

APPEAL NUMBER
2020-00161

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (Ministry) reconsideration decision dated April 29, 2020 which held that the appellant was not eligible for a crisis supplement for funding to purchase a recreation centre pass pursuant to Section 57, 62 and Schedule C 2(1)(f) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

In particular, the ministry found that the legislation, section 57 (3), does not allow a crisis supplement for funding for a recreation centre pass which is a health care good or service. Furthermore, the ministry determined that there is no general health supplement available in Schedule C to cover the cost of a recreation centre pass.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disabilities Regulation – EAPWDR – sections 57, 62 and Schedule C 2(1)(c)

PART E – SUMMARY OF FACTS

Evidence at Reconsideration

1. Prescription, signed and dated November 21, 2020, from the appellant's general practitioner (GP) for a recreation centre pass. It stated, "patient needs recreation access pass for rehabilitation and pain management for osteoarthritis".
2. Monthly Report dated November 20, 2019, which indicated the total allowance as \$1164.66, total income declared \$370.75 and total cheque \$1164.66.
3. Prescription, signed and dated February 20, 2020, from the appellant's GP which stated "Needs funds for rec/pool pass to prevent weight gain which is unexpected outcome of loss of ability to do rehab exercises for his lower back pain. If he doesn't get funding, then there is imminent danger to his health as his back and sciatic pain will worsen and lead to increased disability". In hand-writing a note is added which stated, "will need resizing of braces/support items and clothes".
4. 10-pg client grievance aimed at the appellant's third-party administrator.
5. Note dated November 22, 2019 which requests funding for an annual family recreation centre pass. The appellant stated that the municipality will provide financial funding of \$225 per person. The total cost of the pass is \$1040.00 and the financial aide totals \$675.00. The appellant needs \$365.00.
6. 2-pg Financial Assistance Application, signed and dated November 22, 2019.
7. Request for Reconsideration (RFR), signed and dated March 25, 2020, which stated, in part, the following:
 - There are no other resources to pay for the recreation centre pass.
 - There is an imminent danger to health and ability if therapy programs cannot be accessed.
 - Lack of cardio therapy has caused large weight gain resulting in a need to replace clothing, braces need resizing, range of motion is decreasing, pain management is getting difficult, and no therapy routine will require unnecessary transportation (taxi).
 - Childcare will be needed if a single pass is acquired and that the family pass is less than \$100 more than a single person pass.
 - Without a family pass, the appellant will need to pay for childcare which would cost between \$800-\$1300 per month.
 - With the family pass, swimming lessons are offered.
 - An extension is needed to obtain information from an occupational therapist.

Evidence on Appeal

Notice of Appeal, (NOA), signed and dated June 15, 2020, which stated that "the pool is needed for therapy for many injuries that need to be treated in a weightless environment. It is a medical need" and has been for 20 years. The appellant argued that such exercise is necessary to maintain range of motion, manage pain and manage weight. Without weightless exercise the appellant suffers from pain, loss of range of motion and weight gain. This has caused pressure on the lower back and sciatic nerve, and the need for resized clothing. The appellant also stated that other municipalities cover the cost of the pass. The remainder of the NOA discussed the delays the appellant experienced when dealing with this matter.

The panel considered the information in the NOA to be the appellant's argument. The information regarding the delays the appellant experienced is not a matter before the panel.

Evidence at the Hearing

At the hearing, the appellant requested an adjournment because the appeal package was missing information and documentation. The appellant argued that:

- Initially, he requested, in writing, applications for a crisis supplement and a medical need but only the crisis supplement application was supplied. He wanted the panel to see his written request for both applications as he argued that the ministry had intentionally provided him with the crisis supplement so that it could deny the funds for the recreation centre pass. He also argued that the request indicated the need for a pool pass not gym pass and he wanted the panel to see this. The appellant believes that the ministry used the term 'gym pass' in its decision so that it could deny the funds.
- The request for the RFR documents was missing. It would show that the appellant requested the RFR months ago, but the ministry delayed sending it out to him.
- A December 5, 2019 letter from the GP also was not included in the appeal package. When questioned the appellant stated that he did not have the letter with him but that the GP stated in the letter that the appellant needs the recreation centre pass to maintain his range of motion, manage pain and that his 2 children are at risk to being removed if his physical ability declined further.
- 3-pg letter from the appellant explaining the cost of the recreation centre pass, the amount the city will subsidize, and the financial benefit of a family pass versus a single pass.
- Repeatedly the appellant argued that there have been multiple delays from the ministry which has caused a further deterioration of his health.

