

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated March 14, 2017, which denied the appellant's request for Tens ultra flushable washcloth wipes (the "Flushable Wipes"). The ministry found that as the appellant is a person with disabilities (PWD), he is eligible to apply to the ministry for health supplements under the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR). However, the ministry was not satisfied that the Flushable Wipes were the least expensive supplies appropriate for the purpose as required by EAPWDR Schedule C, section 2(1)(a)(ii)(B) and that they were necessary to avoid an imminent and substantial danger to health as required by EAPWDR Schedule C, section 2(1)(a)(ii)(C).

PART D – Relevant Legislation

EAPWDR section 62, 69 and Schedule C, section 2

PART E – Summary of Facts

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

- Fax from a health office dated July 13, 2016 with a prescription from the appellant's physician dated July 12, 2016 for the Flushable Wipes.
- Request for Reconsideration dated October 14, 2016 completed by the appellant's physician indicating that the appellant has "*cerebellar ataxia and incoordinated movements, and that regular wipes will be unhygienic and a health hazard with risk of infection/contamination of stool*".

Additional Information

In his Notice of Appeal dated March 29, 2017, the appellant states that the physician has clearly explained his disability, which is degenerative and the hygiene and health hazard and infection risk posed by not using the Flushable Wipes.

The appellant did not attend the hearing. Having confirmed that the appellant was notified of the hearing the panel proceeded with the appeal in the absence of the appellant pursuant to section 86(b) of the *Employment and Assistance Regulation*.

At the hearing, the ministry relied on the reconsideration decision.

Admissibility of New Information

The ministry did not object to the information in the Notice of Appeal.

The panel has admitted the information contained in the appellant's Notice of Appeal as argument.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant funding for the Flushable Wipes was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant was not eligible for the Flushable Wipes as they were not the least expensive supplies appropriate for the purpose or that they were necessary to avoid an imminent and substantial danger to health as required by EAPWDR Schedule C, section 2(1)(a)(ii)(B) and (C)?

EAPWDR

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 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).

(B.C. Reg. 61/2010) (B.C. Reg. 197/2012)

EAPWDR Schedule C

General health supplements

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;

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

Position of the Parties

The appellant's position is that he requires the Flushable Wipes because he has a degenerative disability being cerebellar ataxia with incoordinated movements and that regular wipes will be unhygienic and a health hazard with risk of infection and contamination of stool.

The ministry's position, as set out in the reconsideration decision, is that the appellant has provided a prescription for the Flushable Wipes from his physician and that the Flushable Wipes are required for incontinence, one of the prescribed purposes set out in EAPWDR Schedule C, section 2(1)(a)(i)(D). However, the reconsideration decision indicates that the ministry has been providing wet wipes to the appellant for years and there is no information to establish what has changed in the appellant's circumstances or condition to indicate that wet wipes are no longer sufficient and why the appellant is at risk of a health hazard. The minister acknowledges that the Flushable Wipes may be more convenient; however, the information does not indicate that the Flushable Wipes are necessary to avoid an imminent and substantial danger to his health. In addition, the reconsideration decision states that the minister can only provide the least expensive, appropriate medical supply for the purpose.

Panel Decision

As the appellant did not provide any information regarding the cost of the Flushable Wipes the panel cannot tell if the Flushable Wipes would cost more than funding that the ministry currently provides to the appellant to purchase wet wipes. However, it is up to the appellant to establish that the requested item is the least expensive supplies appropriate for the purpose as required by EAPWDR Schedule C, section 2(1)(a)(ii)(B). Without any information to compare the cost of the wet wipes to the Flushable Wipes, the panel finds that the ministry was reasonable in determining that the information does not establish that the Flushable Wipes are the least expensive supplies appropriate for the purpose.

Although the appellant states, in his Notice of Appeal, that his physician has clearly explained his disability and the hygiene and health hazard and infection risk posed by not using Flushable Wipes, the panel finds that the information provided by the physician does not clearly explain the appellant's health risk. While the appellant's physician states that regular wipes will be unhygienic and a health hazard with risk of infection and contamination of stool the physician has not provided any information to indicate what has changed in the appellant's condition to indicate that the wet wipes the ministry has been funding for several years are no longer sufficient.

In addition, the physician has not provided information to indicate that the Flushable Wipes are necessary to avoid an imminent and substantial danger to health as required by EAPWDR Schedule C, section 2(1)(a)(ii)(C). While the information provided indicates that the appellant has a serious health condition, the word "imminent" indicates a degree of urgency or immediacy and there is

nothing in the information provided by the physician to indicate that there is an imminent and substantial danger to the appellant's health. Accordingly, the panel finds that the ministry was reasonable in determining that the information does not establish that the Flushable Wipes are necessary to avoid an imminent and substantial danger to health as required by EAPWDR Schedule C, section 2(1)(a)(ii)(C).

Health supplement for persons facing direct and imminent life threatening health need – EAPWDR section 69

Section 69 of the EAPWDR applies to health supplements set out under Schedule C, sections 2(1)(a) to (f) and section 3, and is intended to provide a remedy for those persons who are facing a direct and imminent life-threatening health need for these supplements and who are not otherwise eligible to receive them.

The panel notes that the ministry did not provide an analysis of whether the appellant would qualify for the Flushable Wipes as a health supplement under EAPWDR section 69. However, as the appellant is eligible to receive health supplements under Schedule C, sections 2 and 3 he is not eligible for a remedy under EAPWDR section 69 even though his request for funding for the Flushable Wipes does not meet the legislated requirements for a health supplement under Schedule C, section 2.

While the information provided by the appellant certainly indicates that he has a serious health condition, the physician did not provide any information indicating that the appellant faces a direct and imminent life threatening health need for which the requested items are required. Accordingly, the panel finds that the ministry was reasonable in considering the appellant ineligible for funding for the Flushable Wipes under EAPWDR section 69.

Conclusion

The panel acknowledges that the Flushable Wipes have been recommended for the appellant and may be beneficial for his health condition. However, having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's reconsideration decision, which found that the appellant is not eligible for funding for the Flushable Wipes as the criteria of EAPWDR Schedule C, section 2(1)(a)(ii)(B) and (C) was not met, was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.