

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) Reconsideration Decision dated April 5, 2017 which denied the appellant's request for funding for a health supplement, namely a voice amplification system (VAS), on the basis that the request did not meet the legislative criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 62 and 69 and Schedule C Sections 2 and 3, specifically that:

- the VAS is not an eligible item listed in Sections 2 or 3 Schedule C of the EAPWDR;
- the appellant is not eligible for a health supplement for a person facing direct and imminent life threatening health need under EAPWDR Section 69 because she is otherwise eligible under Section 62 and insufficient information was submitted to establish that the appellant faces a direct and imminent life-threatening health need for the VAS.

## PART D – Relevant Legislation

EAPWDR:

- Sections 62, 69
- Schedule C, Sections 2, 3

## PART E – Summary of Facts

A ministry representative did not attend the hearing. After confirming that the ministry was notified the hearing proceeded under Section 86 (b) of the Employment and Assistance Regulation.

The appellant is a continued ministry client under “medical services only” designation.

The information before the ministry at reconsideration included several documents that are not relevant to the issue under appeal. Relevant documents appended to the appellant’s request for reconsideration received by the ministry on March 27, 2017 are:

- August 28, 2013 letter from a non-local laryngology specialist (Dr. X) to the appellant’s local ear, nose and throat specialist (Dr. Y) indicating that the appellant:
  - o has noticed a marked deterioration in voice quality, with hoarse and breathy voice;
  - o has a great deal of difficulty with projection;
  - o has no associated swallowing issues;
  - o has had no recent aspiration events.
- May 21, 2016 cheque #493 (payee illegible) for \$25 with no added descriptor;
- June 1, 2016 cheque #613 payable to an unexplained payee for \$35 with no added descriptor;
- pharmacy statements/invoices for the period January 4 – December 31, 2016;
- February 7, 2017 prescription note written by the appellant’s family physician (GP) stating: *“I recommend a voice amplification system – as recommended by speech therapist as patient has a weak voice from having had a stroke”*;
- March 9, 2017 letter from the ministry to the appellant denying the requested VAS because it is not an eligible item under the legislation.
- March 21, 2017 invoice for \$25 from the GP listing an undescribed BCMA service fee code.

### **Information submitted after Reconsideration**

#### Documentary Evidence

Prior to the hearing the appellant tendered the following documents which were not before the ministry at reconsideration:

- April 11, 2017 letter from Dr. Y to the GP indicating a cystic swelling in the appellant’s left vocal cord suggesting a recurrent cyst, with no suspicious signs of carcinoma, and ordering a CT scan for a more definitive diagnosis of the cyst. Dr. Y also referred the appellant for another appointment with Dr. X for his opinion respecting repeat surgery to remove the cyst. Dr. Y noted that it would be reasonable to proceed with acquiring a VAS to assist with speech amplification;
- April 18, 2017 note from an unidentified person in the office of Dr. X stating that a VAS would benefit the appellant;
- April 19, 2017 letter from the GP to the ministry confirming the appellant’s upcoming appointment with Dr. X on May 4, 2017;
- April 19, 2017 appointment letter from the office of Dr. X confirming the appellant’s May 4, 2017 appointment.

#### Notice of Appeal

In her undated Notice of Appeal received by the Employment and Assistance Appeal Tribunal on April 18, 2017 the appellant writes: *“I am in a location of 24/7 of people who cannot hear me clearly, please allow me to be heard.”*

### Oral Evidence at Hearing

At the hearing the appellant stated that her income last year was \$10,700 and that she incurred \$2,600 in medical costs, leaving her “very broke”.

The panel considered the oral and written evidence tendered by the appellant and determined that all of the documentary evidence, including the appellant’s statement in her Notice of Appeal, and the appellant’s oral evidence at the hearing were admissible under EAA Section 22 (4) as evidence in support of the information before the ministry at reconsideration because:

1. they corroborated the physicians’ opinions that the appellant would benefit from acquiring a VAS; and
2. the appellant’s oral evidence supported the 2016 pharmaceutical invoices that were submitted prior to reconsideration, indicating that her medical expenses are very high.

## 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 a voice amplification system (VAS), on the basis that the request did not meet the legislative criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 62 and 69 and Schedule C Sections 2 and 3, specifically that:

- the VAS is not an eligible item listed in Sections 2 or 3 of Schedule C of the EAPWDR;
- the appellant is not eligible for a health supplement for a person facing direct and imminent life threatening health need under EAPWDR Section 69 because she is otherwise eligible under Section 62 and insufficient information was submitted to establish that the appellant faces a direct and imminent life-threatening health need for the VAS.

