

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) Reconsideration Decision dated September 8, 2022, in which the ministry finds the appellant is not eligible for replacement lenses or complete glasses as the request does not meet the criteria set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWD Regulation), Schedule C, Section 1 “basic eyewear and repairs,” and section 2.1.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 62.1, and Schedule C, sections 1, and 2.1.

The relevant legislation is provided in the Appendix.

Part E – Summary of Facts

The evidence before the minister at reconsideration included the following:

- The appellant has been designated as a person with disabilities (PWD) and is in receipt of disability assistance,
- On March 6, 2020, the ministry provided funding for a pair of single vision lenses through PBC (Pacific Blue Cross) to the appellant,
- On May 2, 2022, the appellant’s optometrist submitted a request for replacement glasses to PBC. The request was denied as the appellant had exceeded her allowable amount, having received lenses in 2020,
- On June 22, 2022, the appellant provided the ministry with a prescription for “new RX glasses and frame” completed by a family medical practitioner. The ministry determined the appellant is eligible for replacement glasses every three years and is not eligible for glasses at this time as she received lenses in 2020. The ministry wrote, “In June 2023, the ministry confirmed [the appellant is] eligible for coverage of frames only....”. The panel takes this to mean that the ministry informed the appellant in June 2022. The ministry informed her that she may request these separately through PBC.
- On July 14, 2022, the appellant requested an extension to reconsideration timelines, as her medical practitioner was out of office.
- On August 25, 2022, the appellant submitted a Request for Reconsideration in which she clarifies she is awaiting surgery and has never had complete glasses funded by the ministry. She explained that she needs her glasses to read, drive, and to see anything up close. It has been very difficult to function while holding her glasses off her face to avoid pressure to her nose. The appellant included further information from her medical practitioner:
(The appellant) had a severe injury to her nose in a MVA. This has left her with tenderness at the bridge of her nose and needs new glasses with frames that do not create undue pressure to the nose.

The information also included copies of an approved Pacific Blue Cross (PBC) claims ID dated 24 January 2020, and a rejected PBC claim dated 2 May 2022.

Hearing

The hearing was held as a videoconference with the panel and ministry joining. However, the appellant was unable to join the video. The hearing continued with the appellant’s permission as a teleconference on her part.

Appellant

At the hearing the appellant reiterated statements made in the appeal record: that she had never been issued with frames, initially using an old set of frames combined with her prescribed lenses in 2020; that she has suffered damage to her nose and her current frames are too heavy for her face; and that she has requested frames and has been rejected and wants to know why.

The appellant stated that she has read the decision about becoming eligible in 2023 but will need new lenses by then. To alleviate pain, she must hold her glasses in front of her face to read or write; her cardiologist was surprised when trying to show her diagrams about an

upcoming operation when she had trouble following the procedure as she had to hold her glasses off her face.

When writing, the appellant must use a clipboard and her elbow to balance holding her glasses off her face.

The appellant stated she has never been issued new frames so wonders why she cannot get frames at least. She struggles in driving and has pretty much given up night driving as she cannot see the signs.

In answer to questions from the panel regarding the comment in the reconsideration decision that the appellant was told on June 2023 (sic) she was eligible for frames only and may request these separately from PBC, the appellant admitted to being confused and asking if she was in fact eligible for frames. If so, she had misunderstood, thinking it was all one package.

When asked if she had submitted a request to her optometrist for frames the appellant said she had. She is now suffering from cysts in her eyes and an inability to form tears and had gone back to the optometrist following the ministry decision and was advised to 'keep pushing'.

The appellant does not disagree that the current prescription does not vary much in refractive status. The appellant has not yet had the surgery to her nose, initially contemplated for late September 2022, and is still suffering from pain. The operation had been postponed due to the retirement of the specialist and she is now on a list for a future date.

The appellant was asked to further clarify the two letters from her medical practitioner dated May and July 2022. The appellant explained that she requested the letters to describe the damage done to her nose in an emergency room and that she now needed new frames. These letters were provided to the ministry and discussed with her optometrist.

The appellant explained that the invoice from an eyecare company for frames at \$160, lenses at \$60 and special tint at \$100, for a total of \$320 was the shop in the same building as her optometrist and a result of her new prescription.

The ministry asked the appellant if she has paid the invoice and the appellant replied that she has not, however stated the company is holding the frames for her.

Ministry

The ministry relied upon the reconsideration decision. At the hearing the ministry explained that the appellant is eligible for new frames and will be eligible for new lenses at the three-year point in January 2023 and referred to schedule C of the EAPWD Regulation.

