

**Part C – Decision Under Appeal**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated November 23, 2022, in which the ministry denied the appellant’s request for funding of pre-surgery bowel preparation supplies and medication.

The ministry determined that the prescribed items were not medical equipment and supplies that could be provided as a health supplement under Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), or items that could be provided as a crisis supplement under section 57 of the EAPWDR.

**Part D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Act (“EAPWDA”), section 5  
EAPWDR, sections 57,62 and 69 and Schedule C, section 2(1) and (1.1)  
Administrative Tribunals Act, section 44  
Employment and Assistance Act, section 19.1  
Canadian Charter of Rights and Freedoms, section 7  
Criminal Code of Canada, section 215

**Part E – Summary of Facts**

The hearing took place by videoconference, attended by the appellant and the ministry representative.

Evidence Before the Ministry at Reconsideration:

The appellant is in receipt of benefits under the Employment and Assistance for Persons with Disabilities Act.

The appellant was scheduled for colon surgery on November 7, 2022. He gave the ministry a prescription from a surgeon dated October 21, 2022, for two antibiotics, a bowel preparation kit, a laxative and a fleet enema, and requested funding. The prescription included instructions about use of the prescribed items in preparation for the surgery. The appellant advised the ministry that the surgery was for colon cancer, and if he did not have the surgery, he would die.

Additional Evidence at the Hearing:

At the hearing, the appellant stated that his surgery scheduled for November 7, 2022 had been cancelled because he could not obtain the prescribed items. The surgery is rescheduled for January 13, 2023, but the surgeon will not perform the surgery if the appellant has not gone through the process of bowel preparation. The appellant has approached every possible resource, including the surgeon, pharmacies, and his Member of Parliament, and has been unable to find a source of funding for the items.

Admissibility of Additional Evidence:

The ministry did not object to the additional oral evidence of the appellant at the hearing.

The oral evidence of the appellant provides additional evidence about the appellant's resources and the need to obtain the prescribed items. The panel finds that the additional evidence is reasonably necessary for the full and fair disclosure of all matters relating to the decision under appeal, and therefore it is admissible under Section 22(4) of the Employment and Assistance Act.

**Part F – Reasons for Panel Decision**

The issue in the appeal is whether the ministry's reconsideration decision that denied the appellant funding for prescribed pre-surgery bowel preparation supplies and medication was a reasonable application of the legislation in the appellant's circumstances.

The ministry determined that the appellant was eligible to receive health supplements under Schedule C, section 2 of the EAPWDR. However, the ministry determined that the bowel preparation supplies and medication were not items for which the ministry was authorized to provide a health supplement. The ministry was not satisfied that the items were needed to avoid an imminent and substantial danger to health, and further noted that the items were health care goods and services, and therefore the ministry was not authorized to provide funding for the prescribed items as a crisis supplement under section 57 of the EAPWDR.

**Appellant's Position:**

The appellant says that the prescribed items are necessary, if he is to have the surgery he needs for treatment of colon cancer. The surgeon will not perform the operation if the appellant has not done the bowel preparation as directed by the surgeon, and without the surgery, he will die. The appellant argues that, in denying funding for the supplies and medication necessary for life-saving surgery, the ministry is violating his right to life, liberty and security of the person under section 7 of the Canadian Charter of Rights and Freedoms. The appellant also argues that he is under the care of the ministry, and the ministry is in violation of section 215 of the Criminal Code of Canada for failing to provide the necessities of life to a person under their care. The appellant argues that, regardless of the provisions of the EAPWDR, the ministry has an overriding obligation to provide him with the prescribed items that are necessary for him to be able to have life-saving surgery.

The appellant also says that, when he asked for a supplement for the prescribed items, he had also asked for funds for transportation to the hospital, and the ministry has not given a decision about that request.

**Ministry's Position:**

The ministry maintains that it can only provide funding as set out in the legislation. The ministry says that the appellant's request does not meet all the requirements for eligibility for funding under Schedule C, section 2 of the EAPWDR.

