

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision dated January 2, 2024, which denied the Appellant's request funding for an Ossur Cold Rush Unit. The Ministry found that the item requested is not an eligible item:

- in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (Regulation)
- as a crisis supplement under section 57 of the Regulation
- as a life-threatening health need supplement under section 69 of the Regulation

Part D – Relevant Legislation

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

(The relevant legislation is listed in Appendix A)

Part E – Summary of Facts**Information Before the Ministry at Reconsideration:**

The information the Ministry had at the time of the decision included:

- A quote for a Ossur Cold Rush Cryo Unit with shoulder cuff, total cost \$353.28.
- Shoulder Surgery Pre-Operative Protocol instructions from an Orthopaedic surgeon.
- A prescription from the Appellant’s surgeon prescribing an Ossur Compressive Cold Therapy Unit along with an instruction sheet that indicates that: “It is not required, but strongly recommended that you have the cryotherapy cuff unit.”; and “If you decide not to obtain this device, please be sure to have multiple jell ice packs as keeping the surgical area cold is imperative to healing.”
- A Request for Reconsideration form which indicated the Appellant’s request for a Ossur Cold Rush Unit and Shoulder Pad was denied because it is not an eligible item as it is not listed as an orthosis under section 3.10 (1) of the Regulation. A Community Integration Specialist, on behalf of the Appellant, writes as the reasons for requesting a reconsideration of that decision: (summarized)
 - The Ossur Rush Cryo Unit and Cold Rush Shoulder Paid is not an orthosis, it is an integral part of the healing and recovery after shoulder surgery. It is needed for a minimum of six months during recovery.
 - As the Appellant was unable to receive pre-approval from the Ministry because the surgery date came up sooner than expected, they found the most cost-effective option (\$525 vs \$353) and purchased it from an approved supplier.
 - The Ministry’s categories may not match the new enhanced healing techniques now used in current medical situations.

Information Received After Reconsideration

- A Notice of Appeal form dated January 15, 2024. The Appellant wrote: “There is not a clear understanding of the tool needed to appropriately treat/care for after surgical care.”
- At the hearing, the Appellant explained that the Ossur Cold Rush Unit is a machine that is filled with ice and cold water which runs through lines that lead up to a cup shaped attachment. The cup is placed over the entire area of the shoulder to provide cold

therapy which reduces inflammation from his shoulder replacement surgery. During the first week he used it every two hours. The specialist indicated that this is necessary to recover as well as possible from surgery. The Appellant explained that the specialist focussed on the Ossur Cold Rush Unit as the way to recover as it was necessary to keep applying cold to the area. He mentioned that ice packs were an alternative, but one would need many packs placed over the whole area and would need to be replaced frequently. The Appellant argues that they were used in the past because there was no other alternative, and the specialist did not even mention them as an option. They focussed on the necessity of having the unit during his recovery because icing reduces inflammation caused by the trauma of surgery and keeps circulation going to aid in recovery without complications.

- The Appellant stated that he received the handout provided by the specialist, which included the type of unit recommended and the authorized supplier that provided them. He provided this information to the Ministry via the local office to make a request for the unit to be authorized. Several weeks later he received notification of the surgery date, so he asked the local office whether the request had been authorized. He was informed that his request was still waiting for action in the "queue" and that it would be another month before his request was even reviewed. The surgery was scheduled for the following week, and because he felt it was necessary to his recovery, he contacted the supplier and paid for the unit via credit card. He felt he had to do this because it was necessary to have it immediately after surgery.
- The Appellant stated that he wanted to go through this appeal process because he believes that the legislation does not keep up with the new technologies and equipment that are currently used by the medical profession. Ice packs were used in the past, but Ossur Cold Rush Units are now the common piece of equipment used for people recovering from joint replacement surgeries. They provide the different shaped cups relevant to shoulder, hip, or knee areas.
- At the hearing, the Ministry reviewed the reconsideration decision and emphasized that, although an Ossur Cold Rush Unit is a tool that may be helpful, they may only authorize items that are listed in legislation.
- The Ministry reviewed all the medical equipment listed in section 3 of Schedule C and found the closest item that may be relevant would be for orthoses. They considered that it was the closest piece of legislation that may apply because it straps onto the shoulder. However, it is not a brace, and its purpose is not for bracing the upper extremity, such as listed under orthoses, but is to provide cold therapy to a joint to reduce inflammation.

An Ossur Cold Rush Unit is not listed as medical equipment so cannot be authorized as such.

