

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision dated August 24, 2022, where the ministry denied the appellant’s request for incontinence supplies because she does not meet the legislated criteria. Specifically, the appellant does not meet:

- basic eligibility for a health supplement as set out in section 67 of the Employment and Assistance Regulation (EAR) because the appellant is not in receipt of income/disability/hardship assistance;
- a life-threatening health need as set out in section 76 and Schedule C, section 2(1)(a)(ii)(C) of the EAR because it has not been established there is a direct and imminent and life-threatening health need.

Part D – Relevant Legislation

Employment and Assistance Regulation, section 67 and 76
Employment and Assistance Regulation Schedule C, section 2(1)(a)

The relevant legislation is provided following the Panel Decision

Part E – Summary of Facts**Background Information**

- The appellant is not in receipt of income assistance, disability assistance or hardship assistance as her income is more than the rate of ministry assistance.
- On July 11, 2022 the appellant provided a prescription from her physician, which indicated she requires 3 pull ups per day for the rest of her life, for incontinence management. The physician indicated without this product the appellant is at risk of skin breakdown which can result in life-threatening infections.
- On July 14, 2022 the ministry Health Assistance Branch (HAB) denied the appellant's request citing:
 - because the appellant is not in receipt of assistance only section 76 of the EAR is applicable for consideration.
 - They found that although incontinence can have a significant impact on the appellant's health, the information provided does not demonstrate the applicant is facing a direct and imminent life-threatening health need if the under garments are not provided.
 - There is no evidence to determine whether other resources are available to the appellant to pay the cost of the requested incontinence supplies.
- On August 10, 2022 the appellant requested a reconsideration of this decision. She noted as her reasons (in summary):
 - She faces direct and imminent life threat because her rashes can quickly turn into open wounds and wearing wet undergarments puts her at risk of UTI and possible hospitalization. Also, if she wets her pants urine drips onto the floor of her residence as well as the floors of the building putting others at risk of slipping in bio-hazard.
 - She requires incontinence supplies which are items authorized in legislation.
 - The supplies were prescribed by her medical practitioner.
 - They are the least expensive supply for the purpose.
 - There are no resources to pay the cost of these supplies. Because she can't afford these products, she has tried to borrow them from other tenants in her building and often there are none to borrow. She receives \$1731.18 each month and pays \$1202.05 for rent and hydro. This leaves her only \$529.13 to cover transportation, food, medically recommended supplements, toiletries, and other necessities. The incontinence products cover over \$100 per month and are well beyond her income.
 - Recently she required nursing intervention because she developed a serious rash due to her persistent incontinence and considers that the use of our limited professional nursing resource can be avoided if she has regular access to pull ups to manage her incontinence.
- In the Reconsideration Decision (RD), the ministry determined the appellant requires disposable medical supplies for incontinence, they were prescribed by a medical practitioner, the least expensive supplies appropriate for the purpose were requested and she does not have resources available to her to meet the need for incontinence supplies. However, because a direct and imminent life-threatening health need has not been established, she is not eligible.

Information Received After Reconsideration

On the Notice of Assessment (NOA) dated September 23, 2022 the appellant wrote:

- She requires the product to avoid hospitalization due to a skin infection, or falling from slipping in a puddle, as a result of her incontinence.
- It is unreasonable to first develop an infection or fracture a hip before approving the product.
- Her landlord has insisted she wear this protection as she puts other tenants at risk.

At the hearing, the appellant reiterated the points raised in the RFR and the NOA and emphasized that her need for incontinence supplies is life-threatening because when she is not wearing them she gets a rash and a burn that requires a cream to be applied so infection does not set in.

The appellant states she resides in an Assisted-Living facility where 70% of her pension income goes to the facility to pay for rent and two meals per day, with 30% remaining to cover one meal per day, transportation, supplements and toiletries. This does not leave her with sufficient income to purchase incontinence supplies. While living at the facility she receives a daily visit from the nurse and when she has a rash they apply the cream and provide treatment. The appellant argues an infection results in using the nurse or doctor more frequently and can be life threatening. The appellant questions, "Why does she have to wait until she faces a life-threatening infection before she would be eligible for the supplies".

