

APPEAL NUMBER
2021-0076

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated March 26, 2021 which denied the appellant's request for an Obusforme backrest. The ministry found that the item requested is not an eligible item:

- in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)
- as a crisis supplement pursuant to section 57 of the EAPWDR
- as a life-threatening health need pursuant to section 69 of the EAPWDR

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation section 57, 62, 69 and Schedule C

PART E – SUMMARY OF FACTS

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.

Background Information

- The appellant is a recipient of disability assistance.
- The appellant submitted a physician's prescription dated November 10, 2020 which prescribed an Obusforme backrest with seat along with three estimates for the same with prices ranging from \$73.49 to \$104.99.
- On February 8, 2021 the ministry sent a letter to the appellant acknowledging receipt of the Obusforme backrest request and advised that an Orthoses Request and Justification form was required before the request could proceed.
- An undated Orthoses Request and Justification form was submitted, signed by the appellant, with "already submitted" noted in the Medical or Nurse Recommendation area and N/A noted in the "Signature of Person providing clinical treatment" area.
- On February 26, 2021 the Health Assistance Branch (HAB) denied the appellant's request citing that an Obusforme backrest is not listed as an eligible item in sections 3.1 to 3.11 of the Regulations, and informed the appellant of their right to appeal the decision.
- On March 13, 2021 the appellant submitted a Request for Reconsideration and as their reason for requesting a reconsideration they wrote that they needed the Obusforme backrest because they are in severe pain when they sit for any longer than 15 minutes.
- The ministry reconsideration decision dated March 26, 2021 upheld the HAB decision citing that although the appellant is eligible for health supplements pursuant to section 62 because they are a recipient of disability assistance, they are not eligible for an Obusforme backrest for the following reasons:
 - An Obusforme backrest is not a medical equipment/device included under any of the subsections of section 3 of Schedule C. Although the ministry may provide orthoses, including back braces, the requested Obusforme backrest is not a back brace or any other type of orthotic included in section 3.10 of Schedule C.
 - Although an Obusforme backrest was prescribed by a physician, the ministry determined it is not an eligible item as medical supplies included in Schedule C section 2(1) because:
 - It is not required for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care or limb circulation care as required by Schedule C section 2(1)(a)(i).
 - The ministry is not satisfied that an Obusforme backrest is a medical supply, so does not meet the requirement of Schedule C section 2(1)(a)(ii)(B).
 - Although the appellant has pain caused by lumbar spondylosis, the ministry is not satisfied that the backrest is required to avoid imminent and substantial danger to health, as required by Schedule C section 2(1)(a)(ii)(C).
 - An Obusforme backrest is not an item set out in any other section of Schedule C.
 - An Obusforme backrest is not eligible as a life-threatening health need pursuant to section 69 of the EAPWDR which sets out that the ministry may provide any health supplement set out in sections 2(1)(a) and (f) and 3 provided it is for a person in the family unit who is not eligible for health supplements. The ministry noted that the appellant is eligible for health supplements. Also, the physician has not indicated the appellant has a life-threatening health need.
 - An Obusforme backrest is not eligible as a crisis supplement because:
 - There was insufficient information to determine whether the need was unexpected.
 - Although the item may ease the appellant's discomfort it is not clear that their physical health is in imminent danger without the item.
 - Section 57(3) stipulates that a crisis supplement may not be provided for the purposes of obtaining a supplement described in Schedule C, or any other health care goods or services. The ministry considers it reasonable that an Obusforme backrest, purchased as a pharmacy, to be a health care good.

On the Notice of Appeal form dated April 11, 2021 the appellant wrote they experience extreme pain in their back after sitting for 10 minutes.

The appellant did not provide a written submission.

The ministry's written submission is the reconsideration summary provided in the Record of Ministry Decision.

