

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (ministry) reconsideration decision dated December 11, 2012 which found that the appellant was not eligible for funding for pyridoxine HCL, multi 12 vitamin infusions and a BD sharps container as they are not eligible health supplement items set out in the *Employment and Assistance for Persons with Disability Regulations (EAPWDR)* sections 62 or Schedule C, section 2(1)(a).

In addition the ministry denied the appellant's request to have the medical supplier remain the same as they were not the least expensive supplies appropriate for the purpose as required by EAPWDR Schedule C, section 2(1)(a)(ii)(B).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 62 and Schedule C, section 2(1)(a).

PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision consisted of:

- 1) The appellant's Request for Reconsideration dated November 21, 2012 (RFR) attaching a letter from a pharmacy (the Pharmacy).
- 2) Letter from the Pharmacy dated November 22, 2012 (November 2012 Pharmacy Letter) (attached to RFR) indicating that the appellant's circumstances are complex and that providing products through a product distribution centre (PDC) would not give the appellant the care she requires and ultimately cost more. The Pharmacy indicates that they have provided the appellant with her products for 10 years and understands the appellant's needs. The Pharmacy states that the appellant has 2.5 feet of small intestine and no large intestine which reduces her ability to absorb nutrients and requires a nutritional supplement received via a central intravenous infusion, known as TPN (Total Parenteral Nutrition). The Pharmacy also states that the appellant requires a sharps container to safely dispose of her sharps. The Pharmacy states that the local hospital disposes of the appellant's sharps as a favor to the appellant at no charge but they must be presented in a sharps container otherwise the costs associated with proper disposal is far more than the cost of a sharps container (\$17.17).
- 3) Letter from the Pharmacy dated October 17, 2012 (October 2012 Pharmacy Letter) providing a list of medical supplies required by the appellant and the cost for those items for 2013.
- 4) Letter from the ministry to the appellant dated November 8, 2012 advising of the health supplements that were approved effective January 2013. The letter also advises that pyridoxine HCL, multi 12 vitamin infusions and the BC sharps container are not listed on the approval and that while those items are approved until December 31, 2012, they will not be eligible for coverage through the ministry after December 31, 2012, because the ministry does not provide coverage for food, vitamins, minerals or these type of dietary supplements.
- 5) Letter from the ministry to the Pharmacy dated December 1, 2011 offering a one year standing contract to supply medical supplies to the appellant (3 pages).
- 6) Information from PDC providing a list of their cost to supply medical items and a comparison between their costs and the Pharmacy's costs for the same items, undated (2 pages).

In her Notice of Appeal dated December 16, 2012, the appellant states that she has only 2.5 feet of bowels and a high up ostomy. The appellant states that she dehydrates from loss of fluids and requires the requested vitamins as the food does not stay in her body long enough to get vitamins into her body. The appellant states that the power port a cath goes right into the top of her heart right away as the IV drips into her blood so she gets the multi 12 vitamin and pyridoxine HCL vitamin that she does not get from the foods she eats. The appellant states that she is a widow, age 74 and lives on a small income. The appellant also states that she does not know how to dispose of the used needles safely without a sharps container. The appellant also states that the Pharmacy has been her supplier for 12 years and they are very helpful, will phone her if there is any problem with her supplies, and takes time to explain everything to her. The appellant does not know how PDC will help her this way and she does not know how she is to order her medical supplies from PDC.

As the hearing was a written hearing, neither the appellant nor the Ministry attended the hearing.

Prior to the hearing the appellant provided a written submission dated January 14, 2013, (6 pages including fax cover). The submissions included a letter from the appellant dated January 14, 2013 (the Appeal Letter) stating that she has only 2.5 feet of bowel and that she requires the pyridoxine vitamin, once per day, by injection, to help prevent mouth sores. The appellant states that she requires the multi 12 vitamin by injection twice weekly as she dehydrates very quickly and her body does not get the vitamins she needs, which is why she is unable to take vitamins or minerals by oral tablets. The appellant states that without these vitamins she would be in the hospital soon to keep her alive. The appellant states that she has been receiving these vitamins for 22 years, lives as a widow with a small income and cannot afford to purchase the items on her income.

