

2021-0213

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated December 29, 2020 which denied the appellant's request for a supplement to cover the cost of Blood Pressure Monitor (BPM). The ministry found that the item requested is not listed as an eligible item in Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) or eligible as a crisis supplement pursuant to section 57 of the EAPWDR or eligible as an imminent life-threatening health need pursuant to section 69 of the EAPWDR.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – Section 57, 62, 69 and Schedule C

Part E – Summary of Facts***Evidence at Reconsideration***

- Letter from the appellant's doctor, dated June 24, 2021, which states that the appellant has hypertension, the doctor is seeing patients less often in person and the appellant needs a BPM.
- Request for Reconsideration (RFR), dated August 19, 2021, which, in part, stated:
 1. A blood pressure monitor is required for a life-threatening condition;
 2. The appellant is unable to take medication and occasionally has irregularities in heart beat due to a medical condition;
 3. CBD oil, wild salmon and fish oil, flaxseed oil, turmeric/curcumin with black pepper, folic acid, vitamin D3, and vitamin C are supplements that help, but they can be costly; and
 4. A blood pressure monitor costs \$119.77 plus tax.

Evidence on Appeal

- The appellant submitted a Notice of Appeal (NOA), signed and dated November 4, 2021, which stated "I need a blood pressure monitor".
The panel considers the content of the NOA to be a part of the appellant's argument.
- A letter from the appellant to the Tribunal, in which the appellant reiterated much of the content of the RFR and added:
 1. Blood pressure medication causes a decrease in heart rate to dangerous levels and blood pressure increases causing faintness and weakness. Therefore, a BPM is necessary to monitor blood pressure.

Part F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of a BPM because the item requested is not listed as an eligible item in Schedule C of the EAPWDR or eligible as a crisis supplement pursuant to section 57 of the EAPWDR or eligible as an imminent life-threatening health need pursuant to section 69 of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

The Appellant's Position

The appellant argued that due to irregularities with heart rate and blood pressure, they require a BPM for this life-changing condition.

The Ministry's Position

The ministry argued that the request for a BPM does not meet the legislated requirements for a health supplement, as set out in Schedule C of the EAPWDR. Specifically, a BPM is not otherwise specified as an item which may be provided pursuant to Schedule C section 3 of the EAPWDR.

The ministry argued that the request for a BPM does not meet the legislated requirements for a health supplement, as set out in Schedule C of the EAPWDR, as a BPM is not otherwise specified as an item which may be provide pursuant to Schedule C section 2 of the EAPWDR. Specifically, the information provided by the appellant and the physician does not confirm that the BPM is required for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care or limb circulation pursuant to Schedule C section 2(1)(a)(i). Similarly, the information provided by the appellant and the physician does not confirm that a BPM is required to avoid imminent and substantial danger to the appellant's health pursuant to Schedule C section 2(1)(a)(ii)(c) of the EAPWDR. Furthermore, a BPM is not a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy, or optical services, medical transportation supplements, optical supplements, eye supplements, dental supplements, diet supplements, monthly nutritional supplements, natal supplements, or infant formula.

The ministry argued that the request for a BPM does not meet the legislated requirements for a crisis supplement, as set out in section 57(1) of the EAPWDR. Specifically, the information provided by the appellant and the physician does not confirm that a BPM is an unexpected expense, or an item unexpectedly need and that the failure to obtain a BPM will result in imminent danger to the appellant's physical health. Furthermore, the ministry determined that a BPM is a health care good and therefore, pursuant to section 57(3) it is not an item that is eligible for a crisis supplement.

The ministry argued that a BPM is not an item provided under section 2(1)(a), or (f), or section 3 of schedule C of the EAPWDR and therefore cannot be provided under section 69 of the EAPWDR as a life-threatening need. The ministry also argued that the appellant's doctor did not confirm that the appellant has a life-threatening need for a BPM.

The Panel's Decision

In this case, the ministry has found that the requirement of Section 62 has been met since the appellant has been approved as a recipient of disability assistance.

Schedule C section 3 of the EAPWDR sets out that the ministry may provide various medical equipment and devices. The panel reviewed section 3 and sections 3.1 to 3.12. The evidence provided demonstrates that a BPM is not an item listed in section 3 of Schedule C. Specifically, the panel finds that a BPM cannot reasonably be considered: a cane, crutch or walker; a wheelchair; a wheelchair seating system; a scooter; a toileting, transfer or position aid; a hospital bed; a pressure relief mattress; a floor or ceiling lift device; a breathing device; an orthosis; a hearing instrument; or a non-conventional glucose meter.

