

APPEAL NUMBER
2021-00045

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) Reconsideration Decision dated February 8, 2021, which denied the appellant's application for a health supplement, Floradix Liquid Iron. The ministry found that the requested supplement is:

- not eligible under section 2 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) as a medical supply or extended therapy,
- not eligible as a medical supplement under Schedule C, section 3,
- not eligible as a Monthly Nutritional Supplement under section 67, EAPWDR

and that the requested supplement is not an item set out in any other section of Schedule C. In addition, the ministry found that the appellant is not eligible for the requested supplement as a health supplement for a person facing a direct and imminent life-threatening health need.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 62, 66, 67, 69; Schedule C, sections 2, 3.

PART E – SUMMARY OF FACTS

Information before the minister at reconsideration included:

- A copy of a ministry Health Supplement (supplies) Decision Summary, dated Dec. 24, 2020.
- A letter from the ministry to the appellant dated Dec. 24, 2020, advising of their decision.
- A note from a physician, undated, unsigned, "To Whom it May Concern", stating that the appellant is unable to use oral tabs, IV or IM iron and requires liquid iron to sustain proper iron level, that the appellant's monthly supplement does not cover the full cost and financial means are not available.
- A note from a physician, signed but not dated, stating that the appellant needs liquid iron to sustain the proper level and is not able to use iron tabs or IV or IM iron.
- A letter from a physician, undated, "To Whom it May Concern" stating that the appellant requires liquid iron and is unable to tolerate iron tabs, IV or IM iron.
- The appellant's Request for Reconsideration, signed Jan. 22, 2021.

The appellant wrote a note with the Notice of Appeal to the Tribunal: "Supplement to avoid imminent and substantial danger to my health. \$40 does not cover Floradix Liquid iron" The Panel accepted this statement as part of the appellant's argument.

At the hearing, the appellant asked that more weight be placed on the physician's information which confirms that there is imminent danger to health if the supplement is not provided. The appellant stated that there are no resources available to pay for this supplement, and due to unique circumstances only liquid iron is suitable due to higher bioavailability. The appellant stated that they suffered third degree burns to 80% of the body and they do not have proper circulation, therefore the supplement is needed for proper healing, so the skin does not crack. This affects quality of life. The appellant referred to section 66, EAPWDR, which deals with diet supplements, and section 69, which deals with health supplements for persons facing direct and imminent life-threatening health need.

In response to questions from the Panel, the appellant confirmed that they are arguing that the iron supplement be considered a diet supplement under section 66, EAPWDR and section 2(1) of Schedule C, which refers to limb circulation care. The appellant confirmed that they are receiving a supplement for calcium.

The ministry responded that the appellant's request was denied because they are in receipt of a Monthly Nutritional Supplement (MNS), and the ministry reviewed all sections of the legislation that might apply: the supplement is not a medical supply as listed under section 2(1)(a) of Schedule C, EAPWDR, it is not extended therapy as defined under section 2(1)(c) and not medical equipment as defined under section 3. The ministry stated that the appellant is currently receiving the maximum amount of \$40 per month for the vitamin/minerals MNS. The ministry stated that the appellant is not eligible for consideration under section 69, EAPWDR, because that section refers to persons who are not otherwise eligible for the health supplement under the Regulation. The appellant is eligible under the Regulation, therefore this section does not apply. The ministry stated that the appellant's request does not qualify under any other section of the Regulation.

In response to questions from the Panel, the ministry stated that section 69 of the EAPWDR refers to a person who is not otherwise eligible for health supplements under the Regulation; the appellant is eligible, therefore this section does not apply. The ministry confirmed that the appellant receives a MNS supplement of \$40 per month for vitamins/minerals and a MNS of \$165 for additional nutritional items. The ministry stated that section 2(a) of Schedule C, EAPWDR refers to disposable or reusable medical or surgical supplies, and subsection 2(1.1) specifically excludes nutritional supplements, food, vitamins and minerals from that section. In addition, disposable is not the same as consumable. The ministry stated that the appellant receives the maximum amount available in this category.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry decision which denied which denied the appellant's application for a health supplement, Floradix Liquid Iron. The ministry found that the requested supplement is:

- not eligible under section 2 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) as a medical supply or extended therapy,
- not eligible as a medical supplement under Schedule C, section 3,
- not eligible as a Monthly Nutritional Supplement under section 67, EAPWDR

and that the requested supplement is not an item set out in any other section of Schedule C. In addition, the ministry found that the appellant is not eligible for the requested supplement as a health supplement for a person facing a direct and imminent life-threatening health need.