The panel finds that the Appeal Letter is mainly argument but does also contain new evidence regarding the appellant's medical condition. The panel has admitted the Appeal Letter into evidence as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act (EAA)*.

The appellant's submissions also included a letter from the Pharmacy dated January 14, 2013 (January 2013 Pharmacy Letter) with an attached medical summary (3 pages), which states that the appellant has been on the same medications for 22 years due to her medical condition. The Pharmacy states that cutting off the appellant's medications when she has an annual income of approximately \$16,800 per year can and could be detrimental to her health and can even lead to death. The Pharmacy requests that this matter be reconsidered.

The panel finds that the January 2013 Pharmacy Letter is new evidence which the panel admits into evidence as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act (EAA)*.

The ministry did not provide any submissions and relied on the reconsideration decision.

The panel makes the following findings of fact:

- 1) The appellant has been designated as a persons with disability (PWD) and is eligible to receive health supplements provided under section 62 and Schedule C, subsection 2(1)(a) of the EAPWDR; and
- 2) The appellant has 2.5 feet of small intestine and no large intestine.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant is not eligible for funding for pyridoxine HCL, multi 12 vitamin infusions and a BD sharps container on the basis that they are not eligible health supplement items set out in the EAPWDR sections 62 or Schedule C, section 2(1)(a).

In addition, whether the ministry's decision to change the appellant's medical supplier from the Pharmacy to PDC as the cost of medical supplies from the Pharmacy was not the least expensive supplies appropriate for the purpose as required by EAPWDR Schedule C, section 2(1)(a)(ii)(B).

The relevant sections of the EAPWDR are as follows:

General health supplements

62 (1) Subject to subsections (1.1) and (1.2), 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 family unit if the health supplement is provided to or for a person in the family unit who is a recipient of disability assistance.

EAPWDR 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.

(1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

EAPWDR Schedule C, section 2(1)(a) - eligibility for the pyridoxine HCL, multi 12 vitamin infusions and BD sharps

container

The EAPWDR, Schedule C, section 2(1)(a)(i) sets out that the Ministry may provide either disposable or reusable medical or surgical supplies for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care or limb circulation care if the supplies are prescribed by a medical practitioner, the least expensive supplies appropriate for the purpose and necessary to avoid an imminent and substantial danger to health, and there are no resources available to the family unit to pay the cost of or obtain the supplies.

The Ministry's position is that the requested items are not required for any of the legislated purposes, so the information provided does not establish that the appellant has met the requirements to have the requested items funded as a medical supply for any of the legislated purposes under the EAPWDR Schedule C, section 2(1)(a)(i).

The appellant's position is that she requires the pyridoxine HCL and multi 12 vitamin infusions as she cannot absorb oral vitamins due to the fact that she has only 2.5 feet of small intestine and no large intestine. The appellant position is that she has been taking these medications once weekly and twice weekly for 22 years. The appellant's position is that she has no resources available to pay the cost of or obtain the supplies.

The panel notes that as set out in the letter from the ministry to the appellant dated November 8, 2012, the ministry had been providing coverage for the requested items in the past but that effective January 2013, the appellant was no longer eligible for funding for the requested items. The panel notes that the ministry did not provide any further information to the appellant as to the change in the funding, other than to advise that the requested items are not covered by the legislation. The ministry's letter to the appellant does not state whether there was a change in the legislation or whether the ministry had been funding the requested items in error in the past.

Although the Pharmacy indicates that the appellant has had the same medications for the past 22 years, there is no evidence indicating that the pyridoxine HCL, multi 12 vitamin infusions and the BC sharps container are required for one of the legislated purposes of the EAWDR Schedule C, section 2(1)(a)(i) (i.e. wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care, or limb circulation care). Accordingly, the panel finds that the ministry's decision that the appellant has not met the legislated requirements to have the requested items funded as a medical supply pursuant to the EAPWDR Schedule C, section 2(1)(a)(i) was reasonable.

