

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision dated May 9, 2019 wherein the ministry denied the appellant’s request for reimbursement of a shoulder brace because he does not meet the eligibility requirement set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, subsection 3(1)(b)(i) which sets out that pre-authorization of the ministry is required for the medical equipment or device. The ministry found that while the appellant met the remainder eligibility criteria he was ineligible for re-imbursement because he did not receive pre-authorization from the ministry for the requested medical equipment.

The ministry also determined that section 69 (which mirrors ministry policy) did not apply in the appellant’s circumstances as there was no information provided that a life-threatening emergency existed when the appellant was sent to obtain his shoulder brace.

PART D – RELEVANT LEGISLATION

EAPWDR sections 62 and 69

Schedule C sections 3 and 3.10

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration included the following evidence:

The appellant is a single recipient of disability assistance.

On February 21, 2019 the appellant submitted a receipt for a shoulder brace for \$250. He also submitted a prescription note which stated “please fit for gunslinger neutral rotation shoulder immobilizer”.

In section 3 of the appellant’s Request for Reconsideration the appellant reported that he did not have time to get pre-authorization to buy the brace as he did not anticipate breaking his shoulder. He stated that his orthopaedic surgeon said he should begin using the brace as soon as possible to be sure it healed properly. He reported he went directly from the hospital to the supplier. Furthermore, the appellant stated that he called the ministry within a few days and was told by a worker he should go back to the supplier and have them make a new invoice for the same kind of sling to give to the ministry so that ministry would pay the supplier and they could refund the appellant. The appellant stated that he called the supplier and tried to explain this to the best of his abilities but they couldn’t do it. He then stated that the brace was indeed paid for with a debit card but he did not have the \$250 so had to go into debt that month and still is in debt because of it. He concluded by stating the brace has helped his shoulder heal and he should make a near-full recovery.

In his Notice of Appeal dated April 4, 2019 the appellant wrote that the ministry policy was impossible to adhere to and waiting for approval would have been detrimental to his health and recovery. He was also completely unaware of the policy.

On June 4, 2019 the Tribunal received a submission from the appellant wherein he stated he broke his shoulder in mid-February. At his first check-up the orthopaedic surgeon told him his shoulder had further displaced since the original fracture and if he wanted to avoid surgery he should start wearing the brace straight away. Following these instructions he immediately went to the supplier where he was fitted for the brace and wore it day and night for the next several weeks to aid his recovery. A few days later he called the ministry and the worker told him he would need to go back to the supplier, ask them to make a new invoice - not receipt - for a fictional brace, and submit that to the ministry; once the ministry paid the supplier he should receive a refund from them; however, the supplier did not cooperate. The appellant reported further that he could not possibly meet the requirement of section 3(1)(b)(i) as it contradicted this surgeon’s orders and would have endangered his health further ending in surgery. His situation was a health emergency and he could not wait days or weeks to receive ministry approval.

In a letter dated June 7, 2019 the appellant’s advocate states that the appellant was not able to work for at least 2 months because of the shoulder fractures and went into debt when he bought the recommended shoulder brace so that he would not need surgery. When the appellant was biking in the snow his wheel hit the curb and he was flung onto his right shoulder, breaking it in three places. He went to the hospital and was told by the orthopaedic surgeon that it was necessary to get the brace to ensure his broken shoulder healed adequately and he would not need surgery. The accident may not be seen as life-threatening but the orthopaedic shoulder brace was an immediate emergency need. In May the appellant had to apply for a crisis food supplement and will have to ask again for the month of June as he does not have the funds to purchase food since he had to pay for the brace in February.

In a letter dated June 14, 2019 the ministry wrote that the appellant bought his shoulder brace after his follow-up visit on February 21, 2019. When the appellant requested reimbursement on February 22, 2019 “the ministry would not reimburse him but instead requested that he submit a prescription and invoice from [the supplier] so that the ministry may pay direct to [the supplier]. It was suggested that he could then request reimbursement from [the supplier] after they receive payment from the ministry. On March 18, 2019 [the appellant] submitted a prescription and receipt from [the supplier] dated February 21, 2019 for a shoulder brace paid in full for \$250 (debit). The ministry denied his request for re-imbusement ... In his request for reconsideration [the appellant] explained that although he did his best to fulfill the ministry’s request to provide an invoice for his shoulder brace, [the supplier] could only offer him a receipt for his purchase. The ministry regrets that in his first contact with the ministry on February 22, 2019 [the appellant] was misinformed of his eligibility for a shoulder brace by the ministry worker, as the legislation is clear that pre-authorization is required ...

