

Part C - Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated June 28, 2022 where the ministry denied the appellant's request for funding for 6 cryopak compresses for the following reasons:

- A cryopak compress is not a medical supply under Schedule C, section 2(1).
- It is not a medical equipment/device included under Schedule C, section 3.
- It is not an item set out in any other section of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C.
- The appellant is not eligible for a cryopak compress under Life-Threatening Health Need.
- He is not eligible for a cryopak compress as a Crisis Supplement.

Part D - Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 57, 62, 69 and Schedule C

These relevant sections of the legislation can be found at the end of the decision.

Part E – Summary of Facts

The appellant is a recipient of disability assistance.

The appellant's family doctor wrote 2 letters in support of the appellant's request - one dated February 16, 2022 (letter 1), and the other dated June 8, 2022 (letter 2). While these 2 letters are identical in parts, the June 8 letter is more extensive.

In the June 8, 2022, letter the appellant's family doctor writes:

- "The appellant has a spinal cord injury.
- He requires a wheelchair for mobilizing.
- He uses 3 medium and 3 large cryopak compresses on a daily basis and replaces them every three months.
- He uses the packs for ongoing bowel and wound care.
- He needs them in order to sit in his wheelchair due to low back pain.
- Without them he would not be able to use his wheelchair.
- He also uses them at night for low back pain.
- Without the paks he is unable to sleep at night."

The appellant provided an invoice from a drugstore dated January 26, 2022, for 3 medium and 3 large cryopak compresses for a total amount of \$69.24.

In his Notice of Appeal dated June 29, 2022, the appellant writes "may need more time to find an advocate and prepare for appeal".

On appeal, 2 more letters were provided by the family doctor with additional information:

The first letter dated October 6, 2022 (letter 3) contains the following information:

- "Without the cryopaks he will not be able to use his wheelchair as he has chronic sciatica, lower back pain, wound fissures and hemorrhoids.
- Without using his wheelchair, he is unable to prepare his meals and do activities necessary for daily living.
- He also requires cryopaks to aid with sleeping as it helps decrease his lower back and left periformis [sic] muscle pain. This reduces his need to rely on pain medications. Also pain medications affect his mental state and ability to drive and his time with his son."

A second letter dated January 30, 2023 (letter 4) includes the following information:

- "The gel packs provide a medically necessary cooling treatment..."
- He requires these gel packs to assist his wounds healing after each bowel movement, and to manage the accompanying pain afterwards.

- If [the appellant] is not able to use the gel packs on a daily basis, his wounds will not heal as effectively after each bowel movement. This presents an increased risk of infection, and a substantial danger to his health.
- If he is unable to get an appropriate amount of sleep, his health would suffer and his ability to care for his child would be diminished...
- His health would suffer as a direct consequence [from not being able to use gel packs].
- Please provide [the appellant] with funding for these medically necessary gel packs to avoid infection, reduce pain, and prevent an imminent and substantial danger to his health."

The appellant's advocate provided a letter dated March 9, 2023, which consists of argument that is reflected in Part F (Reasons for Panel Decision).

The hearing had been adjourned twice at the appellant's request. The reason for the first adjournment was that the appellant was finding it difficult to find an advocate. The reason for the second adjournment was that the advocate who had previously confirmed their availability was no longer available at the agreed upon time.

At the hearing the appellant reported that for sleeping he uses large gel packs wrapped in pillowcases - this relaxes his back and his pain and assists in healing fissures, hemorrhoids and bleeding after bowel movements. These wounds take time to heal. The cryopaks are the only means that allow him to sit in his wheelchair and go out in it. A large cryopak is 11 by 15 inches, a medium one 7.5 by 11 inches. He usually uses 1 for sitting in his wheelchair, takes 1-2 with him in a cooler to replace the ones he is using when they get too warm, and keeps 2 in the freezer. He tried a kidney belt instead of the cryopaks but it didn't work. Wound care has been an issue for him for over 5 years, and he has been using cryopaks for 4 years. He paid for them himself until he had a talk with the ministry 1-2 years ago when the ministry mentioned that they could be funded. He has shared custody over his teenage son whom he sees on weekends. Without the cryopaks and his wheelchair he would hardly be able to do any activities with his son. He has \$6000 in credit card debts and no secure employment. Gas costs keep going up which affects the time he can spend with his son.