In questioning by the appellant, the ministry confirmed that the frames are not part of the rejected prescription and that it is the optometrist who needs to submit a request to PBC for 'frames only'. The previous application had been rejected because the lenses were not able to be supplied. The appellant asked if she could apply for the frames and pay for the lenses and

the ministry confirmed this as an approach but stated that she should consider that replacement lenses themselves will be eligible in January of 2023.

The appellant asked if the prescription tint will be covered as that is now needed because of callouses forming on her eye due to dryness and cysts and that she has been told it is important she wear sunglasses. However, sunglasses are too heavy; therefore, she needs the tint. The ministry was unable to confirm if the tint would be covered at this time without access to the file and conducting a review.

Lastly the appellant asked if her next step is to go back to the optometrist and the ministry replied yes.

In answer to questions from the panel as to why the ministry did not simply provide the frames if they were eligible under the prescription the ministry was unable to explain and stated that it was rejected by the ministry third party contractor PBC. When asked if it is not the ministry's role to correct PBC the ministry admitted that the panel has a point, and this should have been considered when the appellant applied for a reconsideration.

When asked how the ministry defines and implements pre-authorized eyewear and repairs as referenced in the decision as section 2.1 of the legislation, the ministry explained that this is the process of an optometrist applying through PBC for review and approval rather than a client purchasing the eyewear first and seeking reimbursement. When asked for clarification and would it relate to other items or policy such as contact lenses as the legislated definition excludes basic eyewear, the ministry reiterated it does not and that it is the process of the appellant seeking funding approval through PBC for her basic eyewear.

Admissibility of new information

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 this case the appellant provided oral information on her request for new frames, the submittal of letters from her physician and the need for tinted lenses, and the ministry provided information on what it believes the pre-authorization of eyewear and repairs constitutes and what should have been considered during the reconsideration. The panel finds that this information is relevant because it relates directly to the original request for new glasses and the misunderstanding of eligibility for frames.

The panel admits the new information under section 22(4) of the Employment and Assistance Act ("EAA") as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Findings of Fact

The panel accepts that the date of June 2023 used in the decision, as the date the ministry confirmed the appellant was eligible for frames only, to be a typographical error and should read June 2022. The panel also finds the appellant had not been provided with frames at the time of new lenses in 2020.

Part F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's decision that the appellant was not currently eligible for replacement lenses or complete glasses, and that replacement frames are outside of the scope of the decision.

In particular, was the ministry reasonable in limiting the scope of the decision to exclude frames, and determining that, as the appellant had received coverage for a pair of lenses in 2020, she was not eligible for coverage of lenses until 2023 and would have to resubmit a new claim for frames only. Further, following a review of the new 2022 prescription change in refractive status, was the ministry reasonable when it determined the changes did not satisfy the legislative requirements for replacement lenses.

Lastly, as the appellant has a new prescription and has also requested replacement glasses because the bridge of the appellant's nose can no longer tolerate the weight of the existing glasses, was it reasonable that the request does not meet a ministry policy that applies to replacing eyewear if lost or broken.

The relevant legislation is provided in Appendix A.

Appellant Position

The appellant argues that, because of an accident to her nose, she has an inability to wear her existing glasses. Further, her eye condition is deteriorating. The pain of wearing the heavy frames and a need for tinted lenses means she needs new lenses and new frames. At the minimum she requires new frames to be able to continue to read, write and drive successfully, and cannot understand why they have not been provided to her, given that she has never been provided frames by the ministry.

Ministry Position

The ministry has stated that the reconsideration decision only addresses the decision to deny the appellant replacement glasses, and that replacement frames alone are outside of the scope of the decision, as the appellant has not requested or been denied funding for frames only. The ministry goes to state that should the appellant wish to pursue funding for frames, she should have her optometrist contact PBC.

Within the decision the ministry argues the appellant received coverage for a pair of single vision lenses on March 6, 2020, through PBC, and as replacement lenses are only issued every three years the appellant is not eligible for further coverage of lenses or complete glasses until 2023.

The ministry also argues that an exception to the replacement period, set out under legislation allowing for new lenses for a change in refractive status has not been demonstrated. A review

of the prescriptions provided in 2020 and 2022 does not confirm a change in refractive status that would satisfy these requirements.