The panel considered the appellant's request but denied it for the following reasons:

1. The delays caused by either the ministry, the third-party administrator or the appellant regarding access to applications is not a matter upon which the panel has the jurisdiction to make a determination and this would not change if an adjournment were granted.
2. The request for the RFR documents did not contain information that had a bearing on the issue on appeal. It supports the appellant's argument that delays were created, which the panel has no jurisdiction to consider and this would not change if an adjournment were granted.
3. All members of the panel confirmed that they understood that the appellant's request for a recreation centre pass was to access a pool and not the fitness gym or weight room, and that the panel considered the use of the term 'gym pass' by the ministry in its reconsideration decision to be interchangeable with the term 'recreation centre pass'. The appellant was satisfied with this confirmation.
4. The ministry conceded and panel accepted that the appellant initially asked for more than one application but was only given the crisis supplement application. The appellant was satisfied with this confirmation.
5. The December 5, 2019 letter from the GP contained no new information regarding the need for the recreation centre pass and the panel had both notes from the GP's dated November 21, 2019 and February 20, 2020 which support the need for the recreation centre pass. The appellant was satisfied.
6. The 3-pg letter in which the appellant explains the costs of the recreation centre pass, the amount the city will subsidize, and the financial benefit of a family pass versus a single pass, was duplicated in the appeal package on pages 78, 79 and 80. The appellant was satisfied with this information.
7. In the appeal and at the hearing the appellant repeatedly argued that unnecessary delays were created by the ministry and that this has had a significant impact on the deterioration of his health. The appellant agreed that an adjournment would cause further unnecessary delays.

The panel had to consider the impact of refusing or granting the adjournment. In making its

determination, the panel considered the reasons for the request, whether the adjournment would cause unreasonable delays, if the circumstances that lead to the adjournment request were unforeseeable and if reasonable efforts were made to avoid the request for adjournment.

In this case, much of the information that was missing was in the appeal package but in different forms and any possible misunderstands the panel may have had regarding the information was dealt with to the appellant's satisfaction. Furthermore, the appellant's appeal package was delivered to the appellant on June 26, 2020. This would have given the appellant 8 business days prior to the hearing on July 9, 2020 to submit all or any information that was missing from the appeal package or request an adjournment. The records demonstrate that such efforts were not made. Finally, the appellant repeatedly voiced his dissatisfaction regarding unnecessary delays in his case and the panel is of the opinion that adjourning the hearing to obtain information that is duplicated in the appeal package or is not of significance to the issue at had would be prejudicial to the interests of both parties. For these reasons, the adjournment was not granted. The appellant agreed and was comfortable to proceed with the hearing.

At the hearing, the appellant stated, in part, the following regarding the appeal.

1. That he has met all 4 criteria to be eligible for a crisis supplement.
2. Under medical need and with a prescription he is eligible for recreation centre pass, but the ministry is not providing him with the proper legislation or applications.
3. He has seen other disabled people at the pool using recreation centre passes, but the ministry will not want to provide one for him.
4. The only reason he is physically ok thus far is because his new home as a large soaker tub for him to sit in hot water and he has some equipment at home for appropriate exercise. However, he will not be able to maintain his range of motion and ability to walk without weightless exercise.
5. His health is in imminent danger because the amount of pain he experiences has increased by 50%. He was walking with 2 canes but now he walks with 4-legged crutches, the shock from riding his scooter causes pain to his joints, and he has gained 25-40 lbs.
6. He does not have the funds to pay the \$365.00 extra for the pass because he is trying to pay his debts, but if a family pass is purchased, he will be able to contribute \$60.00.
7. Outdoor pools do not help because they are not heated, and the heat improves movement and pain.

At the hearing, the ministry relied on its reconsideration decision and stated that the appellant may be able to access the recreation centre pass through a health assistance application, which would rest with the Health Services Branch of the ministry. In this case the appellant applied for a crisis supplement for which he is not eligible.