- An Ossur Cold Rush Unit cannot be considered as medical supplies under section 2 of Schedule C. The Ministry considers medical supplies to be supplies that are disposable or reusable but will eventually need to be replaced. The unit is a permanent item intended to last several years. Although a doctor has recommended the item for postsurgical care, the information provided suggests that an alternative is the lower cost ice packs, which are reusable medical supplies and are considerably less expensive. There is no indication that the more expensive equipment is required to avoid imminent and substantial danger to health, as is legislatively required. Further, the Ministry argues that the item is not required for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care, or limb circulation care.
- The Ministry also determined that the Ossur Cold Rush Unit was not eligible under the life-threatening item of need legislation because there is no indication that the Appellant's life or health was at risk if it were not provided. Further it cannot be considered as a crisis supplement because that legislation specifically cites it cannot be used to purchase any health care goods or service.
- In response to the Appellant's argument that the legislation does not reflect the current medical equipment and therapies that are being used, the Ministry recommended that the Appellant contact his MLA because that is how legislative changes are made.

Admissibility of Additional Information

The panel accepted the oral testimony provided at the hearing as 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. The Ministry had no objection to the admissibility of this evidence.

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision, that the Appellant is not eligible for an Ossur Cold Rush Unit, is reasonably supported by the evidence or is a reasonable application of the legislation.

Appellant's Position

The Appellant's position is that the Ossur Cold Rush Unit was prescribed by his doctor and was required to recover from surgery. The Appellant argues that although the legislation does not specifically identify this medical equipment, it should, because this is what is being currently prescribed and used. The Ministry should be keeping current with the medical equipment and supplies being utilized and updating their legislation to allow for assisting people in need. He had the ability to use a credit card, while many others may not have that available to them.

Ministry's Position

The Ministry's position is that an Ossur Cold Rush Unit is not a piece of medical equipment or supplies listed in legislation, there was a less expensive alternative available by way of using ice packs, and there was no evidence that the Appellant faced imminent danger to his health. Therefore, the requirements of Schedule C were not met, and the Appellant is not eligible for the unit to be covered.

Panel's Decision

Schedule C of the Regulation sets out what the Ministry may, or may not, authorize when any medical request is made. In the Appellant's circumstance, his specialist recommended an Ossur Cold Rush Unit for postoperative surgery wound care. The panel finds this to be a medical request and will review the legislation relevant to the request.

In their decision, the Ministry determined that the Appellant was not eligible for the unit because it was not listed in Schedule C as medical or surgical supplies under section 2 or medical equipment under section 3. There are other health supplements provided under Schedule C, for example dental or optical services, however they are not applicable in the Appellant's circumstance so the panel's discussion will be limited to those health supplements set out in sections 2 and 3.

General health supplements (includes reference to medical or surgical supplies) under section 2 of Schedule C of the Regulation

Section 2 of Schedule C allows for the Ministry to pay for 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 wound care; ongoing bowel care required due to loss of muscle function; catheterization; incontinence; skin parasite care; or limb circulation care; and are necessary to avoid an imminent and substantial danger to health.
- (ii) The supplies are prescribed by a medical practitioner or nurse practitioner and are the least expensive supplies appropriate for the purpose and,
- (iii) There are no resources available to the family unit to pay the cost of or obtain the supplies.

In the Appellant's circumstance, he had surgery, and the unit was required for postsurgical care to aid in recovery by reducing inflammation to the wounded area. The unit was prescribed by a doctor. The Ministry argues that disposable medical supplies for wound care would be for instances where there is risk of infection, or to cover open wounds. The panel notes that although a surgical incision may need to be covered by gauze or a Band-aid, which are considered disposable medical supplies, that is not what is being requested.

The Appellant explained that the Ossur Cold Rush Unit is a piece of equipment that circulates cold water through a cup applied to the shoulder area to aid in keeping inflammation down. The Appellant describes the unit as being a piece of equipment. The panel finds that because the unit is designed to accommodate various attachments, depending on the type of surgery recovery that is needed, that the unit is not considered disposable or reusable medical supplies because it is more a permanent item rather than an item that is used temporarily then disposed of.

Regarding the legislated requirement that the item is necessary to avoid an imminent and substantial danger to health, the panel asked the Appellant whether the doctor had indicated there was any risk of imminent danger with having, or recovering from, the surgery. The Appellant stated that the doctor and he just reviewed the requirement to keep the area cold to avoid inflammation during recovery. The information in the instruction sheet provided by the surgeon indicated that the unit is not a necessity, and suggesting ice packs as an alternative demonstrates that not providing the requested item won't result in imminent danger to the Appellant. The panel found no evidence to indicate the Appellant faced imminent danger to his health if the unit was not provided, as is legislatively required.

