

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated May17, 2017, in which the Ministry determined that the Appellant was not eligible to receive funding for a home alert baby monitoring system under Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because:

- The requested home alert system is not the least expensive appropriate medical equipment or device,
- She is not eligible for the home alert system as a hearing instrument,
- She is not eligible for the home alert system as an alternate hearing assistance supplement,
- She is not eligible for the home alert system as another type of medical equipment,
- She is not eligible for the home alert system as a medical supply,
- The home alert system is not an item set out in any other section of Schedule C, EAPWDR,
- She is not eligible for the home alert system under Section 69, EAPWDR as she is eligible to receive health supplements under Schedule C, EAPWDR and

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 62, 67, 69, 70.02; Schedule C

Speech and Hearing Professionals Regulation, section 1

PART E – Summary of Facts

Information before the minister at reconsideration included:

- Page 2 of a claim form for hearing instruments dated August 5, 2016, stating under “Symptoms”: “Moderate sloping to severe sensorineural hearing loss. Previous hearing aids are lost and replacement warranty expired.”, and under “Communication status”: “[The Appellant] has good speech discrimination and would benefit greatly with amplification. She is in a recovery home and needs both hearing aids for daily communication.” Level of hearing loss is indicated as severe for both ears.
- A Hearing Evaluation Form dated August 15, 2016.
- An invoice, undated, for a baby sound monitor and wearable vibrating pager in the amount of \$193.54.
- An invoice, undated, for a light flashing and vibrating alert system, baby cry transmitter, smoke/firebell sound sensor and remote receiver in the amount of \$473.64.
- Brochures for various remote home alert systems.
- An invoice, undated, for a central alert system, vibrating remote receiver, baby cry sensor in the amount of \$582.07.
- A letter To Whom it May Concern, undated, from a Nurse Practitioner stating that the Appellant suffered hearing loss due to brain injury, that she will require a monitor system and that the most comprehensive system costing \$582.07 was the only system recommended.
- A letter to the Appellant from the Ministry dated March 28, 2017 advising her that her request for a central alarm system, vibrating remote receiver, real time baby cry sensor, audio alarm sensor and rechargeable batteries was denied.
- The Appellant’s Request for Reconsideration, signed May 4, 2017.

In her Notice of Appeal to the Tribunal, the Appellant wrote “Needs hearing aids and monitors, has new baby, and needs these [illegible] to care for baby ASAP. Has support letters from audiologist requesting hearing aids on her behalf stating importance and need.” There is no other direct submission from the Appellant.

The Ministry wrote that their submission is the reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision that the Appellant was not eligible to receive funding for a home alert baby monitoring system under Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because:

- The requested home alert system is not the least expensive appropriate medical equipment or device,
- She is not eligible for the home alert system as a hearing instrument,
- She is not eligible for the home alert system as an alternate hearing assistance supplement,
- She is not eligible for the home alert system as another type of medical equipment,
- She is not eligible for the home alert system as a medical supply,
- The home alert system is not an item set out in any other section of Schedule C, EAPWDR,
- She is not eligible for the home alert system under Section 69, EAPWDR as she is eligible to receive health supplements under Schedule C, EAPWDR and

Legislation

EAPWDR

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

- (a) a family unit in receipt of disability assistance,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is a dependent child, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

Nutritional supplement

67 (1) The minister may provide a nutritional supplement in accordance with section 7 [*monthly nutritional supplement*] of Schedule C to or for a family unit in receipt of disability assistance, if the supplement is provided to or for a person in the family unit who

- (a) is a person with disabilities, and
- (b) is not described in section 8 (1) [*people receiving special care*] of Schedule A, unless the person is in an alcohol or drug treatment centre as described in section 8 (2) of Schedule A,

if the minister is satisfied that

- (c) based on the information contained in the form required under subsection (1.1), the requirements set out in subsection (1.1) (a) to (d) are met in respect of the person with disabilities,
- (d) the person is not receiving another nutrition-related supplement,
- (e) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 7 (c).]
- (f) the person complies with any requirement of the minister under subsection (2), and
- (g) the person's family unit does not have any resources available to pay the cost of or to obtain the items for which the supplement may be provided.

(1.1) In order for a person with disabilities to receive a nutritional supplement under this section, the minister must receive a request, in the form specified by the minister, completed by a medical practitioner or nurse practitioner, in which the practitioner has confirmed all of the following:

- (a) the person with disabilities to whom the request relates is being treated by the practitioner for a chronic, progressive deterioration of health on account of a severe medical condition;

(b) as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the following symptoms:

- (i) malnutrition;
- (ii) underweight status;
- (iii) significant weight loss;
- (iv) significant muscle mass loss;
- (v) significant neurological degeneration;
- (vi) significant deterioration of a vital organ;
- (vii) moderate to severe immune suppression;

(c) for the purpose of alleviating a symptom referred to in paragraph (b), the person requires one or more of the items set out in section 7 of Schedule C and specified in the request;

(d) failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life.

