

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("Ministry") reconsideration decision dated January 10, 2018 in which the Ministry found that the appellant is not eligible for a health supplement for medical supplies - compression stockings ("stockings") under sections 66.1, 67 and 76 of the Employment and Assistance Regulation ("EAR"). The Ministry also found that the appellant is not eligible for the stockings under section 62 of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR").

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation - EAR - sections 66.1, 67 and 76, and Schedule C

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - section 62

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. A Request for Reconsideration (“RFR”), signed by the appellant on December 20, 2017, which included her argument and contained the following information:

- The appellant indicated she applied for stockings for her medical condition (varicose veins). The appellant stated that her condition gets worse if she does not wear the stockings all the time and she now has “heavy legs syndrome” which is very painful.
- The appellant stated that the stockings that she purchased 2 years ago (when she was employed) are no longer helpful for her condition as they are ripped and have lost their compression.
- The appellant stated that she is currently looking for work. As her line of work involves long periods of standing or walking, she called the Ministry in August 2017 to request assistance with purchasing new stockings. The appellant indicated that the Ministry approved her request for stockings during the phone conversation. The appellant further indicated she was unable to follow up and provide medical documentation at that time because she was scheduled for surgery on her toe in September 2017 (with subsequent 4-week recovery period).
- The appellant stated that when she called the Ministry to provide a medical prescription for the stockings, the Ministry informed her that the request was closed in October 2017.

The appellant attached the following medical document:

- A prescription from a medical doctor dated December 3, 2017 for stockings with 30-40 mmhg of compression, “closed toe, thigh hip for varicose veins - 1 pair.”

2. Information from the Ministry’s record of decision which included:

- A letter dated January 10, 2017 [*sic*] in which the Ministry advised the appellant that her request for stockings was denied.
- The reconsideration decision which stated:
 - The appellant is a single recipient of income assistance with no dependents. Her file was re-opened on August 8, 2017.
 - On August 24, 2017, the Ministry created a Service Request (“SR”) for medical supplies (compression stockings). The Ministry also indicated that on August 27, 2017, the appellant contacted it to enquire about medical services available including funding for compression stockings. The Ministry noted that the appellant had full PharmaCare coverage for eligible items. The due date for completion of the SR for medical supplies was October 23, 2017.
 - On October 23, 2017, the Ministry closed the SR as no documents had been submitted concerning the request. The SR was eventually identified as “abandoned/ documents not submitted.” The file resolution was described as “employable client not eligible for Schedule C benefits.”

- On December 5, 2017, the appellant called the Ministry to inquire about where to send the bill for her compression stockings. The Ministry advised the appellant that she is not eligible for stockings as she is an employable client. The appellant advised that she was previously told she was eligible. The Ministry provided information from its Policy and Procedures Manual.
 - The appellant subsequently called the Ministry to request reconsideration. The appellant stated that she medically requires the stockings in order to be able to work.
 - On December 22, 2017, the Ministry received that appellant's RFR with attached prescription for stockings.
- An excerpt from the Ministry's Policy and Procedure Manual, effective October 1, 2012, elaborating on the legislative criteria for medical and surgical supplies; in particular, indicating that compression stockings may be considered as a health supplement to support limb circulation. Among other things, the policy states that medical or surgical supplies are provided only to clients who are eligible for general health supplements, and clients are responsible for providing required documentation. The policy also outlines steps for the Employment and Assistance Worker ("EAW") to follow in processing a request for a health supplement.

Additional information

On January 29, 2018, the Tribunal received a Notice of Appeal in which the appellant reiterated her information and argument regarding her request for the stockings. At the hearing, the appellant further summarized her information and arguments. To the extent that her submission on appeal contains evidence, the panel admits it under section 22(4) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister when the decision being appealed was made.

The Ministry attended the hearing with an observer and the appellant consented to the observer being there. The Ministry clarified its process for considering requests for health supplements and did not submit any new evidence.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry reasonably concluded that the appellant was not eligible for a health supplement for compression stockings under sections 66.1, 67 and 76 of the EAR; and section 62 of the EAPWDR.

The ministry based its reconsideration decision on the following legislation:

EAR - Health Supplements

Definitions

66.1 In this Division:

"continued person" means

- (a) a main continued person under section 66.3 (1) or 66.4 (1), or
- (b) a dependent continued person under section 66.3 (2) or 66.4 (2);

"qualifying person" means a person who

- (a) has persistent multiple barriers to employment, or
- (b) is a recipient of income assistance who is described in section 8 (1) [*people receiving special care*] of Schedule A.

