

### **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 February 9, 2018 which held that the appellant is not eligible for funding for a heating pad 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 heating pad was not a health supplement listed under any of the following:

1. Medical equipment or devices, as provided in Sections 3 and 3.1 to 3.12 of Schedule C of the EAPWDR;
2. Medical supplies, as provided in Section 2(1)(a) of Schedule C of the EAPWDR;
3. A therapy service as provided in Sections 2(1)(c), 2(2), and 2(2.1) of Schedule C of the EAPWDR;
4. Any health supplement under any remaining sections of Schedule C of the EAPWDR; or
5. A health supplement for a person facing a direct and imminent life threatening need under Section 69 of the EAPWDR.

### **PART D – RELEVANT LEGISLATION**

EAPWDR, Sections 62 and 69  
Schedule C

## **PART E – SUMMARY OF FACTS**

The appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

### **Information before the ministry at reconsideration**

The following information was before the ministry at the time of reconsideration:

A prescription dated October 19, 2017 from the appellant's doctor, prescribing "NON-DRUG Rx-Heating pad for arthritis".

The appellant's Request for Reconsideration, dated January 30, 2018, in which he explains that he has multiple disabilities, the latest being severe and crippling arthritis of both hips and his left knee. He is waiting for surgery on his right hip. He has just got approved for a mobility scooter. He indicates that he is not on any pain medication and does not wish to be prescribed pain medication. He uses crutches to get around the house and to the rec center. He uses a heating pad to assist with pain and the one he had borrowed from his mother failed and he would like support for another as he finds it very useful for his hip pain.

A letter from the appellant's mother dated January 31, 2018 which states that she is his advocate and support worker. She indicates that the appellant has lived with her and her husband since April 2017 and that he spends the majority of time in his room lying in a horizontal position in order to relieve the stress, inflammation and pain of his chronic condition. She explains that his exercise plan often causes severe pain and inflammation in his hips and he finds great relief through the use of heat from a heating pad. She adds that he is unable to take any other form of pain medications and remedies due to his multiple challenges and is unable to work so he cannot afford a heating pad. The appellant's mother indicates that it is imperative for the appellant's quality of life that he receive funding from the ministry to buy a heating pad to relieve the pain in his hips.

### **Information provided on appeal**

The appellant's Notice of Appeal dated February 26, 2018 in which he states that with all his medical issues that he is going through at this moment in his life; he suffers from chronic pain not only in the hip that he is awaiting surgery but also the other one. He is not prescribed any pain medication due to addiction issues of the past. He adds that he spends a lot of time at home on his bed because he is not mobile and the heating pad will be a great asset to his pain and circulation care.

### **Hearing**

The ministry stood by their reconsideration decision.

## PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry's reconsideration decision dated February 9, 2018 which held that the appellant is not eligible for funding for a heating pad because the request did not satisfy the statutory criteria as set out in Section 69 or Schedule C of the EAPWDR and was either reasonably supported by the evidence or a reasonable interpretation of the legislation in the circumstances of the appellant.

### Relevant Legislation 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 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.

#### 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).

### 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;

(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>
5	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.

### 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 specific medical equipment and devices for which the ministry may provide supplements under Section 3 are enumerated in sections 3.1 through 3.12 of Schedule C to the EAPWDR. Likewise, sections 4, 4.1, and 5 through 9 set out additional health supplements which the ministry is authorized to provide under Schedule C to the EAPWDR.

### **Ministry's Position**

The ministry's position is that after reviewing all the categories of health supplements set out under the Regulation, Schedule C to determine if the appellant's request could be accommodated, the ministry found that a heating pad does not meet the legislated criteria as set out in the EAPWD Regulation. The ministry notes that there is no exception in policy and the ministry does not have any discretion in this matter.

### **Appellant's Position**

The appellant's position is that he suffers from chronic pain not only in the hip that he is awaiting surgery but also the other one. He is not prescribed any pain medication due to addiction issues of the past. He argues that he spends a lot of time at home on his bed because he is not mobile and the heating pad will be a great asset to his pain and circulation care.

### **Panel's Decision**

#### Basic Eligibility

Section 62 of the EAPWDR states that the ministry may provide any health supplement set out in section 2 or 3 of Schedule C to or for a family unit in receipt of disability assistance. As the appellant is in receipt of disability assistance, the panel finds that the ministry reasonably determined that the appellant is entitled to the general health supplements identified in Section 2 of Schedule C of the EAPWDR and the medical equipment and devices specified in Section 3 of Schedule 2 of the EAPWDR.

#### Health Supplements – medical equipment, medical supplies and all listed others - Eligibility

The panel finds that the heating pad is clearly not any of the health supplements set out in Sections 3 and 3.1 – 3.12 of Schedule C 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 panel therefore finds that the ministry was reasonable to determine that the appellant is not eligible for a heating pad as a medical equipment.

Section 2(1) (a) of Schedule C authorizes the ministry to provide disposable or reusable medical or surgical supplies where such supplies are required for "wound care, ongoing bowel care, catheterization, incontinence, skin parasite care, limb circulation care." In the appellant's circumstances, the heating pad is prescribed by the appellant's doctor for arthritis. The appellant's information is that he needs the heating pad for pain and circulation care. The panel finds that the ministry was reasonable to determine that a heating pad is not a disposable medical or surgical supply for the listed care according to the legislation.

Section 2(1)(a.1) of Schedule C sets out certain items that may be provided by the ministry but a heating pad is not included.

Section 2(1) (a.2) of Schedule C authorizes the ministry to provide supplements for consumable medical supplies which do not include a heating pad.

The heating pad is also not any of the health supplements set out in Sections 2(1)(c), 2(2), and 2(2.1) of Schedule C, therapy services under EAPWDR which comprise acupuncture service, chiropractic services, massage therapy services, naturopathy services, nonsurgical podiatry services and physical therapy services and other services, 2(1)(f) [medical transportation], or Sections 2.1, 2.2, and 4 through 9 [optical, dental, diet, natal].

The panel finds that the heating pad is not an item represented in any provision of Schedule C of the EAPWDR and therefore, the ministry reasonably determined that the heating pad does not meet the legislated criteria as a health supplement pursuant to Schedule C of the EAPWDR.

#### Health Supplements for Persons Facing Life Threatening Need

Section 69 of the EAPWDR authorizes the ministry to provide a health supplement to a person who is not otherwise eligible for the supplement under the EAPWDR provided the Ministry is satisfied that:

- 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,
- the health supplement is necessary to meet that need,
- a person's family unit is receiving premium assistance under the Medicare Protection Act, and
- the requirements specified in the following provisions of Schedule C, as applicable, are met:  
paragraph (a) or (f) of section (2)(1); and Sections 3 to 3.12, other than paragraph (a) of Section 3 (1).

As the ministry acknowledged, the appellant's request does not establish that he faces a direct and imminent life-threatening health need for the requested item. The panel finds that the ministry reasonably determined that the appellant was also not eligible for a health supplement under Section 69 of the EAPWDR.

#### **Conclusion**

The panel finds that the ministry's decision to deny the appellant funding for a heating pad because the item is not an eligible item under Section 69 or Schedule C of the EAPWDR was reasonably supported by the evidence and was a reasonable application of the applicable enactment. The ministry's reconsideration decision is confirmed and the appellant is not successful on appeal.