

APPEAL NUMBER
2019-00428

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated December 12, 2019, which held that the appellant was not eligible for funding for a heating pad.

The ministry held that the appellant is eligible to receive health supplements set under section 62 and Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), but that the appellant's request did not meet the criterion set out in EAPWDR Schedule C or that the appellant was eligible for the heating pad as a crisis supplement pursuant to section 57(1) of the EAPWDR.

PART D – RELEVANT LEGISLATION

EAPWDR, section 57, section 62 and Schedule C

PART E – SUMMARY OF FACTS

The information before the ministry at the time of reconsideration included the following:

- On October 23, 2019 the appellant requested funding for a heating pad.
- Prescription from the appellant's doctor (the "Physician") dated October 23, 2019 for a heating pad due to the appellant's diagnosis of flatulence
- Fax from a pharmacy indicating that the appellant's Physician prescribed the heading pad due to a flatulence and a quote from the pharmacy for the cost of a safe heat heating pad in the amount of \$69.99 plus tax for a total of \$76.00, both dated October 23, 2019
- On November 13, 2019 the ministry denied the appellant's request for funding for a heating pad
- Request for Reconsideration dated November 28, 2019 (RFR) in which the appellant states that the Physician advised that the appellant slipped in the bathtub and "*...hurted my head. My doctor also advise to have a bath tub mat*".

Additional Information

In the Notice of Appeal (NOA) dated December 12, 2019 the appellant states that the Physician says that the appellant needs to "*...heat my stomach to cure my cold. If the heating pad (\$48) can't be approved, a hot water bottle is needed*".

By consent of the parties, the appeal was conducted in writing, pursuant to section 22(3)(b) of the *Employment and Assistance Act* (EAA). Neither party provided any written submissions.

Admissibility of Additional Information

Section 22(4) of the EAA provides that a panel may consider evidence that is not part of the records as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. In the NOA the appellant indicates that the Physician advises that the heating pad is required to heat the appellant's stomach and to cure the appellant's cold but the prescription from the Physician indicates that the heating pad is required for the diagnosis of flatulence. As there was no information from the Physician about the appellant's diagnosis of a cold or the need for the heating pad relating to a cold and as it is a completely different diagnosis from the one provided by the Physician and before the ministry at the time of reconsideration, the panel did not admit that information into evidence.

The NOA also indicates that if the heating pad cannot be approved then a hot water bottle is needed. However, the only issue before the panel for this hearing is the heating pad. The request for a hot water bottle was not before the ministry at the time of reconsideration and would be the subject of a new funding request.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant's request for funding for a heating pad was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable when concluding that the heating pad is not eligible for funding as under EAPWDR Schedule C or under as a crisis supplement under section 57 of the EAPWDR?

Relevant Legislation

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;

(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, ...
- (b) Repealed. [B.C. Reg. 236/2003, Sch. 2, s. 2 (b).]
- (c) subject to subsection (2), a service provided by a person described opposite that service in the following table, ...

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

Optical supplements

2.1 The following are the optical supplements

Eye examination supplements

2.2 The minister may pay a health supplement under section 67.2 [*eye examination supplements*] of this regulation for an eye examination that,

....

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.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section 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 a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

....

Medical equipment and devices — canes, crutches and walkers

3.1 (1) Subject to

Medical equipment and devices — wheelchairs

3.2 (1) In this section,

Medical equipment and devices — wheelchair seating systems

3.3 (1) The following items are health supplements

Medical equipment and devices — scooters

3.4 (1) In this section, "scooter" does not

Medical equipment and devices — toileting, transfers and positioning aids

3.5 (0.1) In this section:

"positioning chair" does not include a lift chair;

"transfer aid" means a transfer board, transfer belt or slider sheet.

(1)The following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to facilitate toileting or transfers of a person or to achieve or maintain a person's positioning:

- (a)a grab bar in a bathroom;
- (b)a bath or shower seat;
- (c)a bath transfer bench with hand held shower;
- (d)a tub slide;
- (e)a bath lift;
- (f)a bed pan or urinal;
- (g)a raised toilet seat;
- (h)a toilet safety frame;
- (i)a floor-to-ceiling pole in a bathroom or bedroom;
- (j)a portable commode chair;
- (k)a standing frame for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;
- (l)a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;
- (m)a transfer aid for a person for whom the transfer aid is medically essential to transfer from one position to another.