The ministry says that the appellant meets the requirement that the supplies are prescribed by a medical practitioner. However, the ministry says that the appellant does not meet the following requirements:

- the supplies are required for a purpose listed in Schedule C, section 2(1)(a);
- the supplies are necessary to avoid an imminent and substantial danger to health.

The ministry also points out that, under Schedule C, section 2(1.1), medical and surgical supplies do not include prescription medications, which should be covered under "Plan C" coverage with Pharmacare through the Ministry of Health, for people in receipt of disability

assistance under the EAPWDA.

Regarding the request for transportation, at the hearing the ministry said that it most likely did not see that the appellant was asking for a supplement for transportation in his initial request.

Panel Decision:

Under section 5 of the EAPWDA, the ministry is authorized to provide a supplement to a person who is eligible for it. The EAPWDR sets out the eligibility requirements for supplements.

The appellant has asked for funding for pre-surgery bowel preparation supplies and medication, as set out in a prescription provided by his surgeon. The ministry considered the request as a health supplement, and as a crisis supplement, and determined that the appellant did not meet the eligibility requirements for a supplement.

*Eligibility as Health Supplement:*

Under section 62 of the EAPWDR, the ministry may provide a health supplement set out in sections 2 or 3 of Schedule C. Under Schedule C, section 2(1)(a), the ministry may provide a health supplement for medical or surgical supplies if the ministry is satisfied that the supplies meet the requirements in that section. The ministry determined that the appellant met the requirement that the supplies were prescribed by a medical practitioner. The ministry also determined that there was no information from the medical practitioner to confirm that the items were necessary to avoid an imminent and substantial danger to health.

The panel finds that the ministry was not reasonable in its determination that there was no evidence that the items were necessary to avoid an imminent and substantial danger to health. The prescription clearly indicates that the items are needed to prepare for bowel surgery. If the appellant does not have the prescribed items, either the surgery cannot be performed safely, or the appellant cannot have the surgery. Either outcome would result in an imminent and substantial danger to health. The panel finds that the information in the prescription that the appellant is scheduled for bowel surgery, combined with the evidence of the appellant about the need for surgery due to cancer, establishes that the items are needed to avoid an imminent and substantial danger to the appellant's health.

However, under the legislation, the items must be required for one of the purposes listed in section 1(1)(a)(i). Those purposes are:

- wound care
- ongoing bowel care required due to loss of muscle function
- catheterization
- incontinence
- skin parasite care
- limb circulation care.

The appellant needs medical or surgical supplies in preparation for surgery. That purpose does not fit under one of the purposes listed in the legislation. Therefore, the panel finds that the ministry was reasonable in its determination that the appellant did not meet the requirement that

the items are needed for one of the purposes listed in section 2(1)(a)(i).

The ministry may provide medical or surgical supplies that are needed for a purpose not listed in section 2(1)(a)(i) if the medical equipment or supplies are listed in section 2(1)(a.1) or (a.2). The prescribed items for pre-surgery bowel preparation are not listed in those sections. Therefore, the panel finds that the ministry was reasonable in its determination that the appellant did not meet the alternative requirement that the items were listed in section 2(1)(a.1) or (a.2).

In addition, two of the items listed in the prescription are antibiotics, which are prescription medication. Schedule C, section 2(1.1) of the EAPWDR provides that medical and surgical supplies do not include prescription medications. The panel finds that the ministry reasonably determined that the ministry is not authorized to provide a health supplement for prescription medication.

Under section 69 of the EAPWDR, the ministry may provide a health supplement to a person who is otherwise not eligible for a health supplement, if the supplement is necessary to meet a direct and life-threatening need, and the person meets the other requirements in section 69. The ministry determined that the appellant had not provided information from a medical practitioner that he faced a direct and imminent life-threatening health need. However, the prescription from the surgeon specifies that the prescribed items are needed for pre-surgery bowel preparation, and therefore, the panel finds that appellant needs the prescribed items to meet a direct and life-threatening need.