At the hearing, the ministry reviewed the RD and argues that although the doctor wrote a note indicating the appellant faces a life-threatening situation, there was no medical evidence to support the statement. Therefore, the ministry could not determine the appellant faced a direct and imminent life-threatening health need to authorize them to provide funding for incontinence supplies.

Admissibility of Additional Information

The panel admits the appellant's NOA and oral evidence under section 22(4) of the Employment and Assistance Act, which allows for the admission of evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant's request for incontinence supplies was reasonably supported by the evidence or was a reasonable application of the legislation.

The appellant's position is because she does not have enough money to purchase incontinence supplies, she often experiences rashes and burns which, if left untreated, can lead to infection, which could be life-threatening. The appellant's physician has supported the need for incontinence supplies due to a medical condition and notes that infection can lead to a life-threatening situation.

The ministry's position is there is insufficient evidence to indicate the appellant faces a life-threatening danger if the incontinence supplies are not provided.

Majority Panel Decision

Section 67 of the EAR sets out who may be eligible for health supplements. The ministry may provide medical supplies set out in Schedule C to a person who is in receipt of income or disability 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. The appellant acknowledges that she is not eligible under section 67 because she is a senior who is in receipt of pension income, not income assistance. Therefore, the panel finds the ministry was reasonable to determine she is not eligible for incontinence supplies pursuant to section 67.

Section 76 of the EAR sets out that the ministry may provide medical supplies 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.

Schedule C sets out that if a person has met the criteria of section 76, then incontinence supplies are an eligible item.

The panel must consider the wording of section 76 of the EAR, which is whether the appellant faces a direct and imminent life-threatening need and has no resources to meet the need. The appellant has demonstrated she has no resources to meet the need. The definition of "imminent" means something that is "likely to happen very soon". (Cambridge Dictionary)

Two of the panel members find that the legislated requirement of a direct and imminent life-threatening need has not been met because:

- 1) Although the appellant requires treatment for the resulting rash and burn when not using incontinence supplies, she does receive treatment when that occurs. The panel finds the evidence suggests that infection does not set in when the appellant receives treatment for the rash and/or burn.
- 2) The appellant argues that she "could" contract an infection which "could" be life-threatening,

and the physician letter indicated that “if” the appellant got an infection it “can” result in a life-threatening situation. The panel finds that although an infection may occur in the future, there is no evidence the appellant is currently facing a life-threatening situation by not receiving incontinence supplies. Therefore, the ministry was reasonable to determine the appellant had not met the direct and imminent life-threatening criterion of the legislation.

One of the panel members considers the legislated requirement of a direct and imminent life-threatening need has been met. The following is the dissenting panel member’s decision.

Dissenting Panel Member’s Decision

In the reconsideration decision, the ministry determines that the appellant is not eligible to receive incontinence supplies as a health supplement for a person facing a direct and imminent life-threatening health need under section 76 of the EA Regulation. It is stated that:

“information submitted with your application and Request for Reconsideration does not establish that you face a direct and imminent life-threatening need for incontinence supplies. While [medical practitioner] reports you are at risk of skin breakdown and subsequent infections, and you report experiencing rashes that have required nursing assistance and you have concerns regarding slips caused by puddles on the floor, a direct and imminent life-threatening need has not been established.”

The minister further determines that the appellant has not met one of the criteria under s.2(1)(a)(ii)(C) of Schedule C. It is stated that:

“information has not been provided to establish that the incontinence supplies are necessary to avoid an imminent and substantial danger to health, as required by subsection 2(1)(a)(ii)(C).”

