

PART C – DECISION UNDER APPEAL

The decision under appeal is the Reconsideration Decision (RD) of the Ministry of Social Development and Poverty Reduction (the Ministry) dated October 20, 2020, which denied the Appellant’s request for hearing aids (a Hearing Instrument).

The Ministry found that the Appellant was not eligible for a health supplement in the form of a Hearing Instrument because the Appellant’s request does not meet the eligibility requirements set out in the Employment and Assistance Regulation (EAR) Section 67 and Schedule C, Section 3(1)(a).

Specifically, the Ministry found that the Appellant is not:

- A “qualifying person” as defined in Section 66.1 of the EAR;
- Under 19 years of age; or,
- A “continued person” as described in Sections 66.3 (1) or (2), or 66.4 (1) or (2) of the EAR.

In addition, the Ministry found that the Appellant’s request did not meet the criteria set out in the EAR Section 76, which provides a remedy for a person who is facing a direct and imminent life-threatening health need for a health supplement but is not otherwise eligible to receive it.

PART D – RELEVANT LEGISLATION

EAR Sections 66.1, 66.3, 66.4, 67 and 76

EAR Schedule C Sections 1 and 3.11

PART E – SUMMARY OF FACTS

The Appellant is an income assistance recipient. No information has been provided to indicate whether the Appellant has any dependents or for how long they have been continuously receiving income assistance benefits. The parties consented to a written hearing.

The information before the Ministry at the time of the Reconsideration Decision (RD) included the following:

- A Request for Reconsideration (RFR) dated September 28, 2020, in which the Appellant said that it was their understanding that *“everything that was needed had been taken care of”* and that they had been told that someone would be calling to advise of the decision. In mid-August of 2020, after contacting the Ministry as to the status of the decision and being advised that the Ministry hadn’t received *“the required paperwork from the health clinic”*, the Appellant asked the health clinic to send on the required paperwork, which the Ministry received on September 11, 2020. The Appellant also states that they are *“currently hearing approximately ten percent in one ear”*;
- An undated Fax Cover Sheet from a health clinic to the Ministry referring to the Appellant stating that the Appellant had asked the health clinic to fax a request for hearing aids to the Ministry and advising that the hearing clinic *“requested new hearing aids for this client via Pacific Blue Cross (on June 8, 2020) but the request was denied and the client was informed of this”*. The Fax Cover Sheet also refers to an attached audiogram (the Audiological Report) completed on June 2, 2020, a predetermination request for new hearing aids faxed to Pacific Blue Cross on June 8, 2020, and Pacific Blue Cross’s reply to the health clinic (the PBC Denial Form) denying the request because *“the client does not have coverage (from the Ministry) for hearing instruments ... at this time”*;
- The Audiological Report completed for the Appellant providing details of the audiogram results and the recommendation *“Updated amplification advised”*; and
- The PBC Denial Form, dated June 10, 2020, indicating a submitted amount totalling \$4,000 for a left hearing aid and a right hearing aid, and showing an eligible amount of \$0.00, and a percent covered of 0%.

Additional Information Submitted after Reconsideration

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

In the Notice of Appeal (NOA), dated April 18, 2021, the Appellant states that they were unable to respond on time because they did not have phone service and due to *“Covid related circumstances”*.

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The Appellant also said that their existing Hearing Instrument gives a 10% communication link, and that “*failure of the device means unable to hear wildlife, radio and most important the phone ... for safety*”.

Neither the Appellant nor the Ministry submitted any additional information before the written hearing.

The Panel considered the information in the NOA to be argument.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the RD, which denied the Appellant's request for a health supplement for a Hearing Instrument because the Appellant's request does not meet the eligibility requirements set out in EAR Section 67 and Schedule C, Section 3(1)(a), or the criteria set out in the EAR Section 76(1), which provides a remedy for persons who are facing a direct and imminent life-threatening health need. Was it reasonable for the Ministry to determine that the necessary requirements specified in EAR Section 67 and Schedule C, Section 3(1)(a), or the criteria set out in the EAR Section 76(1) were not met in the circumstances of the Appellant?

