

APPEAL NUMBER
2020-00283

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated December 9, 2020 which held that the appellant was not eligible for a supplement for hearing aids.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation (EAR), sections 67 and 76
Employment and Assistance Regulation (EAR) Schedule C, sections 3 and 3.11

PART E – SUMMARY OF FACTS

The appellant did not participate in the hearing. The panel confirmed that the appellant had been provided with the Notice of Hearing and waited 15 minutes from the scheduled start time before proceeding as authorized under section 86(b) EAR.

The evidence before the ministry at the time of reconsideration consisted of the following:

1. The appellant has never applied for designation as a person with persistent multiple barriers (PPMB);
2. The appellant has never applied for designation as a person with disabilities (PWD);
3. An audiologist had recommended that the appellant have hearing amplification devices;
4. Pacific Blue Cross had confirmed that the appellant had coverage as an Employable person;
5. The Pacific Blue Cross coverage did not provide a benefit regarding hearing aids;
6. The appellant experienced an incident during which there was a fire in the building he lives in but he was unable to hear the fire alarm;
7. The appellant has difficulty hearing other people when they speak;
8. The appellant's difficulties with hearing is a barrier to the appellant's employment; and
9. The appellant's hearing affects his daily living activities, as an example he cannot hear crosswalk beeps and cannot use the telephone.

PART F – REASONS FOR PANEL DECISION

The issue at appeal is whether the ministry's decision that the appellant was not eligible for a supplement for hearing aids was reasonably supported by the evidence or a reasonable application of the enactment in the appellant's circumstance.

The Relevant Legislation

EAR, section 67 describes the situations where the ministry may provide general health supplements or a supplement for medical equipment and devices. The ministry may provide these supplements if a family unit is in receipt of income assistance, a family unit is in receipt of hardship assistance and the supplement is for someone under the age of 19 or if it is provided to a 'continued person'.

General health supplements

67 (1) 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 income assistance, if
 - (i) the family unit includes a qualifying person, or
 - (ii) the health supplement is provided to or for a person in the family unit who is under 19 years of age,
- (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,
 - (i) is a continued person under section 66.3(1) or (2), or
 - (ii) is a continued person under section 66.4(1) and was, on the person's continuation date, a qualifying person or part of a family unit that then included a qualifying person, or
 - (iii) is a continued person under section 66.4(2)

EAR, section 76 describes the situations where the ministry may provide general health supplements or a supplement for medical equipment and devices to a family unit that does not meet the requirements of section 67. The ministry may provide a supplement if there is a direct and imminent life threatening need, the supplement is necessary to meet that need, the family unit's net income is below a specified amount and the general health supplement or medical equipment and device are identified in Schedule C.

Health supplement for persons facing direct and imminent life threatening health need

76 (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).

EAR Schedule C – Health Supplements provides the specific details of health supplements that the ministry can provide. The portions of Schedule C that are relevant are section 3 'Medical equipment and devices' and section 3.11 'Medical equipment and devices – hearing instruments'. Section 3 permits the ministry to provide medical equipment and devices if a family is eligible under section 67 (described above) and it is pre-authorized by the ministry, there are no resources available to the family and the medical equipment or device is the least expensive appropriate medical equipment or device. Section 3.1 states that a hearing instrument is a health supplement if it is prescribed by an audiologist or if an audiologist performs an assessment that confirms the need for a hearing instrument.

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 67 [*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.

Medical equipment and devices — hearing instruments

3.11 (1) A hearing instrument is a health supplement for the purposes of section 3 of this Schedule if

(a) the hearing instrument is prescribed by an audiologist or hearing instrument practitioner, and

(b) an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument.

(2) The minister may provide a hearing instrument to or for a family unit under this section only if the person is not receiving a hearing assistance supplement under section 77.02 or 77.03 of this regulation.

The Appellant's Position

The appellant did not participate in the hearing. The Notice of Appeal contained no information under the heading: Reasons for Appeal.

The appellant had provided the ministry with a hearing assessment signed by a Registered Hearing Instrument Practitioner and an audiometry evaluation signed by a registered audiologist and registered hearing instrument practitioner. The appellant had also provided a statement that they could not hear a fire alarm that went off in the building where they live, that they can't clearly make out what people are saying and that they need to ask them to repeat themselves 3 or 4 times, that the appellant can't hear if people yell at him on the street, that the appellant cannot hear the crosswalk signal "when it beeps", that the appellant can't hear anyone on the telephone and that the appellant would like to work part time but that they "couldn't hear on an interview."

The audiometry evaluation states the appellant says they have continuous tinnitus and will be receiving ear surgery.

The Ministry's Position

On the hearing of the appeal, the ministry relied on the reconsideration decision.

The ministry stated that the appellant did not satisfy the criteria of EAR section 67 because the family unit was not in receipt of income assistance, hardship assistance nor was a continued person.

The ministry stated that the appellant did not satisfy the criteria of EAR section 76 because the appellant's information "does not establish that you face a direct and imminent life threatening need for hearing aids."

The ministry acknowledged that the appellant may benefit from hearing aids.

In the result, the ministry found the appellant was not entitled to a benefit for hearing aids because they did not satisfy the criteria of either EAR section 67 or EAR section 76.

The Panel's Decision

The panel notes that the appellant did not challenge the ministry's determination on reconsideration that they met the requirements of EAR section 67. In the absence of any information indicating that the appellant was part of a family unit receiving income assistance or hardship assistance or that the appellant was a continued person, the panel finds that the ministry acted reasonably in determining that the appellant did not meet the requirement of EAR section 67.

Consequently, the panel determined that the appellant's possible entitlement to a supplement for hearing aids was under EAR section 76. In particular, the panel considered whether the effects the appellant described as arising from their hearing loss indicated that they faced a "direct and life threatening need."

The panel finds that the inability to clearly hear people in a conversation, the inability to talk on the telephone, the inability to hear people that yell at the appellant on the street and any barriers to employment do not satisfy the requirement for a direct and life threatening need.

The panel considered the appellant's inability to hear a crosswalk signal "when it beeps" and determined that although this could potentially pose a safety concern that there is no information before the panel that the appellant has any impairments to their vision. Consequently, the panel finds that this does not create a direct and life threatening need.

The panel considered the inability to hear a fire alarm or other noise-based warning systems. The panel acknowledges that the inability to hear a fire alarm increases the risk of possible personal injury in a situation where there is a fire or other hazard. However, the panel finds this increased risk is not sufficient to create a direct life threatening need nor does it create an imminent life threatening need.

Consequently, the panel finds that the ministry reasonably determined that the appellant does not satisfy the criteria in EAR section 76.

Conclusion

The panel finds that the appellant is not eligible for a supplement for hearing aids because they do not meet the criteria of EAR section 67 or 76. Therefore, the ministry's decision that the appellant was not eligible for a supplement for hearing aids was reasonably supported by the evidence and a reasonable application of the enactment in the appellant's circumstances.

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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
Trevor Morley

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)
2021/01/20

PRINT NAME
Dawn Martin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2021/01/20

PRINT NAME
Melissa McLean

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2021/01/20