

APPEAL NUMBER
2020-00078

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision dated January 10, 2020 which denied the appellant’s request for reimbursement of monies paid for bowel preparation products for a colonoscopy (the “Products”) because the Products were not listed as an eligible item in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the eligibility criteria were not met for a life threatening health need pursuant to Section 69 of the EAPWDR, and the products were not eligible for a crisis supplement pursuant to s.57 EAPWDR.

PART D – RELEVANT LEGISLATION

Sections 57, 62, 69, and Schedule C Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”)

s.22(4) Employment and Assistance Act (“EAA”)

PART E – SUMMARY OF FACTS

The evidence before the Ministry at reconsideration was:

- On October 30, 2019 the appellant submitted receipts to the Ministry for bowel preparation products for a colonoscopy. Specifically, the appellant submitted receipts for three bowel preparation products totalling \$58.45 and paid by credit card (the “Products”).
- On November 14, 2019 the Ministry denied the appellant’s request.

The appellant’s Request for Reconsideration states:

- The appellant had a colonoscopy 2 years ago and the findings were concerning so the appellant was asked to return in 18 months for another colonoscopy.
- Colon cancer can only be detected with a colonoscopy and the appellant needed to get the colonoscopy in 18 months to be sure they didn’t have cancer.
- The appellant used food money to get the Products prescribed by the doctor. The appellant confirmed that the Products cannot be purchased without prescription.

Documentary evidence provided at the request for reconsideration includes:

- A request for medical transport form dated October 18, 2019.
- An information sheet from the physician’s office advising the patient to purchase Bi-Peglyte, Dulcolax and Purg-Odan and information on how and when to ingest the medications.
- An endoscopy post procedure form dated October 10, 2019.
- Receipts from Walmart and from London Drugs for the Products.

The Notice of Appeal is a four-page submission of the appellant stating:

- They were denied reimbursement for another prescription on November 9, 2017 by the Ministry and were told they had to fill the prescription first and then ask for a reimbursement.
- They think that the Ministry does not cover the prescription ever and that asking for submission of receipts is a waste of time.
- They borrowed money from their father on the understanding they would be reimbursed by the Ministry. The money from their father is a loan. The appellant’s father is not “covering the cost”.
- They were given a “prep form” for the Products to do the colonoscopy from the Doctor and without these Products the colonoscopy could not be performed.
- The colonoscopy is life or death to the appellant because without the colonoscopy the appellant could not detect a colon cancer development.
- They provided the receipts for everything purchased and purchased it as cheap as possible.
- The appellant is challenging the legislation as they receive \$1,146 per month for assistance and their monthly bills total \$1,149. The appellant accesses food from the foodbank.
- The appellant has a history of issues with their colon and runs a high risk of getting colon cancer. Going forward a colonoscopy every two years will be required.

At the hearing, the appellant provided evidence that:

- When a colonoscopy is booked, they are told 10 days prior to the date for the appointment. The appellant says that there is no way they could go through the entire Ministry process of obtaining the funds for the Products in those 10 days.
- The appellant told the Ministry that the cost was not approved last time
- The appellant was told by the Ministry to “go ahead and fill it [the prescription] and bring us back the receipt.”
- If they can’t afford the Products and the Ministry doesn’t cover them and the appellant doesn’t take them, then the physician wouldn’t allow the appellant to get the procedure.

- The appellant indicated that it is not life or death at the moment of the colonoscopy, but the procedure would detect a life threatening cancer.
- The legislation is wrong. Their monthly income leaves no funds for food. Their monthly income is very limiting in relation to being able to travel.
- Appellant has had issues with their colon for many years and they need a special diet or supplements that they can't afford.
- Appellant was able to manage their issue up until 1997 but since 1997 when they went on disability, they couldn't afford the diet required to keep the colon issues suppressed.
- The appellant has stated that a physician has told them that eventually it will be cancer of the colon or the esophagus it is just a matter of when.
- The acid reflux so escalated that they are considering a medical procedure to stop things. They don't know what to do about their stomach issues apart from meeting with a dietician.
- The appellant's physician has told them that the condition is ongoing and serious.

The Ministry relied on its reconsideration decision, as summarized at the hearing.

The appellant introduced new evidence in their notice of appeal and in the hearing. Specifically, the appellant introduced evidence that the physician indicated that the appellant's issues would soon be cancer of the colon and that the condition is ongoing and serious. The appellant's notice of appeal also provided additional written medical information about the appellant and about the seriousness of the issues with their colon. The panel determined the additional oral and documentary evidence was admissible pursuant to s.22(4) of the EAA as it was reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's decision to deny the appellant's request for reimbursement of monies paid for bowel preparation products for a colonoscopy (the "Products") because the Products were not listed as an eligible item in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the eligibility criteria were not met for a life threatening health need pursuant to Section 69 of the EAPWDR, and the products were not eligible for a crisis supplement pursuant to s.57 EAPWDR is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The legislation provides:

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.

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 (1)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) the adjusted net income of any person in the family unit, other than a dependent child, does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation, 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).

