

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated March 22, 2022. The ministry decided the appellant was eligible for a health supplement for replacement lenses for their eyeglasses but was not eligible for a health supplement for complete eyeglasses or an eye examination.

The appellant appeals the decision to deny a health supplement for an eye examination.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities (“EAPWDA”) section 25
Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) sections 62.1, 62.2; Schedule C, sections 1, 2.1, 2.2

Part E – Summary of Facts

The hearing took place by teleconference on April 14, 2022. The appellant attended the hearing with an advocate.

At the hearing, the appellant confirmed that they were only appealing the decision to deny coverage for the eye examination.

Evidence Before the Ministry at the Reconsideration:

The appellant is in receipt of benefits under the Employment and Assistance for Persons with Disabilities Act (“EAPWDA”).

The ministry has authorized Pacific Blue Cross (“PBC”) under section 25 of the EAPWDA to assess and approve or deny requests for coverage on behalf of the ministry.

The appellant received a health supplement for an eye examination and complete set of eyeglasses on January 6, 2020.

On November 1, 2021, an optometrist submitted a request to PBC for pre-authorization of coverage for an eye examination for the appellant. PBC denied the request because it was less than 24 months since the appellant’s last eye examination.

On February 7, 2022, an optician submitted a request to PBC for pre-authorization of coverage for single vision eyeglasses at a cost of \$408. PBC denied coverage. On that date, the appellant paid the optician \$50 for an eye examination and received a current prescription for eyeglasses.

On February 8, 2022, the appellant purchased the eyeglasses from the optician for \$378. The appellant gave the ministry a receipt for the eyeglasses, a copy of the prescription from the optician, and a credit card receipt from the optical company for \$50, dated February 7, 2022.

Evidence at the Hearing:

The appellant said that, when PBC did not approve the eye examination in November 2021, the appellant cancelled that appointment. The eye examination on February 7, 2022 was done by the optician, not by the optometrist who submitted the request for approval of the eye examination in November 2021.

Additional Evidence:

The ministry did not object to the additional evidence provided by the appellant at the hearing. The panel determined that the additional evidence was admissible under section 22(4) of the Employment and Assistance Act because it provides further detail about the eye examination for which the optometrist requested approval in November 2021, and the eye examination that took place in February 2022, and therefore is reasonably required for the full and fair disclosure of all matters relating to the decision under appeal.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's reconsideration decision to deny the appellant a health supplement for an eye examination on February 7, 2022, was reasonably supported by the evidence, or was a reasonable application of the legislation in the appellant's circumstances.

Legislation:

EAPWDR section 62.2 provides that the ministry may provide a health supplement for an eye examination under Schedule C, section 2.2, once in any 24-month calendar period. Under EAPWDR Schedule C section 1, "eye examination" is defined as "a full diagnostic examination of a person's eyes by an ophthalmologist or an optometrist." Schedule C section 2.2 sets out the maximum fees that the ministry may pay for an eye examination by an optometrist or an ophthalmologist.

Appellant's Position:

The appellant argues that the eye examination on February 7, 2022 was more than 24 months after their last eye examination on January 6, 2020. In response to the ministry's argument that a recipient also must get pre-authorization before the examination, the appellant points out that the ministry website only says that a recipient of benefits under the EAPWDA is eligible for an eye examination every 2 years, and they have never been told that they need pre-authorization. Therefore, the appellant says that they are eligible for coverage of the most recent eye examination.

The appellant maintains that it is not reasonable for the ministry to expect recipients of benefits under the EAPWDA to read reams of documents that are hard to find, to determine for themselves that they need pre-authorization, when the ministry website says they are eligible for an eye examination every 24 months.

Ministry's Position:

The ministry says that a recipient of disability benefits under the EAPWDA must get pre-authorization for a health supplement for an eye examination. The appellant did not get pre-authorization; therefore, the ministry cannot provide a health supplement for the eye examination.

In response to a question from the panel, the ministry agreed that a recipient of benefits under the EAPWDA would think they were eligible for an eye examination after 24 months, based on the information on the ministry website. The ministry also agreed that a recipient of disability benefits would not know that they needed pre-authorization for an eye examination unless the service provider, PBC or the ministry told them. The ministry expects that, when PBC denied coverage in November 2021, the appellant would have been told that he needed pre-authorization. However, the ministry acknowledges that there is no information to show that PBC gave the appellant anything more than a bare denial of coverage, without explanation.

The ministry also says that the denial of coverage for the eye examination in the reconsideration decision assumed that the appellant had attended the November 2021 appointment and was asking for reimbursement of that expense. The ministry acknowledges that the credit card receipt for \$50 is evidence that the eye examination took place more than 24 months after the last eye examination. However, the ministry also points out the section of the Optical Supplement – Optometrist that states: “Prior to proceeding with an eye examination, eligibility must be confirmed with Pacific Blue Cross.” The ministry says that the appellant must have pre-authorization before the ministry will provide coverage for an eye examination, even if it takes place more than 24 months after the last examination.

