

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated December 15, 2020, which held that the appellant was not eligible for funding for incontinence supplies (pads and diapers).

The ministry found that the appellant was not eligible under section 67 of the *Employment and Assistance Regulation* (EAR) as the appellant is not a recipient of income or hardship assistance, a “qualifying person”, a dependent child in a family unit eligible for assistance, or a “continued person as defined in the legislation.

The ministry found that although the appellant did not have the resources to meet the need for incontinence supplies and was eligible for premium assistance under the Medicare Protection Act, the information provided did not establish that the appellant faces a direct and imminent life-threatening need for incontinence supplies as required by section 76(1)(a) or (d)(i) and Schedule C section 2(1)(ii)(C) of the EAR.

The ministry found that the appellant met the criteria of EAR Schedule C, sections 2(1)(a)(i), and ii(A) and (B) and iii as the appellant required disposable medical supplies for incontinence, the medical supplies were prescribed by a medical practitioner, and that the appellant was requesting the least expensive supplies appropriate for the purpose. However, the ministry found that the information provided did not establish the incontinence supplies are necessary to avoid an imminent and substantial danger to health as required by EAR Schedule C, section 2(1)(a)(ii)(C).

APPEAL NUMBER
2021-00009

PART D – RELEVANT LEGISLATION

EAR, sections 67 and 76, and Schedule C, section 2(1)(a)

PART E – SUMMARY OF FACTS

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

- Letter from a physician dated November 12, 2020 indicating that the appellant requires incontinence supplies for one year, incontinence pads, 32x2 bags per month, and one bag of diapers per month.
- Letter from another physician dated November 30, 2020 indicating that the appellant requires treatment on a daily basis for incontinence. The physician indicates that the appellant uses a diaper and requires two incontinence pads every day to help prevent skin infection.
- Document titled “Medical History” providing details of the appellant’s medical history, activities of daily living and financial status. The Medical History indicates that the appellant is diabetic, is slow to mobilize, has a painful left hip, and walks with a four-wheeled walker requiring frequent rests. The Medical History indicates that the appellant had a fall the previous month and it took the appellant’s partner one hour to get the appellant off the floor.
- The Medical History indicates that the appellant wears incontinence pads at all times as the appellant had a bladder sling surgery several years previously and that when the appellant stands up, urine pours down the appellant’s legs. The appellant requires pad changes after voiding and after standing up. The appellant is waiting for a urology assessment.
- Request for Reconsideration form signed by the appellant on December 1, 2020 along with a letter (the “Letter”) from the appellant indicating that the appellant has been on CPP disability for approximately six years and has medical conditions including: sleep apnea, severe incontinence, diabetes, high blood pressure, cholesterol, stomach issues, leg problems including knees, obesity, bronchial asthma, chronic obstructive pulmonary disorder (“copd”), degenerative discs, mild spinal stenosis, arthritis, fibromyalgia, depression, neuropathy, anxiety disorder, vision difficulties and fatigue. The appellant uses a walker and cane to get around. The appellant rations the pads as the appellant cannot afford as many pads as required, which has caused rashes and a burning sensation when urinating, as well as hygiene problems that could result in infection, urinary tract infections, and diabetes nerve damage.
- In the Letter, the appellant states that after paying bills, groceries, prescriptions, pads, diapers, and other expenses it is very difficult to purchase all necessary items. The appellant believes that the appellant is eligible for disability from the ministry because the appellant has been in receipt of CPP disability for at least six years. The appellant states that the appellant has a desperate need for incontinence pads, diapers, CPAP machine, medications, financial help, and other things like glasses and prescriptions.

Additional information provided

With the Notice of Appeal (“NOA”) dated January 4, 2021, the appellant provided a letter requesting incontinence pads and diapers (the “Appeal Letter”). The Appeal Letter indicates that the appellant thought that the letters from the physicians recommending the incontinence pads and diapers would be sufficient to establish eligibility for the requested health

supplements. The appellant states that due to the appellant's numerous medical conditions approval of the incontinence pads and diapers would relieve a lot of stress. The Appeal Letter indicates that the appellant has been using cut up towels to save a couple of pads but that means doing more laundry.

