

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) Reconsideration Decision dated January 9, 2017 which denied the appellant's request for funding for a health supplement, namely rental of a knee walker, on the basis that the request did not meet the legislative criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 62 and Schedule C Sections 2 and 3, specifically that:

- a) a knee walker is not a "medical supply" because it is not required for one of the purposes set out in EAPWDR Schedule C, Sections 2(1)(a) (i) and (ii);
- b) the appellant failed to obtain pre-approval for the knee walker rental from the ministry, as required by EAPWDR Schedule C, Section 3 (1) (b) (i); and
- c) the ministry was not satisfied that the appellant had no resources available to pay the cost of the knee walker rental as required under Schedule C, Sections 2 (1) (a) (ii) (B) and 3 (1) (b) (ii).

PART D – Relevant Legislation

EAPWDR:

- Section 62
- Schedule C, Sections 2, 3

PART E – Summary of Facts

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

- October 26, 2016 letter from the ministry to the appellant informing her that her request for a health supplement for rental of a knee walker had been denied;
- June 13, 2016 invoice addressed to the appellant from a commercial knee walker rental supplier for rental of a knee walker for the period June 14, 2016 – July 26 24, 2016, marked “paid in full”;
- August 22, 2016, 2016 invoice addressed to the appellant from knee walker rental supplier for rental of a knee walker for the period June 14, 2016 – August 24, 2016, marked “paid in full”;
- June 16, 2016 prescription from Dr. X to the appellant which reads: “*Knee walker for post-op care*”;
- appellant’s request for reconsideration submitted to the ministry on December 21, 2016.

In her Notice of Appeal dated January 19, 2017 the appellant noted that:

- her surgery date was unexpected due to a cancellation and she had only 4 days to arrange for her knee walker rental;
- without the knee walker she would have been confined to her bed;
- she was unable to walk for 3 months.

At the hearing the appellant explained that when she was informed by the hospital that due to a cancellation her surgery would take place in 4 days (June 14, 2016) she contacted a ministry worker who provided her with a list of 4 places that might lend or rent a knee walker, 3 of which were charitable organizations. None of the suggested organizations was able to assist, and the Red Cross Society does not lend knee walkers.

The appellant added that due to her anxiety disorder she felt it necessary to have all her arrangements in place before her surgery, so she went ahead with renting the item from a commercial supplier for the period June 14 – September 14, 2016 at a total cost of \$300.00. The first rental period was paid for by credit card at a cost of \$150. She could not remember how and when she paid the remaining \$150, but confirms that she used a credit card. She did not seek pre-approval from the ministry for subsequent rental extension payments of \$150.00.

The ministry relied on the reconsideration decision.

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 a health supplement, namely rental of a knee walker, on the basis that the request did not meet the legislative criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 62 and Schedule C Sections 2 and 3, specifically that:

- a) a knee walker is not a "medical supply" because it is not required for one of the purposes set out in EAPWDR Schedule C, Sections 2(1)(a) (i) and (ii);
- b) the appellant failed to obtain pre-approval for the knee walker rental from the ministry, as required by EAPWDR Schedule C, Section 3 (1) (b) (i); and
- c) the ministry was not satisfied that the appellant had no resources available to pay the cost of the knee walker rental as required under Schedule C, Sections 2 (1) (a) (ii) (B) and 3 (1) (b) (ii).

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,

Schedule C

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;

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.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, 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.

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:

(c) a walker;

The appellant argues that prior to her June 14, 2016 surgery she was advised by a ministry worker to proceed with acquiring a knee walker and then submit the bill to the ministry for reimbursement. She adds that due to the short notice of her upcoming surgery she was unable to obtain ministry pre-authorization prior to the surgery, and without the knee walker she would have been bedridden and unable to attend to her personal hygiene. She also argues that she called the 4 suppliers suggested by the ministry as well as the Red Cross but was unable to obtain a knee walker from them, and that the cost of the knee walker rental placed a significant strain on her finances.

The ministry's position is set out in the reconsideration decision, summarized as follows:

- on June 13, 2016 the appellant contacted the ministry to request a health supplement for a knee walker, and informed the ministry that she would submit a prescription from her doctor and an estimate of the rental cost;
- on July 6, 2016 the ministry received a doctor's prescription for a knee walker dated June 30, 2016 and a paid invoice dated June 13, 2016 for a knee walker rental at a cost of \$150;
- the appellant is not eligible for a Schedule C, Section 2 (*general health*) supplement for 2

reasons:

- knee walker is not a medical supply required for one of the purposes set out in subsection (1) (a) (i) and
- she did not satisfy the ministry that she had no resources available to pay the rental cost;
- the appellant is not eligible for a Schedule C, Section 3 (*medical equipment and devices*) supplement because:
 - she did not receive pre-authorization from the ministry and
 - she did not satisfy the ministry that she had no resources available to pay the rental cost.

