

APPEAL NUMBER
2020-00008

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") decision of January 18, 2021 in which the Ministry determined that the appellant was not eligible for funds to provide medical equipment or supplies pursuant to section 62 and Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation*.

PART D – RELEVANT LEGISLATION

EAPWDR – *Employment Assistance for Persons with Disabilities Regulation*, section 62 and Schedule C

PART E – SUMMARY OF FACTS

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

- 1) **September 24, 2020**, the ministry received a quote for a hydration pump kit and license administration program from a Social Worker at the Kidney Care Clinic.

The request included:

- Medical Equipment Request and Justification completed by the appellant’s physician.
 - Medical Condition: Biopsy proven recurrent acute tubular injury of the kidneys due to volume depletion. Appellant is at high risk of renal failure without adequate IV fluids, however, due to their mast cell activation disorder, they cannot tolerate high bolus IV fluid rates. Currently they will need to be attached to an IV pole for 10 hours a night to maintain the 200ml/hr to achieve 2 L of IV fluids - instead they would benefit from an IV infusion during the day at a slower rate which is provided by an IV pump. Recommended equipment: IV fluids with a continuous IV pump as unable to tolerate IV bolus due to mast cell activation disorder.
 - Specifications of medical equipment required to meet the applicant’s need: Currently on dial IV pump; however unable to achieve IV fluid volume needed (2L) during nighttime alone and needs more time during the day; however unable to mobilize. Due to the mast cell activation disorder, they cannot tolerate IV bolus rates. They need an IV pump to provide a continuous IV fluid rate during the day to provide the 2L volume and allow for mobility during the daytime.
- 2) **August 17, 2020** - Letter from physician supporting the application.
Physician writes: *Appellant has a history of recurrent Acute Kidney Injury due to volume depletion with a renal biopsy on Mar 11, 2019 showing evidence of acute tubular injury. Appellant has required copious amount of IV fluids as they have issues with nausea and vomiting due to Ehlers-Danlos syndrome as well as Mast cell activation disorder. Furthermore, they are not able to tolerate high rates of IV fluids likely due to the Mast Cell activation disorder, and with the typical IV fluid dial system, will need to be attached to an IV pole for 5-10 hours. I would propose they be allowed funding for a continuous IV pump that will allow more mobility and provide them with some semblance of quality of life.*
 - 3) Medical Quote for hydration pump (\$6171.43), license administration program (\$708) and PST (\$481.56).
 - 4) **September 24, 2020** - the Ministry denied the request for a hydration pump kit and license administration program. In the decision letter mailed to the Appellant, the Adjudicator wrote that the medical equipment or device is not described in the Employment and Assistance for Persons with Disabilities Regulation, Schedule C Health Supplements. As such, there is not authority to provide funding for the category of item.
 - 5) **October 15, 2020** - The Ministry received a signed Reconsideration, including:
 - A hand-written comment “The pump is a life sustaining item of need. This is not a “health supplement.” Section three indicates: The preventative measure of the hydration pump has not been considered. It is stated on the denial from the Ministry of Social Development that the hydration pump is not a piece of medical equipment that is covered (not on their list) – so therefore coverage could not be offered – The hydration pump should be covered and because it is a piece of medical equipment that supports the kidneys from declining/progressing to kidney failure which would then require a life sustaining treatment; such as dialysis or transplant – moreover, having the pump would allow the client to have a better quality of life.

- Letter from the Social Worker from the Kidney Care Clinic, reiterating information previously provided and advocating for funding of the requested items.
- Letter from the Appellant further discussing their medical conditions, and the importance of the IV pump.
- Information about the hydration pump kit.

Additional Information

Before the hearing began, the Appellant indicated that they had information they wanted to include as new evidence. After explaining that evidence admissibility would be determined after the hearing and during the deliberation period by the panel, the Appellant provided the following information: The Appellant, as a result of severe dehydration and as part of their medical condition(s), suffered from urinary and fecal incontinence with bleeding and bowel muscle deterioration and thus required on-going bowel care. The Appellant also mentioned their wound care is also related to adequate hydration of the body. The Ministry representative did not object to the admissibility of this information. The panel admitted this information as new evidence; as it was determined to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal, pursuant to section 22(4) of the *Employment and Assistance Act*.

The Appellant indicated that they had a letter from a specialist which outlined a need for incontinence supplies and supported the Appellant's claim of requiring on-going bowel care, dated April 1, 2020. The Appellant provided (emailed) the document immediately after the hearing had ended. However, in order to maintain procedural fairness to all parties, the panel did not admit the letter itself as evidence, pursuant to section 22 of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The decision under appeal is the reasonableness of the Ministry of Social Development and Poverty Reduction's (the "Ministry") decision of October 27, 2020 in which the Ministry determined that the appellant was not eligible for funds to provide medical equipment pursuant to section 62 and Schedule C of the Employment and Assistance for Persons with Disabilities Regulation.