Relevant legislation:

**EAPWDR:**

### ***Access to medical services only***

**61.1** (1) Subject to subsection (4), a person is a main continued person if

(a) the person was

- (i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for disability assistance, and
- (ii) a person with disabilities on that date,

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of disability assistance, ceases to be eligible for disability assistance

(a) on a date the family unit includes a person aged 65 or older,

### ***General health supplements***

**62** 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

(c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

### ***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

### 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;

(a.1) the following medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies:

- (i) lancets;
- (ii) needles and syringes;
- (iii) ventilator supplies required for the essential operation or sterilization of a ventilator;
- (iv) tracheostomy supplies;

(a.2) consumable medical supplies, if the minister is satisfied that all of the following requirements are met:

- (i) the supplies are required to thicken food;
- (ii) all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies;

(b) Repealed. [B.C. Reg. 236/2003, Sch. 2, s. 2 (b).]

(c) subject to subsection (2), a service provided by a person described opposite that service in the following table, delivered in not more than 12 visits per calendar year,

- (i) for which a medical practitioner or nurse practitioner has confirmed an acute need,
- (ii) if the visits available under the Medical and Health Care Services Regulation, B.C. Reg. 426/97, for that calendar year have been provided and for which payment is not available under the *Medicare Protection Act*, and
- (iii) for which there are no resources available to the family unit to cover the cost:

Item	Service	Provided by	Registered with
1	acupuncture	acupuncturist	College of Traditional Chinese Medicine under the <i>Health Professions Act</i>
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the <i>Health Professions Act</i>
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia under the <i>Health Professions Act</i>

4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia under the <i>Health Professions Act</i>
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia under the <i>Health Professions Act</i>
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia under the <i>Health Professions Act</i>

(d) and (e) Repealed. [B.C. Reg. 75/2008, s. (a).]

(f) the least expensive appropriate mode of transportation to or from

- (i) an office, in the local area, of a medical practitioner or nurse practitioner,
- (ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,
- (iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or
- (iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*,

provided that

(v) the transportation is to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, and

(vi) there are no resources available to the person's family unit to cover the cost.

(g) Repealed. [B.C. Reg. 75/2008, s. (a).]

- (1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.
- (2) No more than 12 visits per calendar year are payable by the minister under this section for any combination of physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services.
- (2.1) If eligible under subsection (1) (c) and subject to subsection (2), the amount of a general health supplement under section 62 of this regulation for physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services is \$23 for each visit.
- (3) If the minister provided a benefit to or for a person under section 2 (3) of Schedule C of the Disability Benefits Program Regulation, B.C. Reg. 79/97, the Income Assistance Regulation, B.C. Reg. 75/97 or the Youth Works Regulation, B.C. Reg. 77/97, as applicable, for the month during which the regulation was repealed, the minister may continue to provide that benefit to or for that person as a supplement under this regulation on the same terms and conditions as previously until the earlier of the following dates:
  - (a) the date the conditions on which the minister paid the benefit are no longer met;
  - (b) the date the person ceases to receive disability assistance.

### ***Optical supplements***

**2.1** The following are the optical supplements that may be provided under section 62.1 [*optical supplements*] of this regulation:

- (a) basic eyewear and repairs;
- (b) pre-authorized eyewear and repairs.

### **Eye examination supplements**

2.2 The minister may pay a health supplement under section 67.2 [*eye examination supplements*] of this regulation for an eye examination that,

- (a) if provided by an optometrist, is provided for a fee that does not exceed \$44.83, or
- (b) if provided by an ophthalmologist, is provided for a fee that does not exceed \$48.90.

### **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.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section 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 a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

#### **3.1 Medical equipment and devices — canes, crutches and walkers**

#### **3.2 Medical equipment and devices — wheelchairs**

#### **3.3 Medical equipment and devices — wheelchair seating systems**

#### **3.4 Medical equipment and devices — scooters**

#### **3.5 Medical equipment and devices — toileting, transfers and positioning aids**

#### **3.6 Medical equipment and devices — hospital bed**

#### **3.7 Medical equipment and devices — pressure relief mattresses**

**3.8 Medical equipment and devices — floor or ceiling lift devices**

**3.9 Medical equipment and devices — breathing devices**

**3.10 Medical equipment and devices — orthoses**

**3.11 Medical equipment and devices — hearing instruments**

**3.12 Medical equipment and devices — non-conventional glucose meters**

The appellant argues that due to a prior stroke and subsequent tracheotomy her vocal cords were severely damaged, leaving her with a weak voice that is inaudible to others, especially to the co-residents of her assisted living facility. For this reason she requires a VAS. She adds that she does not have the resources to purchase a VAS.

