

### **Part C – Decision Under Appeal**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“Ministry”) dated May 5, 2023, in which the Ministry denied the Appellant a health supplement for prescription medication.

The Ministry determined that prescription medication cannot be provided as a health supplement under Schedule C of the Employment and Assistance for Persons with Disabilities Regulation.

### **Part D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation (“Regulation”), sections 62 and 69, and Schedule C, sections 2(1) and (1.1)  
Employment and Assistance Act, section 22(4)

Full text of the Legislation is set out in the Schedule of Legislation at the end of this decision.

**Part E – Summary of Facts**

The hearing took place in person. The Appellant attended the hearing with an appointed interpreter.

Evidence Before the Ministry at Reconsideration:

The Appellant is a recipient of disability assistance under the Employment and Assistance for Persons with Disabilities Act.

The Appellant submitted a prescription receipt dated March 7, 2023, for two heart medications, Eliquis and Apixaban. Pharmacare covered \$27.65 and the Appellant asked the Ministry to reimburse her for the balance of \$64.41.

The Ministry contacted the pharmacy to ask why Pharmacare did not cover more of the prescription cost, but the pharmacy could not explain. The Ministry told the Appellant to contact other pharmacies to see if they charged less.

The Appellant obtained prescription estimates from two other pharmacies, but the price charged by the first pharmacy was the lowest. The Appellant again asked the Ministry to pay for the medication. The Ministry denied that request on March 17, 2023.

On March 30, 2023, the Appellant gave the Ministry additional receipts dated March 21, 2023, for the same medications. Of the total cost of \$246.70 for those prescriptions, Pharmacare had covered \$62.94. The Appellant asked the Ministry to cover the additional costs that Pharmacare had not covered.

Additional Evidence:

The Appellant provided a handwritten statement of her communications with the Ministry and attendances at the Ministry office, and copies of receipts for Eliquis and Apixaban, as follows:

- On February 23, 2023 she went to the Ministry office with a prescription receipt for the two medications, dated February 22, 2023, and asked for reimbursement of \$64.41 that Pharmacare did not cover.
- On February 28, 2023, an interpreter from the Ministry phoned her and told her that the government would reimburse her for the medication, and she should go to “the cheap pharmacy”.
- On March 9, 2023, she went to the Ministry office with a prescription receipt for a ten day supply of the two medications, dated March 7, 2023, together

- with the prescription cost estimates from two other pharmacies, showing that the pharmacy where she bought the medication had the lowest cost. She asked for reimbursement of \$64.41 that Pharmacare did not cover.
- On March 30, 2023, she went to the Ministry office with a further receipt for the two medications, dated March 21, 2023, for which Pharmacare did not cover \$183.76.
  - On April 21, 2023, she went to the Ministry office with a further receipt for the two medications, dated April 20, 2023, for which Pharmacare did not cover \$183.76.
  - She received the March 17, 2023 decision letter denying coverage, on April 18, 2023.

At the hearing, the Appellant stated:

- She brought the March 7, 2023 medication receipt to the Ministry on March 9, 2023 not March 2 as stated in the reconsideration decision.
- On April 28, 2023, she went to the Ministry office, and a social worker told her that if she signed the Request for Reconsideration form, she would get her medications reimbursed, and the money would arrive between May 1 and May 15.
- On May 5, 2023, she returned to the Ministry office to ask why she had not received anything in the mail, and the social worker told her that her reconsideration had been declined and there was nothing the Appellant could do except appeal the decision. The social worker also gave her the phone number for Pharmacare and told her to phone them.

In answer to questions from the Panel, the Appellant stated:

- The pharmacy has told her that Eliquis and Apixaban are the same medication, from different companies.
- She needs to take the brand name medication (Eliquis) because the generic medication (Apixaban) causes side effects that she cannot tolerate.
- She contacted Pharmacare, and they explained that she needs a form filled out by her family doctor in order to get Pharmacare coverage for the more expensive medication. Her family doctor has submitted the forms, and it may take two weeks to process.
- Pharmacare told her that, based on previous records, the more expensive medication should be covered, but if the doctor's request was refused, the most Pharmacare could pay was 50% of the cost.
- She has had to choose between buying food or buying the medication.

At the hearing the Appellant also provided copies of all receipts for medication and three receipts from a UPS store for sending faxes to the Tribunal and copying documents for the

Appeal. Medication costs not covered by Pharmacare total \$496.34, and fax and copying costs total \$30.45.

