

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of September 28, 2017 (the “Reconsideration Decision”), which denied the Appellant a medical supplement for carpet removal and an air filter or air purifier (the “Purifier”) on the basis that:

- carpet removal is not among the categories of health supplements or medical equipment which are within the statutory authority of the Ministry to provide pursuant to sections 2, 3, and 3.1 through 3.12 of Schedule C to the EAPWDR and the Appellant was not eligible for funding for carpet removal as a medical supply, pursuant to section 2(1)(a) of Schedule C to the EAPWDR;
- the Appellant’s request for the Purifier also did not fall within the categories of health supplements or medical equipment which are within the statutory authority of the Ministry to provide pursuant to sections 2, 3, and 3.1 through 3.12 of Schedule C to the EAPWDR and, more specifically, did not meet the eligibility requirements of section 3.9(1) of Schedule C to the EAPWDR; and
- the Appellant did not meet the statutory requirement of section 69 of the EAPWDR in order for the request for carpet removal and the Purifier to be approved due to a life threatening need.

## PART D – Relevant Legislation

EAPWDR, sections 62 and 69 and Schedule C, sections 2, 3, 3.1 through 3.12

## PART E – Summary of Facts

### Information before the ministry at reconsideration

The following information was before the ministry at the time of the Reconsideration Decision:

- An undated Asthma Information Sheet (the “Info Sheet”) in reference to the Appellant;
- A letter from the Appellant’s immunologist, dated October 27, 2016 (the “Letter”), confirming that the Appellant has a dust mite allergy and recommending allergen avoidance measures;
- A Medical Equipment Request and Justification, dated August 10, 2017, completed by the Appellant’s family doctor, which notes that the Appellant has “asthma and allergies” and recommends an “air filter (medical)”;
- An undated Allergic Rhinoconjunctivitis Plan (the “Plan”);
- The Appellant’s Request for Reconsideration (“RFR”), dated September 18, 2017, in which the Appellant
  - described his efforts to deal with the carpeting in his residence, including having made requests for a transfer to another unit; and
  - reiterated his request for the Purifier.

In his Notice of Appeal, dated October 5, 2017, the Appellant stated that he disagreed with the decision because “there are more things I could discuss in person that wasn’t included in the reconsideration.”

In his oral evidence, the Appellant clarified that he currently lives in the attic portion of his building and stated that he is HIV-positive, which results in his allergies posing a significant danger to his immune system and his overall health. The Appellant also stated that he was diagnosed with a form of skin cancer in 2013. The Appellant also gave some evidence about the cost of various air purifiers that he had looked at and confirmed that carpet removal is not an option for his residence as the carpet operates as a sound barrier and the landlord will not permit its removal, in any event.

At the hearing the Appellant and his advocate submitted five new documents, as follows:

- A printout of an online article entitled “Overview of HIV and the immune system”;
- A printout of an online article entitled “Best Air Purifiers”;
- A printout from Costco’s website of air purifiers available between the price of \$200.00 and \$500.00;
- A printout from the Home Depot’s website of available air purifiers; and
- A printout from Canadian Tire’s website of available air purifiers.

The printouts relating to purifiers were referenced by the Appellant’s advocate, who argued that the cost of same was relatively inexpensive in view of the health benefits that they were likely to provide to the Appellant.

The panel admits the Appellant’s oral evidence, with the exception of his evidence regarding his HIV-positive status and his having been diagnosed with skin cancer in 2013, as oral testimony in support of information that was before the Ministry at the time of the Reconsideration Decision. Likewise, the panel admits the documents submitted at the hearing, with which the Ministry representative did not take issue, with the exception of the article entitled “Overview of HIV and the immune system,” as written evidence in support of information that was before the Ministry at the time of the Reconsideration Decision.

From the perspective of the panel, the problem with admitting the Appellant's oral evidence regarding his HIV-positive and skin cancer diagnoses is that there is no mention of those conditions in the materials that were before the Ministry at the time of the Reconsideration Decision. The Request, the Plan, the Letter, and the Info Sheet all reference the Appellant's asthma and allergies only. Likewise the RFR makes no mention of either a skin cancer or HIV-positive diagnosis. Although the Appellant's advocate argued that the Appellant's PWD designation stems from his HIV-positive diagnosis and that, in the result, the Ministry would have known this at the time of the Reconsideration Decision, the panel has no way to know whether the reconsideration officer had access to that information such that the Appellant's oral evidence about his being HIV-positive could be admitted as oral testimony in support of information that was before the Ministry at the time of the Reconsideration Decision, as required by section 22(4) of the *Employment and Assistance Act*. For the same reason, the panel declines to admit the article entitled "Overview of HIV and the immune system."

