PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the "ministry") reconsideration decision of August 23, 2017 in which the ministry denied the appellant molded ear plugs for a diagnostic procedure (MRI) as the request did not meet the legislated criteria pursuant to Schedule C or section 69 of the Employment Assistance for Persons with Disabilities Regulation (EAPWDR). Specifically, the ministry determined that the appellant, being in receipt of disability assistance, is eligible to receive health supplements, however is not eligible for molded ear plugs:

- as a hearing instrument pursuant to section 3 of Schedule C;
- as any other type of medical equipment pursuant to section 3.1 to 3.12 of Schedule C;
- as a medical supply pursuant to section 2(1)(a) of Schedule C;
- pursuant to any other sections of Schedule C; and
- does not meet the requirements of section 69 of the EAPWDR.

PART D – Relevant Legislation

EAPWDR Schedule C and section 69

PART E – Summary of Facts

The appellant is designated as a single person in receipt of Employment Assistance for Persons with Disabilities benefits.

The evidence before the ministry at the time of reconsideration consisted of the following:

- an audiogram dated May 13, 2016;
- a letter dated May 17, 2016 from a hearing clinic to the family physician with the following recommendations: "to adapt to the hearing condition, that not wearing ear plugs was recommended and a therapy was also recommended, if the condition remains bothersome and begins to hinder his quality of life";
- a letter dated October 19, 2016 from a specialist to the family physician noting a hearing condition with recommendation of therapy;
- an audiological record dated April 7, 2017 noting in the case history that the appellant suffered sudden acoustic trauma and a recommendation of an ENT consult at the discretion of the family physician;
- a letter dated April 11, 2017 from a specialist to the family physician indicating that an MRI is required;
- a letter dated April 12, 2017 from an MRI department to the appellant confirming a June, 2017 appointment date;
- a prescription dated June 1, 2017 for molded ear plugs from the appellant's family physician;
- a letter dated June 15, 2017 from an MRI department to the appellant confirming a July, 2017 appointment date;
- a letter dated June 19, 2017 from the ministry's Health Assistance Branch denying the request for molded ear plugs as a hearing instrument practitioner had not recommended a hearing instrument;
- a letter dated July 18, 2017 from an MRI department to the appellant confirming a September, 2017 appointment date;
- a 3 page typewritten note from the appellant, which is undated, explaining:
  - how his hearing condition happened;
  - that he has seen an ear, nose and throat specialist;
  - that his family physician scheduled an MRI for him;
  - that he has spoken to an MRI technician who explained that the ear plugs provided by them are 29db NRR and are made of foam which did not fit adequately;
  - that the ear plugs used for MRI's provide less protection than the 31db headset he uses every day and that because of his condition he could not wear a headset inside the MRI machine;
  - that he has researched MRI's on the internet (10 pages of internet research included) and discovered how his hearing condition could be worsened without proper hearing protection;
  - that only custom molded class A ear plugs would fit his ear canals and provide the proper protection every time they are put in, and that he requires them specifically to have an MRI done to identify whether there are any other medical reasons for his hearing condition;
  - that he has had to reschedule the MRI three times because he has not gotten the proper hearing protection and that a delay could be fatal if other medical conditions are identified
- a letter dated August 2, 2017 from the family physician confirming that the appellant has a pending MRI and requires class A molded ear plugs to prevent further acoustic trauma secondary to the noise produced by the MRI machine;

In his Notice of Appeal dated September 12, 2017 the appellant argues that he requires class A molded ear plugs in order to get his MRI done without worsening his medical condition. The appellant noted that he did not receive his denial in the mail, that he had to go to the office to get it and that they have delayed his MRI.

At the hearing, the appellant explained that:

- he requires Class A molded ear plugs because his ear canal is narrow and that standard foam ear plugs do not provide him with adequate hearing protection to undergo the MRI that his physician has ordered for him;
- he does have a head set that he normally wears when he knows he will encounter loud noises but that the MRI technician told him that he cannot wear the head set while in the MRI machine;
- he has had an audiological assessment done and has seen an ear, nose and throat specialist to confirm his hearing condition and that the specialist recommended that he not wear ear protection at all times, only when he is to encounter loud noise. The specialist also recommended a therapy treatment plan for him;
- his family physician has ordered the MRI as he needs to rule out other possible medical conditions and that he has had his MRI appointments delayed three times due to his concern over not having appropriate hearing protection to wear in the machine as the loud sounds could worsen his hearing condition; and
- he would not wear specially molded ear plugs all the time as they cut out most sounds, which could be harmful if he were out and didn't hear traffic, for example, but that he would wear them when necessary, such as in the MRI machine.