Legislation

General health supplements

Section 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 - Health Supplements

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, if the minister is satisfied that all of the following requirements are met: (i) the supplies are required to thicken food; (ii) all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies;

Panel Decision

The Ministry's position is that the Appellant is not eligible for the requested medical supplies (continuous hydration pump) under section 2(1) The EAPWD Regulation, Schedule C, as section 2(1)(a) sets out that the ministry may provide either disposable or reusable medical or surgical supplies if: (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 Ministry submits that they are satisfied that a physician has prescribed the hydration pump kit, as required by Schedule C section 2(1)(a)(ii)(A). Further, the ministry submits it is also satisfied that the pump kit is the least expensive and appropriate for the Appellant's needs as well as necessary to avoid an imminent and substantial danger to health, as required by sections 2(1)(a)(ii)(B) and (B). However, the Ministry submits that the pump kit is not required for the purposes listed in Schedule C section 2(1)(a)(i). That the Appellant does not require this item for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care, or limb circulation care. The Ministry's position is that the Appellant's request cannot be provided under the legislation for medical supplies.

The Appellant's position is that the continuous hydration pump kit is a medical necessity and is required for not only the maintenance of general hydration levels and to improve quality of life as was outlined in the appeal record, but to avoid the further breakdown of the bowel muscle and its functioning. The Appellant explained that the bowel muscles have deteriorated directly as a result of being severely deprived of the proper level of hydration within the body (suffering from alternating diarrhea and constipation with fecal bleeding, vomiting and urinary incontinence due to stress). The Appellant explained that the proper levels of hydration are necessary to avoid substantial danger to their health in terms of further bowel muscle breakdown and life-threatening renal failure.

The panel considered that the evidence establishes that the Ministry acknowledged the Appellant met most of the legislative criteria under section 2(1) in Schedule C, of the EAPWDR. Specifically, the Ministry was satisfied that a physician had prescribed the hydration pump kit, as required by Schedule C section 2(1)(a)(ii)(A). Further, the ministry submits it was satisfied that the pump kit is the least expensive and appropriate for the Appellant's needs as well as necessary to avoid an imminent and substantial danger to health, as required by sections 2(1)(a)(ii)(B) and (B). However, the Ministry submits that the pump kit is not required for the *purposes* listed in Schedule C section 2(1)(a)(i). That the Appellant does not require this item for *wound care, ongoing bowel care, catheterization, incontinence, skin parasite care, or limb circulation care.*

The panel considered the Appellant's oral testimony at the hearing which provided a comprehensive overview and connection between the severe lack of hydration they suffered as a result of not having a continuous and consistent supply of hydrating fluids (remedied by a hydration pump) and how being in a state of excessive dehydration contributes directly to on-going bowel muscle deterioration. This on-going bowel muscle deterioration then acts as a perpetuating agent in their severe lack of hydration (through an excessive loss of fluids) and condition via diarrhea, constipation, and urinary and fecal incontinence. The panel considered that while the Appellant's on-going bowel deterioration was not brought forward as the primary issue in the request for the hydration pump; the linkage between on-going excessive dehydration causing bowel deterioration and need for an abnormally excessive supply of hydration to replace lost fluids due to the Appellant's diarrhea, constipation and incontinence - as well as to maintain basic organ function (such as preventing further bowel deterioration and or renal failure) was made clear.

Accordingly, the panel finds that the Appellant had provided sufficient evidence of facing an imminently life-threatening health need for the supplement, (renal failure) due to excessive and severe lack of hydration perpetuated by bowel deterioration, diarrhea, constipation, and urinary and fecal incontinence.

Considering all of the evidence in this appeal that was reasonably required for a full and fair disclosure of all matters related to the decision under appeal, the panel finds that the Ministry was unreasonable in its determination to deny the Appellant the medical supplies as requested under section 62 of the *EAPWDR* and section 2(1)(a)(i) *Schedule C*.

Accordingly, the panel rescinds the Ministry's decision, and the Appellant is successful in this appeal, pursuant to section 24(1)(a) and (2)(b) of the *Employment and Assistance Act*.

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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

Jennifer Armstrong

SIGNATURE OF CHAIR

DATE(YEAR/MONTH/DAY)

2021-02-23

PRINT NAME

Angie Blake

SIGNATURE OF MEMBER

DATE(YEAR/MONTH/DAY)

2021-02-24

PRINT NAME

Jan Broocke

SIGNATURE OF MEMBER

DATE(YEAR/MONTH/DAY)

2021-02-24