Admissibility of Additional Information

The panel accepted the appellant's NOA statement as evidence under section 22(4) of the Employment and Assistance Act, which allows for the admission of evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's decision dated March 26, 2021, which denied the appellant's request for an Obusforme backrest, was reasonably supported by the evidence or was a reasonable application of the legislation. In particular, the panel must decide whether the ministry found that the item requested is not an eligible item:

- in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)
- as a crisis supplement pursuant to section 57 of the EAPWDR
- as a life threatening health need pursuant to section 69 of the EAPWDR.

The relevant legislation follows the Conclusion.

Panel Decision

Section 62 of the EAPWDR allows the ministry to provide a recipient of disability assistance any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C. The appellant is a recipient of disability assistance.

The legislative authority for the ministry to assist with a health supplement for any kind of medical supply or equipment rests within EAPWDR Schedule C. Section 2 (1)(a) sets out that the ministry may provide either disposable or reusable medical or surgical supplies if certain conditions are met and section 3 sets out the general requirements for all medical equipment and devices. The panel reviewed all of the categories of section 3 and determined the category that best suits an Obusforme backrest would be section 3.10, which is for orthotics and braces. The panel will review sections 2(1)(a) and 3.10 legislation in making their determination.

EAPWDR Schedule C section 2(1)(a) – medical supply

Health supplements may be paid for medical supplies if all the following requirements are met:

- the supplies are required for one of the listed purposes: wound care; ongoing bowel care required due to loss of muscle function; catheterization; incontinence; skin parasite care; or limb circulation care.
- are prescribed by a medical practitioner;
- are the least expensive supplies appropriate for the purpose; and
- are necessary to avoid an imminent and substantial danger to health.

Although the appellant may experience circulation issues with their back when sitting for a short period of time, there is no evidence on record that confirms that an Obusforme backrest is required for limb circulation care, or any of the other purposes listed. The item was prescribed by a medical practitioner and the estimates provided appear to be reasonable, so these requirements are met. Although the appellant indicates being unable to sit for more than ten minutes without pain, there is no evidence that the Obusforme backrest is necessary to avoid an imminent and substantial danger to the appellant's health. Therefore, the panel finds the ministry was reasonable in determining that the appellant was not eligible for the Obusforme backrest as a medical supply.

EAPWDR Schedule C section 3 – medical equipment

Health supplements may be provided for medical equipment and devices for a number of different items. Section 3 identifies the specific items that may be considered. In the appellant's circumstance, because of the spinal condition, the only section that could potentially be considered would be section 3.10 – orthoses. Section 3.10(1)(m) allows for a torso or spine brace, provided the requirements of section 3.10(2) are met. These are:

- the orthoses is prescribed by a medical practitioner or a nurse practitioner,
- the minister is satisfied that the orthosis is medically essential to achieve or maintain basic functionality,
- the ministry is satisfied that the orthosis is required for one or more of the following purposes:
 - to prevent surgery;
 - for post-surgical care;
 - to assist in physical healing from surgery, injury or disease;

- to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition

In the appellant's circumstance, the diagnosis is lumbar spondylosis, which is a neuro-musculo-skeletal condition. However, the physician did not prescribe a torso or spine brace to treat this condition, they prescribed a backrest to aid the appellant when sitting, which is not indicative of a brace that improves physical functioning. The panel considers a torso or spine brace is a personal item that fits directly onto a person to improve or maintain physical functionality. Although an Obusforme backrest supports the appellant's back when sitting and it provides relief of pain, it is the panel's determination that it is not a torso or spine brace. Therefore, the panel finds the ministry was reasonable in determining an Obusforme backrest is not an eligible item under Schedule C section 3.10.

The ministry determined the appellant's request for an Obusforme backrest could not be considered as a life-threatening health need under EAPWDR section 69. The purpose of this legislation is to provide eligible items identified in sections 2(1)(a) and 3 of Schedule C, for persons not otherwise eligible, and who have a direct and imminent life-threatening health need. The appellant is a person eligible to receive health goods, so any requests for a health good would need to meet Schedule C requirements. The panel found that the appellant provided no evidence that a medical practitioner has confirmed there is a direct and imminent life-threatening need for the Obusforme backrest, only that the appellant experiences pain when sitting for too long. The panel finds the ministry was reasonable in determining the appellant is not eligible for an Obusforme backrest pursuant to EAPWDR section 69.

