

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, 2020 in which the ministry determined the appellant was not eligible for medical supplies (dental swabs, suction toothbrush, surgical masks and disposable gowns) as a health supplement under Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) or as a life-threatening health need pursuant to section 69 EAPWDR.

The ministry found 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:

- dental swabs and a suction toothbrush are not eligible items set out in any section of the EAPWDR Schedule C; and
- although surgical masks and disposable gowns are required for ongoing bowel care, the appellant had not demonstrated there are no resources available to them to pay for the cost of these items as required by Schedule C, section 2(1)(a)(iii) of the EAPWDR.
- The supplies requested do not meet the legislated criteria for a life-threatening health need.

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 disability assistance.

The evidence before the ministry at the time of reconsideration:

- Request for Reconsideration (RFR) dated September 2, 2020, which included a statement from the appellant's representative. She wrote:
 - The appellant lives with a number of medical conditions and is completely dependent for all activities of daily living;
 - The appellant was denied suction toothbrushes for oral care as the ministry defined this as a personal item, however the appellant is at high risk of aspirating fluids and saliva into his lungs so requires suction during teeth brushing;
 - The appellant has a condition that can be passed through improper infection control and contact so requires disposable gowns (two to four per day) and surgical masks (six to eight per day), as there are multiple caregivers (two at a time) four times per day.
- A letter from the appellant's physician dated August 31, 2020 confirming the appellant's medical condition and requesting the following medical equipment to support their care:
 - Suction toothbrushes (three per day) as careful and regular oral care is necessary to reduce the bacterial load level in the mouth and suctioning prevents aspiration due to increased fluids in the mouth during brushing;
 - Six sterile In and Out Catheterization kits per week to perform catheterization for urinary retention;
 - The appellant's family and caregivers require isolation gowns (two per day), surgical masks (six to eight per day) and gloves (eight pairs per day), to maintain good infection control practices.
- A letter from the appellant's representative to the ministry dated July 9, 2020 outlining the appellant's medical condition and the necessity for disposable gowns and masks; wet wipes for sponge baths; catheterization kits; suction toothbrushes and dental swabs.
- A letter from the appellant's physician dated March 9, 2020 listing the required supplies to practice infection prevention and to avoid cross contamination so the appellant doesn't get ill from this as he is already immuno-compromised.
- A letter from the ministry's Health Assistance Branch (HAB) dated July 22, 2020 in which they wrote the appellant was not eligible for surgical masks, disposable gowns, dental swabs and a suction toothbrush as the eligibility criteria had not been met. The decision noted that the supplies requested do not meet any of the following purposes:
 - Wound care;
 - Ongoing bowel care required due to loss of muscle function;
 - Catheterization;
 - Incontinence;
 - Skin parasite care;
 - Limb circulation care

Additional Information

On the Notice of Appeal (NOA) form dated September 24, 2020 the appellant's representative (the representative) wrote that the items are absolutely required in order for the appellant to avoid life-threatening infections and the family cannot pay for these items.

At the hearing, the representative explained the appellant's medical condition is such that he is fully dependent on others for his care. The care is being provided by family members as well as workers hired by the family. The family receives money from the government to pay for the worker's wages only. The appellant is living in the family's home and goes to a day program three days per week. The appellant cannot have any fluid go down his throat, and a suctioning machine is used to keep the mouth clear of any type of liquid, including saliva. In 2019 the appellant was hospitalized for six months, during which time he picked up a communicable disease that will remain with him indefinitely.

The representative explained there are three types of supplies that are required to maintain the appellant's care, which are not currently being covered, and this is what they are seeking payment of:

Suctioning Toothbrushes

The appellant is at a high risk of contracting aspiration pneumonia, so a suctioning machine is used because he cannot have any fluids go down his throat. The representative explained to ensure bacteria is not forming in the appellant's mouth they must clean regularly using a suctioning toothbrush, which is used once then disposed of. The representative argues this type of toothbrush is a necessary piece of equipment that is attached to the suctioning machine and they must order these disposable suctioning toothbrushes from a medical supply store at a cost of approximately \$900 per month.

Dental Swabs

The representative explained the roof of the appellant's mouth becomes very thick and must be scraped out. To do this they must use a dental swab, which is like a small sponge on a stick, to wipe out the mouth while using the suctioning machine to ensure nothing goes down the appellant's throat. The swabs cost approximately \$60 per box and a box lasts about two months.

At the hearing, the ministry reviewed the table provided in the reconsideration decision pertaining to airway pressure devices in Schedule C section 3.9 and stated based on the clarification provided by the representative in regards to how the suctioning toothbrushes and dental swabs are used with the suction unit they would be considered eligible items.