The ministry provided an email dated February 1, 2021 indicating that the ministry's submission would be the reconsideration decision provided in the Record of the Ministry Decision.

Admissibility of New Information

The panel has admitted the information in the Appeal Letter as it is information that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information confirms the appellant's ongoing incontinence issues and need for incontinence pads and diapers.

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant's request for incontinence supplies was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

In particular, was the ministry reasonable in determining that the appellant was not eligible under section 67 of the EAR as the appellant is not a recipient of income or hardship assistance, a "qualifying person", a dependent child in a family unit eligible for assistance, or a "continued person as defined in the legislation?

Was the ministry reasonable in determining that the information provided did not establish that the appellant is a person facing a direct and imminent life-threatening health need under section 76(1)(a) or (d)(i) of the EAR and Schedule C, section 2(1)(ii)(C) or that the incontinence supplies were necessary to avoid an imminent and substantial danger to health as required by EAR Schedule C, section 2(1)(a)(ii)(C)?

The Panel notes that the Reconsideration decision referred to the *Employment and Assistance for Persons with Disabilities Regulation*, Schedule C, section 2. As this section is almost identical to EAR Schedule C, section 2, the Panel does not find this error to be of any significance. The Reasons of the Panel will only refer to the EAR.

Relevant Legislation

EAR

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) [*access to medical services only*], or

- (ii) is a continued person under section 66.4 (1) [*access to transitional health services*] 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).

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 person's family unit is receiving 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).

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 67 [*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;

Panel Decision

Basic Eligibility

The ministry's position is that the appellant is not eligible for health supplements under section 67 of the EAR as the appellant is not a recipient of income or hardship assistance, a "qualifying person", a dependent child in a family unit eligible for assistance, or a "continued person".

The appellant's position is that as the appellant has been in receipt of CPP disability for approximately six years and is disabled with numerous health conditions, the ministry should find the appellant eligible for health supplements, particularly with the support of the physicians recommending and prescribing the incontinence supplies.

The panel finds that the ministry reasonably determined that the appellant is not eligible for health supplements under section 67 of the EAR as the appellant is not a recipient of income or hardship assistance, a "qualifying person", a dependent child in a family unit eligible for assistance, or a "continued person".

While the appellant may receive CPP disability benefits, that does not automatically mean that the appellant is eligible for income assistance or hardship assistance. The panel also notes that the reconsideration decision indicates that on October 21, 2020 the ministry determined that the appellant was not eligible for assistance. It is not clear if the appellant sought a reconsideration of the ministry's decision finding the appellant ineligible for income assistance, but even if the appellant did, that matter is not within the jurisdiction of the panel on this appeal. This appeal is restricted to determining if the ministry was reasonable in denying the appellant health supplements of incontinence supplies.

Eligibility for incontinence supplies under Imminent Life Threatening Health Need

The ministry's position is that the appellant is not eligible for health supplements under section 76 of the EAR as the information provided does not establish that the appellant faces a direct

and imminent life threatening need as required by section 76(1)(a). The ministry determined that the appellant did not have the resources to meet the need for incontinence supplies and is eligible for premium assistance under the Medicare Protection Act as required by section 76(1)(b) and (c). However, the reconsideration decision indicates that while the information provided indicates that the appellant experiences rashes and burning sensations due to inability to change pads as often as required, this information does not establish a direct and imminent life threatening health need, so section 76(1)(a) of the EAR were not met.

In addition, the ministry determined that the information provided did not establish that the section 76(1)(d) of the EAR was met as the information provided did not meet the criteria of Schedule C, section 2(1)(a)(ii)(C), which requires that the incontinence pads were necessary to avoid an imminent and substantial danger to health.

The appellant's position, as set out in the Letter, is that the appellant has numerous medical conditions including sleep apnea, severe incontinence, diabetes, high blood pressure, cholesterol, stomach issues, leg problems including knees, obesity, bronchial asthma, COPD, degenerative discs, mild spinal stenosis, arthritis, fibromyalgia, depression, neuropathy, anxiety disorder, vision difficulties and fatigue. The appellant uses a walker and cane to get around. The appellant states that after paying bills, groceries, prescriptions, pads, diapers, and other expenses it is very difficult to purchase all necessary items. The Letter indicates that the appellant has a desperate need for incontinence supplies.

