

APPEAL NUMBER  
2021-0165

### **Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated August 12, 2021 which held that the Appellant was not eligible for a general health supplement for prescription medications.

Specifically, the Ministry determined that the Appellant was not eligible for a general health supplement for Lamisil cream or Terbinafine tablets because they are prescription medications and therefore are not considered medical or surgical supplies.

### **Part D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 62 and Schedule C Sections 2(1) and 2(1.1)

## Part E – Summary of Facts

The Appellant is designated as a PWD receiving disability assistance.

The evidence before the Ministry when it made its RD included the following:

- A July 15, 2021 letter from a pharmacist (the Pharmacist’s Letter) indicating that the pharmacist had reviewed the Appellant’s treatment plan and medication needs for her parasitic/fungal skin infection, and that it was the pharmacist’s understanding that Lamisil is the only available effective treatment. The pharmacist also provided details of the anticipated usage of medications and indicated that the Appellant’s physician (the Physician) would still have to order any additional medications for the Appellant’s use and might change her current regimen;
- A prescription written by the Physician (the Physician’s Prescription) for repeated applications of Lamisil 1% cream and Terbinafine tablets, printed on July 28, 2021, which, according to the Ministry’s original decision (OD), also includes a hand-written “*diagnosis of Onychomycosis and nail fungus*”;
- The Appellant’s RFR, dated August 6, 2021, in which the Appellant states that she is being treated for a yet unidentified type of lichen infection, and is using Terbinafine tablets and Lamisil cream, neither of which are covered under Pharmacare for the purpose for which they are being used. The Appellant also states that the Pharmacist has told her that fungal medications are covered only when they are prescribed for the treatment of fungal infections in the nails, which is not presently the case. She explains that her infection is in her skin, all over her body, and that “*(she has) been informed that lichen can cause cancer, if left untreated*”;
- A letter from the Physician dated August 6, 2021 (the Physician’s Letter), in which the Physician writes:

*“(The Appellant) is suffering from a virulent form of lichen, that has yet to be labelled. She has seen two (medical specialists) that both diagnosed Lichen, but not the definitive form. Considering Lichen is a form of parasitic fungus, the only line of treatment until we know exactly what type of Lichen it is, is fungal therapy. Through trial and error we have found that the drug Terbinafine internally is helping the situation, as is the Lamisil cream on the outside of the body. But both drugs will have to be used for an extended period of time, to be re-evaluated after a year of treatment, or until a better treatment plan can be made for that particular strain of Lichen. Fungal treatment though, is no longer covered under Pharmacare. The only time Terbinafine is covered, it is for Severe Onychomycosis, which affects the nails. And this was found not be the problem. The areas being involved is the skin all over the body and especially in her (affected) area. Unfortunately ... we will not know which type of Lichen we are dealing with until a skin biopsy can be performed. Until that time we will use the course of treatment based on use in one month period of full treatment. Which is up to six tubes of Lamisil cream in a month, combined with one Terbinafine tablet daily. And through the Ministry’s information, I believe the special request can be made under the Reference number 1-6460473059, which related to Skin Parasite Care, which Lichen falls under. As it is a parasitic fungal infection.”; and,*

- A one-page Province of BC Pharmacare form titled “*Limited Coverage Drugs – Terbinafine Tablets*” (the Pharmacare Form) which states in the “*Criteria*” section that Terbinafine tablets are used to treat “*severe onychomycosis plus functional disability plus positive KOH or dermatophyte*

*culture of nail from a licensed lab*". In the "Special Notes" section of the Pharmacare Form it states, "Terbinafine cream is not eligible for Pharmacare coverage". The Pharmacare Form also includes a hyperlink to an online form in a section titled "Special Authority Request Form(s)" with the instruction "Click on the link to complete a special authority request form".