At the hearing, the ministry relied on the reconsideration decision and emphasized that the eligibility requirements for the provision of a hearing instrument under Schedule C section 3.11 have not been met. The Ministry allowed that the legislation did not specifically state how a hearing instrument was to be used, only that it be designed or offered for a hearing condition.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry decision of August 23, 2017 in which the ministry denied the appellant molded ear plugs for a diagnostic procedure (MRI) as the request did not meet the legislated criteria pursuant to Schedule C of the Employment Assistance for Persons with Disabilities Regulation (EAPWDR). That is, was the ministry reasonable in determining that the appellant was not eligible for molded ear plugs:

- as a hearing instrument pursuant to section 3 of Schedule C;
- as any other type of medical equipment pursuant to section 3.1 to 3.12 of Schedule C;
- as a medical supply pursuant to section 2(1)(a) of Schedule C;
- pursuant to any other sections of Schedule C; and
- does not meet the requirements of section 69 of the EAPWDR?

Pursuant to Section 62 of the EAPWDR, the applicant must be a recipient of disability assistance, or be a dependent of a person in receipt of disability assistance. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for various medical equipment and devices. In this case, the ministry has found that the requirement of Section 62 has been met in that the appellant is a recipient of disability assistance.

At issue is whether the requested molded ear plugs for a diagnostic procedure is an eligible item under Schedule C or section 69 of the EAPWDR.

EAPWDR Schedule C:

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.

Medical equipment and devices — hearing instruments

3.11 (1) A hearing instrument is a health supplement for the purposes of section 3 of this Schedule if

(a) the hearing instrument is prescribed by an audiologist or hearing instrument practitioner, and

(b) an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument.

(2) The minister may provide a hearing instrument under this section only if the person is not receiving a hearing assistance supplement under section 70.02 of this regulation.

Schedule C Definitions

1 In this Schedule:

"hearing instrument" has the same meaning as in the Speech and Hearing Health Professionals Regulation, B.C. Reg.

413/2008;

"hearing instrument practitioner" means a hearing instrument practitioner registered with the College of Speech and

Hearing Health Professionals of British Columbia established under the Health Professions Act;

Speech and Hearing Health Professionals Regulation

Definitions

1 In this regulation:

"hearing instrument" means an appliance or a device designed or offered for a hearing condition,

(a) including any ear molds, boots or other acoustic couplers and any parts or accessories for the appliance or device

intended to affect the sound pressure level at the eardrum, and

(b) excluding direct audio input accessories, batteries and any accessories that are attachable to the appliance or

device by the wearer and not intended to affect the sound pressure level at the eardrum;

EAPWDR Section 69

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) a person in the family unit is eligible to receive premium assistance under the *Medicare Protection Act*, 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).

The appellant's position is that he cannot use the standard foam ear plugs that are usually provided during an MRI procedure because he is concerned that his hearing condition could be worsened unless he uses the Class A molded ear plugs. The appellant argues that his family physician has ordered the MRI to rule out other possible medical conditions and that he has had an audiological assessment done that confirms he has a hearing condition.

The ministry's position is that the eligibility requirements for the provision of a hearing instrument under Schedule C section 3.11 have not been met. Specifically:

- **that a hearing instrument is an appliance or a device designed or offered for a hearing condition**. The ministry argues that although they acknowledge that the appellant does have a hearing condition and that ear plugs are an appliance intended to affect the sound pressure level at the eardrum, the appellant is requesting them for a diagnostic procedure (MRI) not for a hearing condition;
- **that in order to provide funding for a hearing instrument that it must be prescribed by an audiologist or a hearing instrument practitioner**. The ministry argues that, in the appellant's situation, it was his family physician who prescribed the molded ear plugs, not an audiologist or hearing instrument practitioner; and
- **that an audiologist or a hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument**. The ministry argues that, in the appellant's situation, there is no written evidence to establish that an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for molded ear plugs and they note that the hearing instrument practitioner wrote in his evaluation of the appellant that to adapt to his oversensitive hearing, not wearing earplugs was recommended.