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry's Reconsideration Decision, which denied the Appellant a medical supplement for carpet removal and the Purifier on the basis that:

- carpet removal is not among the categories of health supplements or medical equipment which is within the statutory authority of the Ministry to provide pursuant to sections 2, 3, and 3.1 through 3.12 of Schedule C to the EAPWDR and the Appellant was not eligible for funding for carpet removal as a medical supply, pursuant to section 2(1)(a) of Schedule C to the EAPWDR;
- the Appellant's request for the Purifier also did not fall within the categories of health supplements or medical equipment which is within the statutory authority of the Ministry to provide pursuant to sections 2, 3, and 3.1 through 3.12 of Schedule C to the EAPWDR and, more specifically, did not meet the eligibility requirements of section 3.9(1) of Schedule C to the EAPWDR; and
- the Appellant did not meet the statutory requirement of section 69 of the EAPWDR in order for the request for carpet removal and the Purifier to be approved due to a life threatening need,

was a reasonable application of the relevant legislation in the Appellant's circumstances or, alternatively, was reasonably supported by the evidence before the Ministry at the time of the Reconsideration Decision.

### **Relevant Statutory Provisions**

Section 62 of the EAPWDR authorizes the Ministry to provide health supplements set out in Schedule C of the 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 under 19 years of age, 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; am. B.C. Reg. 161/2017, App. 2 s. 2]

Section 2 of Schedule C to the EAPWDR sets out the general health supplements for which a recipient may be available and under what circumstances a recipient may be eligible for same:

## 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>
6	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.

**Section 3 of Schedule C to the EAPWDR sets out the general requirements for eligibility for supplements in respect of the medical equipment enumerated in sections 3.1 to 3.12 of Schedule C:**

## 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.

**Sections 3.1 through 3.12 of Schedule C to the EAPWDR set out the types of medical equipment and devices for which health supplements may be approved by the Ministry and the criteria for eligibility. Under sections 3.1 through 3.12 of Schedule C to the EAPWDR, the Ministry is authorized to provide supplements for the following medical equipment where a recipient meets the eligibility requirements:**

3.1	canes, crutches and walkers
3.2	wheelchairs
3.3	wheelchair seating systems
3.4	scooters
3.5	toileting, transfers and positioning aids
3.6	hospital beds
3.7	pressure relief mattresses
3.8	floor or ceiling lift devices
3.9	breathing devices
3.10	orthoses
3.11	hearing instruments
3.12	non-conventional glucose meters

**In particular, section 3.9 of Schedule C to the EAPWDR authorizes the Ministry to provide supplements in respect of various breathing devices where the eligibility criteria for that type of device is met:**

## Medical equipment and devices — breathing devices

**3.9** (1) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule:

- (a) if all of the requirements set out in subsection (2) of this section are met,
  - (i) a positive airway pressure device,
  - (ii) an accessory that is required to operate a positive airway pressure device, or
  - (iii) a supply that is required to operate a positive airway pressure device;
- (b) if the minister is satisfied that the item is medically essential to monitor breathing,
  - (i) an apnea monitor,
  - (ii) an accessory that is required to operate an apnea monitor, or
  - (iii) a supply that is required to operate an apnea monitor;
- (c) if the minister is satisfied that the item is medically essential for clearing respiratory airways,
  - (i) a suction unit,
  - (ii) an accessory that is required to operate a suction unit, or
  - (iii) a supply that is required to operate a suction unit;
- (d) if the minister is satisfied that the item is medically essential for clearing respiratory airways,
  - (i) a percussor,
  - (ii) an accessory that is required to operate a percussor, or
  - (iii) a supply that is required to operate a percussor;
- (e) if the minister is satisfied that the item is medically essential to avoid an imminent and substantial danger to health,
  - (i) a nebulizer,
  - (ii) an accessory that is required to operate a nebulizer, or
  - (iii) a supply that is required to operate a nebulizer;
- (f) if the minister is satisfied that the item is medically essential to moisturize air in order to allow a tracheostomy patient to breathe,

- (i) a medical humidifier,
  - (ii) an accessory that is required to operate a medical humidifier,  
or
  - (iii) a supply that is required to operate a medical humidifier;
- (g) if the minister is satisfied that the item is medically essential to deliver medication,
- (i) an inhaler accessory device,
  - (ii) an accessory that is required to operate an inhaler accessory device, or
  - (iii) a supply that is required to operate an inhaler accessory device.

(2) The following are the requirements in relation to an item referred to in subsection (1) (a) of this section:

- (a) the item is prescribed by a medical practitioner or nurse practitioner;
- (b) a respiratory therapist has performed an assessment that confirms the medical need for the item;
- (c) the minister is satisfied that the item is medically essential for the treatment of moderate to severe sleep apnea.

(3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is as follows:

- (a) in the case of an item referred to in subsection (1) (a) (i), 5 years from the date on which the minister provided the item being replaced;
- (b) in the case of an item referred to in subsection (1) (a) (ii) or (iii), one year from the date on which the minister provided the item being replaced;
- (c) in the case of an apnea monitor, suction unit, percussor, nebulizer or medical humidifier, 5 years from the date on which the minister provided the item being replaced;
- (d) in the case of an inhaler accessory device, one year from the date on which the minister provided the device being replaced;
- (e) in the case of an accessory or supply for an item referred to in paragraph (c) or (d), one year from the date on which the minister provided the device being replaced.

