

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated October 10, 2017 in which the ministry denied the appellant's application for the Alternative Hearing Assistance ("AHA") supplement. The ministry determined that specific eligibility criteria under the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") were not met as follows:

- Schedule C, subsection 11(3)(a)(i): The ministry was not satisfied the appellant has permanent profound hearing loss in both ears as defined in section 11(1) of EAPWDR Schedule C.
- Schedule C, subsection 11(3)(b)(i): The ministry was not satisfied that an audiologist or hearing instrument practitioner's assessment, within the previous 12 months, confirms permanent profound hearing loss in both ears (91 decibels or greater across all frequencies tested).
- Section 69: The ministry determined the appellant is not eligible for the AHA supplement (under Life-threatening health need) and is not a person facing a direct and imminent life threatening health need.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - sections 69 and 70.02, and section 11 of Schedule C.

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

1. A *Request for Alternative Hearing Assistance Supplement* completed and signed by the appellant and her audiologist as follows:

Part B - Application Acknowledgement, Hearing Instrument Information and Consent signed by the appellant on August 17, 2017. The appellant indicated she has not received a hearing instrument in the past 36 months.

Part C - Hearing Assessment Information completed and signed by the audiologist on August 16, 2017. The audiologist check marked *No* the appellant does not have permanent hearing loss in both ears. The audiologist check marked *Yes*, the client would significantly benefit from a hearing instrument for the purpose of speech comprehension. When asked to explain the audiologist wrote, *Client currently wears hearing aids. They help in assisting her with speech reading. Her word recognition is very poor so even with hearing aids, she relies on lip reading. However, it would be more difficult without hearing aids. Hearing aids also provide environment sound awareness for her.*

2. *Audiologic Evaluation* completed and signed by the appellant's audiologist on August 16, 2017. The audiologist stated: *bilateral severe to profound sensorineural hearing loss with no measurable responses from 4,000 Hz and up. Poor word recognition bilaterally/ Normal middle ear pressure and compliance bilaterally.*

3. A Request for Reconsideration ("RFR") signed by the appellant on September 22, 2017 with attached *Audiologic Report* dated September 13, 2017 in which the audiologist provided the following information:

- The appellant has a longstanding history of bilateral profound hearing loss and gets limited benefit from her hearing aids.
- The appellant has a medical condition with associated progressive vision and hearing loss. She was diagnosed with mild to severe hearing loss as a young child and has experienced steady deterioration in hearing thresholds since then. The appellant has significant difficulties understanding spoken speech due to her very poor word discrimination ability. She struggles considerably with communication and uses a combination of her limited hearing, lip-reading, and sign language to connect with others.
- Hearing test results indicate the appellant has no response to limits of audiometer at 6000 Hz for her left ear, and no response to limit of audiometer at 4000 Hz and above for her right ear. With respect to the EAPWDR criteria where hearing loss must be greater than 91 dB across all frequencies, the appellant meets the criteria from 750 Hz to 8000 Hz in the right ear and from 1000 Hz to 8000 Hz in the left ear. At 250 Hz, thresholds are 70 dB HL in the left ear and 75 dB HL in the right ear. At 500 Hz, the thresholds are 80 dB HL in the left ear and 85 dB HL in the right ear.

4. Information from the ministry's record as follows:

- On August 17, 2017 the appellant submitted an application for the AHA supplement including the request form and *Audiologic Evaluation* completed by the audiologist.
- On August 23, 2017 the ministry denied the appellant's request for the supplement and sent her a denial letter dated September 13, 2017 (copy provided).
- On September 25, 2017 the ministry received the appellant's RFR with further documentation from the audiologist.

Additional submissions

In the *Notice of Appeal* dated October 15, 2017, the appellant's advocate indicates the appellant is "deaf-blind" due to her medical condition and requires "3 - 4 sets of ear molds per year at \$175 per time" as the ear molds become "very hard fast and need to be replaced often." At the hearing, the advocate explained that "ear molds" are part of the hearing aid; "they go inside the ear to attach the hearing aid and the hearing aid does not work without the mold, it would be like giving someone glasses without the frames." The advocate stated that the appellant has a limited income from income assistance and applied for the AHA supplement to pay for the molds which quickly become hard due to the appellant's medical (metabolic) condition. In response to questions, the advocate stated that the appellant's hearing shows a decrease each time it is tested and she does not know how fast it is deteriorating because very few people have the appellant's condition so "there's nothing to compare it to".