Admissibility of Additional Evidence:

The Ministry did not object to the admissibility of the additional evidence. The Panel finds the additional evidence is reasonably necessary for the determination of all matters relating to the decision under appeal, and therefore the evidence 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 a health supplement for prescription medication was a reasonable application of the legislation in the Appellant's circumstances.

The Ministry determined that prescription medication could not be provided as a health supplement under Schedule C of the Regulation.

### Appellant's Position:

The Appellant says that she needs the medication for a serious heart condition. Pharmacare only covered part of the cost of the generic medication. The Appellant says she needs the more expensive medication because she cannot tolerate the side effects of the generic brand. So far, she has paid almost \$500 for her prescriptions, which is half the amount she receives as disability assistance each month. She has to choose between buying food and buying medication.

The Appellant also maintains the Ministry should pay her compensation for the trouble they have put her through. She says that it was the Ministry's responsibility to help her. She says that Ministry representatives have told her that the Ministry would pay for her medication, and then the Ministry refused to do so. She points to mistakes and alterations in the Ministry's documents, and says she suspects the Ministry of fraudulent actions.

The Appellant also argues that she should be reimbursed for the copying and fax costs she incurred in the appeal.

### Ministry Position:

The Ministry says that, as a recipient of disability assistance, the Appellant may be eligible to receive health supplements authorized under section 62 and Schedule C of the Regulation. However, the Ministry says that it has reviewed all the categories of health supplements set out in Schedule C of the Regulation, and prescription medication is not eligible for coverage as a health supplement. The Ministry maintains that it does not have discretion to provide a health supplement that is not authorized by the Regulation.

The Ministry points out that the Ministry of Health provides coverage for prescription medication and suggests that the Appellant should contact Pharmacare for assistance.

Panel Decision:

The Panel finds that the Ministry was reasonable in its determination that it cannot provide a health supplement for prescription medication.

The Panel accepts the Appellant's evidence of the dates of her attendances at the Ministry office, as her evidence is consistent with the dates of the prescription receipts. The reconsideration decision contains an obvious error when it states the Appellant came to the Ministry office on March 2, 2023 with a receipt dated March 7, 2023. The reconsideration decision also does not mention a visit to the Ministry office on February 23, 2023 or a call from an interpreter on February 28, 2023. The Panel finds that the Appellant did go to the Ministry office on the dates she says, and she did receive a call from an interpreter from the Ministry suggesting that she try to find a less expensive pharmacy.

However, the Ministry can only pay a health supplement if it is authorized under the legislation. Under section 62 of the Regulation, the Ministry may provide a health supplement set out in sections 2 and 3 of Schedule C. The Regulation permits a health supplement for medical and surgical supplies, but section 2(1.1) of Schedule C states specifically that prescription medications are not medical and surgical supplies.

In its reconsideration decision, the Ministry goes on to consider whether prescription medication meets the criteria for any other health supplement authorized under Schedule C. The Panel does not find it necessary to set out in detail the reasons why prescription medication is not medical equipment, extended therapy, or any of the other authorized health supplements. However, the Panel finds that the Ministry reasonably determined that prescription medication is not included in any other category of health supplements listed in sections 2 and 3 or any other section of Schedule C.

The Ministry also considered whether it could provide coverage of the prescription medication as a health supplement for a person who is facing a direct and imminent life-threatening health need, under section 69 of the Regulation. However, again, the Ministry is only authorized to provide a health supplement set out in Schedule C of the Regulation. Prescription medication is not a health supplement set out in Schedule C.

The Panel finds that the Ministry reasonably determined that the Ministry is not authorized to provide a health supplement for prescription medication. The Ministry does not have discretion to provide a health supplement other than as set out in the Regulation.

Prescription medication is addressed by the Ministry of Health, through Pharmacare. The Appellant acknowledges that she has now spoken to Pharmacare and is going through the process of requesting coverage from Pharmacare for the more expensive medication.

Additional Compensation:

The Appellant asks for compensation for the trouble she says the Ministry has caused her, and for the costs she incurred in pursuing this appeal. 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 legislation in the Appellant's circumstances. The Panel is not able to consider requests for additional compensation or for reimbursement of incidental costs of pursuing an appeal.

Conclusion:

The Panel finds that the Ministry's reconsideration decision, that it is not authorized to provide a health supplement for prescription medication, 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.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Regulation

**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).



**Schedule C**

**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;

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

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**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)

Print Name

Robert McDowell

Signature of Member

Date (Year/Month/Day)

Print Name

Diane O'Connor

Signature of Member

Date (Year/Month/Day)