

APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated September 16, 2019 wherein the Ministry determined that the Appellant was not eligible for a hernia belt as a health supplement under Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The Ministry found that the Appellant is eligible to apply to the Ministry for a health supplement due to being eligible for PWD assistance. However, the Ministry determined that a hernia belt is not an eligible item set out in any section of the EAPWDR Schedule C, and that subsection 3.10(11) specifically sets out that a hernia belt is not a health supplement for the purpose of section 3 of the schedule.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 62 and 69  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C Sections 2 and 3

**PART E – SUMMARY OF FACTS**

The appellant is a recipient of Persons with Disabilities (PWD) assistance.

The evidence before the ministry at the time of reconsideration:

- **A Request for Reconsideration** dated July 18, 2019 denying the request for a hernia belt as it is not medical equipment that is funded pursuant to EAPWDR Schedule C section 3.
- **A doctor's letter** dated June 27, 2019 informing that the appellant has a large hernia that severely impairs her function if not supported by a hernia belt and requesting that one be supplied.
- **A Health Assistance Branch letter to the appellant** dated July 18, 2019 denying the request for a health supplement for a hernia belt explaining that it is not an eligible item as it is not listed under EAPWDR sections 3.1 to 3.11.
- **A letter from an advocacy group** dated September 12, 2019 advocating that the appellant be provided a hernia belt, as one has been prescribed by a medical practitioner and because it is medically essential to achieve or maintain basic functionality and that it will assist in physical healing of her injury.

**Additional Information:**

The appellant submitted additional information on October 7, 2019, which included 4 photographs that showed the inside of the appellant's home, the Disabilities Regulation for Crisis Supplement and the Policy and Procedure Guidelines for determining Medically Essential to Achieve or Maintain Basic Mobility.

At the hearing, the appellant and the advocate explained that the appellant's hernia had grown significantly since 2008 and that surgery to remove it was not available at the present time. They stated that the appellant had been told surgery could be an option if weight was lost, which did happen, however the appellant had also been a smoker and was told by the physician that no surgery would be possible without first quitting smoking. The appellant then quit smoking, only to gain back weight such that surgery was no longer an option, at this time.

The appellant showed the panel the large, watermelon-sized hernia and explained that because of it, there was no ability to independently do daily household activities, go shopping, do cooking, drive a car or even bend over to pick anything up. The appellant's advocate explained that the photographs submitted demonstrate the condition of the appellant's home, which is unkempt due to not being able to bend over and that the appellant is also incapable of doing any exercising to help reduce weight, and that even walking one block is problematic. The appellant explained that because of the hernia there was also an incontinence issue and that the ministry had provided a year's worth of incontinence supplies, which will cost more than the actual hernia belt itself, so questions why a belt could not have been provided.

The advocate emphasized that, as per the ministry's Policy Guidelines for Determining Medically Essential to Achieve or Maintain Basic Mobility, the ministry's mandate is to provide medical equipment or supplies that are essential to achieve or maintain basic mobility and that each client's needs are to be taken into consideration. The advocate suggests that the ministry is not following the intent of the policies and regulation in Schedule C section 3.10(11) when they specifically identify that a hernia belt is not an item not covered under section 3, because, in the appellant's circumstance, a hernia belt is a medically essential assistive device which will enable the appellant to maintain mobility. The advocate also noted that the ministry has a duty to accommodate persons with disabilities and no effort has been made in the appellant's situation to accommodate her specific need.

At the hearing, the ministry reviewed the reconsideration decision and emphasized that a hernia belt is specifically identified in EAPWDR Schedule C Section 3.10(11)(c) as being an item that is not a health supplement for the purposes of section 3 Schedule C so therefore there is no discretion permitted that would allow them to provide funding for it.

**Admissibility of Additional Information**

The panel admitted the appellant's written submission which included photos and the oral testimony of the appellant in accordance with section 22(4) of the Employment and Assistance Act (EAA) because the information was in support of the information that was before the ministry at reconsideration. The ministry had no objection to its admissibility.

## PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the Ministry's Reconsideration Decision dated September 16, 2019 to deny the Appellant a hernia belt was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. In particular, the Panel must decide whether the Ministry reasonably determined that the Appellant was not eligible for a hernia belt as a health supplement because it is not an eligible item listed under EAPWDR Schedule C sections 2 and 3.

The relevant legislation is as follows:

### 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,
- (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.

#### 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,
- (b) the health supplement is necessary to meet that need,
- (c) a person in the family unit is eligible to receive 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).

### 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;

## Medical equipment and devices — orthoses

### 3.10

(1) In this section:

"**orthosis**" means

- (a) a custom-made or off-the-shelf foot orthotic;
- (b) custom-made footwear;
- (c) a permanent modification to footwear;
- (d) off-the-shelf footwear required for the purpose set out in subsection (4.1) (a);
- (e) off-the-shelf orthopaedic footwear;
- (f) an ankle brace;
- (g) an ankle-foot orthosis;
- (h) a knee-ankle-foot orthosis;
- (i) a knee brace;
- (j) a hip brace;
- (k) an upper extremity brace;
- (l) a cranial helmet used for the purposes set out in subsection (7);
- (m) a torso or spine brace;
- (n) a foot abduction orthosis;
- (o) a toe orthosis;
- (p) a walking boot.