The main purpose of the cryopaks is ongoing wound care.

At the hearing the advocate looked up the price for cryopaks online and reported that the price for a large cryopak is \$19 and for a medium cryopak \$9.

The ministry stated that from the first 2 doctor's letters the purpose of the cryopacs was not clear and did not make the link with wound care. The new evidence of letter 3 and especially letter 4 provides clarity and a direct link to the necessity of wound care and wound healing. The ministry said that the reconsideration decision would likely have been different if the ministry had had the benefit of the review of these last 2 letters from the family doctor in evidence.

The ministry explained the process of purchase authorization and said that usually pre-approval is a pre-requisite. However, in special circumstances reimbursement for purchased items may be possible. The ministry stated that \$70 for 6 cryopaks seems like a reasonable amount.

To a question from the advocate why the ministry did not reverse their decision once they had received letters 3 and 4 from the family physician the ministry said it could not answer this question with certainty.

Admissibility of additional information

The panel finds that the additional information provided on appeal and at the hearing by the appellant, his advocate and his family physician (letters 3 and 4), is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The new information contributes to the panel's understanding of the nature of the appellant's medical condition, the purpose of the requested cryopaks, and how the use of cryopaks links to the appellant's wound care and wound healing. The panel admits the information as evidence pursuant to section 22(4) of the Employment and Assistance Act (EAA).

Part F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable when it denied the appellant's request for funding for cryopak compresses. Was the ministry reasonable when it found that

- a cryopak compress is not a medical supply under section 2(1);
- it is not a medical equipment/device included under section 3;
- it is not an item set out in any other section of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C;
- the appellant is not eligible for a cryopak compress under Life-Threatening Health Need; and
- he is not eligible for a cryopak compress as a Crisis Supplement?

Panel decision

Schedule C, section 2(1)(a) sets out disposable or reusable medical supplies the ministry may supply if 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.

At reconsideration the ministry determined that the appellant did not meet all the required criteria of section 2(1)(a) of Schedule C. The ministry was not satisfied that the family's physician identified cryopak compresses as a medical supply or as an item to avoid imminent and substantial danger to his health. In addition, the ministry was not satisfied that the compresses "are the least expensive appropriate item for the purpose identified".

The appellant's advocate argues that the ministry decision should be rescinded because the appellant meets the criteria set out in section 2(1)(a) of Schedule C. In particular, the January 30,

2023 letter (letter 4) from the appellant's family doctor demonstrates that the cryopaks are the medically required treatment necessary to avoid danger to the appellant's health. The appellant's advocate elaborates that the appellant's family doctor has outlined the medical necessity for the appellant to use cryopaks for several purposes, including ongoing wound care and mobility as accessory to a wheelchair, and that the cryopaks are needed to avoid imminent and substantial danger to the appellant's health. The advocate points out that the family doctor believes that if the appellant stops using the cryopaks, his health will suffer as a direct consequence. Finally, the advocate submits that the cost of cryopaks is low and there is no suggestion from the ministry that other wound care supplies would be more effective or cheaper.

The panel finds that the ministry's decision that a cryopak compress does not meet all the required legislated criteria of section 2(1)(a) is not reasonable supported by the evidence.

The panel finds that the appellant's family physician provided sufficient new evidence that the compresses are medical supplies for the purpose of wound care:

- The appellant uses the packs for ongoing wound care.
- He requires these gel packs to assist his wounds' healing after each bowel movement, and to manage the accompanying pain afterwards.
- The gel packs provide a medically necessary cooling treatment.

This meets the requirement in Schedule C, section 2(1)(a)(i).

The panel notes that the ministry determined the appellant met the requirement of having the item prescribed by a medical practitioner (Schedule C, section 2(1)(a)(ii)(A)).