The panel admits the additional information under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister at the time the decision being appealed was made. While "ear molds" were not specifically mentioned in the reconsideration record the audiologist noted that the appellant wears hearing aids, of which ear molds are a component. At the hearing, both the advocate and the ministry also provided argument on appeal and the panel will consider both parties' arguments in *Part F - Reasons*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision of October 10, 2017 in which the ministry denied the appellant's application for the AHA supplement was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the appellant. The ministry determined that specific eligibility criteria under the EAPWDR were not met as follows:

- Schedule C, subsection 11(3)(a)(i): The ministry was not satisfied the appellant has permanent profound hearing loss in both ears as defined in section 11(1) of EAPWDR Schedule C.
- Schedule C, subsection 11(3)(b)(i): The ministry was not satisfied that an audiologist or hearing instrument practitioner's assessment, within the previous 12 months, confirms permanent profound hearing loss in both ears (91 decibels or greater across all frequencies tested).
- Section 69: The ministry determined the appellant is not eligible for the AHA supplement (under Life-threatening health need) and is not a person facing a direct and imminent life threatening health need.

Legislation – EAPWDR

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,

Schedule C

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).

Analysis and panel's decision

The ministry accepted that the appellant is eligible to receive the health supplements provided under section 70.02 and Schedule C of the EAPDWR because she is receiving disability assistance. The ministry argued, however, that her request for the AHA supplement did not meet specific eligibility criteria under the Regulation as follows:

EAPWDR Schedule C - Alternative hearing assistance supplement

◦ Subsection 11(3)(a)(i): The ministry noted that this section authorizes the minister to provide the AHA supplement *only if* it is satisfied that the person has “permanent profound hearing loss in both ears.” The ministry argued that industry standards require a hearing loss of 91 decibels or greater across all frequencies tested in an audiological assessment. The ministry noted that section 11(1) of Schedule C states that *profound hearing loss* means hearing loss of 91 decibels greater across all frequencies tested. The ministry further noted that the *Audiologic Evaluation* provided with the application for the AHA supplement, as well as the information from the audiologist at reconsideration, do not show a hearing loss of 91 decibels or greater across all frequencies tested.

The appellant does not dispute the results of the testing or the audiologist’s information but argues, in the *Audiologic Report* of September 13, 2017, that “an exception should be made for the appellant as the AHA supplement will “significantly assist in providing her with the necessary assistance to meet her communicative needs in hopes she can maintain a quality of life.” Nonetheless, the ministry argued in the reconsideration decision that there are no exceptions to the legislated threshold [91 decibels of greater] under the AHA supplement regulation or policy.

Panel's decision

The panel finds that the ministry reasonably determined the appellant does not meet the criterion in subsection 11(3)(a)(i) of EAPWDR Schedule C. As noted by the ministry, the evidence from the audiologist does not confirm a hearing loss of 91 decibels or greater across all frequencies tested in the audiological assessment as required under the Regulation. The audiologist reported a profound hearing loss at some frequencies; however, it was specifically stated that the appellant does not meet the criteria for the AHA supplement for two frequencies: 250 and 500 Hz. The audiologist reported hearing loss thresholds of 70 decibels in the left ear and 75 decibels in the right ear at 250 Hz, and 80 decibels in the left ear and 85 decibels in the right ear at 500 Hz. The panel finds that the ministry reasonably determined that these measures fall below the legislated threshold of 91 decibels or greater.

The panel also finds that the ministry reasonably applied the legislation in finding there are no exceptions to the legislated threshold of 91 decibels or greater. Subsection 11(3)(a)(i) of Schedule C authorizes the minister to provide the supplement “only if” the threshold of 91 decibels or greater is met. Therefore, the ministry has no discretion to provide the supplement to a person whose hearing loss falls below the legislated threshold for two of the tested frequencies.