The ministry states to having a policy that applies to replacement eyewear, which in part states: *“Unless the recipient has a new prescription, the ministry provides replacement glasses once every 3 years for adults and once every 12 months for children. If a recipient loses or breaks their glasses before this timeframe is met, replacement glasses may be approved [...]”* The ministry then argues that the appellant has a new prescription, and as the appellant has requested replacement glasses because the bridge of her nose can no longer tolerate the weight of her glasses, her request does not meet this policy.

The ministry notes it is sympathetic with the circumstances of the appellant’s requests and acknowledges that she would benefit from lighter glasses at this time.

Panel Decision

The relevant legislation is contained in the Employment and Assistance for Persons with Disabilities Regulation (EAPWD Regulation), Section 62.1 which states that the minister may provide any health supplement set out in section 2.1 of Schedule C to a person in receipt of disability assistance. Section 2.1(a) provides basic eyewear and repairs and 2.1(b) provides pre-authorized eyewear and repairs as the optical supplements that may be provided.

Section 1 of schedule C provides definitions on basic and pre-authorized eyewear:

- Basic eyewear and repairs means one pair of eye glasses every 3 years, consisting of the least expensive appropriate single-vision or bifocal lenses, and frames; and new lenses at any time if an optometrist, ophthalmologist, or optician confirms a change in refractive status in either eye, and necessary repairs to lenses or frames;
- Pre-authorized eyewear and repairs means eyewear and repairs provided by an optometrist, ophthalmologist, or optician and for which pre-authorization is given by the minister, but does not include basic eyewear and repairs.

The ministry has stated in the decision that the appellant is eligible for frames and argues at hearing that the appellant needs to have her optometrist apply for frames only to PBC, and yet the panel notes that the ministry has received two letters from the appellant’s medical doctor prescribing new frames and a submission to the PBC by the appellant’s optometrist for new frames and lenses. There is no dispute between the parties that the appellant has not been provided frames. The ministry explains this to be because PBC denied the frames as the prescription also included lenses.

While the panel accepts the ministry may delegate some tasks to third party providers to fulfil its supply mandate, it notes that section 62.1 of the EAPWD Regulation states it is the minister who may provide optical supplements. The panel has found the appellant had not been provided with frames in 2020 and had submitted a claim to PBC on 2 May 2020, as evidenced by the claim ID 134302569, which was annotated as rejected.

The panel finds the appellant has applied and been rejected for frames and the ministry was not reasonable in its determination that the appellant has not requested or been denied funding for frames only. The panel finds therefore that the ministry was unreasonable in excluding the consideration of new or repaired frames.

The panel notes the ministry has quoted a section of legislation where “an exception to the replacement period is set out under section 2.1(c)” regarding a change to refractive status and argues that any change to refractive status in the submission fails to satisfy this legislative requirement. The panel notes there is no section 2.1(c) in the legislation. Potential changes in refractive status is covered under section 1 of Schedule C of the EAPWD Regulation as discussed above.

New lenses may be provided at any time if an optometrist confirms a “change in refractive status” in either eye that meets prescribed definition set out in Schedule C of the *EAPWD Regulation*.

The panel notes the original date of issue of the lenses of January 2020, less than three years from the date of application and prescription, and that the prescriptions of 2020 and May 2022 do not demonstrate a change in refractive status that meets the requirements of the legislation stated in section 1 of Schedule C.

Notwithstanding the ministry error in its discussion, the panel finds the ministry was reasonable in its determination that the appellant is not eligible for further coverage of lenses or complete glasses (lenses and frames) under the basic eyewear and repairs criteria of section 1 of schedule C until January 2023, and that the change in the refractive status does not meet the requirements of the same section of the legislation for new lenses.

The panel notes the legislation allows for repairs in section 2.1(a) and (b) of schedule C and the ministry has referred to and quoted a portion of a ministry policy that apparently allows for replacement glasses for loss and breakage earlier than the legislated term of three years. The ministry then argues that as the appellant has a new prescription and can no longer tolerate the weight of the frames on her nose this policy exemption is not available to the appellant.

The panel finds as the appellant has not broken her glasses or requesting repairs, in fact she is still using them but must hold them away from her face, the ministry was reasonable in it’s finding the appellant’s circumstances do not meet this policy for replacement.

The panel notes that although the appellant has agreed that the time frame of three years has not been met for replacement lenses, she argues that her new prescription requires tinted lenses due to deteriorating eyesight and that as she needs new frames the ministry should reconsider her situation due to the injury to her nose.

The ministry has stated it is sympathetic with the circumstances of the appellant’s requests and acknowledges that she would benefit from lighter glasses at this time.