Surgical Masks and Disposable Gowns

The appellant caught a superbug while hospitalized in 2019 and is highly contagious. Health measures require that anyone in contact with him must wear nitrile gloves, surgical masks and protective gowns. The representative explained she must get close to see in his mouth to brush his teeth and swab his mouth. The appellant does not have the ability to cover his mouth if he coughs. Suctioning is considered an aerosol task and anyone doing this is required to wear a surgical mask. The appellant also requires two people to clean and change him after a bowel movement, and protective gloves, masks and gowns are mandatory to ensure there is no contamination or infection passed to the appellant's caregivers.

The representative and the appellant's mother have been paying for this equipment out of their own funds but are unable to continue to do so due to the high cost. They estimate they are spending approximately \$120 per month for masks, \$500 per month for gowns, \$900 per month for suctioning toothbrushes and \$20 per month for dental swabs for a total of approximately \$1500 per month. They added that no government agency funds this because the appellant is residing in his own home, not a group home.

At the hearing, the ministry explained that Schedule C outlines what supplies may be authorized and they agree, after hearing how the suctioning toothbrushes and dental swabs are used in conjunction with the suctioning machine, that they do meet the criteria. However, the ministry questioned whether the workers who come to the home shouldn't be bringing their own masks and gowns with them, as a possible resource available to the appellant. The representative emphasized it is her responsibility to provide masks and gowns because she hires the workers directly, they are not hired by another agency, and the funding the representative receives from the government is for the purpose of paying the worker's wages only, not for any medical supplies.

The ministry also explained because the appellant is in receipt of persons with disabilities assistance any requests for medical supplies would fall under Schedule C legislation, and not section 69 of the EAPWDR, which is for life threatening health needs, because that is used only for persons who do not have PWD designation.

Admissibility of Additional Information

The panel admitted the representative's NOA and oral statements, on behalf of the appellant, in accordance with section 22(4) of the Employment and Assistance Act because the information was reasonably required for a full and

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fair disclosure of all matters related to the decision under appeal.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's Reconsideration Decision dated September 16, 2020 to deny the appellant medical supplies (dental swabs, suction toothbrush, surgical masks and disposable gowns) was reasonably supported by the evidence or was a reasonable application of the legislation.

In particular, the Panel must decide whether the Ministry reasonably determined that:

- dental swabs and a suction toothbrush are not eligible items set out in any section of the EAPWDR Schedule C;
- although the ministry determined that surgical masks and disposable gowns are required for ongoing bowel care, the appellant had not demonstrated there are no resources available to pay for the cost of these items as required by Schedule C, section 2(1)(a)(iii) of the EAPWDR; and
- The supplies requested do not meet the legislated criteria for a life-threatening health need.

The relevant legislation can be viewed at the end of this written decision.

Appellant's Position

The appellant's position is as described at the hearing with the summary being that all the supplies requested are medically essential to provide care to him in the home and for the safety for those providing the care. The family does not have the financial resources to continue to pay for the expensive medical supplies.

Ministry's Position

At reconsideration the ministry indicated that dental swabs and suctioning toothbrushes are not a benefit of Schedule C, section 2(1)(a)(i) of the EAPWDR because they are not required for the purposes of:

- Wound care
- Ongoing bowel care
- Catheterization
- Incontinence
- Skin parasite care
- Limb circulation care

However, at the hearing the ministry determined, based on the representative's clarification the dental swabs and suctioning toothbrushes are used in conjunction with a suction unit, that this meets the criteria of Schedule C section 3.9, which allows for a suction unit with accessories and supplies.

In regards to surgical masks and disposable gowns, at reconsideration the ministry determined they do meet the criteria of Schedule C, section 2(1)(a)(i) because they are an item required to avoid an imminent and substantial threat to health. However Schedule C, section 2(1)(a)(iii) requires that there be no resources available to pay the cost of the supplies. The ministry considered the masks and gowns could be the responsibility of an employer to provide and because there was no information provided by the appellant that would indicate otherwise, they determined this to be a resource available to obtain the supplies. At the hearing, the ministry did not dispute the representative's information about them being obligated to provide workers with masks and gowns.

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.

SUCTIONING TOOTHBRUSHES AND DENTAL SWABS

The panel will consider both of these items together as they relate to the oral care the appellant requires. Section 2(1)(a) of the EAPWDR allows the ministry to pay for medical supplies providing they are 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.