However, section 69 of the EAPWDR still only authorizes the ministry to provide health supplements set out in Schedule C, and pre-surgery bowel preparation supplies and medication are not covered under Schedule C. Therefore, the panel finds that the ministry was reasonable in its determination that the appellant was not eligible to receive a health supplement for the prescribed items under section 69 of the EAPWDR.

#### *Crisis Supplement:*

The ministry considered whether it could provide a crisis supplement for the prescribed items under section 57(1) of the EAPWDR. However, under section 57(3) of the EAPWDR, the ministry may not provide a crisis supplement for health care goods or services. The panel finds that pre-surgery bowel preparation supplies are health care goods or services. Therefore, the panel finds that the ministry was reasonable in determining that the appellant was not eligible for a crisis supplement for the pre-surgery bowel preparation supplies.

#### *Transportation Request:*

The panel notes that, at the bottom of a handwritten list of the prescribed items and their cost, provided with the initial request, there is written “[municipality] to [hospital] transportation”. The ministry did not consider a request for funds for transportation to the hospital, either in the initial decision or the reconsideration. It appears that the ministry did not notice the request for funds for transportation. The appellant may wish to apply again for transportation, as the panel only has jurisdiction to make a decision about the reconsideration decision.

*Canadian Charter of Rights and Freedoms and Criminal Code of Canada:*

Section 19.1 of the Employment and Assistance Act provides that section 44 of the Administrative Tribunals Act applies to the Employment and Assistance Appeal Tribunal. Section 44 of the Administrative Tribunals Act states that the Tribunal does not have jurisdiction over constitutional questions. The Canadian Charter of Rights and Freedoms is part of the Constitution of Canada. Therefore, this panel is not able to consider, or make any findings, about the appellant's argument that the ministry has breached his right to life, liberty, and security of the person under section 7 of the Charter.

Similarly, the Tribunal has no jurisdiction over Criminal Code offences, and cannot make any determination about whether the ministry contravened section 215 of the Criminal Code of Canada by failing to provide the necessities of life to a person under their charge.

The panel understands the appellant's argument about the Charter and the Criminal Code to be, in essence, that these sections should override the provisions of the EAPWDR, given his urgent need for the prescribed items to treat a serious medical condition. However, the panel's jurisdiction in this appeal is limited to determining whether the ministry's reconsideration decision was reasonably supported by the evidence, or a reasonable application of the EAPWDA and EAPWDR in the appellant's circumstances.

*Comments:*

The panel notes that the appellant needs the prescribed items to prepare for necessary and urgent bowel surgery that has already been postponed once. While the legislation provides for health supplements for a range of items and purposes, the ministry has considered whether it can provide a supplement under the legislation and there does not appear to be a section that would cover pre-surgery bowel preparation supplies. The ministry has no discretion to provide a supplement other than as set out in the legislation.

The ministry has pointed out that prescription medication will be covered by benefits from the Ministry of Health, and the appellant has conceded that his main concern is with the other supplies. The ministry also pointed out at the hearing that, if the appellant purchased the items from his regular support allowance, with the result that he was not able to afford other necessary expenses, the appellant might be eligible for a crisis supplement for those other expenses. The panel cannot comment on those other options but wants to express that they understand the urgency of the appellant's need and the extreme frustration in being unable to prepare for the necessary surgery.

Conclusion:

The panel finds that the ministry's reconsideration decision was a reasonable application of the legislation in the appellant's circumstances. The panel confirms the ministry's reconsideration decision. The appellant is not successful in the appeal.

Employment and Assistance for Persons with Disabilities Act

**Disability assistance and supplements**

s. 5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Employment and Assistance for Persons with Disabilities Regulation

**Crisis supplement**

s. 57(1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if

(a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and

(b) the minister considers that failure to meet the expense or obtain the item will result in

(i) imminent danger to the physical health of any person in the family unit, or

(ii) removal of a child under the *Child, Family and Community Service Act*.

