

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated October 3, 2018, which denied the appellant's request for a hip cushion because a hip cushion does not meet the legislated criteria as a health supplement set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – RELEVANT LEGISLATION

EAPWDR sections 62 and 69 and Schedule C.

PART E – SUMMARY OF FACTS

In her Notice of Appeal dated October 9, 2018 the Appellant requested a written appeal. By way of an Email dated November 9, 2018 the Ministry indicated that its submission is the reconsideration decision.

Information before the Ministry at reconsideration:

On July 18, 2018 the Appellant requested the ministry provide a hip cushion in advance of a visit to an orthopedic surgeon on August 16, 2018 and an expected surgery to follow thereafter. On July 27, 2018 the ministry received a quote for a hip cushion in the amount of \$69.60 from a medical supplier.

The Appellant provided the Ministry with the Request for Reconsideration dated October 4, 2018 with an excerpt from a surgical preparation booklet highlighting the need to, amongst other measures, "*add pillow or raise cushion to low chairs*", and a Prescription from a medical doctor for a cushion. The Appellant stated that the hip cushion is required for recovery after her surgery to sit on and to assist with standing. She has been advised not to use regular pillows because they do not have any spring.

On August 31, 2018 the ministry denied the request citing the requested hip cushion is not listed as an eligible health supplement funded under the EAPDWR Schedule C.

Notice of Appeal

On October 9, 2018 the Appellant submitted a Notice of Appeal. The Appellant stated that she would be having surgery on October 29, 2018 and will need the hip cushion for recovery. She stated that the hip cushion was not available through the Red Cross and it was vital for recovery and that this was too much for her small budget.

Hearing

The Panel conducted a written hearing as requested by the Appellant pursuant to section 22(3) (b) of the Employment and Assistance Act.

In accordance with section 22(4) of the Employment and Assistance Act, the Panel can only admit evidence that was before the Ministry at the time of reconsideration and evidence that is in support of the information and records that were before the Ministry at the time of reconsideration. The Panel determined there was no additional information outside of that available to the Ministry at the time of reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the Ministry's decision to deny the Appellant's request for a hip cushion because the request does not meet the legislated requirements of the EAPWDR is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the Appellant.

Legislation

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,

67 Nutritional-supplement

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

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 receiving 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;

(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...2(2)...2(2.1)...[therapies].

(f) [medical transportation]

2.1 Optical supplements

2.2 Eye examination supplements

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.

3.1 canes, crutches and walkers

3.2 wheelchairs

3.3 wheelchair seating systems

3.4 scooters

3.5 bathing and toileting aids

3.6 hospital bed

3.7 pressure relief mattresses

3.8 floor or ceiling lift devices

3.9 positive airway pressure devices

3.10 orthoses

3.11 hearing instrument

3.12 non-conventional glucose meters

(1) In this section, "non-conventional glucose meter" includes

(a) a continuous glucose monitoring meter, and

(b) a talking glucose meter.

(2) A non-conventional glucose meter is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that

(a) the glucose meter is medically essential to test blood glucose levels, and

(b) the person for whom the non-conventional glucose meter has been prescribed is unable to use a conventional glucose meter.

4 Dental supplements

4.1 Crown and bridgework supplement

5 Emergency dental supplements

6 Diet supplements

7 Monthly nutritional supplements

8 Natal supplements

9 Infant Formula

Ministry Position

The Ministry's position is that the Appellant's request for a hip cushion is not covered under any of the legislated categories of health supplement. The Ministry acknowledged the Appellant is eligible for a health supplement under Section 62 and Schedule C of the EAPWD Regulation because she is in receipt of disability assistance and the Ministry acknowledges the Appellant's need for a hip cushion. However, the Ministry noted that a review of all of the covered health supplements under the EAPWD Regulation Schedule C revealed that a hip cushion was not a covered item:

1. The Appellant is not eligible for a hip cushion as an Orthosis under Schedule C, Section 3.10
2. A hip cushion is not one of the listed health supplements under Medical Equipment and Devices under Schedule C, sections 3.1 to 3.12.
3. A hip cushion is not a Medical Supply under Schedule C, section 2(1)(a) because it is not directly required for one of the listed purposes and it is not one of the medical supplies listed under section 2(1)(a.1).
4. A hip cushion is not considered a Therapy under Schedule C, sections 2(1)(c), 2(2) and 2(2.1), and is not a health supplement as provided under Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 or 9.
5. A hip cushion does not meet the requirements of Schedule C, section 69 (life threatening need).