The panel finds that the ministry was reasonable in its determination that the appellant's request for a BPM does not meet the requirements of Schedule C section 3 of the EAPWDR.

Schedule C, Section 2 – General Health Supplements

Schedule C section 2(1)(a) of the EAPWDR sets out that the ministry may provide medical or surgical supplies for care if the supplies are prescribed by a medical practitioner or nurse practitioner, are the least expensive medical supply appropriate for the purpose, and the supplies are required to avoid imminent and substantial danger to the appellant's health. The evidence does not demonstrate that a failure to obtain a BPM will result in imminent danger to the appellant's physical health. The panel finds that the ministry was reasonable in its determination that the appellant's request for a BPM does not meet the requirements of Schedule C section 2(1)(a) of the EAPWDR.

Schedule C section 2 of the EAPWDR sets out that the ministry may provide a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy, or optical services, medical transportation supplements, optical supplements, eye supplements, dental supplements, diet supplements, monthly nutritional supplements, natal supplements, and infant formula. The panel finds that the evidence provided demonstrates that a BPM is not a service or supplement listed above. The panel finds that the ministry was reasonable in its determination that the appellant's request for a BPM does not meet the requirements of Schedule C section 2 of the EAPWDR.

Section 57 – Crisis Supplement

Section 57(1) of the EAPWDR sets out that the ministry may provide a crisis supplement to meet an unexpected expense or obtain an item unexpectedly needed for which the recipient does not have the resources available to meet the need and a failure to obtain the need will result in imminent danger to the physical health to any member of the recipient's family unit. The ministry has conceded that the appellant does not have the resources to meet the need of a BPM and has therefore the appellant has met this criterion.

The ministry stated that the evidence at reconsideration, which consisted of a letter from the doctor did not address the issue of unexpected need and the appellant did not provide any additional evidence which addressed this issue. The doctor's June 24, 2021 letter specifically states that patients are seen less often in person at this time. While the doctor does not explicitly state so in the letter, the panel determined that when the doctor mentioned seeing patients less often, the doctor implied that this is due to Covid-19 and that the appellant does not have regular access to the doctor/clinic. The panel finds that Covid-19 and the subsequent health safety measures that have been put in place were unexpected. As a result, the panel finds that the evidence supports the position that a BPM is an unexpected expense or need for this appellant.

The ministry argued that the evidence on file did not address the issue of imminent danger to physical health, and no other evidence which addressed this issue was provided at the hearing. Though, in the RFR, the appellant stated that the BPM is required for a life-threatening condition, this information was

not confirmed by the doctor and no other relevant evidence was provided. In addition, the appellant did not provide evidence to support the position that the failure to obtain a BPM will cause imminent danger to the appellant's physical health.

The panel finds that ministry was reasonable in its determination that the appellant's request for a BPM does not meet all the requirements of Section 57(1) of the EAPWDR.

Section 57 (3) of the EAPWDR sets out that the ministry cannot provide a crisis supplement for the purpose of obtaining a supplement described in Schedule C or, any other health care goods or services. The appellant argued that the BPM would help with a medical condition. The panel finds that a BPM according to the appellant's intended use is a health care good. The panel finds that the ministry was reasonable in its determination that a BPM is a health care good and, pursuant to Schedule C sections 57(3)(b) of the EAPWDR, it is not an item the ministry may provide.

Section 69 – Life-Threatening Health Need

Section 69 of the EAPWDR sets out that the ministry may provide a medical device if there is a direct and imminent life-threatening need, and if the medical device requested is listed in Schedule C of the EAPWDR. The panel finds that the ministry reasonably determined that the requirements of Section 69 are not met as a BPM is not set out under Schedule C, Section 2(1)(a) as medical or surgical supplies or under Section 2(1)(f) as a mode of medical transportation, or under Sections 3 to 3.12, as detailed above. The ministry also concluded that the evidence provided by the appellant and their doctor does not establish that there is an imminent life-threatening need. As explained previously, in the RFR, the appellant stated that the BPM is required for a life-threatening condition, but this was not confirmed by the doctor and the appellant did not provide any other evidence relevant evidence to support this argument. The panel finds that the ministry was reasonable in its determination that the appellant did not meet the criterion of section 69 of the EAPWDR as the BPM is not listed in Schedule C and therefore is not an item that the ministry may provide.