Legislation

Please refer to Appendix A.

The appellant's position is that as they have no resources to pay the cost of the requested supplement, a physician has prescribed it and there is an imminent danger to health, the ministry should approve a supplement to pay the cost.

The ministry's position is that the appellant receives the maximum supplement that applies in this category and the request does not meet the legislative criteria for an additional supplement.

Analysis and decision

Floradix Liquid Iron as a medical supply under Schedule C, section 2(1)(a):

The Panel finds that the ministry reasonably determined that the requested supplement is neither a disposable nor reusable medical supply and is a mineral which is specifically excluded by section 2(1.1) as medical and surgical supplies therefore, it cannot be provided under this section.

Floradix Liquid Iron as service under EAPWDR, Schedule C, section 2(1)(c):

The Panel finds that the ministry reasonably determined that the requested supplement is not a service provided by a person described in subsection 2(c)(iii) therefore, it cannot be provided under this section.

Floradix Liquid Iron as medical equipment and devices under Schedule C – section 3:

The Panel finds that the ministry reasonably determined that the requested supplement is not medical equipment or a device as described in Schedule C - section 3.1 to 3.12 therefore, it cannot be provided under this section.

Floradix Liquid Iron as a nutritional supplement under section 67:

The Panel finds that the ministry reasonably determined that the appellant is currently in receipt of a MNS for vitamins/minerals in the of \$40 per month, which is the maximum amount that can be provided under Schedule C - section 7, therefore, it cannot be provided under this section.

Floradix Liquid Iron as a health supplement for persons facing direct and imminent life-threatening health need under section 69:

The Panel finds that ministry reasonably determined that the requested supplement is not a health supplement as set out in Schedule C, sections 2(1)(a), (f) [medical transportation] or section 3 which are the only supplements that may be provided under section 69. Also, the panel notes that the appellant is a recipient of disability assistance and

therefore, pursuant to section 62, may be provided health supplements described under sections 2 and 3 of Schedule C, if the requirements of those sections are met. Section 69 applies to persons who are not in receipt of disability assistance, or the other types of assistance described in section 62, and requires that, in addition to the requirements of section 2(1)(a) or (f) or section 3, the person must also establish a life-threatening health need for those supplements.

Floradix Liquid Iron as a diet supplement under section 66(1):

With respect to the appellant's argument that the health supplement should be considered as a diet supplement in accordance with Schedule C - section 6, section 66(2)(a) provides that a person is not eligible to receive a supplement under subsection (1) unless the person is not receiving another nutrition-related supplement. The Panel finds that the receipt of the MNS and dietary supplement by the appellant are both "another nutrition-related supplement" therefore, Floradix cannot be provided under this section.

The Panel is sympathetic with the appellant's disability and condition; however, the Panel finds that the ministry reasonably determined that the appellant's request does not meet any other legislative criteria for provision of the requested health supplement.

The Panel confirms the ministry decision. The appeal is not successful.

APPENDIX A

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 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.

Diet supplement

66 (1) Subject to subsection (2), the minister may pay for a diet supplement in accordance with section 6 [*diet supplements*] of Schedule C that is provided to or for a family unit in receipt of disability assistance or hardship assistance, if the supplement is provided to or for a person in the family unit who

- (a) is described in section 6 (1) of Schedule C, and
- (b) is not described in section 8 (1) [*people receiving special care*] of Schedule A.

(2) A person is not eligible to receive a supplement under subsection (1) unless

- (a) the person is not receiving another nutrition-related supplement, and
- (b) a medical practitioner, nurse practitioner or dietitian confirms in writing the need for the special diet.

Nutritional supplement

67 (1) The minister may provide a nutritional supplement in accordance with section 7 [*monthly nutritional supplement*] of Schedule C to or for a family unit in receipt of disability assistance, if the supplement is provided to or for a person in the family unit who

- (a) is a person with disabilities, and
- (b) is not described in section 8 (1) [*people receiving special care*] of Schedule A, unless the person is in an alcohol or drug treatment centre as described in section 8 (2) of Schedule A,

if the minister is satisfied that

- (c) based on the information contained in the form required under subsection (1.1), the requirements set out in subsection (1.1) (a) to (d) are met in respect of the person with disabilities,
- (d) the person is not receiving another nutrition-related supplement,

(e) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 7 (c).]

(f) the person complies with any requirement of the minister under subsection (2), and

(g) the person's family unit does not have any resources available to pay the cost of or to obtain the items for which the supplement may be provided.