◦ Subsection 11(3)(b)(i): The ministry noted that this section of the Regulation sets out an additional requirement that must be met in order for the minister to provide the AHA supplement; i.e., confirmation from an audiologist, within the previous 12 months, of permanent profound hearing loss in both ears. The ministry argued that none of the documents from the audiologist establish permanent, profound hearing loss in both ears. As noted earlier, *profound hearing loss* is defined in section 11(1) of Schedule C as a hearing loss of 91 decibels or greater across all frequencies tested in an audiological assessment. The ministry further argued that there are no exceptions to this requirement under the AHA supplement regulation or policy.

Panel’s decision

The panel finds that the ministry reasonably determined the appellant does not meet the requirement in subsection 11(3)(b)(i) of EAPWDR Schedule C. The ministry based its determination on the same evidence as for subsection 11(3)(a)(i); specifically, the audiologist’s report does not confirm a hearing loss of 91 decibels or greater across all frequencies tested in the audiological assessment. Therefore the definition of *profound hearing loss* under section 11(1) of Schedule C was not met.

The clause “only if” [the requirement is met] also applies to subsection 11(3)(b)(i). The panel therefore finds that the ministry reasonably applied the legislation as there are no exceptions to the requirement for an audiologist to confirm permanent profound hearing loss in both ears.

EAPWDR - section 69: life-threatening health need

The ministry noted that this section authorizes the minister to provide health supplements to persons not otherwise eligible for a health supplement under specific sections of Schedule C of the Regulation, and if the minister is satisfied that the person meets the following requirements:

- faces a direct and imminent life-threatening health need; and
- there are no resources in the family unit to meet the need; and
- the health supplement is necessary to meet the need; and
- the family unit is receiving premium assistance under *Medicare* legislation; and
- the specific requirements for the requested health supplement are met.

The ministry noted that the AHA supplement is not one of the health supplements that may be provided under section 69. The ministry argued that the appellant does not require a remedy under section 69 because as a recipient of disability assistance she is eligible to receive health supplements under Schedule C of the EAPWDR. The ministry further argued that information submitted with the application and RFR does not demonstrate that the appellant faces a direct and imminent life-threatening health need for the item requested. The ministry determined the appellant is not eligible for the AHA supplement under section 69 because her request does not meet this legislative criterion.

The appellant’s main argument is that she should qualify for the AHA supplement under Life-threatening health need. In the RFR, the audiologist reported that the appellant’s hearing and vision are expected to decline further on account of her medical condition and that her ability to

communicate is already extremely limited. In the appeal submissions, the advocate argued that not having the AHS supplement to fund replacements of the appellant's ear molds creates a health and safety issue.

The advocate elaborated on health and safety concerns at the hearing, explaining that the appellant cannot hear cars, even with her hearing aids; and without her hearing aids she would be totally deaf, "can't hear fire alarms" and "there is a threat to her life because if she has an accident it could mean her death" and "she will live in a world of darkness and isolation" without the AHA supplement to pay for the molds for her hearing aids. In response to the advocate's submissions on health and safety, the ministry stated at the hearing that "there can be an exception made" under section 69 and a health supplement can be issued if there is a direct and imminent life-threatening health need.

Panel's decision

The panel finds that the ministry reasonably determined the appellant is not eligible for the AHA supplement under Life-threatening health need and that the AHA supplement is not one of the health supplements that may be provided under section 69. The panel notes that section 69 states that only the items listed in certain sections of Schedule C may be provided under Life-threatening health need; specifically, general health supplements and medical equipment and devices under sections 2(1) and 3 of Schedule C respectively. While the AHA supplement is described in Schedule C, it is not covered under sections 2(1) and 3 of the Schedule. The ministry is therefore not authorized to provide the AHA supplement under Life-threatening health need.

The ministry further noted that the eligible items listed in sections 2(1) and 3 of Schedule C may be provided to persons who are facing an imminent threat to life and who are not otherwise eligible to receive them. The ministry argued that the appellant's information does not demonstrate that she faces a direct and imminent life-threatening health need; however, it is noted that even if the appellant provides medical information to confirm an imminent life-threatening health and safety situation, she would not qualify for the AHA supplement under section 69 of the EAPWDR.

Conclusion

The panel finds that the ministry's reconsideration decision that denied the appellant's request for the AHA supplement due to EAPWDR criteria that were not met was a reasonable application of the Regulation in the circumstances of the appellant. The panel therefore confirms the decision under section 24(2)(a) of the *Employment and Assistance Act* and the appellant is not successful in her appeal.