### **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), the Appellant states that the "*diagnosis of Onychomycosis and nail fungus*" referenced in the RD was not a diagnosis. The Appellant explained that she had a diagnosis of lichen from a medical specialist and that she will have a written diagnosis from that medical specialist at the time of the appeal hearing. The Appellant also said that the treatment could go on for more than a year and that, because fungal medications are no longer covered under MSP(sic), it would cost her almost \$200 per month if she was using it as needed. She stated that she cannot afford the cost because she is on disability. She wrote that she feels she qualifies for a general health supplement because she "*falls under every category shown*", including the requirement that the medication must be "*necessary to avoid an imminent and substantial danger to health*". She also stated that without the treatment she is at risk of getting cancer, which would cost much more to treat.

On August 25, 2021, the Appellant submitted additional evidence (the First Appellant Submission) comprising three photographic images and an email in which she wrote that she was "*including pictures relevant to (the Appeal which provide) evidence of needing the fungal cream and pills ... Believe it or not it is getting better as I am using the fungal cream and pills. It is slow progress and it will take time*".

On August 29, 2021, the Appellant submitted additional evidence (the Second Appellant Submission) comprising:

- An excerpt from an email, dated September 20, 2020, from one of the Appellant's medical specialists expressing concern about a rash described by the Appellant, which was not present on that date, stating that the rash "*might be in keeping with the diagnosis of lichen sclerosis*", and recommending that if the rash should recur, the medical specialist would encourage the Appellant to see her physician or a medical specialist for evaluation for lichen sclerosis; and,
- An excerpt from an email from the same medical specialist, dated October 9, 2020, providing "*a dictation of the (medical specialist's) overall impression*", in which the medical specialist states that the Appellant attended the clinic on that date for a diagnosis of general schistosomiasis, and that all the Appellant's standard testing was negative. With reference to photographic images provided by the Appellant on that occasion, the medical specialist wrote "*What was concerning ... was the presence of a figure-of-eight type lesion ...*".

On August 31, 2021, the Appellant submitted additional evidence (the Third Appellant Submission) comprising a photographic image and an email from the Appellant explaining that the medication she was taking appears to be working, adding "*I don't know if the issue is Lichen or not. And I don't know if it*

*is parasitic. And I am on waiting lists to see other specialists for help, but everything moves very slow. And for what ever reason, these meds are working. Please help me continue to have it available to use. As you can see in my pictures, it is an emergency to stop the tissue from being destroyed on the one side. I am still in high hopes that I can reverse the damage by catching it early enough.”*

At the hearing, the Appellant referred to the Ministry’s OD, which found that the Appellant did not require medical or surgical supplies for the purpose of skin parasite care because the required medical supplies were for nail fungus, which the Appellant said is not the case. In addition, the Appellant disputed the Ministry’s finding in the OD that the treatment was not required to avoid an imminent and substantial danger to health. The Appellant explained that the prescribed treatment was indeed required for skin parasite care, that it has proven effective in that treatment, that she was told by her physician of the risk of cancer if the treatment did not continue, and that she is waiting for a biopsy.

The Appellant also said that the two medical specialists she has seen “*did little to assist*”, and that the second specialist “*won’t see her anymore*”. In response to a question from the Panel, the Appellant said that she has an appointment with a third medical specialist in September 2021, and she assumes that the third medical specialist will schedule her for a biopsy following that consultation.

In response to another question from the Panel, the Appellant said that she didn’t have a doctor when her medical condition first appeared and no doctors in her community were prepared to help. She was eventually able to find a doctor to see her in September 2020, which was about six months after she first noticed the symptoms. She stated that she has been paying out-of-pocket for her medications for about 6 weeks, but she is currently taking ¼ of the prescribed dosage because she can’t afford to pay for it. She also said that she thought that one of the two treatments, which she thought was the Terbinafine tablets but might have been the Lamisil cream, could be purchased without a prescription.

At the hearing, the Ministry relied on the RD, emphasizing that, while the Ministry has determined that the other requirements set out in the legislation had all been met, it was unable to provide the Appellant with a general health supplement for the Lamisil cream or Terbinafine tablets because they are prescription medications and therefore explicitly excluded from coverage under EAPWDR Schedule C Section 2(1.1).

