

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision dated April 27, 2022, where the ministry denied the appellant’s request for a two-month CPAP trial and mask because he does not meet the criteria for basic eligibility as set out in section 67 and Schedule C of the Employment and Assistance Regulation (EAR); he is not

- a qualifying person [i.e. he is not in receipt of income assistance as a Person with Persistent Multiple Barriers (PPMB) or a person receiving special care under section 8(1)];
- under 19 years of age;
- not a “continued person” as described under section 66.3 (1) or (2) [access to Medical Services Only];
- a “continued person” as described under section 66.4 (1) [access to transitional health services].
- a “continued person” as described under section under section 66.4 (2) [i.e. a dependent of a continued person];

In addition, the ministry found that the appellant did not meet all the required criteria of a person facing a direct and imminent life-threatening health need as set out in section 76 of the EAR.

Part D – Relevant Legislation

Employment and Assistance Regulation (EAR) sections 66.1, 66.3, 66.4, 67 and 76 and Schedule C sections 3 and 3.9

Part E – Summary of Facts

From ministry files:

- The appellant has not been designated as a Person with Disabilities (PWD) nor has he qualified as a Person with Persistent Multiple Barriers (PPMB).
- He is pending federal retirement pensions and the ministry provided him with income assistance as a CPP adjustment for April 2022.
- His eligibility for May has not yet been determined; he may be eligible for hardship assistance for May provided he continues to wait on a decision for his federal pensions.

In a note dated December 31, 2021 the appellant’s physician requests funding for CPAP therapy for his patient and writes that

- The appellant is formally diagnosed with sleep apnea.
- He was assessed and had a level III sleep study which demonstrates “moderate sleep apnea”.
- He “is having very troubled sleep and ‘cannot breathe’”.

In a Breathing Device Request and Justification form

- the appellant indicated he had no additional resources to meet his medical needs. (Dated February 10, 2022)
- The appellant’s physician reports the appellant requires a CPAP machine as directed by the respiratory clinic, to treat the moderate sleep apnea. (Dated April 4, 2022)
- In their assessment the registered respiratory therapist wrote: “Patient has been diagnosed with obstructive sleep apnea. He needs constant positive airway pressure device to treat him.” (Dated February 10, 2022)

In a Prescription for Positive Airway Pressure (PAP) Therapy dated January 20, 2022 the appellant’s physician writes:

- The appellant has been diagnosed with Sleep Apnea. AHI (Apnea Hypopnea Index) is 27.6/hr.
- He requires PAP therapy.
- He has been directed to use a PAP device while sleeping. This therapy is for long term use unless directed by a physician to discontinue therapy.

A Medical Equipment Provider estimates the cost of a 2-month CPAP trial and mask as \$845.

In his Request for Reconsideration dated April 1, 2022 the appellant writes:

“1) I have multiple health problems.

- a) Continuous pain from my osteo-arthritis in my joints,
- b) serious depression with suicidal ideation
- c) diabetes and high blood pressure,
- d) cardiac fibrillation – heart murmur
- e) colon tumor and I use colon bags for my defecation

*f) Very tired due to my sleep apnea, to a point that my daily activity suffering from not-sleep disorder. This problem exaggerates my health problems a-e. Hence, I have to see Doctor frequently. C-PAP machine, not only helps me drastically to manage health problem, but in long run economically, beneficial.

2) The C-PAP machine is very expensive to purchase with the budget I have and it makes it impossible to buy it.

3) The C-PAP machine helps me a lot. I wish I could find a part time job to purchase it myself.

Unfortunately, I am 70 years old and I am carrying a colostomy bag, which is stinks all the time. I tried to find a job, and was not successful.”

At the hearing the appellant repeated information he had previously provided and added that he is disabled but his disability assistance was discontinued at the age of 65.

He came to live in Canada in 1974 but couldn't find a job so he moved to the USA. He had a PAP machine earlier in the USA but it was stolen. In the US the rules and eligibility requirements are different than in Canada.

His supplementary income was cut off because he was out of the country for 7 months and couldn't come back. He has a home in Canada. The ministry has told him he has to wait for their decision.