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;

The panel finds:

The Ministry's position is that the appellant is eligible to receive health supplements pursuant to section 62 of the EAPWDR but that the requested products are not an eligible item as a medical or surgical supply set out in section 2(1)(a) of Schedule C of the EAPWDR. The Ministry argued that information has not been provided to establish that the Products are a disposable or reusable medical or surgical supply required for one of the purposes set out in the section 2(1)(a)(i) of Schedule C. The appellant does not contest that the Products do not fall into the category of section 2(1)(a)(i) of Schedule C.

At reconsideration the Ministry conceded that the Products were prescribed (Schedule C 2(1)(a)(ii)(A) EAPWDR), were the least expensive supplies appropriate for the purpose (Schedule C 2(1)(a)(ii)(B) EAPWDR), and that the

Appellant did not have the resources available to the family unit to pay the cost or obtain the Products (Schedule C 2(1)(a)(iii) EAPWDR). The panel has listened to the appellant's evidence about the fact that the Products could only be purchased with the note from their physician, the limited income the appellant has access to, that the funds from their father were a loan only, and that the appellant took extensive efforts to obtain the most cost effective supplies. The panel accepts the appellant's evidence on these issues and finds the Ministry's decision with respect to those specific factors reasonable.

The Ministry determined that the Products were not necessary to avoid an imminent and substantial danger to health pursuant to Schedule C 2(1)(a)(ii)(C) EAPWDR. The panel has listened to the appellant's evidence that the colonoscopy could not be performed without the Products and that the appellant needs regular colonoscopies because of the likelihood that the appellant will develop colon cancer and for the purpose of detecting that cancer. The panel finds that it was not reasonable for the Ministry to determine that these Products, necessary for this medical procedure were not necessary to avoid imminent and substantial danger to health. Without the Products, the colonoscopy could not occur and without the colonoscopy, a cancer would be undetectable to the appellant. Given that the appellant's doctor has advised the appellant that it is "a matter of when" with respect to the appellant's development of colon cancer, the panel finds this is a real, imminent and substantial health risk. The Ministry indicated that they would need to see a note from the doctor indicating that the health risk was real, imminent, and substantial. The panel had reviewed the legislation and there is no requirement for a doctor's note to establish real, imminent, and substantial danger to health. It is a section of the legislation that provides for some interpretation. The word "imminent" indicates immediate and the words "substantial" indicates significant. The panel accepts the appellant's evidence that when a colonoscopy is scheduled the appellant must take that scheduled date within 10 days of the appointment. The appellant must follow by the timelines available to them through our health care system. In this case, the appellant had 10 days to purchase the Products necessary to obtain a procedure that may detect a serious danger to the appellant's health. Without the colonoscopy as ordered by the appellant's physician, imminent and substantial danger to the appellant's health could ensue. The panel therefore finds that it was unreasonable for the Ministry to determine that the Products were not necessary to avoid an imminent and substantial danger to health pursuant to Schedule C 2(1)(a)(ii)(C) EAPWDR.

Although the panel finds that the appellant has met almost every requirement under s.2 of Schedule C, the panel finds that the Ministry's decision that the Products did not qualify as 2(1)(a)(i) of Schedule C to be a reasonable interpretation of the legislation. The appellant did not contest that the Products did not fit into the language in s.2(1)(a)(i) of Schedule C and on a reading of that section. It is clear, on reading the legislation, that the Products do not fit into any of the limited categories available. The panel has listened to the appellant's concerns about the narrowness of this section and about how the appellant desires to change this legislation. The panel, however, has no authority to change legislation.

The Ministry reviewed sections 3.1 to 3.12 of Schedule C EAPWDR to see if the Products could fit into any of those categories. On a reading of those sections, the Products do not fit into any of the limited categories available in s.3.1 to 3.12. The panel therefore finds that the Ministry was reasonable in determining that the Products were not any of the other items set out in sections 3.1 to 3.12 of Schedule C EAPWDR.

The Ministry attempted to "test" the coverage of these products pursuant to s.69 EAPWDR (life threatening health need). The panel has reviewed section 69 EAPWDR and finds that any qualification under s.69 must be for an item set out in Schedule C EAPWDR. As the panel has already determined that the Ministry reasonably found that the Products did not fit into Schedule C EAPWDR the panel finds that it was reasonable for the Ministry to determine that the Products did not qualify under s.69.

The Ministry attempted to "test" the coverage of these products pursuant to s.57 EAPWDR (a crisis supplement). S.57(3)(b) EAPWDR states that a crisis supplement cannot be provided for any health care good or supplement. The panel finds that given that the Products were prescribed by a doctor and used to ingest for a colonoscopy, the Products are a health care good or supplement. The panel therefore finds that the Ministry decision to deny reimbursement of the Products pursuant to s.57(3)(b) EAPWDR because they were a health care good or supplement was a reasonable interpretation of the legislation.

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Overall, while the panel is sympathetic to the appellant's situation, the panel finds the Ministry's decision to deny the appellant reimbursement for the Products was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.

PART G – 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 type="checkbox"/> or 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"/>	

PART H – SIGNATURES	
PRINT NAME MEGHAN WALLACE	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2020/Apr/14

PRINT NAME Susan Mackey	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2020/Apr/14
PRINT NAME Robert McDowell	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2020/Apr/14