Panel Decision

Eligibility

EAPWDR Section 62 allows the ministry to provide a health supplement under Section 2 (*general*) or 3 (*medical equipment and supplies*) of Schedule C to a person who is in receipt of disability assistance. The panel finds that the ministry reasonably determined that the appellant is eligible for a Section 62 health supplement because she is a recipient of disability assistance.

Schedule C, Section 2 “General” Health Supplement:

A person is not eligible to receive a “general” health supplement under Section 2 unless the following criteria are met:

1. the medical or surgical supplies are required for one of the following purposes: wound care, ongoing bowel care due to loss of muscle function, catheterization, incontinence, skin parasite care or limb circulation care;
2. the supplies are prescribed by a medical practitioner or nurse practitioner; are the least expensive supplies appropriate to the purpose, are necessary to avoid imminent and substantial danger to health, and
3. there are no resources available to the family unit to pay the cost.

The ministry was satisfied that Criterion 2 was met, but not Criteria 1 and 3. The panel finds that the ministry reasonably determined that Criterion 1 was not met because the knee walker was not required for one of the specific purposes set out in Schedule C, Section 2 (1) (a) (i) (A)-(F). The panel also finds that the ministry reasonably determined that Criterion 3 was not met because the appellant paid the rental fee for the knee walker in advance and midway through the rental period, and did not submit any financial information to demonstrate that she had no financial resources.

The panel therefore finds that the ministry reasonably determined that the appellant was not eligible for a “general” health supplement under Schedule C, Section 2 because she did not meet the legislative criteria.

Schedule C, Section 3 “Medical Equipment and Devices” Supplement:

The criteria for a Section 3 “medical equipment/ devices supplement” differ from the criteria in Section 2. The knee walker requested by the appellant is listed as an eligible health supplement under Section 3.1, which may be provided to a person receiving disability assistance if the following criteria are met:

1. the person has received pre-authorization from the ministry for the requested item;

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2. there are no resources available to the family unit to pay the cost;
 3. the item is the least expensive appropriate medical device; and
 4. a medical practitioner or nurse practitioner has prescribed the item.

The ministry was satisfied that the appellant searched for and obtained the least expensive appropriate medical device (Criterion 3) and that a medical practitioner prescribed the knee walker (Criterion 4), but was not satisfied that Criteria 1 and 2 were met.

The evidence indicates that the appellant acquired and paid for the knee walker rental on June 13, 2016 but did not submit the invoice to the ministry until July 6, 2016. Although the appellant argues that a ministry worker told her to go ahead and rent the knee walker prior to her surgery and submit the bill at a later date, there is no ministry notation to this effect. Because the ministry is bound by the same legislative criteria as the appellant it is difficult to accept that a ministry worker advised the appellant to proceed with the knee walker rental without pre-authorization. As well, during the hearing the appellant stated that she might have misunderstood the ministry worker's instructions. The panel also notes that the appellant failed to seek pre-authorization from the ministry in August 2016 when she extended the rental period to September 14, 2016 at an additional cost of \$150. The panel therefore finds that the ministry reasonably determined that Criterion 1 was not met because the appellant failed to obtain pre-authorization for the knee walker rental under EAPWDR Section 3 (1) (b) (i) of Schedule C.

Criterion 2 of Section 3 requires the appellant to demonstrate that she has no resources available to pay the rental cost of the knee walker. For the reasons set out under the heading "Schedule C, Section 2 General Health Supplements" (above) the panel finds that the ministry reasonably determined that the appellant failed to demonstrate that she had no resources available to cover the rental cost. Therefore Criterion 2 was not met.

The panel therefore finds that the ministry reasonably determined that the appellant was not eligible for a "medical equipment and supplies" supplement under Schedule C, Section 3 because she did not meet the legislative criteria.

In conclusion, the panel finds that the decision of the ministry denying funding for rental of a knee walker was a reasonable application of the applicable legislation in the appellant's circumstances, and confirms the decision. The appellant is not successful in her appeal.