The ministry's position is that the appellant is not eligible for a health supplement for a VAS because:

- she does not meet the eligibility criteria for a general health supplement under EAPWDR Schedule C, Section 2;
- she does not meet the eligibility criteria for a medical equipment and devices supplement under EAPWDR Schedule C, Section 3; and
- she does not meet the eligibility criteria under EAPWDR Section 69 for a health supplement for persons facing a direct and imminent life threatening health need.

**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 a "continued person" under Section 61.1 if that person was in receipt of disability assistance upon becoming 65 years of age. The appellant is therefore eligible for a Section 62 health supplement because she is a continued person as described in Sections 61.1 and 62.

**Schedule C, Section 2 "General" Health Supplement:**

A person is not eligible to receive a "general" health supplement under Section 2 unless all of 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 not satisfied that Criterion 1 was met, because a VAS is not one of the medical or surgical supplies listed under Section 2 (1) of Schedule C. The panel finds that the ministry reasonably determined that Criterion 1 was not met because the VAS was not required for one of the specific purposes set out in Schedule C, Section 2 (1) (a) (i) (A)-(F).



The ministry also was not satisfied that a VAS is an eligible “therapy” under subsections 2(1)(c), 2(2) and 2(2.1) because a VAS is not one of the listed therapeutic services, which are: acupuncture, chiropractic, massage therapy, naturopathy, podiatry and physiotherapy treatments. The panel finds that the ministry reasonably determined that the appellant is not eligible for a supplement under Schedule C, subsections 2(1)(c), 2(2) and 2(2.1) because the VAS is not listed as an eligible service for which a health supplement can be provided.

The panel also finds that the ministry reasonably determined that the appellant is not eligible for a general health supplement under Schedule C, Sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9 because a VAS is not listed as one of the allowable items under these sections, which are limited to: optical supplements, eye examination supplements, dental supplements crown and bridgework supplements denture supplements, emergency dental supplements, diet supplements, natal supplement and infant formula.

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

Sections 3.1 to 3.12 set out the specific medical equipment or devices for which the ministry is authorized to provide a health supplement. These items are: canes, crutches, walkers, wheelchairs, scooters, bathing and toileting aids, hospital bed, pressure relief mattresses, floor or ceiling lift devices, breathing devices, orthoses, hearing instruments and non-conventional glucose meters. A VAS is not included in any of these categories. The panel therefore finds that the ministry reasonably determined that the appellant is not eligible for a supplement under EAPWDR Schedule C Section 3 because a VAS is not a listed medical equipment or device under subsections 3.1 to 3.12.

Section 69 Health Supplement for Persons Facing Direct and Imminent Life Threatening Health Need

EAPWDR Section 69 states that this supplement is available to person who is otherwise not eligible for the health supplement under the regulation and who faces a direct and imminent life threatening health need. As stated earlier in this decision the appellant is eligible for a general health supplement under Schedule C, Section 2 and a medical equipment and devices supplement under Section 3 because she is eligible for a Section 62 health supplement as a “continued person” under Sections 61.1 and 62. The panel also notes that in the August 28, 2013 letter from Dr. X to Dr. Y the laryngologist writes that the appellant has no associated swallowing issues and no recent aspiration events. Also, in a recent examination by Dr. Y a left vocal cord cyst was found with no suspicious signs of carcinoma. None of the physicians’ letters indicates that the appellant requires a VAS due to life threatening health issues.

The panel therefore finds that the ministry reasonably determined that this section is not applicable to appellant’s circumstances because she is otherwise eligible for Schedule C health supplements under Section 62 of the EAPWDR and because the information provided does not establish that she faces a direct and imminent life threatening health need.

In conclusion, the panel sympathizes with the appellant’s desire for a VAS to assist in communicating with others, and recognizes that in 2016 she spent almost one-quarter of her income to purchase medical and pharmaceutical products. However, for the reasons cited above the panel finds that the ministry’s determination that the appellant is not eligible for a health supplement for the purchase of a VAS because her request did not meet any of the legislative criteria for a health supplement under Schedule C is a reasonable application of the applicable legislation in the circumstances of the appellant, and confirms the decision. The appellant is not successful in her appeal.