

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“Ministry”) Reconsideration Decision dated March 26, 2024, which held that the Appellant is not eligible for funding for a replacement abdominal support brace (“the Brace”) because the request failed to meet the required legislative criteria. The Ministry found that the Brace is not an item set out in the Employment and Assistance for Persons with Disabilities Regulation (“Regulation”) Schedule C, section 3.10(11). Therefore, the Ministry cannot provide funding for it.

**Part D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation – Section 69 and Schedule C, Section 3.10(11).

The applicable legislation can be found in Appendix A.

**Part E – Summary of Facts****Evidence at Reconsideration**

- A letter dated November 24, 2023 from medical supplier which stated that the Appellant “last received this brace in June of 2022 and finds that this one fits comfortably and provides the support she needs for the abdomen. She is wearing the brace due to her abdominal wall dehiscence pain and strangulation of bowel. This brace is an ‘off-the-shelf’. Manufacturer recommends replacing every 12 months. She has now been wearing it for 16 months and it is worn out and no longer providing the protection that it needs to. Therefore, we are requesting that it be replaced sooner than the allowable 2 years”
- A prescription dated November 24, 2023, from the Appellant’s doctor, which stated that the Appellant “has been diagnosed with abdominal wall dehiscence from multiple previous [surgeries] and has an abdominal incision hernia that is non-operable due to absence of connective fascial tissue. [The Appellant] requires an abdominal support brace to avoid causing increased dehiscence pain and strangulation of bowel”.
- A letter dated November 2, 2021 from the Appellant’s doctor, which stated that the Appellant “has been diagnosed with abdominal muscle dehiscence and lumbar hyper lordosis”. The Appellant requires Miami Lumbar/Ab support for ongoing daily use.
- A letter dated February 20, 2012 that confirms the Appellant’s request for a Miami Lumbar/Ab support brace was approved at Reconsideration.
- Request for Reconsideration, dated March 7, 2024, which stated that the following
  1. Appellant disagrees with the Ministry’s decision.
  2. She provided proof of her diagnosis of abdomen muscle dehiscence and lumbar hyper lordosis from 2021.
  3. Her diagnosis is permanent, and she require the brace still.
  4. She has needed the Brace since 2012, and she was approved to have it at Reconsideration.
  5. She is not sure why it is being denied at this time.

**Evidence on Appeal**

Notice of Appeal signed and dated June 21, 2024, which stated “I was approved for one in the past, why am I not now?”.

The Panel found that the Notice of Appeal is the Appellant’s argument and accepted it accordingly.

**Evidence at the Hearing**

The Ministry did not attend the hearing.

At the hearing, the Appellant, in part, indicated the following:

- She had flesh-eating disease 28 years ago. The Ministry has been providing the same Brace for over 25 years.
- She has only been denied coverage for the Brace once in 2012, but the Ministry reversed its decision at reconsideration.
- She is not sure why the Ministry has denied her coverage this time and is not aware of any changes to the legislation. The legislation provides that a torso brace is an allowable health supplement under Schedule C of the Regulation.
- Her medical condition is permanent and has not changed.

When questioned, the Appellant stated the following:

- The Brace is replaced every two years by the Ministry.
- The device that is provided is a lumbar brace.
- She has a lumbar and an abdominal condition and this has been confirmed by the doctor.
- She cannot wear two braces at the same time. The requested Brace addresses both conditions.
- She completely depends on the Brace to hold herself up and to hold in her internal organs. She will be wearing the Brace for the rest of her life.

The Panel found that the above testimony is the Appellant's argument and accepted it accordingly.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the Ministry's decision which held that the Appellant is not eligible for funding for a replacement Brace because the request failed to meet the legislative criteria set out in the Regulation was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. In particular, was the Ministry reasonable in determining that the Brace is not a health supplement item set out in Schedule C of the Regulation, and therefore it cannot provide funding for such item?

*The Appellant's Position*

The Appellant argued that her request is to replace the Brace that was previously provided to her by the Ministry. Her medical condition is permanent and has not changed. The Brace she requires is the same as previous and for the same medical condition.