The relevant legislation is provided in Schedule A.

ANALYSIS

Whether the Hearing Instrument is a Medical Device or Equipment that Qualifies as a Health Supplement

EAR Schedule C Section 3.11 says that a Hearing Instrument is a health supplement for the purposes of EAR Schedule C Section 3 if it is prescribed by an audiologist, and an audiologist has performed an assessment that confirms the need for a Hearing Instrument, but that the Ministry may only provide the Hearing Instrument to member of a family unit under that section if the person is not receiving a hearing assistance supplement.

The Panel notes that the Audiological Report provides reasonable evidence that the hearing aids were prescribed by an audiologist and that the audiologist performed an assessment that confirms the need for a Hearing Instrument. The Ministry stated in the RD that the Appellant was not receiving the Alternative Hearing Assistance Supplement. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant's request is for a medical device that fits the definition of a Hearing Instrument as set out in EAR Schedule C Section 3.11.

Whether the Appellant Meets the Requirements Set Out in EAR Section 67

EAR Section 67(1) says that the Ministry may provide a Hearing Instrument to a family unit:

- Which is receiving income assistance, if the family unit includes a "qualifying person" or if the Hearing Instrument is provided to or for a person in the family unit who is under 19 years of age;
- If the family unit is receiving hardship assistance and the Hearing Instrument is provided to a person in the family unit who is under 19 years of age; or,
- If the Hearing Instrument is provided to a person in the family unit who is a "main continued person".

A "qualifying person" is defined in EAR Section 66.1 to be a person who has persistent multiple barriers to employment (PPMB) or is a recipient of income assistance who is described in Schedule A Section 8(1) [*people receiving special care*]. In the RD the Ministry said that the Appellant had not been designated by the Ministry as a PPMB, and no evidence was presented to suggest that the Appellant did have such a designation. In addition, the Panel notes that the evidence shows that the Appellant is not

under 19 years of age and no evidence was presented to suggest that there are any other people in the Appellant's family unit. Finally, there was no evidence that the Appellant is a person receiving special care under EAR Schedule A Section 8(1).

A "main continued person" is defined in EAR Section 66.3 to be a person who was part of a family unit on the date the family unit ceased to be eligible for income assistance and that the person was a "qualifying person" on that date, and if the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance. In the RD, the Ministry stated that the Appellant is not a main continued person, and no evidence was presented to suggest that the Appellant has ceased to be eligible for income assistance, or to suggest, as mentioned above, that the Appellant is a "qualifying person".

EAR Section 67(2) says that the Ministry may provide a Hearing Instrument to a family unit if it is provided to a recipient in the family unit who has received income assistance under the *BC Benefits (Income Assistance) Act* or the *Employment and Assistance Act* continuously from March 31, 1997 and on March 30, 1997 was eligible for the health care services and benefits referred to in that legislation. The Panel notes that the Ministry did not indicate in the RD whether the Appellant qualified for a Hearing Instrument under Section 67(2). There was no evidence presented to indicate that the Appellant has been receiving income assistance continuously since March 31, 1997.

As there was no evidence that the Appellant has been receiving income assistance continuously since March 31, 1997, the Panel finds that the Ministry reasonably determined that the Appellant does not qualify for a Hearing Instrument under EAR Section 67.

Whether the Appellant Meets the Requirements Set Out in EAR Section 76(1)

EAR Section 76(1) says that the Ministry may provide a Hearing Instrument to a family unit if it is provided to a person in the family unit who is otherwise not eligible for the Hearing Instrument, and if the Ministry is satisfied that:

- The person faces a direct and imminent life threatening need,
- There are no resources available to the person's family unit with which to meet that need, and
- The Hearing Instrument is necessary to meet that need.