Appellant's Position

The Appellant's position as stated in the Notice of Appeal is that she disagrees with the Ministry position because she requires a hip cushion for recovery and this is not available from the Red Cross and her budget is too small to allow for it. In the Request for Reconsideration the Appellant noted the need for a hip cushion for recovery after surgery and to be used in the vehicle home. She has been advised not to use a pillow as there is no spring in them like a hip cushion which will also help in standing after sitting. After paying bills from monthly PWD and CPP there are no funds available to purchase a hip cushion. The Appellant provided copies of a prescription from her doctor for a hip cushion and an excerpt from a surgery preparation booklet where the need to "add pillow or raised cushions to low chairs" was highlighted.

Panel Decision

The decision under appeal is that the Ministry denied the Appellant's request for a hip cushion under the provisions of the EAPDWR. The panel reviewed the analysis and decisions for each of the legislative criteria the Ministry said were not met.

Under Schedule C section 3.10 the Ministry argues that a hip cushion cannot be considered an Orthosis in its various forms specified such as a hip brace as it is not worn on the body. Noting that a hip cushion is not included in the defined list of an Orthosis, the Panel finds the Ministry's conclusion to be reasonable.

Under Schedule C sections 3(1) to (12) Medical Equipment and Devices, the Ministry concludes that a hip cushion is not one of those listed. The panel finds this to be reasonable. In particular, under subsection 3.5 which permits the Ministry to provide items which are intended to maintain a person's positioning such as a positioning chair for a wheelchair, the Ministry reasonably concludes that the Appellant has not demonstrated a need for a wheelchair to achieve or maintain basic mobility or that the requested item is required to achieve or maintain positioning in a wheelchair. Additionally, the Ministry was also reasonable in concluding that a hip cushion is not a "transfer aid" which is defined as a transfer board, transfer belt or slider sheet. Subsection 3.6 authorizes the Ministry to provide a positioning item on a hospital bed and, the Ministry reasonably concludes that there is no indication the requested item will be used on a hospital bed. Subsection 3.7(1) allows for a pressure relief mattress that is medically necessary to prevent skin breakdown and maintain skin integrity. The Ministry has reasonably concluded that there is no evidence of such a requirement for the Appellant and that the item requested is not a mattress for sleeping and further there is no evidence that the hip cushion will be used for a wheelchair.

In reviewing Schedule C section 2(1)(a) Medical Supply, the Ministry notes the authority to provide medical or surgical supplies required for purposes including wound care, ongoing bowel care, catheterization, incontinence, skin parasite care and limb circulation care subject to a number of qualification requirements and has reasonably concluded that the item requested is not directly required for one of those purposes and that the information does not establish that the item requested is necessary to avoid an imminent and substantial danger to death. Subsection 2(1)(a.1) sets out a number of medical and surgical supplies and subsection 2(1)(a.2) consumable medical supplies that may be provided but a hip cushion is not one of these supplies.

The Ministry reviewed the remaining sections of Schedule C and finds the item requested does not meet the requirement of a therapy (sections 2(1)(c), 2(2), 2(2)(1) and does not meet the criteria as one of the remaining supplements (sections 2(1), 2(2), 4, 4.1, 5, 6, 7, 8 and 9). This conclusion is reasonable as the supplements described in those sections, which includes dental and natal supplements, are clearly not hip cushions.

Finally, the Ministry has reasonably concluded that a hip cushion does not meet the legislated eligibility requirements contained in section 69 life-threatening need. In reaching this conclusion, the Panel notes that this provision would only be applicable if the applicant was not eligible to receive health supplements under section 62 of the EAPDWA, which she is, and that section 69 also only allows for the provision of health supplements set out in Schedule C

The Panel has reviewed each of the relevant and applicable provisions of the EAPDWR in the context of the request of the Appellant and the Ministry's reasoning under each applicable section and finds that the Ministry has reasonably applied the provisions of the legislation.

Conclusion

The panel confirms the ministry's reconsideration decision as it was a reasonable application of the legislation. 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

Keith Lacroix

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018-11-20

PRINT NAME

Lowell Johnson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-11-20

PRINT NAME

Jane Nielsen

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-11-20