(2)The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is 5 years from the date on which the minister provided the item being replaced.

Medical equipment and devices — hospital bed

3.6 (1)Subject to

Medical equipment and devices — pressure relief mattresses

3.7 (1)A pressure relief mattress

Medical equipment and devices — floor or ceiling lift devices

3.8 (1)In this section, "floor or ceiling lift device" means

Medical equipment and devices — breathing devices

3.9 (1)Subject to subsection

Medical equipment and devices — orthoses

3.10 (1)In this section:

....

Medical equipment and devices — hearing instruments

3.11 (1) A hearing instrument is

Medical equipment and devices — non-conventional glucose meters

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

....

Crisis supplement

57 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if

(a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and

(b) the minister considers that failure to meet the expense or obtain the item will result in

(i) imminent danger to the physical health of any person in the family unit, or

(ii) removal of a child under the *Child, Family and Community Service Act*.

(2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.

(3) A crisis supplement may not be provided for the purpose of obtaining

(a) a supplement described in Schedule C, or

(b) any other health care goods or services.

(4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:

(a) if for food, the maximum amount that may be provided in a calendar month is \$40 for each person in the family unit;

(b) if for shelter, the maximum amount that may be provided in a calendar month is the smaller of

(i) the family unit's actual shelter cost, and

(ii) the sum of

(A) the maximum set out in section 2 of Schedule A and the maximum set out in section 4 of Schedule A, or

(B)the maximum set out in Table 1 of Schedule D and the maximum set out in Table 2 of Schedule D,

as applicable, for a family unit that matches the family unit;

(c)if for clothing, the amount that may be provided must not exceed the smaller of

(i)\$100 for each person in the family unit in the 12 calendar month period preceding the date of application for the crisis supplement, and

(ii)\$400 for the family unit in the 12 calendar month period preceding the date of application for the crisis supplement.

(5)-(6)Repealed. [B.C. Reg. 248/2018, App. 2, s. 2.]

(7)Despite subsection (4) (b), a crisis supplement may be provided to or for a family unit for the following:

- (a)fuel for heating;
- (b)fuel for cooking meals;
- (c)water;
- (d)hydro.

Panel Decision

The appellant's position is that the heating pad is required for flatulence as prescribed by the Physician. The appellant also states that a bathtub mat is required.

The ministry's position is that the heating pad does not meet the legislated requirements for a health supplement as set out in Schedule C of the EAPWDR or the requirements for a crisis supplement under section 57 of the EAPWDR so the request for funding was denied. In particular, the ministry found that the heating pad did not meet the request for funding as a medical supply, extended therapy, medical equipment, or any of the other health supplements listed in EAPWDR Schedule C. The ministry's position is that the appellant is not eligible for the heating pad as a crisis supplement under EAPWDR Section 57.

The panel notes that while the RFR references a bathtub mat, the ministry indicates that was addressed in a separate request and is not the subject of the reconsideration. As the bathtub mat was not part of the initial funding and is part of a separate request, it will not be considered in this appeal.

Eligibility as Medical Supplies

The EAPWDR Schedule C, section 2(1)(a) sets out that the ministry may provide either disposal or reusable medical or surgical supplies if;

- (i) the supplies are required for 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.

The ministry was satisfied that the Physician prescribed the heating pad, as required by Schedule C, section 2(1)(a)(ii)(A), but was not satisfied that the heating pad is a medical supply, so the request does not meet the requirement of Schedule C, section 2(1)(a)(ii)(B). The ministry accepts that the appellant requires a heating pad due to a diagnosis of flatulence, but the ministry was not satisfied that the item is required to avoid imminent and substantial danger to the appellant's health as required by EAPWDR Schedule C, section 2(1)(a)(ii)(C).

The reconsideration decision also states that as the heating pad does is not required for one of the purposes specified in EAPWDR Schedule C, section 2(1)(a)(i).

The panel finds that the ministry reasonably determined that the heating pad is not eligible as a medical supply as it is not required for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care or limb circulation as required by EAPWDR Schedule C, section 2(1)(a)(i). As the panel finds that the ministry was reasonable in determining that the heating pad does not meet the requirements of EAPWDR Schedule C, section 2(a)(i), the panel finds that the ministry was also reasonable in determining that the appellant's request does not meet the requirement of Schedule C section 2(1)(a)(ii)(B).