When asked, the ministry stated that it did not know why the appellant was not given an application for health assistance for all non-mentioned medical requests.

PART F – REASONS FOR PANEL DECISION

The issue at appeal is whether the ministry's decision which denied the appellant a crisis supplement for funding for a recreation centre pass was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry determined that a recreation centre pass is a health care good or service for which a crisis supplement cannot be provided and there is no general health supplement available to cover the cost of the pass.

The relevant legislation is as follows:

EAPWDR

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.

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.

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:

- (c) subject to subsection (2), a service provided by a person described opposite that service in the following table, delivered in not more than 12 visits per calendar year,
 - (i) for which a medical practitioner or nurse practitioner has confirmed an acute need,
 - (ii) if the visits available under the Medical and Health Care Services Regulation, B.C. Reg. 426/97, for that calendar year have been provided and for which payment is not available under the *Medicare Protection Act*, and
 - (iii) for which there are no resources available to the family unit to cover the cost:

Item	Service	Provided by	Registered with
1	acupuncture	acupuncturist	College of Traditional Chinese Medicine under the <i>Health Professions Act</i>
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the <i>Health Professions Act</i>
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia under the <i>Health Professions Act</i>
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia under the <i>Health Professions Act</i>
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia under the <i>Health Professions Act</i>
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia under the <i>Health Professions Act</i>

The Appellant's Position

The appellant argued that without access to a pool his health is in imminent danger, which includes weight gain, loss of range of motion and pain. In addition, the appellant argued that with increased weight gain clothes and braces will need to be resized. The appellant provided detailed information and evidence from his GP to support this position. Finally, the appellant argued that he meets all 4 legislative requirements to be eligible for a crisis supplement.

The Ministry's Position

The ministry argued that a recreation centre pass is a health care good and service and a crisis supplement cannot be provided for health care goods and services pursuant to section 57 (3) of the EAPWDR. The ministry also argued that a crisis supplement grant cannot be provided for the general health items listed in Schedule C. Finally, the ministry argued that Schedule C does not list a recreation centre pass as an item and therefore section 62 does not apply to the appellant. For these reasons, the ministry must deny the appellant's request for funding for a recreation centre pass.

The Panel's Decision

The evidence presented by the GP and appellant, indicated that due to the appellant's osteoarthritis there is a need for the appellant to engage in weightless exercise in a heated pool and therefore a recreation centre pass is necessary. Weightless exercise will maintain a healthy weight and range of motion and manage pain for the appellant. The GP and the appellant argued that without the recreation centre pass the appellant's health is in imminent danger. For these reasons, the panel finds that the ministry was reasonable in determining that the recreation centre pass is a healthcare good or service or a health supplement.

Section 57(3) explicitly states that a crisis supplement cannot be provided for a supplement described in Schedule C or any other health care goods or services. Since it has been determined that the recreation centre pass is a healthcare good or service, the panel finds that the ministry was reasonable in determining that funds for a recreation centre pass is not an item for which a crisis supplement may be provided pursuant to section 57(3) of the EAPWDR.

Section 62 of the EAPWDR allows the ministry to provide any health supplement that is set out in Schedule C. Schedule C of the EAPWDR does not list a recreation centre pass as a health supplement that the ministry may provided. For example, a recreation centre pass is not a medical or surgical good or supply pursuant to section 2(1) nor is it medical equipment pursuant to subsection 3-3.12. Section 2(c) indicates that services, such as physical therapy can be provided for up to 12 visits per calendar year. Though physical therapy can take place in pools, the panel understands that this was not the benefit the appellant applied for nor would it meet his long-term needs. The panel therefore finds that the ministry was reasonable in determining that funds for a recreation centre pass is not an item for which a general health supplement can be provided pursuant to section 62 and Schedule C of the EAPWDR.

Conclusion:

The panel finds that the ministry's reconsideration decision, which determined that the appellant was ineligible for a crisis supplement or a general health supplement for a recreation centre pass, was a reasonable application of the legislation and was reasonably supported by the evidence. The panel confirms the ministry's decision and the appellant is not successful on appeal.

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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

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/07/09

PRINT NAME

Arshdeep Dhaliwal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/07/09

PRINT NAME

Linda Smerychynski

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/07/09