

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated August 16, 2017 which held that the appellant is not eligible for funding for a wig because the request did not meet the requirements for the provision of a health supplement under Schedule C or section 69 of the Employment for Persons with Disabilities Regulation (EAPWDR). Specifically, the ministry determined that the wig:

- is not a disposable or reusable medical supply under section 2(1)(a) of Schedule C, is not a supply required for any of the purposes set out in paragraph (a)(i), and is not necessary to avoid imminent and substantial danger to health as required by paragraph (a)(ii);
- is not any of the health supplements set out under sections 2(1)(a.1), (c) or (f) or 2.1 through 9 of Schedule C;
- is not any of the health supplements set out in sections 3.1 to 3.12 of Schedule C; and
- does not meet the requirements of section 69 of the EAPWDR.

PART D – Relevant Legislation

EAPWDR, Schedule C and section 69

PART E – Summary of Facts

Information before the ministry at reconsideration

In support of her original request for funding from the ministry, the appellant submitted a July 12, 2017 prescription from a general practitioner for a wig “for medical reasons” and a receipt for “Medical hair and prosthesis.”

In support of her request for reconsideration, the appellant submitted a letter dated July 31, 2017, written by the appellant’s registered psychiatric nurse (RPN) who explains that the appellant has severe Alopecia which has resulted in complete hair loss. The RPN writes that although this condition has few physically harmful effects, it may lead to psychological consequences including high levels of anxiety and depression. This condition has affected the appellant’s ability to want to leave her home and socialize with others due to negative self-esteem and anxiety and depression related to hair loss.

Information provided on appeal and admissibility

In her Notice of Appeal, signed on August 28, 2017, the appellant writes that without a wig, Alopecia has affected her self-worth and quality of life. Before she got the wig, she didn’t want to leave the house and felt depressed and anxious. Since having the wig, she is more confident to leave her home and is much less anxious when she does leave her home. The appellant lists four prescription medications she takes.

The appellant also submitted a letter dated September 13, 2017, from her psychiatrist. The psychiatrist writes that the appellant suffers from psychiatric illnesses with features of depressed mood, that she was diagnosed with alopecia several years ago, and that the appellant reports that her hair loss has had a significant impact on her emotional state and social functioning. During her last three follow-up appointments, which took place since the appellant obtained her wig, she has repeatedly reported improvement in her mood and self-esteem, which the appellant attributes, at least partially, to her improved appearance while wearing a wig. Her social functioning has improved such that she is leaving her home more often, and even dating again. This improvement in mood has occurred in the absence of medical adjustments.

On appeal, the ministry indicated that its submission would be the reconsideration decision. The ministry did not address the admissibility of the appellant’s appeal submissions.

As the information from the appellant and her psychiatrist substantiated the previous information about how hair loss has impacted the appellant’s self-esteem, social functioning and anxiety about leaving her home, the panel admitted the additional information in accordance with section 22(4) of the Employment and Assistance Act as being in support of the information and records at reconsideration.

PART F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry decision which held that the appellant is not eligible for funding for a wig is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. That is, was the ministry reasonable in determining that the wig:

- is not a disposable or reusable medical supply under section 2(1)(a) of Schedule C, is not a supply required for any of the purposes set out in paragraph (a)(i), and is not necessary to avoid imminent and substantial danger to health as required by paragraph (a)(ii);
- is not any of the health supplements set out under sections 2(1)(a.1), (c) or (f) or 2.1 through 9 of Schedule C;
- is not any of the health supplements set out in sections 3.1 to 3.12 of Schedule C; and
- does not meet the requirements of section 69 of the EAPWDR?

Relevant Legislation – Schedule C and section 69 of the EAPWDR

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;.....

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

Subsection (1)(c) sets out the requirements for specified services from listed health care providers and subsection (1)(f) sets out the requirements for medical transportation.

Sections 2.1, 2.2, 3, 3.1-3.12, and 4 through 9 of Schedule C set out the requirements for optical, medical equipment and devices (canes, wheelchairs and other specified equipment and devices), dental and natal health supplements.

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 reflected in her Notice of Appeal, is that the requested wig is required to improve her quality of life. It has improved her self-esteem which has given her more confidence to leave her home and has reduced her anxiety when she is away from home.

Ministry's position

The ministry's position is that the appellant is not eligible for the wig because it is not any of the health supplements the ministry may provide, all of which are set out in Schedule C. Specifically, the wig is not any of the health supplements set out in sections 2 through 9 of Schedule C.

Respecting section 2(1)(a) of Schedule C, the ministry is not satisfied that a wig is a medical or surgical supply and that it is not directly required for any of the purposes listed in section 2(1)(i)(A-F). Additionally, the ministry is not satisfied that the wig is necessary to avoid an imminent and substantial danger to the appellant's health. The ministry recognizes that the appellant's mental health would benefit from having the wig, but concludes that the information from the RPN does not establish that the wig is necessary to avoid an imminent and substantial [emphasis included] danger to the appellant's health. In particular, the ministry notes that while the nurse comments that the appellant's self-esteem and ability to leave her home are "affected," the RPN does not explain to what degree. Also, the RPN explains that alopecia "may" lead to psychological consequences including high levels of anxiety and depression which, the ministry argues, does not suggest that the appellant is experiencing these symptoms at this time.