The only exception to this stands in ministry policy ... which requires that a life-threatening emergency has been established ... [The appellant] was aware that he required the pre-approval of the ministry and although he explains concerns about the ministry's timelines as part of his reasoning, this does not alleviate the legislative requirement for pre-approval. The ministry would like to note, however, that requests to expedite are often considered by the ministry, especially in medical-related situations."

Pursuant to section 22(4) of the Employment and Assistance Act the panel admits the appellant's Notice of Appeal and the appellant's, advocate's and ministry letters into evidence as any new information contained in these documents is in support of the information that was before the ministry at reconsideration; these documents provide additional details about the appellant's medical and financial circumstances as well as his interaction with the ministry.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry's decision to deny the appellant's request for reimbursement of a shoulder brace because he did not receive pre-authorization from the ministry as set out in subsection 3(1)(b) of Schedule C, subsection 3(1)(b)(i) of the EAPWDR was a reasonable application of the legislation or reasonably supported by the evidence.

Additionally, was the ministry reasonable when it determined that section 69 did not apply in the appellant's circumstances as there was no information provided that a life-threatening emergency existed when the appellant was sent to obtain his brace?

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, ...

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,...

Schedule C**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...

Medical equipment and devices — orthoses

3.10 (1) In this section:

"orthosis" means ...

(k) an upper extremity brace; ...

(6) For an orthosis that is an upper extremity brace, in addition to the requirements in subsection (2) of this section, the upper extremity brace must be intended to provide hand, finger, wrist, elbow or shoulder support.

Appellant's Position

The appellant argues he did not have time to get pre-authorization to buy the brace because he did not anticipate he would break his shoulder. He had to follow his doctor's orders immediately and purchase the shoulder brace as soon as possible to avoid surgery. His situation was a health emergency - waiting for approval would have been detrimental to his health and recovery. The appellant's advocate added that the accident may not be perceived as life-threatening but the shoulder brace was an immediate emergency need.

The appellant believes the ministry should reimburse him for the purchase of his shoulder brace as he had to go into debt because of it; he was not able to get the invoice from the medical supplier as suggested by the ministry worker which would have enabled him to receive a refund once he presented the invoice to the ministry.

Ministry Position:

The ministry's position is that the appellant's request does not meet the eligibility requirement set out in Schedule C subsection 3(1)(b)(i) of the EAPWDR which sets out that a person must receive pre-authorization from the ministry for the medical device or equipment requested. As the appellant did not seek pre-authorization from the ministry prior to purchasing the upper extremity brace, the ministry is unable to reimburse him for the equipment requested.

Section 69 allows for the ministry to accept payment responsibility for medical equipment purchased without prior approval in case of a life-threatening emergency. However, information was not provided to establish that a life-threatening emergency existed in his case. It appears that the appellant was sent to the medical supplier after his surgery to obtain the upper extremity brace to assist with his recovery and healing.

Panel decision

While the appellant argues that he had no time to get pre-authorization from the ministry because he was faced with a medical emergency and his doctor ordered him to get the brace as soon as possible the panel finds there is insufficient evidence that the appellant was facing a direct and imminent and life-threatening health need as set out in section 69 of the EAPWDR. Even though the bicycle accident resulted in a hospital visit the brace was not recommended until a later follow-up visit, and although an immediate need for a shoulder brace may be considered reasonable, there is no indication that the appellant was in a life-threatening situation at the time he purchased his shoulder brace. Consequently, the ministry was reasonable when it found that section 69 does not apply in the appellant's circumstances.

Section 3.1(b)(i) clearly sets out that pre-authorization of the ministry is required to determine eligibility for a health supplement such as upper extremity braces; therefore the panel finds the ministry reasonably determined that the appellant is not eligible under this section as there is no evidence that he sought pre-authorization of the ministry.

While the appellant argues he requires funds for his shoulder brace to be reimbursed by the ministry to cover the debt he incurred as a result of this purchase the panel finds that the ministry had no discretion in the matter and correctly applied section 3.1(b)(i) in the appellant's circumstances.

Conclusion

The panel finds that the ministry's determination that the appellant is not eligible for re-imbursement of upper extremity braces is reasonably supported by the evidence and is a reasonable application of the legislation in the appellant's circumstances. The ministry's reconsideration decision is confirmed and the appellant is not successful on appeal.

PARTG-ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION: <i>Employment and Assistance Act</i> Section 24(1)(a) <input checked="" type="checkbox"/> and Section 24(1)(b) <input checked="" type="checkbox"/> and Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PARTH-SIGNATURES	
PRINTNAME Inge Morrissey	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/06/27

PRINTNAME Margarita Papenbrock	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/06/27
PRINTNAME: Inge Morrissey, on behalf of Joseph Rogers	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/06/27