of her physiotherapy which she states is indicative of health care not being accessible and it is a denial of a fundamental human right;
  - The ministry's decision to deny the BPM could result in her death and that the ministry has the moral authority to preserve life;
  - Various UN conventions and the Canadian constitution, the Bill of Rights and the Charter of Rights and Freedoms.



### **Admissibility of Additional Evidence**

The ministry did not object to admitting the December 30, 2016 letter from the appellant.

On review of the evidence, the panel notes that the December 30, 2016 letter is in support of or corroborates the information and records that was before the ministry at the time of reconsideration, pursuant to section 22(4)(b) of the *Employment and Assistance Act*. However, the panel assigned little weight to the December 30, 2016 letter because it cites legislation and conventions that do not have a bearing on the issue at hand.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a BPM because the item requested is not listed as an eligible item in Schedule C of the EAPWDR and that the evidence did not establish that failure to obtain the item will result in an imminent life threatening need pursuant to section 69 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 BPM 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).

### **Schedule C of the EAPWDR:**

#### **General health supplements**

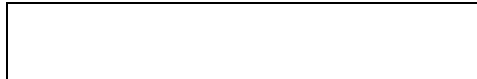
2 (1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is

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.

### **Crisis supplement**

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- 57** (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if
- (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and
  - (b) the minister considers that failure to meet the expense or obtain the item will result in
    - (i) imminent danger to the physical health of any person in the family unit, or
    - (ii) removal of a child under the *Child, Family and Community Service Act*.
- (2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.
- (3) A crisis supplement may not be provided for the purpose of obtaining
- (a) a supplement described in Schedule C, or
  - (b) any other health care goods or services.

**Employment Assistance Act (EAA):**

**Application of *Administrative Tribunals Act***

**19.1** The following provisions of the *Administrative Tribunals Act* apply to the tribunal:

- (e) section 44 [*tribunal without jurisdiction over constitutional questions*];
- (f) section 46.3 [*tribunal without jurisdiction to apply the Human Rights Code*];

**Administrative Tribunals Act (ATA):**

**Tribunal without jurisdiction over constitutional questions**

- 44** (1) The tribunal does not have jurisdiction over constitutional questions.
- (2) Subsection (1) applies to all applications made before, on or after the date that the subsection applies to a tribunal.

**Tribunal without jurisdiction to apply the *Human Rights Code***

- 46.3** (1) The tribunal does not have jurisdiction to apply the *Human Rights Code*.
- (2) Subsection (1) applies to all applications made before, on or after the date that the subsection applies to a tribunal.

**Panel's Decision**

The panel notes that in all cases, its jurisdiction is restricted to determining whether or not the ministry's reconsideration decision was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. As such, the panel can either confirm the ministry's decision or rescind it. The panel cannot make a determination on the moral authority of the ministry or whether or not the legislation which guides the ministry adheres to the principles found in either federal or international laws and conventions, which includes human rights legislation, pursuant to section 19.1 of the EAA and sections 44 and 46.3 of the ATA.

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*Section 2 and 3 of Schedule C of the EAPWDR*

The appellant argues that the ministry will provide similar equipment such as a glucose monitor but will not provide a BPM. The appellant argues that her human rights are in violation and that she and her social worker ask for an exception in this case.

The ministry argues that the requested item, a BPM, is not an item listed in Schedule C sections 2 (general health) or section 3 (medical equipment or devices) and as such the ministry does not have the authority to provide the item pursuant to Schedule C of the EAPWDR.

After review of the legislation the panel finds that the ministry reasonably determined that a BPM is not an item the ministry can provide pursuant to Schedule C, sections 2, 3 and 3.1 to 3.12 of the EAPWDR. Therefore, the panel finds that the ministry reasonably determined that the item requested, a BPM, is not an item it can provide to the appellant pursuant to sections 2, 3 and 3.1-3.12 of Schedule C of the EAPWDR.

*Section 69 of the EAPWDR*

The appellant argues that the failure to obtain a BPM creates a risk that could result in death.

The ministry argues that the evidence provided does not establish that failure to obtain the BPM will result in a direct and imminent life threatening need pursuant to section 69 of the EAPWDR. The ministry also argues that even if the failure to obtain the BPM would result in an imminent life threatening need, section 69 of the EAPWDR only grants the ministry the authority to provide the items listed in Schedule C section 2 and 3 of the EAPWDR.

Section 69 of the EAPWDR states that ministry may provide an item listed in sections 2 and 3 of Schedule C of the EAPWDR to persons otherwise ineligible if the person faces a direct and imminent life threatening need and (d) that the provisions of Schedule C are met [Note: the panel has previously addressed the issue regarding the provisions in Schedule C of the EAPWDR]. In this regard, the evidence consists of a letter provided by the appellant's physician which was dated June 29, 2016. It is noted that no additional evidence was provided by the physician either at reconsideration or on appeal. The physician's letter states that "it would be very helpful if [the appellant] had a BP monitor at home to measure her blood pressure on a regular basis". The panel notes that physician did not explicitly state that the BPM was necessary for medical treatment or that failure to obtain it would create an imminent life threatening need. The panel also notes that the appellant herself stated in her December 30, 2016 letter that "there is a *risk* that the impact of the decision *could* result in death" and did not state that there was a direct and imminent life threatening need. The panel finds that the ministry reasonably determined that the evidence did not establish that a failure to obtain a BPM cause the appellant to face a direct and imminent life threatening need, and that the provisions of Schedule C have not been met pursuant to section 69 of the EAPWDR.

*Section 57(3) of the EAPWDR*

The appellant's social worker argues that the ministry could provide a BPM under a crisis grant.



The ministry argues that pursuant to section 57(3) of the EAPWDR, it cannot provide a crisis grant for items listed in Schedule C or for obtaining a health care good.

Section 57(3) of the EAPWDR states that a crisis supplement may not be provided for the purposes of obtaining an item described in Schedule C or to obtain a health care good or service. The ministry states that a BPM is a health care good and the appellant does not dispute this. The panel finds that the ministry reasonably determined that a crisis supplement cannot be provided for the purposes of obtaining a BPM pursuant to section 57(3) of the EAPWDR.

**Conclusion**

The panel finds that the ministry's decision to deny the request for a blood pressure monitor for not meeting the legislated criteria of sections 57(3), 69 and Schedule C, Sections 2, 3, and 3.1 to 3.12, of the EAPWDR, was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the ministry's decision. The appellant is not successful in her appeal.