(2) In order to determine or confirm the need or continuing need of a person for whom a supplement is provided under subsection (1), the minister may at any time require that the person obtain an opinion from a medical practitioner or nurse practitioner other than the practitioner referred to in subsection (1) (c).

(3) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 8.]

[am. B.C. Regs. 317/2008, s. 8; 68/2010, ss. 1 and 2; 145/2015, Sch. 2, ss. 7 and 8.]

Nutritional supplement — short-term

67.001 The minister may provide a nutritional supplement for up to 3 months to or for a family unit in receipt of disability assistance, if

(a) the supplement is provided to or for a person in the family unit who is not receiving another nutrition-related supplement, and

(b) a medical practitioner or nurse practitioner confirms in writing that the person has an acute short-term need for caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from

- (i) surgery,
- (ii) a severe injury,
- (iii) a serious disease, or
- (iv) side effects of medical treatment.

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).

Alternative hearing assistance supplement

70.02 The minister may provide a health supplement set out in section 11 of Schedule C to or for

(a) a family unit in receipt of disability assistance,

(b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is a dependent child, or

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

Schedule C

Definitions

1 In this Schedule:

"audiologist" means an audiologist registered with the College of Speech and Hearing Health Professionals of British Columbia established under the *Health Professions Act*,

"hearing instrument" has the same meaning as in the Speech and Hearing Health Professionals Regulation, B.C. Reg. 413/2008;

"hearing instrument practitioner" means a hearing instrument practitioner registered with the College of Speech and Hearing Health Professionals of British Columbia established under the *Health Professions Act*;

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.

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) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is

damaged, worn out or not functioning if

(a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and

(b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

- (4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.
- (5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if
- (a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and
- (b) it is more economical to repair the medical equipment or device than to replace it.
- (6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

Medical equipment and devices — hearing instruments

3.11 (1) A hearing instrument is a health supplement for the purposes of section 3 of this Schedule if

- (a) the hearing instrument is prescribed by an audiologist or hearing instrument practitioner, and
- (b) an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument.

(2) The minister may provide a hearing instrument under this section only if the person is not receiving a hearing assistance supplement under section 70.02 of this regulation.

Alternative hearing assistance supplement

- 11** (1) In this section, "**profound hearing loss**" means a hearing loss of 91 decibels or greater across all frequencies tested in an audiological assessment.
- (2) The amount of a hearing supplement that may be provided under section 70.02 of this regulation is \$100 per calendar month to or for each person in a family unit to whom subsection (3) of this section applies.
- (3) The hearing supplement under subsection (2) may be provided by the minister only if
- (a) the minister is satisfied that the person
- (i) has permanent profound hearing loss in both ears, and
- (ii) cannot benefit significantly, in respect of speech comprehension, from a hearing instrument, and
- (b) an audiologist or hearing instrument practitioner, within the previous 12 months, has
- (i) performed an assessment that confirms the permanent profound hearing loss in both ears, and
- (ii) provided an opinion that the person cannot benefit significantly, in respect of speech comprehension, from a hearing instrument.
- (4) The hearing supplement under subsection (2) may not be provided if a person received a hearing instrument under section 3.11 of this Schedule, or from another source, in the previous 36 months.
- (5) Despite subsection (4), the hearing supplement under subsection (2) may be provided to or for a person who received a hearing instrument in the previous 36 months if the person did not meet the

requirements set out in subsection (3) on the date the person received the hearing instrument but subsequently meets the requirements in subsection (3).

Speech and Hearing Professionals Regulation

Definitions

1 In this regulation:

"audiologist" means a registrant who is authorized under the bylaws to practise audiology;

"audiology" means the health profession in which a person provides, for the purposes of promoting and maintaining communicative, auditory and vestibular health, the services of assessment, treatment, rehabilitation and prevention of

(a) auditory and related communication disorders and conditions, and

(b) peripheral and central auditory system dysfunction and related peripheral and central vestibular system dysfunction;

"hearing instrument" means an appliance or a device designed or offered for a hearing condition,

(a) including any ear molds, boots or other acoustic couplers and any parts or accessories for the appliance or device intended to affect the sound pressure level at the eardrum, and

(b) excluding direct audio input accessories, batteries and any accessories that are attachable to the appliance or device by the wearer and not intended to affect the sound pressure level at the eardrum;

"wearable hearing instrument" means a hearing instrument wearable on the head or body.

The Appellant's position is that she needs the requested monitor in order to care for her baby.

The Ministry position, as stated in the reconsideration decision, is that the Appellant's request does not meet the legislative criteria for approval.

Panel Decision:

Not the least expensive appropriate medical equipment or device per EAPWDR Schedule C, section 3(1)(b)(iii)

The Appellant submitted a letter from a nurse practitioner with estimates for 3 monitoring systems. The letter stated that the only recommended system was the most comprehensive, at a cost of \$582.07. No direct recommendation from an audiologist was included.