Access to medical services only

66.3 (1) Subject to subsection (4), a person is a main continued person if

- (a) the person was
 - (i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for income assistance, and
 - (ii) a qualifying person on that date, and
- (b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance.

(2) Subject to subsection (6), a person is a dependent continued person if

- (a) the person was a dependant of a main continued person under subsection (1) on the main continued person's continuation date, and
- (b) the person is currently a dependant of that main continued person.

Access to transitional health services

66.4 (1) Subject to subsection (4), a person is a main continued person if

- (a) the person was, on or after September 1,

2015,

(i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for income assistance, and

(ii) a recipient of income assistance on the date referred to in subparagraph (i) and

(b) the person has not, since the date referred to in paragraph (a) (i), been part of a family unit in receipt of income assistance, hardship assistance or disability assistance.

(2) A person is a dependent continued person if

(a) the person was a dependent child of a main continued person under subsection (1) on the main continued person's continuation date, and

(b) the person is currently a dependent child of that main continued person.

Health supplement for persons facing direct and imminent life threatening health need

76 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).

Schedule C - Health Supplements

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 67 [*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:
 - (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;

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.

Analysis

The appellant argued that the reconsideration decision “was not fair or just” because the Ministry closed the SR without her knowledge and later denied her request for the stockings. The appellant acknowledged she did not follow up on her request right away but she understood that she could provide the medical prescription in support of her request after she recovered from her toe surgery and was ready to resume her work search. The appellant maintains that the Ministry approved her request for stockings during her initial phone call and that the agent also stated that her request would be valid until the end of 2017.

The appellant argued that the stockings are not “a fashion item” but are medically necessary for her condition and the prescription from her doctor confirms that the stockings are medically essential. The appellant stated that she is unable to afford to purchase stockings (approximate cost \$120 - \$150) because she is looking for work and assisting her child who attends university.

The appellant expressed frustration with the Ministry’s process and procedures and indicated she was upset with a “very rude” and “unprofessional” agent who told her the SR was closed in October 2017. The agent told her “the decision was made, she cannot comment about that decision, and I cannot do anything about it...if I need the item to take care of it by myself.” The appellant stated that she subsequently spoke with another agent who apologized and told her that the Ministry was “switching her”

from “hardship circumstances” to “regular (income assistance) funding” and suggested that she write to the Ministry and explain why she needs the stockings. The appellant believed that she would still have time to provide a doctor’s letter in support of her request for medical stockings because the ministry never informed her that the “due date” was October 23, 2017 (as indicated in the reconsideration decision). The appellant stated that she picked up the reconsideration package and provided the medical prescription, and she is frustrated because the ministry still denied her request and whenever she calls the Ministry, “every agent tells a different story.”

The Ministry argued that the appellant is not eligible for compression stockings because she does not meet the legislated criteria in sections 67(1) and (2) of the EAR including the definitions set out in section 66.1. On the Ministry’s interpretation of these sections, the minister may provide Schedule C health supplements to the following categories of income assistance recipients:

- a “qualifying person” who has Persistent Multiple Barriers to Employment (“PPMB”) or is a person receiving “special care” under Schedule A;
- a dependent child in a family unit that is in receipt of hardship assistance;
- a “continued person” who has access to Medical Services Only benefits (“MSO”); and
- a person otherwise described in section 67.

The Ministry argued that the appellant is not described in these categories because she is an employable adult recipient of income assistance.

The Ministry further argued that the appellant’s application for the stockings does not meet the legislated criteria in section 62 of the EAPWDR because the appellant is not a recipient of disability assistance; or a dependent child of a family unit in receipt of hardship assistance; or a “continued person” under the EAPWDR who is now qualified to receive MSO.

The Ministry argued that the appellant is not eligible for stockings under section 76 of the EAR because the information provided in her initial request and RFR “does not establish you were facing a direct and imminent life-threatening health need for the items requested.”

Regarding its process and procedures, the Ministry noted that there is “no evidence in the ministry’s electronic records that a ministry worker advised you that you were eligible for compression stockings.” The Ministry noted that no written request for compression stockings or supporting documentation, such as a prescription from a physician, was submitted prior to December 22, 2017 when a prescription was submitted with the appellant’s RFR. The Ministry argued that “an EAW could not have made an oral decision” to approve a request for compression stockings without supporting documentation.

