

**PART C – Decision under Appeal**

The decision under appeal is the decision made by the ministry at Reconsideration on February 17, 2012 in which the ministry denied the appellant's request for an Obus Forme Lowback Backrest Support and an Obus Forme Contoured Seat Cushion on the basis that the request does not meet the legislated criteria of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, Schedule C or Section 69.

The ministry's decision states that as the appellant is designated as a Person with Disabilities, she is eligible to receive health supplements provided under Section 62 and Schedule C of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation. The ministry had approved the appellant's request for an Obus Forme Lumbar Support Back Belt as an orthosis.

**PART D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Regulation (EAPWD) Sections 62 & 69*  
*Employment and Assistance for Persons with Disabilities Regulation (EAPWD) Schedule C*

## PART E – Summary of Facts

At reconsideration, the documents that were before the ministry included the following:

- A completed Request for Reconsideration Form signed by the appellant on December 22, 2011
- Letter from the appellant dated December 15, 2011 (2 pages)
- Letter from the appellant dated December 22, 2011 (3 pages)
- Note from a doctor dated December 13, 2011 stating that the appellant requires lumbar back support and back brace and obus form back support for chair and sitting as she is in acute pain following spinal surgery
- Letter from a physiotherapist dated December 21, 2011 stating that the appellant would benefit from a low back support because of her acute low back problem
- Facsimile from a pharmacy dated December 13, 2011 requesting coverage for an obus forme lumbar support backbelt \$44.79, obus forme lowback back rest support \$84.59, and obus forme contoured seat cushion \$72.79. The facsimile has a note that states "*pt says they are needed urgently*".
- Letter from the Office of the Mayor dated October 19, 2004 thanking the appellant for her volunteer work
- Character reference letter from an organizer dated February 25, 2003 stating that the appellant developed and executed a comprehensive collection of resources for persons with disabilities at a college
- Newspaper article from 2002 regarding the appellant's educational goals and bursary

In her letters to the ministry dated December 15 and December 22, 2011 the appellant states that she has had multiple (18-21) surgeries and the last two were spinal surgeries including a double spinal fusion. The appellant states that despite being ill since 1992 she has tried to better herself through education and doing volunteer work. The appellant states that she is having a difficult time recovering from her last surgery, that her pain is unbearable and that she has lost 42 pounds. The appellant states that she has 12 inches of steel in her back and six pins and that she requires a back brace and lumbar support to pack and move, and to assist her parents, who have Alzheimer's, with their move. The appellant states that she has no one to help her pack and move.

In her Notice of Appeal, the appellant states that she needs help and that she is in acute pain and suffering.

At the appeal the appellant submitted new evidence in the form of a doctor's letter dated November 28, 2011 (the "Doctor's Report"). The doctor states that the appellant has osteoarthritis involving spine, hands and knees, generalized anxiety disorder with panic attacks, and severe irritable bowel syndrome with chronic diarrhea. The doctor states that the appellant had her most recent operation

in June 2011 and that in spite of the operation has chronic back and leg pains as well as frequent panic attacks that interfere with her ability to function, think clearly, and make decisions. The doctor states that the appellant has 5-6 bowel movements a day at unpredicted times that cause her to remain home much of the time. The doctor states that because of the appellant's problems, she is "...severely restricted all of the time in terms of functioning for everyday life and requiring a much longer time to complete tasks". The appellant stated and the ministry agreed that the appellant had previously provided a copy of the Doctor's Report but the copy was not clear. The ministry did not object to the admission of the Doctor's Report.

The panel finds that the Doctor's Report is evidence that is in support of the information and records that were before the minister when the decision being appealed was made and the panel admits the new evidence pursuant to Section 22(4)(b) of the *Employment and Assistance Act*.

