

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) reconsideration decision of July 17, 2017 (the “Reconsideration Decision”), which denied the Appellant a supplement for the funding of fleet enemas, as the Appellant’s request did not meet the eligibility requirements for a medical supply, pursuant to section 2(1) of the *Employment and Assistance For Persons with Disabilities Regulation* (“EAPWDR”), for medical equipment, pursuant to section 3(1)(b) of Schedule C to the EAPWDR, or under any of the other sections of Schedule C to the EAPWDR. The Ministry also determined that the Appellant was not eligible for a health supplement under section 69 of the EAPWDR for the fleet enemas.

PART D – Relevant Legislation

EAPWDR, sections 62 and 69

EAPWDR, Schedule C, sections 2, 3, 3.1 through 3.12, 4, 4.1, and 5 through 11

PART E – Summary of Facts

Information before the ministry at reconsideration

The following information was before the Ministry at the time of reconsideration:

- A purchase authorization, dated May 30, 2017, for a sitz bath;
- Surgery instructions, received by the Ministry on May 26, 2017, in respect of the Appellant's June 2, 2017 surgery for a fistula repair;
- A prescription, dated May 26, 2017, from the Appellant's doctor, prescribing two fleet enemas for "colon surgery", a donut cushion for "post fistula repair", and a sitz bath pain for "perineal maintenance post surgery";
- The Health Assistance Branch decision, which denied the Appellant funding for the fleet enemas and the donut cushion;
- The Appellant's Request for Reconsideration, dated June 30, 2017, to which was attached an undated four page typed submission by the Appellant;

Information provided on appeal

- The Appellant's Notice of Appeal, received by the tribunal on July 28, 2017 to which was attached:
 - A prescription, dated July 28, 2017, from a doctor who was filling in for the Appellant's regular doctor; and
 - An undated one page typed submission by the Appellant.

The Appellant suffers from Crohn's Disease and has previously had her colon removed, due to her Crohn's Disease and Colon Cancer. The Appellant was scheduled for a fistula repair on June 2, 2017, as she has a history of fistula wound infection and inflammation because of her Crohn's Disease. Fleet enemas were prescribed by her doctor for use prior to surgery in order to ensure that the area of the fistula repair would be clear of fecal matter at the time of the surgery.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry's decision to deny the appellant a medical supplement for fleet enemas was reasonably supported by the evidence or was a reasonable application of the relevant statutory provisions in the circumstances of the appellant. In particular, the issue on appeal is whether the Ministry reasonably determined that the Appellant was not entitled to the supplement because the Appellant did not meet the criteria set out under Schedule C to the EAPWDR for the provision of health supplements for medical supplies and equipment and did not meet the criteria under section 69 of the EAPWDR either.

The relevant legislation is found in sections 62 and 69 of the EAPWDR, which authorizes the Ministry to provide medical supplements generally, and sections 2, 3, 3.1 through 3.12, 4, 4.1, and 5 through 11 of Schedule C to the EAPWDR, which set out the specific eligibility requirements for supplements for various types of medical supplies and equipment.

Section 62 of the EAPWDR authorizes the Ministry to provide health supplements in section 2 or section 3 of Schedule C as follows:

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.

Sections 2 and 3 of Schedule C of the EAPWDR set out the criteria for eligibility for health supplements and medical equipment and devices as follows:

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.

The specific medical equipment and devices for which the Ministry may provide supplements under section 3 are enumerated in sections 3.1 through 3.12 of Schedule C to the EAPWDR. Likewise, sections 4, 4.1, and 5 through 11 set out additional health supplements which the Ministry is authorized to provide under Schedule C to the EAPWDR.

Finally, section 69 of the EAPWDR sets out the criteria for a health supplement where there is an imminent life threatening health need:

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).

Appellant's position

The Appellant's position as expressed in her oral evidence and in the written attachment to her Notice of Appeal is that the purpose of the fistula repair itself was wound care as her fistula would not be able to heal without the surgery and the wound from an abscessed fistula carries with it a risk of sepsis, which can be life threatening.

In the result, the Appellant argues that the fleet enemas, because they were required prior to the fistula repair procedure, are a form of wound care for which she should be eligible for a health supplement.

Ministry Position

Although the Ministry was satisfied that:

- The fleet enemas were prescribed by the Appellant's doctor;
- The fleet enemas were the least expensive supplies appropriate in the Appellant's circumstances;
- The fleet enemas were necessary to avoid an imminent and substantial danger to the Appellant's health; and
- The Appellant had no other resources available to pay the cost of the fleet enemas,

the position of the Ministry is that the Appellant nevertheless does not meet the criteria for a health supplement under section 2(1)(a) of Schedule C to the EAPWDR because it was not satisfied that the fleet enemas were directly required for wound care or ongoing bowel care, as fleet enemas were used only once in preparation for the Appellant's fistula repair surgery.

The Ministry also denied the Appellant funding for the fleet enemas under sections 2(1)(a.1) and 2(1)(a.2) of Schedule C to the EAPWDR as those sections authorize the Ministry to provide a health supplement for supplies which did not include fleet enemas. Likewise, the Ministry's position is that section 3 of Schedule C to the EAPWDR is not applicable as it authorizes the Ministry to provide a health supplement in respect of the medical equipment specifically enumerated in sections 3.1 through 3.12 of Schedule C to the EAPWDR, which does not include fleet enemas.

The Ministry also set out that fleet enemas are not covered items under any other sections of Schedule C to the EAPWDR.