EAPWDR Schedule C, section 2(1)(a)(ii)(C) - Imminent and Substantial Danger to Health

The ministry's position is that the evidence does not establish that the appellant requires the pyridoxine HCL, multi 12 vitamin infusions and a BD sharps container to avoid an imminent and substantial danger to health as required by EAPWDR Schedule C, section 2(1)(a)(ii)(C). The ministry's position is that there is no indication that the medical supplies are necessary to avoid an imminent and substantial danger to health.

The appellant's position is that due to her medical condition she cannot absorb vitamins and minerals through food or oral tablets and she needs the injectable vitamins to get the vitamins her body needs.

The appellant argues that without these vitamins she would soon be in the hospital to keep her alive.

Although the January 2013 Pharmacy Letter states that the cutting off the appellant's vitamins could be detrimental to her health and can even lead to death, the Pharmacy has not provided any additional information to indicate that the appellant faces imminent and substantial danger to her health if she does not receive the requested items.

As the appellant has been receiving these medications for 22 years, it seems clear that she requires them on a continual basis, but the information provided by the appellant and the Pharmacy does not demonstrate that the appellant is currently facing an imminent and substantial danger to her health. In addition, the panel notes that there is no other medical evidence, such as information from the appellant's general practitioner providing information that the appellant requires the medical supplies to avoid an imminent and substantial danger to health and detailing what would happen to the appellant if she does not receive the pyridoxine HCL and multi 12 vitamin infusions.

The panel finds that the Ministry's decision that the appellant does not require the pyridoxine HCL, multi 12 vitamins and a BD sharps container to avoid an imminent and substantial danger to health as required in the EAPWDR Schedule C, section 2(1)(a)(ii)(C) was reasonable.

Medical supplier change - EAPWDR Schedule C, section 2(1)(a)(ii)(B)

The ministry's position is that they are changing the medical supplier from the Pharmacy to PDC as of January 1, 2013, as PDC can provide the approved medical supplies at a much less expensive rate as evidenced by their medical cost summary. The ministry states that PDC will deliver the medical supplies to the appellant's residence. The ministry's position is that as the EAPWDR Schedule C, section 2(1)(a)(ii)(B) requires that the supplies are the least expensive supplies appropriate for the purpose, and as PDC can provide the supplies at a lower rate, the change in suppliers is reasonable.

The appellant's position is that the Pharmacy has been her medical supplier for many years and they understand her needs. In addition, the appellant does not know how she will order her supplies from PDC. The Pharmacy states that they have provided the appellant's supplies for the past 10 years and know firsthand the time required to meet the appellant's needs. The Pharmacy points out that their existing standing offer to supply has a total not to exceed \$22,338.72 and that from January through September 2012 they have billed \$8,437.15 which is less than \$1,000 per month. The Pharmacy also states that the appellant does not have regularly scheduled home nursing appointments and administers her medications independently which should be taken into consideration.

Based on the Pharmacy's standing offer and the information from PDC it is clear that PDC is prepared to provide the medical supplies at a lower rate. For example, for a box of 100 10 ml syringes, PDC's price is \$15 whereas the Pharmacy's price is \$37.52. Another example is that for a box of 12 needle port-a-cath's PDC's price is \$138.12 whereas the Pharmacy's price is \$220.59.

The panel notes that in the November 2012 Pharmacy Letter, the Pharmacy states that as the PDC cannot give the appellant the care she requires, it will ultimately cost more for PDC to provide the appellant's medical supplies but there is no further explanation as to why the cost will be more from PDC.

The panel notes that the appellant has a good relationship with the Pharmacy and trusts them with her medical care. While the panel appreciates that the appellant may prefer not to change medical suppliers, the EAPWDR Schedule C, section 2(1)(a)(ii)(B) states that the ministry may pay for health supplies provided that they are the least expensive supplies appropriate for the purpose.

As the cost for the medical supplies is less expensive from PDC than the Pharmacy, the panel finds that the ministry's decision to change the appellant's medical supplier from the Pharmacy to PDC as the cost of medical supplies from PDC is the least expensive supplies appropriate for the purpose as required by EAPWDR Schedule C, section 2(1)(a)(ii)(B) was reasonable.

Conclusion:

In conclusion, the panel finds that the ministry's Reconsideration Decision was reasonable and confirms the decision.