In response to a question from the Panel, the Ministry said that it was not involved with clients’ applications for Pharmacare coverage as that program was administered by a different ministry under “*a completely different system*”. The Ministry added that front-line Ministry staff will sometimes assist clients by providing information about how to contact Pharmacare with a request for prescription medication coverage. The Ministry also said that any citizen can go to the Pharmacare website to see if a particular prescription drug is covered and apply for a special authorization, if necessary.

In response to a question from the Appellant, the Ministry said that there were no other provisions in the legislation that would provide for a supplement or any other type of assistance in the Appellant’s circumstances. In response to the Appellant’s assertion that she did not believe that a prescription was required for one of the two medications, the Ministry said it would check to confirm.

### ***Admissibility of New Evidence***

The Panel considers the new information provided by the Appellant in the NOA about the cost of the treatment to be admissible but assigns it no weight because, while the Panel sympathizes with the Appellant regarding the difficulties that she has in affording the cost of treatment, the cost of prescription medication is not the reason the Ministry denied the Appellant a general health supplement.

The Panel considers the new written evidence provided by the Appellant in the Second Appellant Submission about the negative standard testing results for a diagnosis of general schistosomiasis to be immaterial without the professional opinion of a medical specialist as to the implications of such a test, which has not been provided. Without that opinion, the Panel is unable to determine whether the evidence is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal. Furthermore, the Panel notes that whether the treatment is necessary to avoid an imminent and substantial danger to the Appellant's health is not at issue in this appeal (see the *Panel's Decision* section below).

Similarly, the Panel considered the photographic images provided by the Appellant in the Second and Third Appellant Submissions to be immaterial because a medical professional has not provided an interpretation. Without the professional opinion of a medical specialist in interpreting the images, the Panel is unable to determine whether the evidence is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal. In addition, as mentioned above, whether the treatment is necessary to avoid an imminent and substantial danger to the Appellant's health is not at issue in this appeal.

Regarding the new information in the medical specialist's statement in the excerpt from the October 9, 2020 email provided in the Third Appellant Submission ("*What was concerning ... was the presence of a figure-of-eight type lesion ...*"), the Panel admits this new evidence but gives it no weight because the medical specialist does not explain the possible consequences of a figure-of-eight type lesion, and, in any event, whether the treatment is necessary to avoid an imminent and substantial danger to the Appellant's health is not at issue in this appeal.

The Panel considered the verbal evidence presented at the hearing by the Appellant that one of the two treatments did not require a prescription to be hearsay as no evidence was presented to confirm or deny that this is the case. In addition, the Panel notes that both treatments are listed in the Physician's Prescription, which suggests that it is likely that both medications require a prescription.

## **Part F – Reasons for Panel Decision**

The issue under appeal is whether the Ministry's decision, which found that the Appellant is not eligible for a crisis supplement for a general health supplement for Lamisil cream or Terbinafine tablets because they are prescription medications and therefore are not considered medical or surgical supplies, is reasonably supported by the evidence or is a reasonable application of the applicable enactment in his circumstances.

### ***Position of the Parties***

The Appellant's position is the Ministry should provide coverage for her Lamisil cream or Terbinafine treatment because the supplies are required for skin parasite care and are necessary to avoid an imminent and substantial danger to her health. In addition, the treatment is effective because since taking the medications her condition has improved, but she is unable to afford the high cost of the medications.

The Ministry's position is that it is unable to provide the Appellant with a general health supplement to cover the cost of the Appellant's treatment because Lamisil cream and Terbinafine tablets are prescription medications and prescription medications are specifically excluded from the list of medical or surgical supplies that are covered in the general health supplements sections of the EAPWDR, and that there are no other provisions in the Ministry's legislation that would allow for any other type of supplement or assistance to cover the cost of prescription medications.

### ***The Panel's Decision***

Regarding the Appellant's dispute concerning the Ministry's finding in the OD that the Appellant did not require medical supplies to treat skin parasite care and that a physician has not indicated that the treatment is required to avoid an imminent and substantial danger to health, the Panel notes that this appeal is based on the Ministry's findings in the RD, not the OD, and that the Ministry changed its decision on these two criteria in the RD, as set out below.