Regarding the legislated requirement that the item be the least expensive appropriate for the purpose, the information provided by the doctor in the handout indicated that if the unit was not available that ice packs could also be used. The Appellant stated he did not even consider using ice packs because the specialist had informed him that the unit is what is now used for recovery after surgery. There is no information in the appeal record to indicate how many ice packs would be required during recovery to compare to the cost of the unit. The unit cost \$353.28, and common sense would indicate that the cost of ice packs required to cover a shoulder would be less than that. The Appellant argues that the doctor recommended the unit, so that is what should be used, not the ice packs. However, the panel notes that the handout provided by the doctor indicated that the alternative could be ice packs, which are less expensive. Therefore, the Ministry was reasonable to determine that there was a less expensive supply appropriate for the purpose.

Because the requirements of section 2 of Schedule C of the Regulation have not been met, the panel finds the Ministry was reasonable to determine an Ossur cold rush unit is not disposable or reusable medical supplies, and therefore cannot be provided under this legislation.

Ossur Cold Rush Unit as medical equipment and devices under section 3 of Schedule C of the Regulation

Section 3 (1) of Schedule C provides that medical equipment and devices described in sections 3.1 to 3.12 of the Schedule may be provided if the supplements are provided to a family unit that is eligible under section 62 and all the following requirements are met:

- (i) The family has received the pre-authorization of the minister for the medical equipment or device requested;
- (ii) There are no resources available to 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.

The panel reviewed sections 3.1 to 3.12, which lists all the types of medical equipment and devices that may be authorized. None of the sections seem relevant to the Appellant's circumstance. The Ministry found that the closest section pertaining to medical equipment and devices that may meet the Appellant's request was section 3.10, pertaining to orthoses. Under the orthoses section there is allowance for several types of braces. The Ministry argues that, although the Ossur Cold Rush Unit is strapped around the Appellant's shoulder,

it is not an upper extremity brace. It is not a knee brace or hip brace, which are the only other braces listed. The Appellant agreed that the unit is not a brace, nor an orthosis.

Because the Ossur Cold Rush Unit is not listed as medical equipment or devices authorized in section 3 of Schedule C, the panel finds the Ministry was reasonable to determine it cannot be provided under this section.

Ossur Cold Rush Unit as a crisis supplement under section 57 of the Regulation

Section 57(3) of the Regulation states 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. An Ossur Cold Rush Unit is not described in Schedule C; however, the panel finds it is a health care good. Therefore, the Ministry was reasonable to determine it cannot be funded as a crisis supplement.

Eligibility for an Ossur Cold Rush Unit as a life-threatening health supplement under section 69 of the Regulation

Section 69 of the Regulation allows the Ministry to provide a family unit some of the health supplements set out in Schedule C if provided to a person in the family unit who is otherwise not eligible for health supplements. The Appellant is a person eligible for health supplements. In addition, the item requested is not an eligible item set out in Schedule C. Therefore, the panel finds the ministry was reasonable to determine an Ossur Cold Rush Unit cannot be funded as a life-threatening health need supplement.

Conclusion

The Panel finds that the Ministry's reconsideration decision, which determined that the Appellant is not eligible for an Ossur Cold Rush Unit, was a reasonable application of the legislation in the Appellant's circumstances and therefore confirms the decision. The Appellant is not successful on appeal.

**APPENDIX A
RELEVANT LEGISLATION**

EAPWDR

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*.
- (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.

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,
 - (b) a family unit in receipt of hardship assistance, if the health supplement is provided 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

- 69** 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

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

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.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section 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 a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

{Sections 3.1-3.12 are not relevant in the Appellant's situation} They are for:

- 3.1** Canes, crutches and walkers
- 3.2** Wheelchairs
- 3.3** Wheelchair seating systems
- 3.4** Scooters
- 3.5** Toileting, transfers and positioning aids
- 3.6** Hospital bed
- 3.7** Pressure relief mattresses
- 3.8** Floor or ceiling lift devices
- 3.9** Breathing devices
- 3.10** Orthoses
- 3.11** Hearing instruments
- 3.12** Non-conventional glucose meters

APPEAL NUMBER 2024-0067

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)

2024/03/06

Print Name

Bill Farr

Signature of Member

Date (Year/Month/Day)

2024/03/07

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2024/03/06