

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the ministry's reconsideration decision dated July 24, 2018. In that decision the ministry denied the appellant's request for funding for a Samsung smart phone because funding for a smart phone did not meet the eligibility requirements for health supplements set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C, sections 2, 3, and 11.

## **PART E – SUMMARY OF FACTS**

The information before the ministry at reconsideration included the following:

- A letter, dated July 5, 2018, from a medical doctor stating that it was “strongly recommend[ed] that [the Appellant] be provided assistance to obtain a proper smartphone with talk and text plan/capabilities to maintain satisfactory regulation of her symptoms and prevent life threatening deterioration;
- A letter, dated June 22, 2018, from a registered clinical counsellor which stated “[The Appellant’s] cell phone is the most useful tool of therapy and because of it, she has been able to create what some medications and Cognitive-Behavioural therapies can never achieve – regulation...I wholeheartedly support [the Appellant’s] bid to have the ‘prosthetic’ of a cell phone to mitigate, control and help regulate her mental health and well being”;
- A report from a psychiatry consult that occurred on January 29, 2016, in which she was diagnosed with posttraumatic stress disorder;
- A Medical Equipment Request and Justification Form, dated March 16, 2018. In that form, under the heading ‘What Type of Medical Equipment is Recommended?’ it was written “Smartphone with talk + text plan (essential)” and under the heading ‘Specifications of Medical Equipment Required to Meet the Applicant’s Needs’ it was written “Cellular phone with talk + text capability. Essential for regulating PTSD.”; and
- A prescription, dated February 15, 2018, from a medical doctor prescribing “NON-DRUG Rx – Cell Phone...Cell Phone with the ability to phone, text and email (i.e., Smartphone capability) – required due to her medical condition.

### **Information provided on appeal:**

#### **Notice of Appeal**

In the Notice of Appeal dated August 8, 2018, the Appellant wrote under the heading Reasons for Appeal “I don’t agree with the Ministry’s decision.”

The Appellant also provided a submission, dated August 28, 2018, that included a 4 page letter, and three articles: Posttraumatic Stress Disorder in Children and Adolescents: Epidemiology, Pathogenesis, Clinical Manifestations, Course, Assessment, and Diagnosis written by Katie McLaughlin, PhD; The Science Behind PTSD Symptoms: How Trauma Changes the Brain by Michele Rosenthal; and How Does Post-Traumatic Stress Disorder Change the Brain, by Viatcheslav Wiassoff, PhD.

The panel reviewed the submissions for admissibility and determined it was admissible as argument.

The panel reviewed the articles for admissibility and determined they were admissible as it is in support of information before the ministry at the time of the reconsideration decision, specifically the Appellant’s diagnosis of posttraumatic stress disorder and the descriptions of her symptoms.

## PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry's determination that the appellant did not meet the eligibility requirements set out in EAPWDR Schedule C, subsections 2, 3, 11 to receive the benefit of a Samsung smart phone, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

### Applicable Legislation

#### EAPWDR

#### 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;

### **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.

### **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).

### **Appellant's Submissions**

The Appellant's written submission and her submission at the hearing was that smartphones should be considered a medical supply, medical equipment or a medical device and a life-threatening health need.

The Appellant stated that all the devices listed in the EAPWDR were for physical disabilities not mental disabilities. She noted that a smartphone was better for her than a physical aide. She highlighted that if her prescription was for a chemical substance she would likely be provided with assistance and that there needs to be a better understanding of her condition.

She also made submissions explaining why she believed a smartphone should be considered available under the existing regulation. She stated that a smartphone was a reusable medical supply and that section 2(1)(a)(i) allowed

the minister to pay for medical or surgical supplies that are required for wound care. She stated that her brain was wounded and a smartphone “has become a healing tool for me to be able to deal with the wounded parts of my brain.”

She also said that the smartphone was a medical device or supply because it assisted her with sleeping because the ability to text or call supportive people help her to fall asleep and to get back to sleep is she wakes with night terrors or nightmares.

### **Ministry Submissions**

The ministry reaffirmed the reasoning articulated in the Reconsideration Decision. The ministry stated that it was sympathetic to the Appellant’s illness.

The ministry stated that a smartphone was not a medical or surgical supply that met the conditions of EAPWDR section 2(1)(a), 2(1)(a.1) or 2(1)(a.2).

The ministry also stated that a smartphone was not a medical equipment or device listed in section 3.1 to 3.12 of Schedule C and therefore section 3(1) of the EAPWDR did not apply.

The ministry further commented that EAPWDR section 11 did not apply because the smartphone was not provided to provide hearing assistance.

### **The Panel’s Decision**

The Employment and Assistance Act, section 24 provides legislative authority for the Panel to determine whether the decision being appealed is reasonably supported by the evidence and if it is a reasonable application of the legislation in the circumstances of the appellant.

The Panel acknowledges that the Appellant may have a legitimate medical need for a smartphone and that a smartphone may provide her with the benefits she describes. However, the Panel notes that EAPWDR sections 2 and 3, authorizes the ministry to pay for any health supplements only if they meet the legislated criteria.

Section 2 provides authority for the ministry to pay for supplies for wound care, bowel care, catheterization, incontinence, skin parasite care, limb circulation care, lancets, needles, syringes, ventilator supplies, tracheostomy supplies, supplies required to thicken food and basic eyewear and supplies. The Panel finds that the ministry reasonably determined that a smartphone does not come within the scope of medical supplies identified in Section 2.

Section 3 provides authority for the ministry to provide medical equipment and supplies that are canes, crutches, walkers, wheelchairs, wheelchair seating systems, scooters, bathing and toileting aids, hospital beds, pressure relief mattresses, floor lift devices, ceiling lift devices, positive airway pressure devices, orthosias, custom footwear, hearing instruments and non-conventional glucose meters. The Panel finds that the ministry reasonably determined that a smartphone does not come within the scope of medical equipment and supplies identified in Section 3. In particular, the Panel notes that the Appellant does not qualify for a hearing instrument because an audiologist or hearing instrument practitioner has not performed an assessment that confirms the Appellant’s need for a hearing instrument.

The Panel finds that the ministry reasonably determined that section 11 also does not apply to this circumstance and notes the Appellant has not suffered profound hearing loss in both ears.

### **Conclusion**

The Panel finds that the ministry’s determination that the appellant did not meet the eligibility requirements set out in EAPWDR Schedule C, subsection 2, 3 or 11 to receive a smartphone as a health supplement is reasonably supported by the evidence and a reasonable application of the enactment in the circumstances of the person appealing the decision. The Panel confirms the ministry’s reconsideration decision. The appellant is not successful on appeal.

**PART G – ORDER**

THE PANEL DECISION IS: (Check one)

 UNANIMOUS BY MAJORITY

THE PANEL

 CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount?  Yes  No

**LEGISLATIVE AUTHORITY FOR THE DECISION:***Employment and Assistance Act*Section 24(1)(a)  or Section 24(1)(b) 

and

Section 24(2)(a)  or Section 24(2)(b) **PART H – SIGNATURES**

PRINT NAME

Trevor Morley

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/Sep/06

PRINT NAME

Marcus Hadley

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/Sep/06

PRINT NAME

Jane Nielsen

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/Sep/06