Conclusion

In conclusion, the panel finds that the ministry's decision to deny the request for a supplement to cover the cost of a BPM because it does not meet the legislated criteria of Schedule C or section 57 of the EAPWDR or section 69 of the EAPWDR, was a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the ministry's decision. The appellant is not successful at appeal.

The legislation states:

Pursuant to Section 62 of the EAPWDR, the applicant must be a recipient of disability assistance, or be a dependant of a person in receipt of disability assistance in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met to qualify for a health supplement for various items.

Schedule C:

Section 2(1) provides for "medical or surgical supplies" that are disposable or reusable provided that:

- (i) the supplies are for one of the purposes listed including 2(1)(a)(F) limb circulation care;
- (ii) the supplies are
 - a. prescribed by a medical or nurse practitioner,
 - b. the least expensive supplies appropriate for the purpose and
 - c. necessary to avoid an imminent and substantial danger to health; and
- (iii) there are no resources available to the family unit to pay for the supplies.

The rest of section 2 concerns certain services (acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physical therapy) and transportation.

Medical equipment and devices

Section 3(1) provides that the “medical equipment and devices” listed in sections 3.1 to 3.12 may be provided where the requirements of the applicable section are met, and

- (i) the minister has pre-authorized the medical equipment or device;
- (ii) there are no resources available to pay for the medical equipment or device; and
- (iii) the medical equipment or device is the least expensive appropriate medical equipment or device.

Sections 3(2) and (2.1) provide that for items listed in sections 3.1 to 3.8, 3.9(1)(b) to (g) or section 3.12, the minister may request:

- a. a prescription from a medical practitioner or nurse practitioner for the device;
- b. an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

Section 3.1 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a cane, a crutch, a walker, an accessory to a cane, a crutch, or a walker.

Section 3.2 provides that the following items are health supplements for the purposes of section 3 if the other criteria of the section are met: a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair.

Section 3.3 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a wheelchair seating system, an accessory to a wheelchair seating system.

Section 3.4 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a scooter, an upgraded component of a scooter, an accessory attached to a scooter.

Section 3.5 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a grab bar in a bathroom, a bath or shower seat, a bath transfer bench with hand held shower, a tub slide, a bath lift, a bed pan or urinal, a raised toilet seat, a toilet safety frame, a floor-to-ceiling pole in a bathroom or bedroom, a portable commode chair, a standing frame or a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility, and a transfer aid for a person for whom the transfer aid is medically essential.

Section 3.6 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed, and a positioning item on a hospital bed.

Section 3.7 provides that the following item is a health supplement for the purposes of section 3 of the Schedule if the other criteria of the section are met: a pressure relief mattress.

Section 3.8 provides that the following item is a health supplement for the purposes of section 3 of the Schedule if the other criteria of the section are met: a floor or ceiling lift device.

Section 3.9 provides that the following items are health supplements for the purposes of section 3 of the Schedule if the other criteria of the section are met: breathing devices.

Section 3.10 provides that certain orthoses are a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met.

Section 3.11 provides that the following item is a health supplement for the purposes of section 3 of the Schedule if the other criteria of the section are met: a hearing instrument.

Section 3.12 provides that the following item is a health supplement for the purposes of section 3 of the Schedule if the other criteria of the section are met: a non-conventional glucose meter.

Crisis supplement

Section 57 provides for a crisis supplement where:

- (a) the supplement is needed to obtain an item unexpectedly needed and the family unit has no resources available; and
- (b) failure to obtain the item will result in imminent danger to the physical health of the person.

The section states that a crisis supplement may not be provided for a supplement described in Schedule C or any other health care goods or services.

Section 69 of the EAPWDR provides as follows:

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) 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).

2021-0213

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

Neena Keram

Signature of Chair

Date (Year/Month/Day)

2021/12/09

Print Name

Simon Clews

Signature of Member

Date (Year/Month/Day)

2021/12/09

Print Name

Vivienne Chin

Signature of Member

Date (Year/Month/Day)

2021/12/09