The Physician indicates that the heating pad is required for a diagnosis of flatulence but has not provided any other information. The panel finds that the ministry was reasonable in determining that the heating pad is not required to avoid imminent and substantial danger to the appellant's health as required by EAPWDR Schedule C section 2(a)(ii)(C).

The panel finds that the ministry was reasonable in concluding that the appellant is not eligible for a heating pad as a medical supply.

Eligibility as an Extended Therapy

The panel finds that the ministry reasonably determined that the heating pad is not an extended medical therapy as it is not acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry or physical therapy, the specified therapies set out in EAPWDR Schedule C, section 2(1)(c).

Eligibility as Medical Equipment

The ministry's position is that the heating pad is not included in the list of medical equipment which may be provided under EAPWDR Schedule C, section 3. In addition, the reconsideration decision states that the information provided does not establish the other legislated criteria for each of the health supplements has been met.

The panel finds that the ministry reasonably determined that the heating pad is not included in the list of medical equipment and devices set out in EAPWDR Schedule C, section 3.1 to 3.12 which includes items such as a cane, crutch, walker, wheelchair, scooter, bathroom grab bar, bath or shower seat, hospital bed, pressure relief mattress, positive airway pressure device, custom-made or off the shelf orthotic, custom made footwear, hearing instrument, or a non-conventional glucose meter. As the ministry is not authorized to provide medical equipment and devices that are not specifically set out in EAPWDR Schedule C, sections 3.1 to 3.12, the panel finds that the ministry reasonably determined that the appellant was not eligible for funding for the heating pad a medical equipment.

Eligibility as other Health Supplements

Sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, and 9 set out that the ministry may provide: optical supplements, eye examination supplements, dental supplements, crown and bridgework supplements, denture supplements, emergency dental supplements, diet supplements, natal supplements, and infant formula. The ministry's position is that the heating pad is not one of the specified items and that the information provided does not establish that the other legislated criteria for other health supplements is met.

EAPWDR section 67 sets out that the ministry may provide a monthly nutritional supplement for a chronic progressive deterioration of health or a short-term nutritional supplement for an acute short-term need but that the heating pad is not a nutritional supplement.

The panel finds that as the heating pad is not one of the other specified health supplements in EAPWDR Schedule C sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, and 9 that the ministry may provide, namely: optical supplements, eye examination supplements, dental supplements, crown and bridgework supplements, denture supplements, emergency dental supplements, diet supplements, natal supplements, and infant formula. Accordingly, the panel finds that the ministry reasonably determined that the appellant is not eligible for funding for the heating pad in any of the other sections of EAPWDR Schedule C as a health supplement.

Eligibility for a heading pad as a Crisis Supplement

EAPWDR section 57(1) states that the ministry may provide a crisis supplement if:

- (a) The appellant requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available; and
- (b) The ministry considers that failure to meet the expense or item will result in imminent danger to the physical health of the appellant.

The ministry was satisfied that the appellant does not have the resources available to obtain the heating pad but was not satisfied that the appellant requires the supplement to meet an unexpected expense or to obtain an item unexpectedly needed. The ministry was also not satisfied that failure to meet the expense or item will result in imminent danger to the physical health of the appellant.

The panel finds that the ministry was not reasonable in determining that the appellant requires the supplement to meet an unexpected expense or to obtain an item unexpectedly needed. The panel finds that there is no information that would indicate that the appellant's diagnosis of flatulence or the prescription for the heating pad was an expected expense. Expected expenses include things such as clothing, electricity, food or regular expenses or items that may be occurred but there is no information to indicate that the appellant had any reason to expect that the appellant would need a heating pad.

However, the panel finds that the ministry reasonably determined that the information did not confirm that failure to obtain the heating pad will result in imminent danger to the physical health of the appellant. The Physician provides the prescription indicating that the heating pad is needed due to a diagnosis of flatulence, but the Physician does not indicate that the appellant's physical health is in any danger.

The panel finds that the ministry reasonably determined that the appellant was not eligible for funding for the heating pad as a crisis supplement.

Conclusion

The panel acknowledges that the heating pad has been prescribed to the appellant. However, having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's reconsideration decision finding the appellant ineligible for funding for the heating pad was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision. The appellant is not successful on appeal.

APPEAL NUMBER
2019-00428

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

Helene Walford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

PRINT NAME

Wayne Reeves

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Kevin Ash

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)