While the ministry determined at reconsideration that it is not satisfied that "they are the least expensive appropriate [item] for the purpose identified", the panel finds that this determination is not supported by the evidence. The ministry does not explain how it arrived at this conclusion considering the invoice for \$69.24. At the hearing the ministry stated that it found \$70 for 6 cryopaks to be a reasonable amount. The panel finds the ministry's determination that these were not the least expensive supplies appropriate was not reasonably supported by the evidence. The requested items meet the requirement in Schedule C, section 2(1)(ii)(B).

While the ministry was not satisfied that the appellant requires the compresses "to avoid imminent and substantial danger to [his] health", the panel finds this determination to be unreasonable considering the new evidence of the appellant's physician:

- If the appellant is not able to use the gel packs on a daily basis, his wounds will not heal as effectively after each bowel movement. This presents an increased risk of infection, and a substantial danger to his health.

This meets the requirement in Schedule C, section 2(1)(a)(ii)(C).

The ministry was satisfied that the appellant has no resources to meet his need for the 6 cryopak compresses. The requirement in Schedule C, section 2(1)(a)(iii) had been met.

Conclusion

The panel finds that the ministry's determination that the appellant is not eligible for cryopaks under section 2(1)(a) of Schedule C is not reasonably supported by the evidence. The ministry's reconsideration decision is rescinded and the appellant is successful on appeal.

The panel notes that the ministry was reasonable when it determined that it is not clear how cryopak compresses provide "ongoing bowel care required due to loss of muscle function" as set out in section 2(1)(a)(B). The panel finds there is no evidence that the need for the appellant's bowel care is caused by a "loss of muscle function".

Although the above is sufficient to dispose of the appeal, as the ministry considered several other sections of the EAPWDR in its reconsideration decision, the panel will briefly discuss these.

The panel finds that the ministry reasonably concluded that a cryopak compress is not a medical equipment /device included under section 3 of Schedule C. While the appellant uses cryopak compresses when he sits in his wheelchair, they are not "an accessory attached to a wheelchair" as set out in section 3.2 (c).

The panel finds that the ministry reasonably concluded that the appellant's request is not for one of the following extended therapies that are set out in Schedule C section 2(1)(c): acupuncture, chiropractic, massage therapy, naturopathy, nonsurgical podiatry, and physical therapy.

The panel finds that the ministry reasonably determined that the appellant was not eligible for cryopaks under a Life-Threatening Health Need as set out in section 69 of the EAPWDR. There is insufficient evidence that without cryopaks the appellant's life would be in imminent danger. The panel notes that as the appellant is a recipient of disability assistance and is eligible to receive health supplements under the EAPWD Regulation, Schedule C, the appellant does not require the remedy under section 69.

The panel finds further that the ministry reasonably determined that cryopak compresses are not medical transportation supplements, optical supplements, eye examination supplements, dental supplements, crown and bridgework supplements, denture supplements, emergency dental supplements, diet supplements, denture supplements, emergency dental supplements, monthly nutritional supplements, natal supplements, and infant formula. (Schedule C sections 2(1)(f), 2.1, 2.2, 4, 4.1, 4.2, 6, 6, 7, 8 and 9) They are not a nutritional supplement for an acute short-term. (section 67.001)

The panel finds that the ministry reasonably denied funding for cyropacs as a crisis supplement. The panel notes that section 57 does not apply in the appellant's circumstances as section 57(3) sets out that a crisis supplement may not be provided for the purpose of obtaining a supplement described in Schedule C, or any other health care goods or services.

Employment and Assistance for Persons with Disabilities Regulation

Crisis supplement

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*...

(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.

General health supplements

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, ...

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

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).

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 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; ...
- (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>

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)For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections 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 an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

Medical equipment and devices — wheelchairs

3.2 ...

(2) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:

- (a) a wheelchair;
- (b) an upgraded component of a wheelchair;
- (c) an accessory attached to a wheelchair.

APPEAL NUMBER 2022-0140

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
Inge Morrissey

Signature of Chair

Date (Year/Month/Day)
2023/04/02

Print Name
Vivienne Chin

Signature of Member

Date (Year/Month/Day)
2023/04/02

Print Name
Dawn Wattie

Signature of Member

Date (Year
2023/04/02