He lives at home.

He doesn't go into a deep sleep because of his sleep apnea. With sleep apnea there is a danger of drifting into a coma. He will have more surgery related to his colon.

He has all medical documents that verify his medical conditions.

It is difficult to find a medical practitioner in his home town. He went to see one 7 times in 1 month but they had no time for him.

He has not received his federal pensions yet and will probably receive them in July or later.

He wanted to apply for PPMB designation but didn't know how.

The ministry stated they want to be helpful as opposed to just reiterate their decision. They explained the following:

The first step in the process is that the financial resources have to be explored. The ministry wanted to help with hardship assistance but is aware that he will receive federal benefits. So far, the appellant has not informed the ministry how much these benefits will be and when they are expected. He may qualify only if it was established that he had no resources to purchase the requested medical equipment.

To qualify he needs to have PWD, PPMB or MSO (Medical Services Only) designation, regardless of his other circumstances. He does not qualify for either of those. Only if he qualifies would he get to the next step which addresses the medical issues. The appellant has not applied for PWD, PPMB or MSO status - he could apply but he has not done so.

The next step would be a diagnosis and prescription by a nurse practitioner or physician for the other health issues such as diabetes and heart disease.

If the appellant does not provide the requested information the ministry cannot move forward with his request. Verification of changes in his circumstances has not been supplied and the ministry is still waiting to verify his "resources". [The appellant did not dispute this.] His eligibility for May has not been determined.

To the appellant's question on how to apply for PPMB designation the ministry answered that he has to ask the income assistance office how to do it. He will have to request an application, take it to a medical professional and in the end submit it back to the ministry for assessment. This process will include providing information about his financial resources. He can call 1 866 0081 which is the client line of the Ministry of Social Development and Poverty Reduction.

Admissibility of New Evidence:

The panel finds that the information provided by the appellant and the ministry at the hearing is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as it contributes to the panel's understanding of the circumstances surrounding the appellant's request for a two-month CPAP trial and mask. The panel therefore admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant's request for a two-month CPAP trial and mask was a reasonable application of the legislation or reasonably supported by the evidence.

Section 67 of the EAR sets out who may be eligible for health supplements. The ministry may provide medical equipment and devices set out in Schedule C to a person who is in receipt of income assistance if they are a qualifying person. They may also provide the same to a continued person who is deemed to have access to medical services only or to transitional health services.

Section 66.1 defines a "qualifying person" as a person who has persistent multiple barriers to employment, or is a recipient of income assistance who receives special care.

Schedule C, section 3(1)(b), sets out that the ministry may provide a medical device described in section 3.9 to a person eligible under section 67 of the EAR if the person has received the pre-authorization of the ministry, if there are no resources available to person to pay for it, and if the medical device is the least expensive appropriate one.

Schedule C, section 3.9 sets out that a positive airway pressure device, an accessory that is required to operate a positive airway pressure device, or a supply that is required to operate a positive airway pressure device items must be prescribed by a medical practitioner or nurse practitioner; a respiratory therapist has performed an assessment that confirms the medical need for the item; and the ministry is satisfied that the item is medically essential for the treatment of moderate to severe sleep apnea.

Section 76 of the EAR sets out that the ministry may provide medical equipment and devices listed in Schedule C, if it is provided to a person who is otherwise not eligible for it under this regulation (including someone who does not meet the requirements of section 67), and if the ministry is satisfied that

- the person faces a direct and imminent life threatening need and there are no resources available to the person with which to meet that need,
- the health supplement is necessary to meet that need,
- the person is receiving premium assistance under the Medicare Protection Act, and
- the requirements specified in section 3.9 are met.

Appellant Position

The appellant argues he should be eligible for a CPAP machine because he has several health problems that are exacerbated because of his sleep apnea - he may even drift into a coma. His medical conditions are documented. The CPAP machine would help him significantly to manage his health problems. He is disabled but his disability assistance was discontinued, and so was his supplementary income. He has not received his federal pensions yet. He cannot afford to purchase the machine. Funding by the ministry would financially benefit the health care system in the long run.