The ministry also found that the requirements set out in section 69 are not met because the appellant does not require a remedy under section 69, as she is eligible to receive health supplements as a person in receipt of disability assistance, the information does not establish that there is a direct and imminent life-threatening need for a wig, and section 69 only allows for the provision of those health supplements set out in Schedule C, which does not include a wig.

Panel Decision

Under the EAPWDR, the only health supplements that may be provided by the ministry are those set out in Schedule C.

Eligibility under section 2(1)(a) and (1)(a.1) of Schedule C

Section 2(1)(a) allows for the provision of unspecified reusable or disposable medical or surgical supplies if certain conditions are met, including that the supplies are required for one of the purposes listed in paragraph (a)(i).

As a wig is not related to surgery, the ministry is reasonable in determining that it is not a surgical supply. Although the ministry does not explain why the requested wig is not a medical supply, given that the plain meaning of "medical supply" is something that is primarily and customarily used to treat an illness or injury, the ministry has reasonably concluded that the wig is not properly characterized as a medical supply. The panel also notes that based on the various health supplements described in Schedule C, the provision of health supplements under the EAPWDR does not appear to contemplate health supplements required to alleviate or treat symptoms of mental illness, such as anxiety.

That the legislators intended that a medical supply provided under section 2(1)(a) be required for treatment of a physical condition is confirmed by paragraph (a)(i) which stipulates that the medical supply be 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. The ministry has reasonably determined that the requested wig does not attend to any of these purposes.

Paragraph (a)(ii) requires that the medical or surgical supply be required to avoid an imminent and substantial danger to health. While the ministry concluded that the information from the RPN respecting the appellant's mental health did not establish either imminent or substantial danger to health, the panel considers that the "imminent or substantial danger" relating to medical supplies provided under section 2(1)(a) cannot be assessed in isolation from the other requirements of that section. That is, the imminent and substantial danger to health must relate to the need for medical supplies that are required for the treatment of wound or bowel care, catheterization, incontinence, skin parasite care, or limb circulation care. As the requested wig is not required for treatment related to any of those purposes, the ministry has reasonably determined that the required imminent and substantial danger to health has not been established.

Accordingly, the ministry has reasonably determined that the appellant is not eligible for the requested wig under section 2(1)(a) of Schedule C as the wig is not a medical or surgical supply, and is not required for any of the legislated purposes to avoid imminent and substantial danger to health.

Section 2(1)(a.1) allows for the provision of specified medical or surgical supplies. The panel finds that the wig is not any of these items, namely, lancets, needles and syringes, ventilator and tracheostomy supplies. Accordingly, the ministry reasonably determined that the appellant is not eligible for the requested wig under section 2(1)(a.1) of Schedule C.

Eligibility under the remaining sections of Schedule C

The wig is clearly not any of the health supplements set out in sections 3 and 3.12 – 3.12 as it is not a cane, crutch, walker, wheelchair, wheelchair seating system, transfer device/aid, scooter, hospital bed, pressure relief mattress, floor or ceiling lift device, positive airway pressure device, orthosis, hearing instrument, or non-conventional glucose meter. The requested wig is also not any of the health supplements set out in section 2(1)(c) [therapies and other services], 2(1)(f) [medical transportation], or sections 2.1, 2.2, and 4 through 9 [optical, dental, diet, natal].

Accordingly, the panel concludes that the ministry reasonably determined that the appellant is not eligible for the requested wig under any of these sections of Schedule C.

Eligibility under section 69

Section 69 allows for the provision of health supplements set out under sections 2(1)(a) and (f) and 3 of Schedule C where the applicant is not otherwise eligible for a health supplement under the EAPWDR. Additionally, the supplement must be required to meet a life-threatening health need and the requirements of sections 2 or 3 applicable to the specific health supplement must also be met.

The appellant's circumstances are that she is eligible to receive health supplements under the EAPWDR as a recipient of disability assistance and is therefore "otherwise eligible" to receive health supplements. The requirements of the particular supplement set out under sections 2(1)(a), (f) or section 3 of Schedule C must still be met but the appellant's request does not have to meet the additional requirement of section 69 that the supplement be required to meet a life-threatening health need. The ministry has reasonably determined that the appellant she does not require a remedy under section 69.

As previously stated, the ministry reasonably determined that the wig is not a health supplement set out under sections 2(1)(a), (f), or 3 of Schedule C, which are the only supplements that may be

provided under section 69. Section 69 also requires that a health supplement provided under sections 2(1)(a), (f) or section 3 be required to meet a life-threatening health need. In this case, the ministry has reasonably viewed the information respecting the benefit of the wig to the appellant's mental health needs as not establishing an imminent or life-threatening need and furthermore, as previously discussed, the language of section 2(1)(a) requires that the need for a medical or surgical supply must relate to the need for treatment for one of the purposes set out in section 2(1)(a)(ii), which the requested wig does not.

Accordingly, the panel finds that the ministry reasonably determined that the appellant does not require a remedy under section 69 and that the requirements of section 69 of the EAPWDR were not met.

Conclusion

Based on the above analysis, the panel finds that the ministry's reconsideration decision that determined that the appellant is not eligible for the wig because the requirements set out in Schedule C and section 69 of the EAPWDR were not met is a reasonable application of the legislation in the circumstances of the appellant. The ministry's reconsideration decision is confirmed and the appellant is not successful on appeal.