At appeal, the appellant and her representative stated that the appellant had numerous invasive surgeries including a double spinal fusion and that she was unbearably uncomfortable and needed the requested items urgently as noted on the pharmacy facsimile. The appellant stated that she makes \$100 per month but she cannot work more to earn the money needed to pay for the requested items. The appellant stated that she has ongoing bowel problems due to loss of muscle function that causes her to be incontinent. The appellant stated that she packed, unpacked and moved herself and her parents without help and doing so has aggravated her pain and made her bowel and incontinence problems worse.

At appeal, the ministry relied on its Reconsideration Decision. The ministry stated that as a Persons with Disabilities the appellant is eligible to receive health supplements provided under Section 62 and Schedule C of the EAPWD Regulation and stated that they had found the appellant eligible for an Obus Forme Lumbar Support Back Belt as an orthosis but that the appellant's request for an Obus Forme Lowback Backrest Support and an Obus Forme Contoured Seat Cushion does not meet any of the legislated criteria for health supplements.

The ministry stated that the Obus Forme Lowback Backrest Support and an Obus Forme Contoured Seat Cushion did not meet the definition of an "orthosis" defined in Schedule C, section 3.10(1) or (2), and that the requests did not meet the criteria of Schedule C, section 2(1)(a) in that they are not one of the listed medical or surgical supplies, including torso or spine brace.

The ministry also stated that they looked at the other legislation in Schedule C and could not fit the items into any other section including therapies or nutritional supplements.

The ministry stated that they are not able to provide the requested Obus Forme Lowback Backrest Support and an Obus Forme Contoured Seat Cushion under Section 69 of the EAPWD Regulation as there is no evidence to demonstrate that they are intended to provide a remedy for a person who is facing a direct and imminent life-threatening health need and who is not otherwise eligible to receive them. As the appellant is a recipient of disability assistance, she is eligible for health supplements under Schedule C, sections 2 and 3 of the EAPWD Regulation and the ministry states that she does not require a remedy under section 69.

Based on the documents, the panel's finding of facts are as follows:

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- 1) The appellant is a Persons with Disabilities and is eligible to receive health supplements provided under Section 62 and Schedule C of the EAPWD Regulation;
- 2) The ministry had approved the appellant's request for an Obus Forme Lumbar Support Back Belt as an orthosis; and
- 3) The appellant has osteoarthritis involving spine, hands and knees, generalized anxiety disorder with panic attacks and severe irritable bowel syndrome with chronic diarrhea.

**PART F – Reasons for Panel Decision**

The issue to be determined at appeal is whether the decision of the ministry at reconsideration was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances. The ministry's reconsideration decision denied the appellant's request for an Obus Forme Lowback Backrest Support and an Obus Forme Contoured Seat Cushion on the basis that the request does not meet the legislated criteria of the EAPWD Regulation, Schedule C or Section 69.

The EAPWDR Schedule C, Section 2(1)(a) sets out that the ministry may provide either disposable or reusable medical or surgical supplies if:

- (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.

The EAPWDR Schedule C, Section 2(1.1) sets out that, for the purposes of subsection (1)(a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

The appellant's position is that she requires an Obus Forme Lowback Backrest Support and an Obus Forme Contoured Seat Cushion as she is unbearably uncomfortable. She states that she is in constant pain, is unbearably uncomfortably, and requires the requested items urgently.

The ministry relied on the reconsideration decision stating that the requested items are not disposable or reusable medical or surgical supplies, are not required for one of the purposes set out in the EAPWD Regulation, Schedule C, section 2(1)(a)(i) and the information provided does not establish that the requested items are necessary to avoid an imminent and substantial danger to health.

The panel finds that the requested items are not disposable or reusable medical or surgical supplies and are not required for one of the purposes set out in the EAPWD Regulation, Schedule C, section 2(1)(a)(i). Although the appellant stated that she is in constant pain and the items are needed on an urgent basis, there is no evidence confirming that the Obus Forme Lowback Backrest Support and an Obus Forme Contoured Seat Cushion are necessary to avoid an imminent and substantial danger to health as required by Schedule C, Section 2(1)(a)(ii). The panel finds that the conclusion by the

ministry that the criteria of EAPWD Regulation Schedule C, Section 2(1)(a) was not met was reasonable.