Ministry Position

The ministry determined that the appellant is not eligible for funding of medical equipment and devices under Section 67 of the EA Regulation and is not eligible for health supplements set out in Schedule C because he is not

- a qualifying person [i.e. he is not in receipt of income assistance as a person with PPMB designation or a person receiving special care under section 8(1)] - the appellant lives at home;

- under 19 years of age.
- not a “continued person” as described under section 66.3 (1) or (2) [access to medical services only].
- a “continued person” as described under section 66.4 (1) [access to transitional health services].
- a “continued person” as described under section under section 66.4 (2) [i.e. a dependent of a continued person].

The ministry also determined that the information provided does not establish that the appellant requires a CPAP machine due to a direct and imminent life threatening need as set out in section 76; the letters from his physicians and respirologist do not suggest the appellant has a direct and imminent life threatening health need for a CPAP trial and mask.

The ministry noted that the appellant met requirements of section 3(1)(b) and 3.9 of Schedule C, EAR; a respiratory therapist assessed the appellant has moderate sleep apnea and would benefit from a CPAP trial, as prescribed by a medical practitioner; the appellant has no resources to meet his need for the trial and mask which is established to be the least expensive appropriate equipment to treat moderate to severe sleep apnea.

Panel Decision

After considering all the evidence the panel finds the ministry was reasonable when it denied the appellant’s request for a two-month CPAP trial and mask.

The panel finds the ministry correctly assessed the appellant under the Employment and Assistance Act; there is no evidence that the appellant has PWD designation and should be assessed under the Employment and Assistance for Persons with Disabilities Act.

The panel finds further that the ministry reasonably determined the appellant does not qualify for a health supplement as set out in the EAR; he has not provided the ministry with the requested information, and as a result the ministry was not able to assess his basic eligibility in any one of the following categories:

- a qualifying person [i.e. he is not in receipt of income assistance as a Person with Persistent Multiple Barriers (PPMB) or a person receiving special care under section 8(1)];
- under 19 years of age;
- not a “continued person” as described under section 66.3 (1) or (2) [access to Medical Services Only];
- a “continued person” as described under section 66.4 (1) [access to transitional health services].
- a “continued person” as described under section under section 66.4 (2) [i.e. a dependent of a continued person].

In addition, the panel ministry finds the ministry reasonably determined that the appellant does not face a direct and imminent life-threatening health need as set out in section 76 of the EAR; there is insufficient medical evidence that the appellant has a direct and imminent life threatening health need for a CPAP trial and mask.

Conclusion

The panel acknowledges the appellant would benefit from a CPAP machine. However, the panel finds the ministry was reasonable when it determined that he was neither eligible for a CPAP trial and mask under to section 67 (basic eligibility) nor under section 76 (imminent life threatening health need). The ministry’s reconsideration decision is confirmed and the appellant is not successful on appeal.

EMPLOYMENT AND ASSISTANCE REGULATION

Division 5 — Health Supplements

Definitions

66.1 In this Division:

“continuation date”,

(a) in relation to a person who is a main continued person under section 66.3

(1) [*access to medical services only*] or 66.4 (1) [*access to transitional health services*] as a result of having been part of a family unit on the date the family unit ceased to be eligible for income assistance, means that date, and

(b) in relation to a dependent continued person under section 66.3 (2) or 66.4 (2) of a main continued person, means the continuation date of the main continued person;

“continued person” means

(a) a main continued person under section 66.3 (1) or 66.4 (1), or

(b) a dependent continued person under section 66.3 (2) or 66.4 (2);

“qualifying federal benefit” means a supplement under Part II or an allowance under Part III of the *Old Age Security Act* (Canada);

“qualifying person” means a person who

(a) has persistent multiple barriers to employment, or

(b) is a recipient of income assistance who is described in section 8 (1) [*people receiving special care*] of Schedule A.

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.

(2) Subject to subsection (6), a person is a dependent continued person if

(a) the person was a dependant of a main continued person under subsection (1) on the main continued person’s continuation date, and

(b) the person is currently a dependant of that main continued person.

(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

© 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.