The ministry notes that the February 7, 2022 pre-authorization request was only for eyeglasses, not for an eye examination. The only request for pre-authorization for an eye examination was on November 1, 2021.

Panel Decision:

The only part of the reconsideration decision under appeal at the hearing was the decision that the appellant was not eligible for a health supplement for the February 7, 2022 eye examination.

The panel finds that the eye examination did take place more than 24 months after the last eye examination by the optometrist. If the examination had been by an optometrist or an ophthalmologist, the appellant would have been eligible for a health supplement for an eye examination under EAPWDR Schedule C section 2.2.

However, the eye examination in February 2022 was by an optician. EAPWDR section 1 defines “eye examination” as “a full diagnostic examination of a person’s eyes by an ophthalmologist or an optometrist.” There is no legislative authority for the ministry to provide a health supplement for an eye examination by an optician.

The ministry’s “Optical Supplement – Optician” document explains ministry policy about optical supplements. It states:

Eye Examination Supplements:

Routine eye examinations are covered by MSD for ministry clients 19 to 64 years of age who have not had an eye examination in the past 24 months and where the client is not eligible for this coverage under the Medical Services Plan. Payment is made at the rates negotiated by the Ministry of Health and is restricted to examinations performed by an Ophthalmologist or an Optometrist. Prior to proceeding with an eye examination, eligibility must be confirmed by calling Pacific Blue Cross. [*emphasis added*]

This statement is consistent with the EAPWDR and confirms that the ministry would only provide coverage for an eye examination by an optometrist or ophthalmologist. The panel notes that the optician did not ask PBC for approval for an eye examination.

With respect to the ministry’s argument that the appellant was not eligible for the health supplement for the eye examination because they did not have pre-authorization, the panel

notes that a ministry policy that asks for confirmation of eligibility is not the same as a legislative requirement for pre-authorization. If the appellant were otherwise eligible for a health supplement for an eye examination under the EAPWDR, the panel would not have found that they were ineligible because the practitioner did not ask for pre-authorization.

The panel notes that neither the reconsideration decision nor the appeal record includes any information from PBC about its reason for denying coverage for the November 2021 eye examination, or any communication it may have had with the appellant or the service provider about eligibility. The panel has no record of the criteria PBC may have considered, or their reasoning for the decision to reject the application for coverage in November 2021, which may have assisted the panel in its review.

Conclusion:

The panel confirms the ministry reconsideration decision that the appellant was not eligible for a health supplement for the eye examination by the optician on February 7, 2022. The panel finds that, while the eye examination took place more than 24 months after the last eye examination, it was not provided by an optometrist or an ophthalmologist. Therefore, the ministry has no legislative authority to provide a health supplement for the examination. The appellant is not successful in the appeal.

Schedule “A”

Legislation

Employment and Assistance for Persons with Disabilities Act

Delegation of minister's powers and duties

s. 25 (1) Subject to the regulations, the minister may delegate to any person or category of persons any or all of the minister's powers, duties or functions under this Act except

(a) the power to prescribe forms, and

(b) the power to enter into an agreement under section 21 (2) or (2.1), unless section 21 (2.2) applies in relation to the agreement.

(2) A delegation of the powers, duties or functions of the minister must be in writing and may include any limits or conditions the minister considers advisable.

Eye examination supplements

s. 62.2 (1) Subject to subsections (2) and (3), the minister may provide a health supplement under section 2.2 [*eye examination 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, 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.

(2) A health supplement under subsection (1) may only be provided to or for a person once in any 24 calendar month period.

(3) A health supplement under subsection (1) may only be provided if payment for the service is not available under the Medicare Protection Act.

Schedule C

Health Supplements

Definitions

s. 1 In this Schedule:

"eye examination" means a full diagnostic examination of a person's eyes by an optometrist or an ophthalmologist, that includes

- (a) a determination of the refractive status of the eyes and of the presence of any observed abnormality in the person's visual system,
- (b) any necessary tests connected to making determinations under paragraph (a), and
- (c) the provision of a written prescription for lenses if necessary;

Eye examination supplements

s. 2.2 The minister may pay a health supplement under section 67.2 [*eye examination supplements*] of this regulation for an eye examination that,

- (a) if provided by an optometrist, is provided for a fee that does not exceed \$44.83, or
- (b) if provided by an ophthalmologist, is provided for a fee that does not exceed \$48.90.

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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

Susan Ferguson

Signature of Chair

Date (Year/Month/Day)

2022/04/19

Print Name

Melissa McLean

Signature of Member

Date (Year/Month/Day)

2022/04/19

Print Name

Wesley Nelson

Signature of Member

Date (Year/Month/Day)

2022/04/17