The EAPWD Regulation, Schedule C, Sections 2(1)(c), 2(2) and 2(2.1) sets out that the ministry may provide no more than 12 visits per calendar year in the amount of \$23 per visit for acupuncture, chiropractic, massage therapy, naturopathy, non surgical podiatry and physiotherapy treatments.

The ministry states that the Obus Forme Lowback Backrest Support and an Obus Forme Contoured Seat Cushion do not meet the criteria for therapies and at appeal the appellant did not argue that the requested items were one of the defined therapies. The panel finds that the conclusion by the ministry that the Obus Forme Lowback Backrest Support and an Obus Forme Contoured Seat Cushion do not meet the criteria of EAPWD Regulation, Schedule C, Sections 2(1)(c), 2(2) and 2(2.1) was reasonable.

The EAPWD Regulation, Schedule C, Sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, and 9 set out that the ministry may provide: optical supplements, eye examination supplements, dental supplements, crown and bridgework supplements, emergency dental supplements, diet supplements, monthly nutritional supplements; natal supplements, and infant formula.

The ministry states that the Obus Forme Lowback Backrest Support and an Obus Forme Contoured Seat Cushion are not one of these items and at appeal the appellant did not dispute that. The panel finds that the conclusion by the ministry that the Obus Forme Lowback Backrest Support and an Obus Forme Contoured Seat Cushion do not meet the criteria of EAPWD Regulation, Schedule C, Sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 or 9 was reasonable.

The EAPWD Regulation, Schedule C, Section 3(1) provides that the medical equipment and devices described in section 3.1 to 3.11 of Schedule C 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 the 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, 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.

EAPWD Regulation, Schedule C, sections 3.1 to 3.11 list the following eligible health supplements as follows:

Section 3.1 – a cane; a crutch, a walker; an accessory to a walker

Section 3.2 – a wheelchair; an upgraded component of a wheelchair; an accessory to a wheelchair;

Section 3.3 – a wheelchair seating system; an accessory to a wheelchair seating system

Section 3.4 – a scooter; an upgraded component of a scooter; an accessory to a scooter

Section 3.5 – a grab bar in a bathroom; a bath or shower seat; a bath transfer bench with hand held shower; a tub slide; a bath lift; a bed pan or urinal; a raised toilet seat; a toilet safety frame ;a floor-to-ceiling pole in a bathroom; a portable commode chair

Section 3.6 – a hospital bed; an upgraded component of a hospital bed; an accessory attached to a hospital bed

Section 3.7 – a pressure relief mattress

Section 3.8 – a floor or ceiling lift device (means a device that stands on the floor or is attached to the ceiling and that uses a sling to transfer a person)

Section 3.9 – a positive airway pressure device; an accessory that is required to operate a positive airway pressure device; a supply that is required to operate a positive airway pressure device;

Section 3.10 – a custom-made or off-the-shelf foot orthotic; custom-made footwear; a permanent modification to footwear; off-the-shelf footwear required to accommodate a custom-made-orthosis; an ankle brace; an ankle-foot orthosis; a knee-ankle-foot orthosis; a knee brace; a hip brace; an upper extremity brace; a cranial helmet; a torso or spine brace.

Section 3.11 – a hearing aid.

EAPWD Schedule C, Section 3.10 (1) states that

“off-the-shelf”, in relation to an orthosis, means a prefabricated, mass-produced orthosis that is not unique to a particular person;

“orthosis” means

(a) a custom-made or off-the-shelf foot orthotic;

(b) custom-made footwear;

(c) a permanent modification to footwear;

(d) off-the-shelf footwear required for the purpose set out in subsection (4.1) (a);

(e) off-the-shelf orthopaedic footwear;

(f) an ankle brace;