Respecting section 69, the ministry argues that the appellant does not require a remedy under section 69, because he is eligible to apply for health supplements under Schedule C and that the information submitted does not demonstrate that the appellant faces a direct and imminent life-threatening health need for the ear plugs.

The ministry argues that ear plugs are not a health supplement set out in any other section of Schedule C, and that the request has not met all the requirements specified in those sections.

Panel Decision

Under the EAPWDR, the only health supplements that may be provided by the ministry are those set out in Schedule C.

EAPWDR section 3 of Schedule C

Section 3(1) allows the minister to provide medical equipment and devices described in sections 3.1 to 3.12 of Schedule C to persons eligible under section 62 providing that they have pre-authorization, have no resources available to pay the cost and is the least expensive appropriate medical equipment or device.

The appellant is considered eligible under section 62 as he is a designated as a person with disabilities, so we can review eligibility to Schedule C supplements, however the panel notes that the appeal record did not contain sufficient evidence relating to whether there were any resources to pay the cost of ear plugs or whether it was the least expensive appropriate medical equipment or device so finds that the ministry reasonably determined the appellant did not meet all the requirements of section 3(1).

Section 3.1 – 3.12 outlines all the various medical equipment and devices that the ministry may provide. The panel reviewed all of the sections and find that **section 3.11** is specifically related to providing a hearing instrument.

A hearing instrument is determined to be a health supplement for the purposes of Section 3 if, (a) the hearing instrument is prescribed by an audiologist or hearing instrument practitioner and (b) an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument.

The panel first reviewed the definition of a hearing instrument. The Speech and Hearing Health Professionals Regulation describes it, in part, as being an appliance or device that is designed or offered for a hearing condition, including ear molds intended to affect the sound pressure level at the eardrum. The ministry conceded that, in the appellant's situation, ear plugs are a device that affects the sound pressure level at the eardrum, however, that because the appellant required the ear plugs for an MRI procedure and not for his hearing condition, that the eligibility requirement was not met. The panel finds that this interpretation was not reasonable as there is no stipulation in the definition about how often, or under what circumstances, the hearing instrument was to be used, only that it be designed or offered for a hearing condition.

The panel reviewed **section 3.11(a)** which requires that the hearing instrument be prescribed by an audiologist or hearing instrument practitioner. In the appeal record there is a prescription for Class A molded ear plugs from the appellant's family physician, however not from an audiologist or hearing instrument practitioner. Because the ear plugs were not prescribed by an audiologist or hearing instrument practitioner, the panel finds that the ministry reasonably determined the appellant was not eligible under section 3.11(a).

The panel reviewed **section 3.11(b)** which requires that an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument. The appeal record does contain audiological assessments confirming the appellant has a hearing condition, as well as a letter from an ear, nose and throat specialist who recommends a treatment therapy for the appellant. However, there is no mention in these documents that that confirms the need for the Class A molded ear plugs, so the panel finds the ministry reasonably determined the appellant was not eligible under section 3.11(b).

The panel reviewed all the other categories of section 3, which include such items as canes, wheelchairs, grab bars, hospital beds, airway devices, orthotics and glucose meters and finds that the ministry reasonably determined that the appellant's request for ear plugs did not fall under any of these categories.

The panel also reviewed section 2 which relates to general health supplements for items such as supplies for wound care, lancets, ventilators and for services such as chiropractic and physical therapy. The panel finds that the ministry reasonably determined the appellant's request for ear plugs does not fall under any of these categories.

EAPWDR section 69

Section 69 allows for the provision of health supplements set out under section 2 and 3 of Schedule C where a life-threatening health need exists, the requirements of sections 2 or 3 applicable to the specific health supplement are met, and the applicant is not otherwise eligible for a health supplement under the EAPWDR. The panel finds that there was not sufficient evidence in the appeal record that demonstrates there is a life-threatening health need and because the appellant is a person who is eligible to receive health supplements under Schedule C, providing he meet the requirements of, in his situation, section 3, that the ministry reasonably concluded that he does not meet the eligibility requirements of section 69.

Conclusion

In conclusion, the panel finds that the ministry's reconsideration decision that determined that the appellant is not eligible for Class A molded ear plugs for a diagnostic procedure (MRI) because the requirements set out in Schedule C and section 69 of the EAPWDR were not met is a reasonable application of the legislation in the circumstances of the appellant. The ministry's reconsideration decision is confirmed and the appellant is not successful on appeal.