

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

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") Reconsideration Decision of April 9, 2024. In the Reconsideration Decision the Ministry determined that the Appellant was not eligible for incontinence supplies.

The Ministry determined that the Appellant was not eligible for general health supplements under Section 67 of the Employment and Assistance Regulation, and the request could only be addressed under Section 76, the provision for health supplements under a life-threatening need. This determination is not in dispute.

The Ministry was not satisfied that the information submitted with the Appellant's application and Request for Reconsideration demonstrated that she faced a direct and imminent life-threatening health need for the incontinence liners and briefs requested.

The Ministry was satisfied that the remaining criteria for health supplements under a life-threatening need were met.

### **Part D – Relevant Legislation**

Employment and Assistance Regulation section 76, and Schedule C, section 2(1) (the "Regulation")

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

**Part E – Summary of Facts**

A hearing was held via teleconference on May 17. The Appellant was accompanied by her social worker (RSW) and her case manager (RNCM). A representative of the Ministry also joined the meeting via the teleconference.

The information before the Ministry at the time of reconsideration included the following:

- A Supply Request form, dated January 24, 2024, signed by RNCM and the Appellant's doctor (Dr. V), requesting incontinence liners for Continence Management and Skin and Wound care.
- A letter from the Appellant's doctor (Dr. V), dated January 29, 2024, stating that the Appellant:
  - Is bedridden due to multiple debilitating health issues.
  - Requires ongoing incontinence supplies to prevent skin breakdown and infection.
  - Has a life-threatening need.
- A revised Supply Request form dated March 25, 2024, including briefs and liners.
- Photographs dated March 14, 2024, of the Appellant's legs, thigh, and hip, illustrating areas of skin breakdown.
- A letter from RSW dated March 26, 2024, which stated:
  - The Appellant has had multiple urinary tract and skin infections because of her bladder and bowel incontinence, which have been a direct and imminent threat to her life.
  - A catheter was trialed and resulted in multiple life-threatening complications.
  - The incontinence supply need has increased and now includes briefs due to the bowel incontinence.
- Reasons for Request for Reconsideration dated March 24, 2025, which summarized the Appellant's medical condition and treatments that have been tried and provided the following additional information:
  - "I initially started the application process under 'Life Threatening Need' in November 2021. Unfortunately, my initial application was closed because I was unable to produce all of the required financial documents as my brother, (name), is my Power of Attorney and was out of the country for several months at that time. The application for funding under 'Life Threatening Need' was re-initiated in fall 2023."

- “There are no other resourcing/funding options available to me for incontinence supplies. I am not eligible the BC Palliative Benefits Program. Supplies donated to Community Health Services have been insufficient to meet my supply needs.”
- “Given my current financial situation, my increasing need for and cost of incontinence supplies, I cannot afford incontinence supplies and am experiencing financial hardship.”

*Information submitted after the Reconsideration Decision*

1. Notice of Appeal – dated April 26, 2024, including as attachments:

- A letter from RSW, dated April 30, 2024, in which she:
  - Re-iterated the concerns expressed in her previous letter,
  - Indicated that, while home support workers came multiple times per day, there were still times when the Appellant had to sit in her own feces for hours awaiting their visits, and
  - Stated that the Appellant had turned 65 and would be transitioning from LTD to GIS, resulting in a significant decrease in income.
- A letter from the Appellant’s new doctor (Dr. J) supporting the previous statements and adding:
  - That the cost of the incontinence supplies would be much lower than the cost of relocating to a long-term care facility to meet the Appellant’s basic human needs.
  - A list of the Appellant’s medical history, surgical history, allergies, and active medications.

2. Testimony at the hearing

- RNCM stated that:
  - Since the appeal was submitted, the Appellant has developed two different areas of skin breakdown, one of which has become infected and is being treated for cellulitis. This started in a four-hour window about ten days before the hearing. The Appellant was not feeling well, was experiencing fever and chills, and had an “over the phone” consultation with her doctor.
  - While the Appellant receives home care multiple times per day, she can still have delays in addressing incontinence issues and there is no “rapid response” team in the Appellant’s region.

- In response to a question from the Panel, RNCM outlined the following progression.
  - The Appellant has a rash and edema on her legs. These can combine with the effects of incontinence to cause skin breakdowns. The Appellant's diabetes results in slow healing and the skin can become very fragile. Because of the Appellant's other conditions and allergies, this is very tricky to treat and can lead to cellulitis. If the cellulitis is not treated quickly with intravenous antibiotics, it can result in sepsis, which can quickly become life-threatening.
- RNCM took issue with the paragraph in the Reconsideration Decision that says: "Your doctor confirms that these supplies are needed to mitigate the risk of skin breakdown and infection. As these supplies are needed for preventative care and not to treat an existing wound...." She said it was incorrect to equate mitigation with preventative care.
- The Ministry Representative summarized the Ministry position. In response to questions from the Panel, she:
  - Confirmed that, if the Appellant had been eligible for income assistance, she would have been eligible for these supplies.
  - Indicated that, had they known about the current existence of cellulitis at the time of the Reconsideration Decision, the decision might have been different.