EAPWDR Section 62 says that general health supplements may be provided to a family that receives disability assistance. The Ministry has determined that the Appellant is eligible for health supplements because she receives disability assistance. Therefore, this requirement is not in dispute.

EAPWDR Schedule C Section 2(1)(a) says that the Ministry may provide medical supplies if they are required for skin parasite care, if they are prescribed by a medical practitioner, if they are the least expensive supplies for the appropriate purpose and if they are necessary to avoid an imminent and substantial danger to health, and if there are no resources available to the family unit to pay for the cost or to meet the need. Despite its findings to the contrary with respect to skin parasite care and imminent and substantial danger to health in the OD, the Ministry determined that the Appellant meets all these conditions in the RD. Therefore, this requirement is not in dispute.

The Panel must focus on the matter in dispute; that is the reasonableness of the Ministry's RD in relation to EAPWDR Section 2(1.1)(a)(ii), which limits the range of medical and surgical supplies that the Ministry may provide.

The Ministry has determined that, because Lamisil cream and Terbinafine tablets are prescription medications, they are excluded from the general health supplements that may be provided by the Ministry. After a close review of EAPWDR Section 2(1.1)(a)(ii), the Panel finds that the Ministry

reasonably determined that prescription medications are excluded from the general health supplements that the Ministry may provide as a general health supplement.

The Ministry has also advised the Appellant both in the RD and the Request for Reconsideration (RFR) that the required prescription medications might be eligible for Pharmacare funding. The Appellant wrote in the RFR and stated at the hearing that she was told by the Pharmacist that neither Lamisil cream nor Terbinafine tablets are covered under Pharmacare for the purpose for which they are being used. This is supported by information in the Physician's Letter, where the Physician writes "*Fungal treatment though, is no longer covered under Pharmacare. The only time Terbinafine is covered, it is for Severe Onychomycosis, which affects the nails. And this was found not be the problem.*" However, the Panel notes that in the same letter, the Physician writes "... *I believe the special request can be made under the Reference number 1-6460473059, which related to Skin Parasite Care, which Lichen falls under. As it is a parasitic fungal infection.*" This is supported both by information provided by the Ministry in the RD and at the hearing, and by the Pharmacare Form, which includes a hyperlink to an online form with an instruction to "*Click on the link to complete a special authority request form*".

At the hearing, the Appellant stated that the Pharmacist phoned Pharmacare on her behalf and was told that a special authorization would not be approved, but the Panel notes that there is no evidence that a Special Authority Request Form was ever submitted by the Appellant or her Physician to determine if Pharmacare would consider a special authorization in this case. The Panel notes that unless and until the Appellant completes and submits a Special Authority Request Form and receives a decision from Pharmacare, it cannot be assumed that Pharmacare will not cover the cost of either or both required medications.

The Panel is sympathetic to the significant financial difficulties that the Appellant faces in receiving what appears to be effective treatment in the prescribed doses. However, the Panel does not have the authority to vary the legislative requirements, which clearly states that prescription medication is not covered as a general health supplement. But, as mentioned above, it cannot be determined if all opportunities for assistance have been pursued by the Appellant, as there is no evidence that Pharmacare received and denied a special authorization request.

### **Conclusion**

The Panel finds that the Ministry's decision that the Appellant is not eligible for a general health supplement for prescription medications was a reasonable application of the applicable enactment in the circumstances of the Appellant. Therefore, the Ministry's decision is confirmed. The Appellant is not successful in her appeal.

**APPENDIX A - LEGISLATION**

**EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION**

**General health supplements**

**62** The minister may provide any health supplement set out in section 2 [*general health supplements*] ... 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.

**Schedule C**  
**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 ...

**(1.1)** For the purposes of subsection (1) (a), medical and surgical supplies do not include ... prescription medications.



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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)

Section 24(2)(a)       or Section 24(2)(b)

**Part H – Signatures**

Print Name

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2021/09/03

Print Name

Cynthia (Aba) Agbozo

Signature of Member

Date (Year/Month/Day)

2021/09/05

Print Name

Linda Pierre

Signature of Member

Date (Year/Month/Day)

2021/09/05