*The Ministry's Position*

The Ministry argued that given the evidence it is unable to confirm that the Appellant requires a lumbar support brace, and Schedule C Section 3.10(11) of the Regulation states that abdominal support and hernia support are not considered a health supplement. The Ministry is unable to approve the request for a replacement abdominal support brace.

In the Reconsideration Decision, the Ministry found that the Appellant meets the following:

- The family unit is eligible to receive health supplements set out under the Regulation, Schedule C; section 3.
- The request includes a pre-authorization for the replacement abdominal support brace requested.
- She does not have resources available to pay the cost of or obtain the replacement abdominal support brace.
- The Ministry is satisfied the replacement abdominal support brace requested is the least expensive appropriate item for the Appellant.

However, the Ministry found that in the prescription the doctor notes that the Appellant requires a support brace to treat abdominal wall dehiscence and hernia only. Additionally, while the quote from the medical supplier lists the item requested as a lumbar support, it also confirms that the brace is needed to treat pain from abdominal wall dehiscence and strangulation of bowel at this time. The Ministry stated that since it is unable to confirm that the Appellant requires a lumbar support brace in addition to an abdominal or hernia support, and Schedule C Section 3.10(11) of the Regulation states that abdominal support and hernia support are not considered a health supplement, the Ministry is unable to approve the request for a replacement abdominal support brace.

***The Panel Decision***

Upon review of the evidence, the Panel notes that the November 24, 2023 estimate does not specifically mention that lumbar support is needed but does request a "Lumbar brace \$360.00". It also stated that in June 2022 the requested Brace was provided. The Panel notes that the November 24, 2023 letter from the doctor mentions that abdominal support is needed and does not mention a lumbar condition. The Panel notes that the same doctor provided a letter on November 2, 2021 which confirms that the Appellant has been diagnosed with Abdominal Muscle Dehiscence and Lumbar Hyper-lordosis.

The Appellant confirmed that her medical condition and diagnosis has not changed. The Appellant also confirmed that the Ministry has been providing the same Brace for over 25 years. The Panel notes that the Ministry's February 2012 Reconsideration Decision states that a Miami Lumbar/Ab Support Brace has been approved.

The Ministry stated that it could not confirm that the Appellant requires a lumbar support brace. The Panel finds that the Ministry's conclusion is not reasonable as the doctor confirmed in the November 2, 2021 letter that the Appellant suffers from a lumbar and abdominal condition. Furthermore, the evidence demonstrates that the Appellant's conditions have not changed, the Ministry has been providing the requested Brace for over 25 years and the Ministry's own 2012 Reconsideration Decision indicates that the Brace is for both lumbar and abdominal support. The Ministry also indicated that the replacement period will not lapse until December 2023. The Panel notes that it is now July 2024 and the replacement period has lapsed.

The Panel also notes that the evidence indicates that the Ministry has been providing the Appellant with the requested Brace for over 25 years. By doing so, the Ministry represented to the Appellant that she was eligible for the Brace and has placed in a position of relying on the Ministry for the funds.

In her oral evidence the appellant made it clear that her condition requires a lumbar support brace and not simply an abdominal brace. This is further supported by the historical medical information in the evidence from the Appellant's doctor. The Panel is satisfied that the brace the Appellant requires is a lumbar brace which is an item that may be provided under Section 3.10 of Schedule C of the Regulation.

As such, the Panel finds that the Ministry was not reasonable in its determination that the Appellant's request for the Brace did not meet the requirements set out in Schedule C of the Regulation.

### **Conclusion**

The Panel rescinds the Ministry's March 26, 2024 Reconsideration Decision which denied the Appellant's request for the Brace. The Appellant is successful at appeal.

## Appendix A

### 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).

(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

#### Medical equipment and devices — orthoses

3.10 (11) The following items are not health supplements for the purposes of section 3 of this Schedule:

- (a) a prosthetic and related supplies;
- (b) a plaster or fiberglass cast;
- (c) a hernia support;
- (d) an abdominal support.

**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

Neena Keram

Signature of Chair

Date (Year/Month/Day)

2024/07/18

Print Name

Vivienne Chin

Signature of Member

Date (Year/Month/Day)

2024/07/18

Print Name

David Handelman

Signature of Member

Date (Year/Month/Day)

2024/07/18