Panel's decision - EAR section 66.1

Section 66.1 provides definitions for the Regulation:

- A “continued person” refers to a person in a family unit who, subject to other sections of the Regulation, ceased to be eligible for income assistance, hardship assistance, or disability assistance and is transitioning to MSO or has access to *transitional health services*. Under the circumstances outlined in the Regulation, a “continued person” may also be a dependent in the family unit. The evidence indicates that the appellant is a sole adult recipient of income assistance whose file was re-opened in August 2017. The panel therefore finds that the Ministry reasonably found that the appellant is not a “continued person” under the EAR.
- A “qualifying person” means a person who has the PPMB qualification, or is a recipient of income assistance receiving “special care” in a hospital or other care facility as described in Schedule A of the Regulation. The evidence indicates that the appellant is a recipient of regular income assistance and is currently searching for employment. The panel therefore finds that the Ministry reasonably concluded she is not a “qualifying person” under the EAR.

Panel's decision - EAR section 67

Subsection 67(1)(a) authorizes the minister to provide a health supplement for the medical equipment and devices described in Schedule C of the Regulation, to a family unit in receipt of income assistance if the following requirements are met:

- the family unit includes a “qualifying person”; or
- the health supplement is provided to or for a person in the family unit who is under 19 years of age.

Under subsections 67(1)(b) and (c) respectively, a health supplement may also be provided to or for a person under 19 years of age in a family unit that is receiving hardship assistance; or a “continued person” in the family unit. Under subsection 67(2), and subject to other sections of the Regulation, the minister may provide medical equipment and devices to persons who were eligible for income assistance under the former *BC Benefits* legislation. Neither the appellant nor the Ministry indicated the appellant was eligible for assistance under the former legislation.

Based on the analysis of section 67, the panel finds that it was reasonable for the ministry to deny funding for compression stockings under subsections 67(1)(a), 67(1)(b), 67(1)(c), and 67(2). As noted earlier, the appellant is not a “qualifying person” (PPMB); a child under the age of 19; a child in a family unit that receives hardship assistance; or a “continued person”. Further, there was insufficient information to indicate that her request was considered under the former legislation.

Under the Ministry’s Policy and Procedure Manual, compression stockings may be considered for the purpose of “limb circulation care.” While subsection 2(1)(a)(i)(F) of Schedule C authorizes the minister to pay for medical supplies for the purpose of “limb circulation care”, the supplies “must be provided to a family unit that is eligible under section 67 [*general health supplements*] of this regulation.” As the appellant is an employable recipient who is not in one of the eligible categories of persons set out in section 67, the panel finds that the Ministry reasonably concluded it is not authorized to provide a health supplement for compression stockings under section 67 of the EAR.

Panel's decision - EAPWDR section 62

Section 62 of the EAPWDR authorizes the minister to provide medical equipment and devices to/for a family unit in receipt of disability assistance; a person under age 19 in a family unit that receives hardship assistance; or a "continued person" in a family unit. As noted by the Ministry, a "continued person" under the EAPWDR is a person who qualifies for MSO. The Ministry argued that the appellant does not meet these basic eligibility requirements under section 62, and as the appellant is an adult recipient of regular income assistance, the panel finds that the Ministry reasonably concluded she is not eligible for compression stockings under the EAPWDR.

Panel's decision - EAR section 76

Section 76 authorizes the Ministry to provide a health supplement if the health supplement is provided to or for a person in a family unit who is otherwise not eligible for the health supplement under the Regulation. In addition, the minister must be satisfied that the criteria under subsections 76(a) to (d) are met. The Ministry argued that the appellant's evidence does not meet the criteria under subsection 76(a) as it does not establish a direct and imminent life-threatening health need for compression stockings.

The panel finds that the ministry reasonably determined there was insufficient evidence of a direct and imminent life-threatening health need. While the appellant submitted a prescription from her doctor for compression stockings, the doctor indicated that she requires stockings with particular features "for varicose veins" and the information does not address a life-threatening situation. The panel recognizes that compression stockings are medically necessary for the appellant's condition but the appellant has provided insufficient evidence of a life-threatening health risk that would result if she does not obtain the stockings. The panel therefore finds that the ministry reasonably determined that a direct and imminent life-threatening health need for compression stockings under subsection 76(a) of the EAR was not established by the evidence.

Conclusion

While the appellant was very unhappy with the service she received from the Ministry in processing her request for compression stockings, the panel finds that the Ministry reasonably applied the legislation despite any procedural irregularities. The panel finds that the Ministry's decision that found the appellant ineligible for a health supplement for the stockings was a reasonable application of the legislation. The panel confirms the decision and the appellant is not successful in her appeal.