In the RD, the Ministry determined that, while there are no resources available to the Appellant to meet that need, the information submitted with the Appellant's application and RFR does not establish that they face a direct and imminent life threatening need for the Hearing Instrument. In addition, the Panel also notes that no evidence was presented by the Appellant to suggest that they face a direct and imminent threat to their life if the Hearing Instrument is not provided. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant did not qualify for a Hearing Instrument under EAR Section 76.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the Panel finds that the Ministry's RD, which determined that the Appellant was not eligible for a health supplement in the form of a Hearing Instrument, was a reasonable application of the EAPWDA in the circumstances of the Appellant, and therefore confirms the decision. The Appellant's appeal, therefore, is not successful.

SCHEDULE A - LEGISLATION

Section 3.1 of the EAR defines “Continued Person” and “Qualifying Person” as referred to in EAR Section 66.3(1):

Division 5 — Health Supplements

Definitions

66.1 In this Division: ...

"continued person" means

- (a) a main continued person under section 66.3 (1) ...

“qualifying person” means a person who

- (a) has persistent multiple barriers to employment ...

Access to medical services only

66.3 (1) Subject to subsection (4), a person is a main continued person if

- (a) the person was

- (i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for income assistance, and
 - (ii) a qualifying person on that date, and

- (b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance.

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of income assistance, ceased to be eligible for income assistance

- (a) on a date the family unit included a person aged 65 or older,
- (b) as a result of a person in the family unit receiving an award of compensation under the Criminal Injury Compensation Act or an award of benefits under the Crime Victim Assistance Act, or
- (c) as a result of a person in the family unit receiving a payment under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry.

Section 67 of the EAR authorizes the Ministry to provide specified health supplements, including Hearing Instruments, under certain conditions and as set out in Section 3.11 of Schedule C to the EAR:

General health supplements

67 (1) The minister may provide any health supplement set out in section ... 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*] ...

(2) Subject to subsection (3), the minister may provide any health supplement set out in section ... 3 [*medical equipment and devices*] of Schedule C to or for a family unit if the health supplement is provided to or for a recipient in the family unit who

- (a) has received income assistance under the *BC Benefits (Income Assistance) Act* or the Act continuously from March 31, 1997 and on March 30, 1997 was eligible under section 37 (1) (a) of the *BC Benefits (Income Assistance) Regulations*, B.C. Reg. 272/96, as it read on March 30, 1997, for the health care services and benefits referred to in that provision ...

(3) Subsection (2) applies only until the earlier of the following dates:

- (a) the date the recipient ceases to receive income assistance;
- (b) the first day of the calendar month after the minister makes a determination that the recipient, or any dependant of the recipient other than a dependent child, is capable of accepting employment.

EAR Section 76 authorizes the Ministry to provide specified health supplements, including Hearing Instruments, under certain conditions and as set out in Section 3.11 of Schedule C to the EAR:

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 ...

Section 1 of Schedule C of the EAR defines "Hearing Instrument" as referred to in EAR Section 66.3(1):

Schedule C

Health Supplements

Definitions

1 In this Schedule: ...

"hearing instrument" has the same meaning as in the Speech and Hearing Health Professionals Regulation, B.C. Reg. 413/2008 ...

(The Hearing Health Professionals Regulation defines "Hearing Instrument" as "*an appliance or a device designed or offered for a hearing condition, including any ear molds, boots or other acoustic couplers and any parts or accessories for the appliance or device intended to affect the sound pressure level at the eardrum, and excluding direct audio input accessories, batteries and any accessories that are attachable to the appliance or device by the wearer and not intended to affect the sound pressure level at the eardrum*".)

EAR Schedule C, Section 3.11 authorizes the Ministry to provide Hearing Instruments under certain conditions:

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 to or for a family unit under this section only if the person is not receiving a hearing assistance supplement under section 77.02 or 77.03 of this regulation.

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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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/06/02

PRINT NAME

Shirley Heafey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/03

PRINT NAME

Wes Nelson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/03