The Ministry wrote in the reconsideration decision that the Appellant was approved recently for provision of hearing aids, and that with them the Appellant would be able to make use of a conventional audio baby monitor.

The Panel notes that the recommendation from the Nurse Practitioner was for the most comprehensive hearing monitor with no justification or explanation. The Panel finds that the Ministry reasonably determined that it cannot be established that the recommended system is the least expensive appropriate medical equipment or device required.

Eligibility for a home alert system for baby monitoring as a hearing instrument

The Appellant did not specifically address this point.

The Ministry found that the definition of hearing instrument under the Regulation, which has the same meaning as in the *Speech and Hearing Health Professionals Regulation*, does not include the requested item because the definition describes an appliance or device intended to affect the sound pressure level at the eardrum, and

it is not a wearable hearing instrument that can be prescribed and fitted by an audiologist or hearing instrument practitioner.

The panel notes that the description of the recommended system includes various remote parts that do not affect the sound pressure level at the eardrum; therefore it does not meet the definition of hearing instrument. The panel finds that the Ministry reasonably determined that the requested item is not a hearing instrument under the EAPWDR.

Eligibility for a home alert system for baby monitoring as an alternate hearing assistance supplement

The Appellant did not specifically address this point.

The Ministry wrote that this supplement may not be provided under section 11 of Schedule C, EAPWDR if a person received a hearing instrument under section 3.11 of Schedule C, EAPWDR or from another source within the previous 36 months, and the Appellant received approval for replacement hearing aids within that period. In addition, the Ministry wrote that the information provided does not establish that the Appellant has profound hearing loss in both ears, as required under that section.

The Panel accepts the Ministry's assertion that the Appellant was approved for the provision of hearing aids in April, 2017 and therefore does not qualify for an alternate hearing assistance supplement. The Panel notes, however, that the hearing evaluation form submitted by the Appellant indicates severe hearing loss in both ears. The Panel finds that the Ministry reasonably determined that the Appellant does not meet the criteria for approval of an alternate hearing loss supplement under section 11 of Schedule C, EAPWDR.

Eligibility for a home alert system for baby monitoring as another type of medical equipment

The Appellant did not specifically address this point.

The Ministry wrote that section 3 of Schedule C, EAPWDR sets out the list of medical equipment and devices that may be provided and the criteria for their provision, and a home alert system for baby monitoring is not one of those.

The Panel finds that the Ministry reasonably determined that a home alert system for baby monitoring is not listed in section 3 of Schedule C, EAPWDR, and the Ministry is not authorized under that section to provide it.

Eligibility for a home alert system for baby monitoring as a medical supply

The Appellant did not specifically address this point.

The Ministry wrote that section 2 of Schedule C, EAPWDR sets out that disposable or reusable medical or surgical supplies may be provided if the supplies are required for listed purposes, and the requested home alert system is not one of those.

The Panel finds that the Ministry reasonably determined that the requested home alert system is not directly required for one of the purposes set out in section 2 of Schedule C, EAPWDR.

Home alert system for baby monitoring under other sections of Schedule C, EAPWDR

The Appellant did not specifically address this point.

The Ministry wrote that the requested item does not meet the criteria for provision as a therapy.

The Panel finds the Ministry reasonably determined that the requested item is not among the therapies listed in section 2 of Schedule C, EAPWDR.

The Ministry wrote that the home alert system does not meet the criteria as one of the remaining health supplements – optical supplements, eye examination supplements, dental supplements, crown and bridgework supplements, denture supplements, diet supplements, emergency dental supplements, natal supplements and infant formula, and does not meet the criteria for provision of a monthly nutritional supplement or a short-term nutritional supplement for an acute short-term need.

The Panel finds that the Ministry reasonably determined that the requested item is not one of the listed remaining health supplements and does not meet the criteria set out in section 67, EAPWDR as a nutritional supplement.

Provision of a home alert system for baby monitoring under life-threatening health need under section 69, EAPWDR

The Appellant did not specifically address this point.

The Ministry wrote that the Appellant is eligible to receive health supplements under Schedule C, EAPWDR; therefore she does not require the remedy under section 69, EAPWDR, and that the information provided does not demonstrate that she faces a direct and imminent life-threatening health need for the item requested.

The Panel notes that the Appellant is eligible to receive health supplements under Schedule C, EAPWDR; therefore the Ministry reasonably determined that the Appellant does not meet the criteria for provision of the health supplements listed in section 69, EAPWDR. In addition, the Panel finds that the Ministry reasonably determined that the information provided by the Appellant, a letter from a Nurse Practitioner, states that hearing impairment presents challenges and that to safely parent, she will require a monitoring system. The Panel finds that the Ministry reasonably determined that there is insufficient information to establish that she or a person in her family unit faces a direct and imminent life-threatening need, as required by that section considering that the Appellant was recently approved for the provision of hearing aids.

The Panel finds that the Ministry decision to deny the Appellant's for a home alert system for baby monitoring was reasonably based on the legislative criteria and confirms the Ministry decision. The Appellant is not successful on appeal.