The ministry determined the appellant's request for an Obusforme backrest could not be considered as a crisis supplement under EAPWDR section 57. A crisis supplement must meet the criteria of being for an unexpected item of need as well as requiring there be imminent danger to a person's health. The panel found no evidence to indicate whether this item was unexpectedly required, nor that the appellant's health was in imminent danger, only that the Obusforme backrest would provide some pain relief. Section 57(3) stipulates that a crisis supplement may not be provided for the purpose of obtaining any health care good or service identified in Schedule C. The panel notes the estimates show that an Obusforme backrest is purchased at a pharmacy, and the appellant has written that it is required to relieve back pain, so the panel finds it reasonable to determine it is a health good. Section 57(3) clearly identifies health goods as not eligible. For these reasons, the panel finds the ministry was reasonable in determining the appellant is not eligible for an Obusforme backrest pursuant to EAPWDR section 57.

Conclusion

The panel finds the ministry's reconsideration decision, which determined that the appellant was not eligible for an Obusforme backrest pursuant to sections 57 and 69, Schedule C section 2(1)(a) and section 3 of the EAPWDR, was a reasonable application of the legislation and therefore confirms the decision. The appellant is not successful in the appeal.

Relevant Legislation

EAPWDR

Crisis supplement

- 57** (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if
- (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and
 - (b) the minister considers that failure to meet the expense or obtain the item will result in
 - (i) imminent danger to the physical health of any person in the family unit, or
 - (ii) removal of a child under the *Child, Family and Community Service Act*.
- (2) A crisis supplement may be provided only for the calendar month in which the application or request for the

supplement is made.

- (3) A crisis supplement may not be provided for the purpose of obtaining
- (a) a supplement described in Schedule C, or
 - (b) any other health care goods or services.

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.

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

69 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) a person in the family unit is eligible to receive 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).

EAPWDR 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;

Medical equipment and devices

[Sections 3.1 – 3.9 are not relevant in the appellant's situation]

3.10 - orthoses

(1) In this section:

"orthosis" means

- (a) a custom-made or off-the-shelf foot orthotic;
- (b) custom-made footwear;
- (c) a permanent modification to footwear;
- (d) off-the-shelf footwear required for the purpose set out in subsection (4.1) (a);
- (e) off-the-shelf orthopaedic footwear;
- (f) an ankle brace;
- (g) an ankle-foot orthosis;
- (h) a knee-ankle-foot orthosis;
- (i) a knee brace;
- (j) a hip brace;
- (k) an upper extremity brace;
- (l) a cranial helmet used for the purposes set out in subsection (7);
- (m) a torso or spine brace;
- (n) a foot abduction orthosis;
- (o) a toe orthosis;
- (p) a walking boot.

(2) Subject to subsections (3) to (11) of this section, an orthosis is a health supplement for the purposes of section 3 of this Schedule if

- (a) the orthosis is prescribed by a medical practitioner or a nurse practitioner,
- (b) the minister is satisfied that the orthosis is medically essential to achieve or maintain basic functionality,
- (c) the minister is satisfied that the orthosis is required for one or more of the following purposes:
 - (i) to prevent surgery;
 - (ii) for post-surgical care;
 - (iii) to assist in physical healing from surgery, injury or disease;
 - (iv) to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition, and
- (d) the orthosis is off-the-shelf unless
 - (i) a medical practitioner or nurse practitioner confirms that a custom-made orthosis is medically required, and
 - (ii) the custom-made orthosis is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist

[Sections 3.11 - 3.12 are not relevant in the appellant's situation]

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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

Janet Ward

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021 May 21

PRINT NAME

Maryam Majedi

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 May 21

PRINT NAME

Susanne Dahlin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 May 21