Finally, the Ministry also took the position that the Appellant was not eligible for a health supplement for the fleet enemas under section 69 of the EAPWDR because the Appellant was otherwise eligible to receive health supplements under section 2(1)(a) and (f) of Schedule C to the EAPWDR.

Panel Decision

Section 2(1)(a)(i)(A) of Schedule C to the EAPWDR authorizes the Ministry to provide disposable or reusable medical or surgical supplies where such supplies are required for "wound care." In the Appellant's circumstances, the fleet enemas were prescribed by the Appellant's doctor for use prior to the fistula repair and the Appellant's evidence is that she was required to use them in order for the fistula repair procedure to be done. However, the purpose of the fleet enemas themselves does not appear to have been "wound care."

Section 2(1)(a)(i)(B) of Schedule C to the EAPWDR authorizes the Ministry to provide disposable or reusable medical or surgical supplies where such supplies are required for “ongoing bowel care required due to loss of muscle function.” At the time of the Reconsideration Decision there was no information before the Ministry which indicated that the Appellant required ongoing bowel care due to loss of muscle function. There was no indication in the information submitted by the Appellant with her Notice of Appeal that she required ongoing bowel care due to loss of muscle function.

Subsections (C) through (F) of 2(1)(a)(i) of Schedule C to the EAPWDR concern health purposes not applicable in the Appellant’s circumstances.

Sections 2(1)(a.1) and 2(1)(a.2) of Schedule C to the EAPWDR authorize the Ministry to provide supplements for specific medical or surgical supplies and consumable medical supplies, respectively, which do not include fleet enemas.

In view of the foregoing, the panel is satisfied that the Ministry reasonably determined that the Appellant was not eligible for a health supplement for fleet enemas pursuant to sections 2(1)(a), 2(1)(a.1), and 2(1)(a.2) of Schedule C to the EAPWDR.

Section 3 of the EAPWDR authorizes the Ministry to provide a health supplement in respect of the medical equipment specifically set out in sections 3.1 through 3.12 of Schedule C to the EAPWDR. Specifically, sections 3.1 through 3.12 authorize the provision of health supplements in respect of the following items, respectively:

Section	Items Authorized
3.1	Canes, crutches and walkers, including accessories to a cane, crutch, or walker.
3.2	Wheelchairs, including an upgraded component of a wheelchair and an accessory attached to a wheelchair.
3.3	Wheelchair seating systems, including an accessory to a wheelchair seating system.
3.4	Scooters, including an upgrade component of a scooter and an accessory attached to a scooter.
3.5	Toileting, transfers and positioning aids, including 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 for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility, 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 to transfer from one position to another.
3.6	Hospital beds, including an upgraded component of a hospital bed, an accessory attached to a hospital bed, and a positioning item on a hospital bed.
3.7	Pressure relief mattresses.
3.8	Floor or ceiling lift devices.
3.9	Breathing devices, including a positive airway pressure device, an apnea monitor, a suction unit, a percussor, a nebulizer, a medical humidifier, an inhaler accessory device,

	and accessories or supplies required to operate the items set out under section 3.9.
3.10	Orthoses, including a custom-made or off-the-shelf foot orthotic, custom-made footwear, a permanent modification to footwear, off-the-shelf footwear required for the purpose set out in subsection (4.1) (a), 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 used for the purposes set out in subsection (7), a torso or spine brace, a foot abduction orthosis, a toe orthosis.
3.11	Hearing instruments.
3.12	Non-conventional glucose meters.

Sections 4, 4.1, and 5 through 11 of Schedule C to the EAPWDR concern dental supplements, crown and bridgework supplements, emergency dental supplements, diet supplements, monthly nutritional supplements, natal supplements, infant formula, and alternative hearing assistance supplements, respectively.

Given that the fleet enemas do not fall under any of the items set out in sections 3.1 through 3.12 or sections 4, 4.1, and 5 through 11 of Schedule C to the EAPWDR, the panel finds that the Ministry was reasonable in its determination that the Appellant was not eligible for a health supplement in respect of the fleet enemas under any of those sections of Schedule C to the EAPWDR.

Section 69 of the EAPWDR authorizes the Ministry to provide a health supplement to a person who is not otherwise eligible for the supplement under the EAPWDR provided the Ministry is satisfied that:

- 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,
- the health supplement is necessary to meet that need,
- a person in the family unit is eligible to receive premium assistance under the Medicare Protection Act, and
- the requirements specified in the following provisions of Schedule C, as applicable, are met:
 - paragraph (a) or (f) of section (2)(1);and
 - sections 3 to 3.12, other than paragraph (a) of section 3 (1).

As the Ministry acknowledged, the Appellant met the first three criteria set out in section 69. However, as set out above, the Appellant did not meet the criteria set out in section 2(1)(a) of Schedule C to the EAPWDR as the fleet enemas were not directly prescribed for wound care or any of the other purposes set out in subsections (A) through (F) of section 2(1)(a)(i) of Schedule C to the EAPWDR. As section 2(1)(f) and sections 3 to 3.12 are inapplicable to the Appellant's circumstances, the panel finds that the Ministry reasonably determined that the Appellant was also not eligible for a health supplement under section 69 of the EAPWDR.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation and for the reasons provided above, the panel finds that the Ministry's decision that the Appellant is not eligible for a health supplement for fleet enemas is a reasonable application of the relevant statutory provisions in the circumstances of the Appellant. In the result, the panel confirms the Ministry's decision. The Appellant is not successful on appeal.