The appellant stated that she developed a serious rash due to persistent incontinence and required nursing intervention. The appellant also submitted a medical note from a medical practitioner stating that the appellant requires pull ups for incontinence management and that without the incontinence product, the appellant is at risk of skin breakdown which can result in life threatening infections. No reason was given by the minister as to why the appellant’s own evidence and the medical practitioner’s evidence were not accepted, nor is there any evidence to contradict the appellant’s or the medical practitioner’s evidence.

Section 76(a) states that the minister may provide to a family unit any health supplement set out in sections 2(1)(a) and (f) and 3 of Schedule C if the minister is satisfied that “the person faces a direct and imminent life-threatening **need**...”. The expression “imminent” refers to the “need”. Thus, section 76, properly construed, refers to a situation where a person faces a direct and imminent **need** for the supplement and that without the supplement, there will be a life-threatening risk to the person’s life.

The appellant faces a direct and imminent need for the incontinence product. She developed serious rashes due to persistent incontinence. She stated that wearing wet undergarments puts her at risk of urinary tract infections. The medical practitioner confirmed that the appellant requires pull ups for incontinence management and that without the incontinence product, the appellant is at risk of skin breakdown which can result in life threatening infections.

No one can predict how fast a skin breakdown would develop into a life-threatening infection. The dissenting panel member agrees with the appellant that it should not be the case that she has to first develop a life-threatening infection or that her life must be at imminent risk before she could be considered eligible for the supplement. If the expression “imminent life-threatening need” is construed to mean that the person’s life is imminently at risk before the person could be eligible for the supplement, then the health supplements which the minister may provide under section 76 (as more particularly set out in section 2(1)(a) Schedule C) would not have included supplements such as supplies for the purposes of “wound care”, “ongoing bowel care required due to loss of muscle function”, “**incontinence**”, “skin parasite care”, or “limb circulation care”.

In construing the meaning of a legislation, it is important to keep in mind the *Interpretation Act* section 8 which reads: “Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.”

When the overall purpose of an Act is to make benefits available, a liberal interpretation of the provisions is necessary. Any ambiguity in a benefit-conferring statute should be resolved in favour of the claimant: *Abrahams v. Canada (Attorney General)* [1983] 1 S.C.R. 2 at 10.

Section 76 is a benefit-conferring legislation. It should be given such fair, large and liberal construction, and that it should be interpreted with a benevolent purpose in mind.

In the appellant’s case, there is evidence from the medical practitioner that without the incontinence product, the appellant *is* at risk of skin breakdown which can result in life threatening infections. There is no evidence to contradict the appellant’s or the medical practitioner’s evidence. The dissenting panel member takes the view that the effect of the appellant’s own evidence and the medical practitioner’s evidence is such that there is evidence to establish that the appellant faces a direct and imminent need for the incontinence supplies and that without the incontinence supplies, the appellant is at risk of life-threatening infections. The dissenting panel member finds that the appellant has met the section 76 criteria.

The appellant has also met the requirement under section 2(1)(a)(ii)(C) of Schedule C that the supplies are “necessary to avoid an imminent and substantial danger to health”. This is confirmed by the medical practitioner who opined that without the incontinence product, the appellant is at risk of skin breakdown which can result in life-threatening infections.

For the reasons stated above, the dissenting panel member would find that the ministry’s reconsideration decision is not reasonably supported by the evidence and is not a reasonable application of the applicable enactment in the circumstances of the appellant.

Conclusion

By a majority decision, the Panel finds that the Ministry’s decision that the appellant is not eligible for incontinence supplies was reasonably supported by the evidence and was a reasonable application of the legislation. Therefore, the Ministry’s decision is confirmed. The appellant is not successful in her appeal.

Relevant Legislation

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
 - (c) 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).

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,
 - (c) 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);

Schedule C

General 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 67 [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;

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

Janet Ward

Signature of Chair

Date (Year/Month/Day)

2022/October/25

Print Name

Bill Farr

Signature of Member

Date (Year/Month/Day)

2022/October/25

Print Name

Mimi Chang

Signature of Member (Dissenting)

Date (Year/Month/Day)

2022/October/25