#### Admissibility of New Information

The Ministry did not object to the new evidence provided by the Appellant. The Appellant did not object to the responses provided by the Ministry.

The Panel finds that the information provided by the Appellant with the Notice of Appeal and by the Ministry and RNCM at the hearing is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. It contributes to the Panel's understanding of the circumstances surrounding the Appellant's request for incontinence supplies. The Panel admits this information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

**Part F – Reasons for Panel Decision**

The issue in this appeal is whether the Ministry's determination that the Appellant was not facing a life-threatening need was reasonable and supported by the evidence.

**Ministry's Position**

The information provided does not clearly demonstrate that the Appellant faces a direct and imminent life-threatening health need if incontinence supplies are not provided. The physician notes that these items are required to "prevent skin breakdown and infection". However, it is not clearly indicated that the Appellant is currently experiencing wounds related to incontinence. The request suggests, rather, that these supplies are required as a preventative measure. Therefore, due to the above-noted reason, the Appellant is not eligible for medical supplies due to life-threatening health needs.

**Appellant's Position**

The Appellant is housebound and bedbound. She has been incontinent of urine and, more recently has become incontinent of bowel. Though she has home support workers coming to help with personal care multiple times per day, there have been times that she has had to sit in her own feces for hours while awaiting home care staff's scheduled visits.

She has complex health issues including diabetes, which makes her susceptible to skin sores and delayed healing. She has had numerous skin infections and urinary tract infections. Her urinary and bowel incontinence pose a direct, and imminent threat to her life, which can only be mitigated by using incontinence briefs and liners.

**Panel Findings**

Section 67 enables the provision of general health supplements to family units who are eligible for income assistance or hardship assistance. If a family unit is not eligible under Section 67, Section 76 of the Regulation provides for the granting of a health supplement in the event of a direct and imminent life-threatening health need. Section 76 is the only option available in the circumstances of the Appellant.

Schedule C(2)(1) defines the general health supplements that can be provided and includes additional requirements. The Ministry has stated that the required criteria to receive a health supplement for incontinence supplies are met except for it being a life-threatening health need.

The Panel notes that the Regulation defines two levels of imminent threat. Section 76(1)(a) includes the requirement “the person faces a **direct and imminent life threatening** need...” while Schedule C section 2(1)(a)(ii)(c) has the requirement “necessary to avoid an **imminent and substantial danger to health**” (emphasis added). It is apparent the legislators desired a higher level of need for those applying under Section 76.

The Panel recognizes that, given the rash and edema experienced by the Appellant, and her diabetes, introduction of the effects of incontinence for an extended period would lead to an imminent and substantial danger to her health. However, according to the progression described by the RNCM, the rash, edema, and even the potential cellulitis can all be treated, even if it means intravenously.

What is required in the Regulations is the higher level of a direct and imminent threat to life. What does “imminent” mean. It is not defined in the Act or Regulation. The Panel turned to the definition in the Webster dictionary: “ready to take place, happening soon – often used of something bad or dangerous seen as menacingly near.”

Can the potential of sepsis be considered imminent? In her letter, Dr. J says it has the potential to lead to a life-threatening infection. In her description of the progression of infection, RNCM describes the possibility of infection, the potential for cellulitis and the potential for sepsis, which can become life-threatening. Given this consistent use of words like potential and possibility, the threat expressed by the Appellant does not appear to have the certainty to be menacingly near and happening soon. Therefore, the Panel finds that the Ministry was reasonable in their decision.

In summary, while the Panel agrees that the absence of incontinence briefs and liners can result in an imminent and substantial danger to the Appellant’s health, the Panel finds the Ministry was reasonable in determining that the higher criterion of a direct and imminent threat to life, as required by Section 76, has not been met.

## **Conclusion**

The Panel has no authority to go beyond the legislation. Our role is to ensure the Ministry’s decision is a reasonable interpretation of the existing legislation and is supported by the evidence. Therefore, the Panel finds that the Ministry was reasonable in their decision that the Appellant was not eligible for incontinence supplies as a health supplement for persons facing a direct and imminent life-threatening health need.

The Panel confirms the Reconsideration Decision and the Appellant's appeal is unsuccessful.

## APPENDIX – RELEVANT LEGISLATION

### Health supplement for persons facing direct and imminent 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);
  - (ii)sections 3 to 3.12, other than paragraph (a) of section 3 (1).

### 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;

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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

Wes Nelson

Signature of Chair

Date (Year/Month/Day)

2024/05/23

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)

2024/05/23

Print Name

Rick Bizarro

Signature of Member

Date (Year/Month/Day)

2024/05/23