The Appeal Letter indicates that the appellant thought that the letters from the physicians recommending the incontinence pads and diapers would be sufficient. The appellant states that due to the appellant's numerous medical conditions approval of the incontinence pads and diapers would relieve a lot of stress. The Appeal Letter indicates that the appellant has been using cut up towels to save a couple of pads but that means doing more laundry.

The panel finds that the ministry reasonably determined that the appellant did not meet the legislative criteria required of section 76(1)(a) or (d) and Schedule C section 2(1)(a)(ii)(C) as the the information provided does not establish that the appellant faces a direct and imminent life threatening health need as required by section 76(1)(a). The panel also finds that the ministry reasonably determined that the information provided does not meet the legislative criteria of section 76(1)(d) and Schedule C section 2(1)(a)(ii)(C) as the information does not establish that the incontinence pads are necessary to avoid an imminent and substantial danger to health.

While the Letter from the appellant sets out numerous health conditions, the information provided from the physicians does not indicate that the appellant faces a direct and imminent life threatening health need. The letter from the physician dated November 12, 2020 indicates that the appellant requires incontinence supplies for one year and one bag of diapers per month. The letter from the second physician dated November 30, 2020 indicates that the appellant requires treatment daily for incontinence and requires two incontinence pads every day to help prevent skin infection.

While it is clear that the appellant requires incontinence supplies, the panel finds that the ministry reasonably determined that the information does not establish that the appellant faces a direct and imminent life threatening health need or that the incontinence supplies are necessary

to avoid an imminent and substantial danger to health. The letter from the physician dated November 30, 2020 indicates that the pads are required to help prevent skin infection, but that physician does not indicate that the skin infection is an imminent and substantial danger to health.

Eligibility for incontinence supplies under EAR Schedule C, section 2(1)

The reconsideration decision indicates that the ministry also determined that the appellant was not eligible for incontinence supplies under EAR Schedule C, section 2(1)(a)(ii)(C).

The ministry determined that the appellant met the criteria of Schedule C, section 2(1)(a)(i), and ii(A) and (B), and (iii) as the appellant requires disposable medical supplies for incontinence, the medical supplies were prescribed by a medical practitioner, and the appellant is requesting the least expensive supplies appropriate for the purpose. However, the ministry determined that the information provided does not establish that the incontinence supplies are necessary to avoid an imminent and substantial danger to health as required by EAPWDR Schedule C, section 2(1)(a)(ii)(C).

The appellant's position is that the incontinence supplies are required as the appellant cannot afford them, has severe incontinence, and needs the supplies to prevent rashes, burning, skin infections, urinary tract infections, and diabetes nerve damage.

The panel finds that the ministry's decision that the appellant does not meet the criteria of EAPWDR Schedule C section 2(a)(ii)(C) was reasonable. While the appellant states that the incontinence supplies are required to prevent infection, urinary tract infection, or diabetes nerve damage, the physicians do not provide any information to establish that the incontinence supplies are necessary to avoid an imminent and substantial danger to health as required by the legislation.

The letter from the physician dated November 30, 2020 indicates that the incontinence supplies are required to prevent infection, but the physician does not provide information to indicate that the infection would prevent and imminent and substantial danger to health.

Conclusion

The panel finds that the ministry's decision that the appellant was not eligible for the incontinence supplies as the legislative criteria of section 76(1)(a) and (d) and Schedule C, sections 2(1)(a)(ii)(C) and EAPWDR Schedule C section 2(1)(a)(ii)(C) was not met was reasonable.

The panel therefore confirms the ministry's decision that the appellant is not eligible for incontinence supplies. The appellant is not successful on appeal.

APPEAL NUMBER
2021-00009

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

Helene Walford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/02/17

PRINT NAME

Jeanne Byron

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/02/17

PRINT NAME

Bill Haire

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/02/17