(1.1) In order for a person with disabilities to receive a nutritional supplement under this section, the minister must receive a request, in the form specified by the minister, completed by a medical practitioner, nurse practitioner or dietitian, in which the practitioner or dietitian has confirmed all of the following:

(a) the person with disabilities to whom the request relates is being treated by a medical practitioner or nurse practitioner for a chronic, progressive deterioration of health on account of a severe medical condition;

(b) as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the following symptoms:

(i) malnutrition;

(ii) underweight status;

(iii) significant weight loss;

(iv) significant muscle mass loss;

(v) significant neurological degeneration;

(vi) significant deterioration of a vital organ;

(vii) moderate to severe immune suppression;

(c) for the purpose of alleviating a symptom referred to in paragraph (b), the person requires one or more of the items set out in section 7 of Schedule C and specified in the request;

(d) failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life.

(2) In order to determine or confirm the need or continuing need of a person for whom a supplement is provided under subsection (1), the minister may at any time require that the person obtain an opinion from a medical practitioner, nurse practitioner or dietitian other than the medical practitioner, nurse practitioner or dietitian who completed the form referred to in subsection (1.1).

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).

(2) For the purposes of subsection (1) (c),

(a) "adjusted net income" has the same meaning as in section 7.6 of the Medical and Health Care Services Regulation, and

(b) a reference in section 7.6 of the Medical and Health Care Services Regulation to an "eligible person" is to be read as a reference to a person in the family unit, other than a dependent child.

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;
- (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;
- (b)Repealed. [B.C. Reg. 236/2003, Sch. 2, s. 2 (b).]
- (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 Physicians and 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>

- (d) and (e)Repealed. [B.C. Reg. 75/2008, s. (a).]
- (f)the least expensive appropriate mode of transportation to or from
- (i)an office, in the local area, of a medical practitioner or nurse practitioner,

- (ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,
- (iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or
- (iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*,

provided that

- (v) the transportation is to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, and
- (vi) there are no resources available to the person's family unit to cover the cost.
- (g) Repealed. [B.C. Reg. 75/2008, s. (a).]

(1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

(2) No more than 12 visits per calendar year are payable by the minister under this section for any combination of physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services.

(2.1) If eligible under subsection (1) (c) and subject to subsection (2), the amount of a general health supplement under section 62 of this regulation for physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services is \$23 for each visit.

(3) If the minister provided a benefit to or for a person under section 2 (3) of Schedule C of the Disability Benefits Program Regulation, B.C. Reg. 79/97, the Income Assistance Regulation, B.C. Reg. 75/97 or the Youth Works Regulation, B.C. Reg. 77/97, as applicable, for the month during which the regulation was repealed, the minister may continue to provide that benefit to or for that person as a supplement under this regulation on the same terms and conditions as previously until the earlier of the following dates:

- (a) the date the conditions on which the minister paid the benefit are no longer met;
- (b) the date the person ceases to receive disability assistance.

Optical supplements

2.1 The following are the optical supplements that may be provided under section 62.1 [*optical supplements*] of this regulation:

- (a) basic eyewear and repairs;
- (b) pre-authorized eyewear and repairs.

Eye examination supplements

2.2 The minister may pay a health supplement under section 67.2 [*eye examination supplements*] of this regulation for an eye examination that,

- (a) if provided by an optometrist, is provided for a fee that does not exceed \$44.83, or
- (b) if provided by an ophthalmologist, is provided for a fee that does not exceed \$48.90.

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.
- (3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if
- (a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and
 - (b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.
- (4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.
- (5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if
- (a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and
 - (b) it is more economical to repair the medical equipment or device than to replace it.
- (6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

The medical equipment and devices listed in sections 3.1 through 3.11 are:

Eye examination supplements

Medical equipment and devices

Medical equipment and devices — canes, crutches and walkers

Medical equipment and devices — wheelchairs

Medical equipment and devices — wheelchair seating systems

Medical equipment and devices — scooters

Medical equipment and devices — toileting, transfers and positioning aids

Medical equipment and devices — hospital bed

Medical equipment and devices — pressure relief mattresses

Medical equipment and devices — floor or ceiling lift devices

Medical equipment and devices — breathing devices

Medical equipment and devices — orthoses

Medical equipment and devices — hearing instruments

Medical equipment and devices — non-conventional glucose meters

APPEAL NUMBER

2021-00045

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

Reece Wrightman

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021 March 12

PRINT NAME

Nancy Eidsvig

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 March 12

PRINT NAME

Daniel Chow

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 March 12