

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of July 2, 2019 (the “Reconsideration Decision”), which denied the Appellant’s request for a health supplement for cleansing pads on the basis that the request did not meet the criteria set out in section 2(1)(a) of Schedule C to the *Employment and Assistance For Persons With Disabilities Regulation* (“EAPWDR”).

PART D – RELEVANT LEGISLATION

Section 62, EAPWDR
Section 2 of Schedule C, EAPWDR

PART E – SUMMARY OF FACTS

The Appellant is a recipient of disability assistance who has a history of [REDACTED] surgery with a rectovaginal fistula, leaving the Appellant with incontinence associated with diarrhea and loose stools. In the result, the Appellant uses incontinence pull ups and was prescribed cleansing pads by her doctor to prevent skin breakdown associated with fecal incontinence.

The information before the Ministry at the time of the Reconsideration Decision included the following:

- a photograph of a package of the type of cleansing pads the Appellant was seeking coverage for with a handwritten note indicating that the cost was \$12.99 plus GST;
- a note from a doctor, dated April 29, 2019, prescribing cleansing pads (the “Prescription”);
- Letter from the Ministry, dated June 4, 2019, denying the Appellant’s request for a health supplement in respect of the cleansing pads; and
- the Appellant’s Request for Reconsideration (“RFR”), which included:
 - 3 photographs of the type of cleansing pads for which the Appellant was seeking a health supplement;
 - a note from the Appellant’s doctor, dated June 19, 2019, in which the doctor states that the Appellant “has a history of [REDACTED] surgery, complicated with rectovaginal fistula, gracilis flap”, has suffered from “incontinence associated with diarrhea or loose stools”, and that she would “benefit from cleansing pads for her fecal incontinence, in order to prevent skin breakdown” (the “June 19, 2019 Note”); and
 - a handwritten note from the Appellant which stated “I do in fact qualify under legislation and have new information to add”.

Following the filing of her Notice of Appeal, the Appellant submitted two further documents, as follows:

- a note, dated July 19, 2019 (the “July 19, 2019 Note”) from the same doctor who prepared the June 19, 2019 Note, in which the doctor reiterates the reasons for recommending cleansing pads to the Appellant and added that skin breakdown can “cause infection and be a substantial danger for her health.”; and
- a more detailed letter from a different doctor, dated July 22, 2019 (the “July 22, 2019 Letter”), which sets out that the Appellant:
 - underwent [REDACTED] surgery in 1989 and developed a rectovaginal fistula shortly thereafter;
 - subsequently underwent a diverting colostomy and a skin graft in order to try to repair the fistula;
 - had a gracilis flap done when the graft broke down;
 - had a colostomy for 6 years and had it reversed in 1996;
 - has incontinence which requires more sanitary care than others;
 - [REDACTED] surgical intervention difficult; and
 - has been sent for a surgical consult but, at present, will require ongoing sanitary care with pads and wipes.

At the hearing of the appeal, the Appellant stated that she has endured her current health problems for approximately 30 years. She had been advised by her occupational therapist to seek assistance from the Ministry and did so. To that end, she obtained the Prescription which prescribed a medicated cleansing pad. She subsequently shopped around to obtain pricing for various types of cleansing pads. The Appellant also confirmed that the Ministry is currently paying for the pull ups that she wears to deal with her incontinence. She advised that she has skin breakdowns regularly and that the skin breakdowns can

lead to hospitalization. She is presently applying a topical mix made from coconut oil, which has been prepared by her landlady to try to prevent skin breakdowns.

The panel admits the July 19, 2019 Note and the July 22, 2019 Letter as written testimony in support of the information and records that were before the Ministry at the time of the Reconsideration Decision, in accordance with section 22(4)(b) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the Ministry was reasonable in its determination that the Appellant's request for a health supplement for cleansing pads on the basis that the request did not meet the criteria set out in section 2(1)(a) of Schedule C to the EAPWDR.

Statutory Framework

Section 62 of the EAPWDR authorizes the Ministry to provide health supplements:

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 under 19 years of age, 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.

Section 2 of Schedule C to the EAPWDR sets out the specific criteria that must be met for a recipient to be eligible for general health supplements:

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;

Appellant's Position

The Appellant's position is that she meets all of the criteria set out in section 2 of Schedule C to the EAPWDR and, in particular, that she requires the cleansing pads in respect of which she is seeking a supplement in order to avoid a danger to her health, namely skin breakdown. Without the cleansing pads, the Appellant argues, she is at substantial risk of skin breakdowns from incontinence which can cause infection and hospitalization.

Ministry Position

The Ministry's position is that the Appellant has met all of the criteria required by section 2 of Schedule C to the EAPWDR, save and except that the Appellant had not satisfied it that the cleansing pads are needed to avoid an imminent and substantial danger to health, as required by section 2(1)(a)(ii)(C).

Panel Decision

At the time of the Reconsideration Decision, the evidence before the Ministry did not include the July 19, 2019 Note, which described the risk of infection from skin breakdown as being a "substantial danger" to the Appellant's health, or the Appellant's own evidence as to the health impact of skin breakdown. The effect of the July 19, 2019 Note and the Appellant's evidence as to the pain caused by skin breakdown, however, is such that the panel finds that the current evidence does establish that the cleansing pads are necessary to avoid an imminent and substantial danger to the Appellant's health. Both the Appellant and, more importantly, one of the Appellant's doctors have confirmed this.

As the criteria in section 2(1)(a)(ii)(C) of Schedule C to the EAPWDR was the only basis for the Ministry's denial of a supplement in respect of the cleansing pads, the panel finds that the Ministry determination that the Appellant was not eligible for a supplement in respect of the cleansing pads was not reasonable and, in the result, the panel rescinds the Reconsideration Decision. The Appellant is successful in her appeal.

APPEAL NUMBER

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

Adam Shee

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/07/31

PRINT NAME

Melvin Donhauser

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Marilyn Mellis

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)