(4) Subject to subsection (5), a person’s status as a main continued person under subsection (1) is suspended for a calendar month if

(a) the person fails to meet an applicable income test under subsection (7) in the calendar month and in each of the immediately preceding 12 calendar months, and

(b) the person’s continuation date is before those immediately preceding 12 calendar months.

(5) Subsection (4) does not apply to a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) ©.

(6) A person's status as a dependent continued person under subsection (2) of a main continued person under subsection (1) is suspended if the main continued person's status is suspended under subsection (4).

(7) For the purposes of subsection (4), a main continued person under subsection (1) meets the income test for a calendar month if,

(a) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(b) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the adjusted net income of the main continued person does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation.

(7.1) For the purposes of subsection (7) (b),

(a) "adjusted net income" has the same meaning as in section 7.6 of the Medical and Health Care Services Regulation, and

(b) a reference in section 7.6 of the Medical and Health Care Services Regulation to an "eligible person" is to be read as a reference to the main continued person.

(8) Despite this Division, a person is not eligible, as a main continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the person's continuation date occurs.

(9) Despite this Division, a person is not eligible, as a dependent continued person under subsection (2) of a main continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the main continued person's continuation date occurs.

Access to transitional health services

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

(a) the person was, on or after September 1, 2015,

(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 recipient of income assistance on the date referred to in subparagraph (i), and

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

(2) A person is a dependent continued person if

(a) the person was a dependent child of a main continued person under subsection (1) on the main continued person's continuation date, and

(b) the person is currently a dependent child of that main continued person.

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

(a) ceased to be eligible for income assistance as a result of employment income, and

(b) included on the date the family unit ceased to be eligible for income assistance

(i) a dependent child, or

(ii) a person providing care to a supported child.

(4) Subject to subsection (1) (b), a person ceases to be a main continued person under subsection (1) one year after the first day of the calendar month immediately following the calendar month in which the person's continuation date occurred.

(5) Despite this Division, a person is not eligible, as a main continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the person's continuation date occurs.

(6) Despite this Division, a person is not eligible, as a dependent continued person under subsection (2) of a main

continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the main continued person's continuation date occurs.

General health supplements

67 (1)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 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
- ©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*], or
 - (ii)is a continued person under section 66.4 (1) [*access to transitional health services*] and was, on the person's continuation date, a qualifying person or part of a family unit that then included a qualifying person, or
 - (iii)is a continued person under section 66.4 (2).

(1.1) and (1.2)Repealed. [B.C. Reg. 145/2015, Sch. 1, s. 8 (b).]

(2)Subject to subsection (3), 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 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, or
- (b)is a dependant of a recipient referred to in paragraph (a).

(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.

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,
- ©the adjusted net income of any person in the family unit, other than a dependent child, does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation, 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)...

SCHEDULE C

Medical equipment and devices

3 (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.12 of this Schedule are the health supplements that may be provided by the minister if

(a) the supplements are provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation, and

(b) all of the following requirements are met:

(i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;

(ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;

(iii) the medical equipment or device is the least expensive appropriate medical equipment or device...

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

(a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;

(b) an assessment by a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

Medical equipment and devices — breathing devices

3.9 (1) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule:

(a) if all of the requirements set out in subsection (2) of this section are met,

(i) a positive airway pressure device,

(ii) an accessory that is required to operate a positive airway pressure device,
or

(iii) a supply that is required to operate a positive airway pressure device;

...

(2) The following are the requirements in relation to an item referred to in subsection (1) (a) of this section:

(a) the item is prescribed by a medical practitioner or nurse practitioner;

(b) a respiratory therapist has performed an assessment that confirms the medical need for the item;

© the minister is satisfied that the item is medically essential for the treatment of moderate to severe sleep apnea.

...

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) and Section 24(1)(b)
 Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name
Inge Morrissey

Signature of Chair

Date (Year/Month/Day)
2022/06/02

Print Name
Wendy Marten

Signature of Member

Date (Year/Month/Day)
2022/06/02

Print Name
Bill Haire

Signature of Member

Date (Year
2022/06/02