

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation, renamed the Ministry of Social Development and Poverty Reduction (the “Ministry”) July 5, 2017 reconsideration decision which found that the appellant was not entitled to a reimbursement of over-the-counter medications, which included medications for pain relief, allergies, and vitamins/minerals, because the items were not a health supplement as defined in any of the subsections of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”). The Ministry found that the legislation gave them no discretionary authority to permit an exception.

PART D – Relevant Legislation

s.62 and s.69, and Schedule C Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”)
s.39 Administrative Tribunals Act (“ATA”)

PART E – Summary of Facts

The evidence before the Ministry at reconsideration was:

- On April 5, 2017 the appellant submitted an application for reimbursement of over-the-counter medication. The appellant submitted receipts for the purchase of various items including medications for bowel care, pain relief, allergies, and vitamins and minerals
- On May 2, 2017 the Ministry approved funding for daily bowel care accessories. The Ministry denied the appellant's request for the remaining over-the-counter-medications.
- On May 17, 2017 the appellant requested reconsideration of the Ministry's decision
- On June 6, 2017 the appellant requested an extension to the reconsideration period. The Ministry granted the request for an extension with a due-date of July 5, 2017 to submit additional documents or information.
- On July 5, 2017 the Ministry reviewed the appellant's request for reconsideration. No additional documents were provided by the appellant prior to the Ministry's reconsideration.
- The appellant receives a Monthly Nutritional Supplement for vitamin/mineral supplementation in the amount of \$40 per month.
- Receipts for the appellant's over-the-counter-medications from December 24, 2016 – March 30, 2017
- The Ministry's original Health Supplement (supplies) Decision Summary

At the hearing:

- The appellant's advocate (the "Advocate") wished to rely on his request for reconsiderations submissions as well as a letter from the appellant's doctor (the "Additional Submissions"). The Advocate stated that the Additional Submissions were likely submitted to the Ministry on or around July 5, 2017. The advocate stated that the letter from the doctor was a letter of support for the appellant which indicated that the appellant needed the over-the-counter medications.
- After looking for the Additional Submissions in the appeal record and being unable to locate them, the Advocate requested an adjournment of one week so that he could have the opportunity to bring the Additional Submissions with him to the hearing.
- The panel asked for a five-minute adjournment to discuss the Advocate's adjournment request.
- The panel confirmed that the Additional Submissions were not in the appeal record and also that they were not submitted to the Ministry prior to reconsideration.

The panel reviewed the provisions of s.39 of the ATA and determined that the appellant should not be granted the adjournment. The panel determined that if the Additional Submissions were not before the Ministry at reconsideration. The panel that the appellant was afforded the opportunity to provide the Ministry with the Additional Submissions at reconsideration. The panel also noted that the tribunal hearing was also already adjourned by the appellant twice. The panel found that an adjournment would cause additional delay, and that the appellant was already granted two previous adjournments by the tribunal. The panel found that the appellant was mailed the appeal record on July 25, 2017 and could have at that time, reviewed the appeal record and determined that her Additional Submissions were missing from the appeal record. The panel finds that the appellant had ample time to review the appeal record before the hearing date of September 18, 2017. Finally, the panel finds that if the Additional Submissions were imperative to the appellant's presentation at the hearing she or her Advocate should have brought the Additional Submissions to the hearing. The panel denies the appellant's request for an adjournment.

The hearing continued and the appellant and her Advocate provided the following:

- The Advocate relied on the appellant's notice of appeal which states: "having to pay for these medications is causing me extreme hardship. They are essential to my health."
- The appellant stated that in 2017 she is just finishing going through morphine, she has osteoarthritis, and she cannot get by without the over-the-counter medications.
- The appellant re-iterated that it is her pain medications, creams, and allergy tablets that are the main items she needs coverage for.
- The appellant states that she is a number 12 on a pain chart. She states she has a heart condition and she cannot get by without these over-the-counter medications.
- The advocate requested that the panel advise the Ministry about how unfair the legislation is and ask that we take into account the client's dire position.

The Ministry provide the following:

- The Ministry relied on its reconsideration decision. The Ministry stated that they have no authority to change the legislation. The Ministry confirmed that the appellant is receiving the \$40 per month vitamin and mineral supplement and she is also receiving reimbursement of her incontinence (bowel) medication.

PART F REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's decision to deny the appellant reimbursement of over-the-counter medications, which included medications for pain relief, allergies, and vitamins/minerals, because the items were not a health supplement as defined in any of the subsections of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"), and because the legislation gave the Ministry no discretionary authority to permit an exception, was reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The legislation provides:

Administrative Tribunal Act ("ATA"):

Adjournments

39 (1) An application may be adjourned by the tribunal on its own motion or if it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held.

(2) In considering whether an application should be adjourned, the tribunal must have regard to the following factors:

- (a) the reason for the adjournment;
- (b) whether the adjournment would cause unreasonable delay;
- (c) the impact of refusing the adjournment on the parties;
- (d) the impact of granting the adjournment on the parties;
- (e) the impact of the adjournment on the public interest.

Employment and Assistance for Persons With Disabilities Regulation ("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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4.]

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).

[en. B.C. Reg. 61/2010, s. 4; am. B.C. Regs. 197/2012, Sch. 2, [s. 8](#); 145/2015, Sch. 2, s. 12.]

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 Health Professions Act
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the Health Professions Act
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia under the Health Professions Act
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia under the Health Professions Act
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia under the Health Professions Act
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia under the Health Professions Act

(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 panel finds:

The appellant was, pursuant to s.62 EAPWDR eligible to receive health supplements, as the appellant was a person receiving disability assistance. The panel reviewed the various health supplements set out in Schedule C EAPWDR, and reviewed the Ministry's reconsideration decision which reviewed the health supplement categories Schedule C EAPWDR to determine if the appellant's over-the-counter medications could fall into under one of the health supplement categories in the EAPWDR legislation. The appellant did not provide argument or submissions on how the over-the-counter medications fell into one of the health supplement categories in Schedule C EAPWDR.

The panel finds that it was reasonable for the Ministry to determine that the over-the-counter medications were not a medical supply in Schedule C section 2 because pursuant to Schedule C s. 2(1.1), medical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

The panel finds that it was reasonable for the Ministry to determine that over-the-counter medications are not Extended Therapy as set out in Schedule C subsection 2(1)(c). The Extended Therapies listed are specific therapies and do not include the cost of over-the-counter medications.

The panel finds that it was reasonable for the Ministry to determine that over-the-counter medications are not Medical Equipment and Devices set out in Schedule C section 3 because over-the-counter medications do not fall into one of the specific equipment or devices permitted.

The panel finds that it was reasonable for the Ministry to conclude that the over-the-counter medications did not into any other sections of the EAPWDR Schedule C

The panel find that it was reasonable for the Ministry to find that the appellant is not eligible for these Medications under s.69 EAPWDR, Life-Threatening Health Need. One of the requirements of s.69 is that the item still needs to meet the definition of health supplement in Section 2 or 3 of Schedule C EAPWDR and the panel has already determined that it was reasonable for the Ministry to conclude that the appellant's over-the-counter medications did not fit into one of the health supplements in Schedule C.

The panel finds that it was reasonable for the Ministry to determine that the legislation gives the Ministry no discretionary authority to permit an exception in the case of the appellant.

The panel finds the Ministry's decision was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the Ministry's decision.