The legislation discussed above in section 2.1(b) of schedule C also allows for pre-authorized eyewear and repairs. The ministry stated at hearing that this relates to the optometrist applying

to PBC for basic eyewear and does not have an applicable policy on contact lenses or similar other needs. However, the panel notes the definition in section 1 of the legislation states that pre-authorized eye wear and repairs does not include basic eyewear and repairs and therefore the panel does not find the ministry position compelling.

The panel views pre-authorized eyewear and repairs as providing the ministry with discretion as to what items or eyewear or repairs may be included to address client needs other than basic eyewear or repairs such as in the circumstances of the appellant when glasses are not broken but have become unsuitable for the original intended use.

The panel notes that the ministry optical services policy contains a definition of pre-authorized eyewear and repairs as:

“Pre-authorized eyewear and repairs include changeable coloured lenses or tints, special lenses or lens material, special or oversized frames, and contact lenses. The Ministry’s optical program contractor, Pacific Blue Cross (PBC) only considers these special supplements when confirmed as medically essential by an optometrist or ophthalmologist. Pre-authorized optical supplements also include replacement glasses without a significant change in prescription or outside the time limitations set by the ministry.”

The panel notes this policy would afford the ministry the opportunity to consider the appellant’s circumstances, namely: tinted lenses; special lenses, in this case lighter, plastic lenses; and special or oversized frames, in this case lighter frames. The need for these has been confirmed as medically essential by an optometrist.

The panel finds this ministry policy to be a reasonable interpretation of the legislation and that, based on the evidence, the ministry did not consider or address pre-authorized eyewear in the decision. The panel finds that the appellant’s needs, as documented by the optometrist, fits within the definition of pre-authorized eyewear and repairs, as defined in the legislation and expanded on in the ministry’s policy. Therefore, the panel finds the failure to consider section 2.1(b) to be procedurally unfair and therefore unreasonable.

Summary

The panel finds that the appellant applied for, and was denied, frames when deemed eligible. Further, the ministry failed to consider the appellant’s circumstances as part of a pre-authorized eyewear and repairs section 2.1(b) of Schedule C of the legislation.

Conclusion

Based on all available evidence the panel finds that the ministry’s reconsideration decision not to be supported by the evidence, and not a reasonable interpretation of the legislation in the circumstances of the appellant.

The ministry’s reconsideration decision is rescinded and as there are requirements for minimal cost the decision is referred to the minister as to amount.

The appellant is successful on appeal.

Appendix A

Division 4 — Health Supplements

Optical supplements

62.1 The minister may provide any health supplement set out in section 2.1 [*optical supplements*] of Schedule C to or for

(a) a family unit in receipt of disability assistance,

**Schedule C
Health Supplements**

Definitions

1 In this Schedule:

"basic eyewear and repairs" means any of the following items that are provided by an optometrist, ophthalmologist or optician:

(b) for any other person who has a new prescription, one pair of eye glasses every 3 years consisting of the least expensive appropriate

(i) single-vision or bifocal lenses, and

(ii) frames;

(c) for a child or other person,

(i) new lenses at any time if an optometrist, ophthalmologist or optician confirms a change in refractive status in either eye,

(ii) a case for new eye glasses or lenses, and

(iii) necessary repairs to lenses or frames that come within this definition;

"change in refractive status" means a change of not less than 0.5 dioptres to the spherical or cylinder lens, or a change in axis that equals or exceeds

(a) 20 degrees for a cylinder lens of 0.5 dioptres or less,

(b) 10 degrees for a cylinder lens of more than 0.5 dioptres but not more than 1.0 dioptre, and

(c)3 degrees for a cylinder lens of more than 1.0 dioptre;

"pre-authorized eyewear and repairs" means eyewear and repairs provided by an optometrist, ophthalmologist or optician and for which pre-authorization is given by the minister, but does not include basic eyewear and repairs;

Optical supplements

2.1 The following are the optical supplements that may be provided under section 62.1 [*optical supplements*] of this regulation:

- (a) basic eyewear and repairs;
- (b) pre-authorized eyewear and repairs.

APPEAL NUMBER 2022-0212

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

Donald Stedeford

Signature of Chair

Date (Year/Month/Day)

2022/10/11

Print Name

Shannon Campbell

Signature of Member

Date (Year/Month/Day)

2022/10/12

Print Name

Wes Nelson

Signature of Member

Date (Year/Month/Day)

2022/10/12