

APPEAL NUMBER
2021-00084

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") decision of April 12, 2021 in which the Ministry denied the Appellant health supplements due to not having met the legislative requirements set out under *Schedule C, section 3* of the *Employment and Assistance for Persons with Disabilities Regulation*.

PART D – RELEVANT LEGISLATION

EAPWDR – *Employment Assistance for Persons with Disabilities Regulation*, section 62, & Schedule C, section 3, 3.12

PART E – SUMMARY OF FACTS

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

- 1) **March 25, 2021** – The Appellant’s advocate contacted the Ministry to report that the Appellant requires replacements for their hearing implants. The audiologist recently reported that the Appellant was showing significant hearing loss, and Pacific Blue Cross (“PBC”) denied the claim. The Ministry received the following documents:
 - **March 18, 2021** dated decision of PBC denying the claim for hearing instruments. Each hearing instrument cost was \$6,720.00.
 - **February 25, 2021** dated audiologist assessment, completed by the Appellant’s audiologist.

- 2) **April 7, 2021** – The Ministry contacted PBC requesting more information on the denial of the claim. PBC indicated:
 - Under PBC policy, the hearing instruments are only eligible for replacement every 5 years and the two instruments were last purchased in November 2016 and March 2017.
 - Information was not provided as to why the hearing instruments could not be repaired.
 - PBC did not receive an audiology report from 2017 and could not determine the changes or loss of hearing.

Additional Information

The Appellant’s advocate submitted a 19-page document, dated May 12th, 2021 the day before (May 13, 2021) the hearing was set. The 19 pages included the Appellant’s medical records from the hearing clinic, dating back to 2015, as well as an updated hearing test and report completed by the Appellant’s audiologist, dated May 11, 2021 - with the most recent assessment date indicated as February 25, 2021. The Ministry made no objections to the admissibility of the document at the hearing. 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 had two advocates from the Developmental Disability Association attend and participate in their hearing.

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 April 12, 2021 in which the Ministry denied the Appellant health supplements due to not having met the legislative requirements set out under *Schedule C, section 3* of the *Employment and Assistance for Persons with Disabilities Regulation*.

Legislation

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. [en. B.C. Reg. 145/2015, Sch. 2, s. 4; am. B.C. Reg. 161/2017, App. 2, s. 2.]

Schedule C

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.

(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

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 under this section only if the person is not receiving a hearing assistance supplement under section 70.02 of this regulation.

Panel Decision

The Ministry's position is that the Appellant is not eligible for replacement hearing instruments due to the Appellant not providing verification that the hearing instruments are medically necessary. Moreover, the Ministry submits that the Appellant has also not provided information to confirm that it is more economical to replace the hearing instruments than to repair the instruments originally provided.

The Appellant's position, as was outlined at the hearing, is that they require replacement for the hearing instruments because the one purchased in 2017 does not work at all, and the other one purchased in 2016 is not functioning properly. The Appellant noted that they require fully functioning hearing instruments for obvious reasons, such as: personal safety, communication, employment, and to avoid social isolation.

As outlined in *Schedule C, section 3(3)* of the *Employment and Assistance for Persons with Disabilities Regulation*, and subject to subsection (6) (provided the hearing instruments are not damaged due to misuse), 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.

Further, as outlined in section 3(11)(1) a hearing instrument is a health supplement for the purposes of section 3 of this Schedule and may be provided if (b) an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument.

The panel finds that the ministry was unreasonable in its application of the legislation when it relied on section 3(11)(1)(b) of *Schedule C*, of the *EAPWDR* – requesting verification that the Appellant required the hearing instruments, as the need had been previously established, given that the Ministry had fully funded the hearing instruments in 2016 and 2017.

Additionally, the Appellant provided a 19-page document, dated May 12, 2021, which was admitted as new evidence at the hearing, and without objection from the Ministry. The 19 pages consisted of hearing assessments dating back to 2015, with the most recent including an assessment on February 25, 2021 – showing a clear progressive loss of hearing in both ears. The May 11, 2021 dated letter (provided by the Appellant's audiologist), outlined the cost of purchasing a 12-month warranty from the manufacturer for hearing instruments at this time - \$1,330.00 (each) – which would include the repair.

Accordingly, the panel finds that the evidence establishes the Appellant requires repair or replacement for both hearing instruments – as evidenced by the Appellant's audiologist May 11, 2021 dated letter. While the audiologist indicates that a replacement would be most cost effective, the panel considered that the original cost to replace each hearing instrument, as outlined on the PBC claim was \$6,720.00 (each).

The panel considered that the Ministry spoke to a PBC eligibility policy regarding the hearing instruments that were purchased in 2016 and 2017 as not being eligible before a five-year period had passed. The panel considered that the eligibility period under PBC policy is not relevant to the applicable legislation, and therefore should not be relied upon by the Ministry in making a decision to address the broken or ill-performing hearing instruments. Specifically, section 3(3)(a) & (b) of *Schedule C* states that 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.

The panel finds that no period of time for replacement or repair of hearing instruments is outlined within the legislation (section 3.1 to 3.12 of Schedule C) and under the Appellant's circumstances and; indeed, the Ministry could not direct the panel to any legislative support for the purported timeline. However, the panel considered that the information provided by the audiologist, in the May 11, 2021 dated letter regarding the cost of purchasing a 12-month manufacturer warranty, which includes repair for each hearing instrument *is* the more economical approach to addressing the Appellant's hearing needs. Specifically, as outlined in section 3(3)(a) of Schedule C, the minister may provide a replacement if it is more economical to replace than to repair the medical equipment or device previously provided by the minister. In this case, the panel finds the repair cost for each hearing instrument through the purchase of a 12-month manufacturer warranty (including repair) at \$1,330.00 each to be less costly than the replacement cost of \$6,720.00 each. The panel considered that the repair of the current hearing instruments does not impede the eventual replacement of the hearing instruments if they are determined to be necessary in the future.

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 repair or replacement of hearing instruments under section 3 of Schedule C, *Employment and Assistance for Persons with Disabilities Regulation*.

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)

2021/05/14

PRINT NAME

Susan Ferguson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/05/18

PRINT NAME

Anil Aggarwal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/05/14