The appellant does not use suctioning toothbrushes or dental swabs for any of the medical conditions listed above, so the panel agrees the ministry was reasonable to say the requirements of Schedule C section 2(1)(a) have not been met.

However, in the appellant's circumstances, the purpose of suctioning toothbrushes and dental swabs is to clear out any liquids or items in the mouth while a suction unit is being used. Schedule C section 3.9(1)(c) states the following are a health supplement "if the minister is satisfied that the item is medically essential for clearing respiratory airways,

- (i) a suction unit,
- (ii) an accessory that is required to operate a suction unit, or
- (iii) a supply that is required to operate a suction unit;"

In the reconsideration decision, and at the hearing, the ministry summarized in a table what the ministry considers Schedule C section 3.9(1)(c) covers. The table notes "a positive airway pressure device; an accessory that is required to operate a positive airway pressure device; a supply that is required to operate a positive airway pressure device" and then also reference specific devices, including "a suction unit with accessories and supplies".

The panel notes the suctioning toothbrush is directly connected to the suction unit so it is reasonable to say it is a supply that operates using a suction unit. The dental swabs are used to keep the appellant's mouth clear of any bacteria, and because there are items scraped from the roof of the mouth that cannot be allowed to fall and block the respiratory airways, a suctioning machine is used any time a dental swab is used. The panel considers, in the appellant's circumstance, that although the dental swab is not something that is directly connected to a suction unit, it is a supply that must be used while operating the suction unit.

The panel agrees with the ministry's concession stated at the hearing that the suctioning toothbrushes and dental swabs, as being used in the appellant's circumstances, are accessories and supplies necessary to the operation of a suction unit and that these accessories and supplies are medically essential for clearing the appellant's respiratory airway. Therefore, the panel finds the ministry was not reasonable in their decision to not consider suctioning toothbrushes and dental swabs as an eligible item under Schedule C section 3.9(1)(c).

SURGICAL MASKS AND DISPOSABLE GOWNS

The legislative authority to issue medical supplies is found in section 2(1)(a) of the EAPWDR. The items were prescribed by a medical practitioner. The appellant has ongoing bowel care requirements so meets section 2(1)(a)(i)(B). The ministry decision acknowledged, and the panel agrees, that these items are necessary to avoid an imminent and substantial danger to health.

However, the ministry indicated there may be other resources available to the appellant, which is a requirement of section 2(1)(a)(iii), because the workers who come into the home should have their masks and gowns supplied by their employer. The representative confirmed there are some workers who come into the appellant's home, however they are hired directly by the family, not by an agency, so it is their responsibility to provide the workers with masks and gowns. The representative indicated they do not receive funding from the government to provide masks and gowns, only enough to pay for their wages. The family has been paying for these necessary supplies out of their own funds, but because the cost is significant, they do not have the resources available to continue to cover these costs. Although the panel did not see documentary evidence confirming the representative's assertion they hire the workers directly, we find the verbal confirmation of this to be acceptable. The ministry did not suggest documentary evidence was required. The panel also notes the family themselves provide the remainder of the appellant's care and must also wear the masks and gowns. The panel finds the appellant does not have the

resources to pay the ongoing and significant costs of surgical masks and gowns and therefore find the ministry was not reasonable in their decision.

In their decision, the ministry also referenced EAPWDR section 69, life-threatening health need, and determined the appellant was not eligible because this piece of legislation is only for eligible items identified in sections 2(1)(a) and 3, and is for persons not otherwise eligible. The ministry argues the appellant is a person eligible to receive health supplements so this section does not apply. The panel agrees the appellant is a recipient of disability assistance and therefore any medical supplies would be considered under Schedule C. Therefore, the panel finds the ministry was reasonable in their decision that this section of legislation is not applicable in the appellant's circumstance.

Conclusion

For the reasons noted above, the panel finds that the ministry's reconsideration decision was not a reasonable application of the legislation in the appellant's circumstance and therefore rescinds the decision. The appellant is successful in this appeal.

Relevant Legislation

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 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;
- (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;

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.

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Sections 3.1 – 3.12 list specific types of medical equipment and devices in the following categories:

3.9 – breathing devices

- 3.9(1) (c) if the minister is satisfied that the item is medically essential for clearing respiratory airways,
 - (i) a suction unit,
 - (ii) an accessory that is required to operate a suction unit, or
 - (iii) a supply that is required to operate a suction unit;

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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
Janet Ward

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)
2020 November 10

PRINT NAME
Katherine Wellburn

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2020 November 10

PRINT NAME
Sameer Kajani

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2020 November 10