(4) A ventilator is not a health supplement for the purposes of section 3 of this Schedule.

Finally, section 69 of the EAPWDR authorizes the Ministry to provide any of the supplements set out in section 2 and 3 of Schedule C to the EAPWDR to persons who are not otherwise eligible for the supplement in situations of direct and imminent life threatening 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.]

### **The Appellant's position**

The Appellant's position is that the Purifier is essential for his health which is being compromised by living in an environment that aggravates his allergies. The Appellant argued further that the cost of an air purifier is small in relation to the health benefits that it would likely bring him and that his allergies and asthma are having a detrimental effect on his overall health and on his immune system more specifically, particularly in view of his HIV and skin cancer diagnoses. The Appellant did not make any arguments regarding the Ministry's denial of a supplement for carpet removal as the Appellant stated that carpet removal was not an option for him, in any event. The Appellant argued that with a supplement for the Purifier, the Appellant may be able to stay in his current residence.

### **The Ministry's position**

The Ministry's position is that neither the request for the Purifier or the carpet removal fit within the categories of supplements which the Ministry is authorized to provide under Schedule C.

In particular, the Ministry's position is that there is no provision in Schedule C for carpet cleaning or anything similar thereto and that the Purifier does not clearly fit specifically within any of the categories of breathing devices which the Ministry is authorized to provide and, in any event, the Appellant does not meet the criteria for eligibility for any of the specific breathing devices enumerated under section 3.9 of Schedule C to the EAPWDR.

Finally, the Ministry's position is that the Appellant does not meet the criteria for a supplement under section 69 of the EAPWDR because he *is* otherwise eligible for a health supplement under the EAPWDR and section 69 applies only to persons who are not otherwise eligible for supplements under the EAPWDR.

### **Panel's decision**

#### *Carpet Removal*

The Appellant and his advocate advised that the Appellant was no longer seeking to have the removal of carpets at his residence funded as a supplement pursuant to section 62 of the EAPWDR. Nevertheless, the panel finds that the Ministry reasonably determined that carpet removal was not an item for which a supplement was available under any of sections 2, 3, or 3.1 through 3.12 of Schedule C to the EAPWDR as there is no provision for supplements for anything even similar to carpet removal in any of those sections and no discretion in Schedule C for the Ministry to fund, as a supplement, any item not specifically referenced in those sections, pursuant to section 62 of the EAPWDR.

#### *Purifier*

With respect to the purifier, the Ministry, is likewise only authorized to provide supplements for the items set out "in section 2 [general health supplements] or 3 [medical equipment and devices] of Schedule C", pursuant to section 62 of the EAPWDR. Of the general health supplements set out in section 2 and the medical equipment referenced in section 3 (and more specifically enumerated in sections 3.1 through 3.12), it is evident that the Purifier, as described by the Appellant and in the documentation provided by the Appellant, could only potentially qualify under section 3.9 – breathing devices.

Section 3.9 of Schedule C to the EAPWDR sets out seven types of breathing devices and accessories and supplies thereto for which the Ministry is authorized to provide supplements. These items are a positive airway pressure device, an apnea monitor, a suction unit, a percussor, a nebulizer, a medical humidifier, and an inhaler accessory device. An air purifier is not specifically itemized under section 3.9 and, based on the description of the Purifier in the documentation provided by the Appellant, can not be said to be similar in function to any of the items that are set out in section 3.9. Although the Appellant argued that an air purifier may be similar to a medical humidifier, even if that was the case, a supplement for a medical humidifier is only available to a recipient when it would be "medically essential to moisturize air in order to allow a tracheostomy patient to breathe." The Appellant is not a tracheostomy patient.

In view of the foregoing, the panel finds that the Ministry reasonably determined that the Appellant was not eligible for a supplement for the Purifier under section 62 of the EAPWDR and, in particular, under section 3.9 of Schedule C to the EAPWDR.

Finally, the panel finds that the Ministry reasonably determined that the Appellant was not eligible for a supplement for either carpet removal or the Purifier under section 69 of the EAPWDR, which would require the Appellant to demonstrate that supplement being sought is among those “set out in sections 2 (1) (a) and (f) [general health supplements] and 3 [medical equipment and devices] of Schedule C”, that the Appellant was “otherwise not eligible for the health supplement under this regulation”, that the Appellant faced “a direct and imminent life threatening need”, that there were “no resources available” to the Appellant with which to meet that need, and that the particular supplement was necessary to meet that need.” In the Appellant’s circumstances, it appears that neither the carpet removal nor the Purifier fall within those “set out in sections 2 (1) (a) and (f) [general health supplements] and 3 [medical equipment and devices] of Schedule C” and, even if either of them were, the Appellant is otherwise eligible for supplements under section 62 and provided only argument as to the life threatening need for the items but no medical evidence in support.

### **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 Reconsideration Decision that the Appellant is not eligible for supplements for either carpet removal or the Purifier is a reasonable application of the relevant legislation and is reasonably supported by the evidence that was before the Ministry. In the result, the panel confirms the Ministry’s decision. The Appellant is not successful on this appeal.