(2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.

(3) A crisis supplement may not be provided for the purpose of obtaining

(a) a supplement described in Schedule C, or

(b) any other health care goods or services.

(4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:

(a) if for food, the maximum amount that may be provided in a calendar month is \$40 for each person in the family unit;

(b) if for shelter, the maximum amount that may be provided in a calendar month is the smaller of

(i) the family unit's actual shelter cost, and

(ii) the sum of

(A) the maximum set out in section 2 of Schedule A and the maximum set out in section 4 of Schedule A, or

(B) the maximum set out in Table 1 of Schedule D and the maximum set out in Table 2 of Schedule D,

as applicable, for a family unit that matches the family unit;

(c) if for clothing, the amount that may be provided must not exceed the smaller of

(i) \$100 for each person in the family unit in the 12 calendar month period preceding the date of application for the crisis supplement, and

(ii) \$400 for the family unit in the 12 calendar month period preceding the date of application for the crisis supplement.

(5) and (6) Repealed. [B.C. Reg. 248/2018, App. 2, s. 2.]

(7) Despite subsection (4) (b), a crisis supplement may be provided to or for a family unit for the following:

(a) fuel for heating;

(b) fuel for cooking meals;

(c) water;

(d) hydro.

### **General health supplements**

s.62 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 disability assistance,

(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 is a continued person.



**Health supplement for persons facing direct and imminent life threatening health need**

s. 69 (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);
  - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

(2) For the purposes of subsection (1) (c),

- (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 a person in the family unit, other than a dependent child.

Schedule C

**Health Supplements**

**General health supplements**

s. 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 62 [*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;

(a.1) the following medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies:

(i) lancets;

(ii) needles and syringes;

(iii) ventilator supplies required for the essential operation or sterilization of a ventilator;

(iv) tracheostomy supplies;

(a.2) consumable medical supplies, if the minister is satisfied that all of the following requirements are met:

(i) the supplies are required to thicken food;

(ii) all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies;

(b) Repealed. [B.C. Reg. 236/2003, Sch. 2, s. 2 (b).]

(c) subject to subsection (2), a service provided by a person described opposite that service in the following table, delivered in not more than 12 visits per calendar year,

- (i) for which a medical practitioner or nurse practitioner has confirmed an acute need,
- (ii) if the visits available under the Medical and Health Care Services Regulation, B.C. Reg. 426/97, for that calendar year have been provided and for which payment is not available under the *Medicare Protection Act*, and
- (iii) for which there are no resources available to the family unit to cover the cost:

Item	Service	Provided by	Registered with
1	acupuncture	acupuncturist	College of Traditional Chinese Medicine under the <i>Health Professions Act</i>
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the <i>Health Professions Act</i>
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia under the <i>Health Professions Act</i>
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia under the <i>Health Professions Act</i>
5	non-surgical podiatry	podiatrist	College of Physicians and Surgeons of British Columbia under the <i>Health Professions Act</i>
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia under the <i>Health Professions Act</i>

(d) and (e) Repealed. [B.C. Reg. 75/2008, s. (a).]

(f) the least expensive appropriate mode of transportation to or from

- (i) an office, in the local area, of a medical practitioner or nurse practitioner,
- (ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,
- (iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or
- (iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*,

provided that

- (v) the transportation is to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, and
- (vi) there are no resources available to the person's family unit to cover the cost.

(g) Repealed. [B.C. Reg. 75/2008, s. (a).]

(1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

(2) No more than 12 visits per calendar year are payable by the minister under this section for any combination of physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services.

(2.1) If eligible under subsection (1) (c) and subject to subsection (2), the amount of a general health supplement under section 62 of this regulation for physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services is \$23 for each visit.