(2) Subject to subsections (3) to (11) of this section, an orthosis is a health supplement for the purposes of section 3 of this Schedule if

- (a) the orthosis is prescribed by a medical practitioner or a nurse practitioner,
- (b) the minister is satisfied that the orthosis is medically essential to achieve or maintain basic functionality,
- (c) the minister is satisfied that the orthosis is required for one or more of the following purposes:
  - (i) to prevent surgery;
  - (ii) for post-surgical care;
  - (iii) to assist in physical healing from surgery, injury or disease;
  - (iv) to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition, and
- (d) the orthosis is off-the-shelf unless
  - (i) a medical practitioner or nurse practitioner confirms that a custom-made orthosis is medically required, and
  - (ii) the custom-made orthosis is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist

[(3) – (10) are not relevant in the appellant's situation]

(11) The following items are not health supplements for the purposes of section 3 of this Schedule:

- (a) a prosthetic and related supplies;
- (b) a plaster or fiberglass cast;
- (c) a hernia support;
- (d) an abdominal support.

The appellant's position is that the physician has prescribed a hernia belt, which is medically essential and will assist in healing, in order to manage daily living activities and to maintain mobility. The appellant argues that because the ministry's mandate is to assist people with disabilities to maintain mobility, them citing that a hernia belt is specifically an item the ministry cannot issue a health supplement for is contradictory.

The ministry's position is that health supplements may only be issued pursuant to legislation and that EAPWDR

Schedule C section 3.10(11) specifically identifies a hernia support as an item that is not a health supplement for the purposes of section 3. The ministry also argues that a hernia belt is not considered a medical supply for the purposes of section 2 of Schedule C as it is not directly required for one of the purposes set out in section 2(1)(a) and there was no information from a medical practitioner to establish that a hernia belt is necessary to avoid an imminent and substantial danger to health.

### **Panel Decision**

The legislative authority for the ministry to assist with a health supplement for any kind of medical supply or equipment rests within EAPWDR Schedule C. Section 2 (1)(a) sets out that the ministry may provide either disposable or reusable medical or surgical supplies if certain conditions are met and section 3 sets out the general requirements for all medical equipment and devices. The panel reviewed all of the categories of section 3, and determined that a hernia belt could be considered a brace, so the category that most closely fits the appellant circumstance would be section 3.10, which is for orthotics and braces. Section 3.10(11) lists items not eligible under section 3.10. The panel will review sections 2(1)(a), 3.10, and 3.10(11) legislation in making their determination.

In their decision, the ministry also referenced EAPWDR section 69, life-threatening health need, and determined that the appellant was not eligible because this piece of legislation is only for eligible items identified in sections 2(1)(a) and 3, for persons not otherwise eligible. The ministry argues that the appellant is a person eligible to receive health supplements so this legislation does not apply, and also because a hernia belt is listed as a non-eligible item. They argue that there is also no evidence that a medical practitioner has confirmed there is a direct and imminent life-threatening need for the hernia belt. At the hearing, the appellant and advocate agreed that they did not ask the physician to write that this was a life-threatening health need and that this was not at issue because the hernia just impacts mobility for doing daily living activities. The panel will not be making a determination regarding section 69.

### **EAPWDR Schedule C section 2(1)(a) – medical supply**

Health supplements may be paid for medical supplies if the supplies are required for certain specific purposes (such as wound care or incontinence); are prescribed by a medical practitioner; are the least expensive supplies appropriate for the purpose; and necessary to avoid an imminent and substantial danger to health. In the appellant's circumstance, they mentioned that there were sores on the stomach and an incontinence issue due to the hernia and that large bandages are used to cover the sores and that the ministry has assisted with adult pads for the incontinence issue. There is no evidence on record that confirms that a hernia belt is directly required for the purposes of wound care or incontinence, therefore, the panel finds that the ministry was reasonable in determining that the appellant was not eligible for a hernia belt as a medical supply.

### **EAPWDR Schedule C section 3.10 and 3.10(11) – medical equipment**

Health supplements may be paid for medical equipment and devices for a number of different items. In the appellant's circumstance a hernia belt could be considered under section 3.10(m), a torso or spine brace, as the belt wraps around the torso, but legislation also specifies that it must be intended to provide pelvic, lumbar, lumbar-sacral, thoracic-lumbar-sacral, cervical-thoracic-lumbar-sacral or cervical spine support. There is no evidence in the appeal record that indicates that the hernia belt is intended for any of these conditions. Section 3.10(11) identifies items that are not health supplements for the purposes of section 3, and a hernia support and abdominal support are specifically listed in this legislation.

The appellant argues that medically required equipment should be given more weight and override something specifically listed as not eligible. Particularly because the hernia is affecting the appellant's health in the other ways that was described at the hearing, such as there are more expensive supplies being purchased than the cost of a hernia belt, which is approximately \$200. The panel agrees that this argument is a valid one, however at this time the legislation clearly identifies that hernia or abdominal supports, which the panel interprets a hernia belt to be, are not health supplements for the purposes of EAPWDR Schedule C section 3 so therefore finds that the ministry was reasonable in determining that the appellant was not eligible for a hernia belt as medical equipment.

**Conclusion**

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for a hernia belt pursuant to Schedule C Section 2(1)(a) and section 3 of the EAPWDR, was a reasonable application of the applicable enactment in the circumstances of the appellant and therefore confirms the decision. The appellant is not successful in the 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

Janet Ward

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/10/18

PRINT NAME

Laurie Kent

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/18

PRINT NAME

Linda Smerychynski

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/18