(3) If the minister provided a benefit to or for a person under section 2 (3) of Schedule C of the Disability Benefits Program Regulation, B.C. Reg. 79/97, the Income Assistance Regulation, B.C. Reg. 75/97 or the Youth Works Regulation, B.C. Reg. 77/97, as applicable, for the month during which the regulation was repealed, the minister may continue to provide that benefit to or for that person as a supplement under this regulation on the same terms and conditions as previously until the earlier of the following dates:

- (a) the date the conditions on which the minister paid the benefit are no longer met;
- (b) the date the person ceases to receive disability assistance.

### Administrative Tribunals Act

#### **Tribunal without jurisdiction over constitutional questions**

s. 44 (1) The tribunal does not have jurisdiction over constitutional questions.

(2) Subsection (1) applies to all applications made before, on or after the date that the subsection applies to a tribunal.

### Employment and Assistance Act

#### **Application of *Administrative Tribunals Act***

s. 19.1 The following provisions of the *Administrative Tribunals Act* apply to the tribunal:

- (a) Part 1 [*Interpretation and Application*];
- (b) Part 2 [*Appointments*], except sections 7 (3) [*remuneration and benefits after expiry of term*]

- and 10 [*remuneration and benefits for members*];
- (c) Part 3 [*Clustering*];
  - (d) section 30 [*tribunal duties*];
  - (d.1) section 40 [*information admissible in tribunal proceedings*];
  - (e) section 44 [*tribunal without jurisdiction over constitutional questions*];
  - (f) section 46.3 [*tribunal without jurisdiction to apply the Human Rights Code*];
  - (g) Part 8 [*Immunities*];
  - (h) section 58 [*standard of review with privative clause*];
  - (i) section 59.1 [*surveys*];
  - (j) section 59.2 [*reporting*];
  - (k) section 60 (1) (g) to (i) and (2) [*power to make regulations*];
  - (l) section 61 [*application of Freedom of Information and Protection of Privacy Act*].

The Constitution Act, 1982, Schedule B to the Canada Act, 1982

Canadian Charter of Rights and Freedoms

**Life, liberty and security of person**

s. 7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Criminal Code

**Duty of persons to provide necessities**

s. 215 (1) Every one is under a legal duty

- (a) as a parent, foster parent, guardian or head of a family, to provide necessities of life for a child under the age of sixteen years;

(b) to provide necessaries of life to their spouse or common-law partner; and

(c) to provide necessaries of life to a person under his charge if that person

(i) is unable, by reason of detention, age, illness, mental disorder or other cause, to withdraw himself from that charge, and

(ii) is unable to provide himself with necessaries of life.

### **Offence**

(2) Every person commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse to perform that duty, if

(a) with respect to a duty imposed by paragraph (1)(a) or (b),

(i) the person to whom the duty is owed is in destitute or necessitous circumstances, or

(ii) the failure to perform the duty endangers the life of the person to whom the duty is owed, or causes or is likely to cause the health of that person to be endangered permanently; or

(b) with respect to a duty imposed by paragraph (1)(c), the failure to perform the duty endangers the life of the person to whom the duty is owed or causes or is likely to cause the health of that person to be injured permanently.

### **Punishment**

(3) Every one who commits an offence under subsection (2)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) is guilty of an offence punishable on summary conviction.

### **Presumptions**

(4) For the purpose of proceedings under this section,

(a) [Repealed, 2000, c. 12, s. 93]

(b) evidence that a person has in any way recognized a child as being his child is, in the absence of any evidence to the contrary, proof that the child is his child;

(c) evidence that a person has failed for a period of one month to make provision for the maintenance of any child of theirs under the age of sixteen years is, in the absence of any evidence

to the contrary, proof that the person has failed without lawful excuse to provide necessaries of life for the child; and

(d) the fact that a spouse or common-law partner or child is receiving or has received necessaries of life from another person who is not under a legal duty to provide them is not a defence.

APPEAL NUMBER 2022-0298

**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)  
2022/12/21

Print Name  
Mimi Chang

Signature of Member

Date (Year/Month/Day)  
2022/12/21

Print Name  
Patrick Cooper

Signature of Member

Date (Year/Month/Day)  
2022/12/21