- (g) an ankle-foot orthosis;
  - (h) a knee-ankle-foot orthosis;
  - (i) a knee brace;
  - (j) a hip brace;
  - (k) an upper extremity brace;
  - (l) a cranial helmet used for the purposes set out in subsection (7);
  - (m) a torso or spine brace;
- (B.C. Reg. 144/2011)

(2) Subject to subsections (3) to (11) of this section, an orthosis is a health supplement for the purposes of section 3 of this Schedule if

- (a) the orthosis is prescribed by a medical practitioner or a nurse practitioner,
  - (b) the minister is satisfied that the orthosis is medically essential to achieve or maintain basic functionality,
  - (c) the minister is satisfied that the orthosis is required for one or more of the following purposes:
    - (i) to prevent surgery;
    - (ii) for post-surgical care;
    - (iii) to assist in physical healing from surgery, injury or disease;
    - (iv) to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition, and
  - (d) the orthosis is off-the-shelf unless
- (B.C. Reg. 144/2011)
- (i) a medical practitioner or nurse practitioner confirms that a custom-made orthosis is medically required, and
  - (ii) the custom-made orthosis is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist.

(3) For an orthosis that is a custom-made foot orthotic, in addition to the requirements in subsection (2) of this section, all of the following requirements must be met:

- (a) a medical practitioner or nurse practitioner confirms that a custom-made foot orthotic is medically required;
- (b) the custom-made foot orthotic is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist;
- (c) Repealed (B.C. Reg. 144/2011)
- (d) the custom-made foot orthotic must be made from a hand-cast mold;
- (e) the cost of one pair of custom-made foot orthotics, including the assessment fee, must not exceed \$450. (B.C. Reg. 144/2011)



Section 3.10(8) specifies that an orthosis that is a torso or spine brace, in addition to the requirements in subsection (2) of section 3, the brace must be intended to provide pelvic, lumbar, lumbar-sacral, thoracic-lumbar sacral, cervical-thoracic-lumbar-sacral or cervical spine support.

The appellant stated that she did not know what was meant by a torso or spine brace as described in Schedule C, sections 3.10(1)(m) and the ministry stated that it meant an item that must be worn on a person's body. The ministry also told the appellant that the reason her request for the Obus Forme Lumbar Support Back Belt was approved was because it met the criteria of a torso or spine brace in that it was an item that was an item to be worn on the appellant's body.

The ministry's position is that the Obus Forme Lowback Backrest Support and an Obus Forme Contoured Seat Cushion are not one of the eligible health supplements set out in Schedule C, Section 3 and 3.1 to 3.11. In particular, the ministry states that the requested items are not orthoses, as set out in EAPWD Regulation, Schedule C, Subsection 3.10(1) and are not braces which are applied directly to the body.

The appellant's representative stated that as the ministry is not a medical specialist and the requested items were recommended by the appellant's doctor and physiotherapist that the ministry should approve them. The ministry states that while they do not take issue with the doctor's diagnosis, prescription or recommendation and while the ministry sympathizes with the appellant's circumstances, the requested items, even when prescribed by a medical practitioner, must fit within the legislated criteria in order to be eligible health supplements.

The appellant argued that the Obus Forme Lowback Backrest Support and an Obus Forme Contoured Seat Cushion could be considered similar to a pressure relief mattress that is provided under EAPWD Regulation, Schedule C, section 3.7 but the ministry stated that a pressure relief mattress is typically for someone who is bed-ridden and has pressure sores. The ministry stated that the appellant's doctor had not indicated that she has bed sores or is bed-ridden.

The appellant questioned whether she should be going back to her doctor to obtain a prescription for a back brace. The ministry stated that there may be other items that the appellant's doctor could recommend that may fall into the legislated criteria and encouraged the appellant to speak to her doctor. The appellant's representative stated that they had not understood why there was no "loophole" enabling the appellant to obtain the Obus Forme Lowback Backrest Support and an Obus Forme Contoured Seat Cushion but that she and the appellant now better understood the ministry's decision. The appellant stated that she intended to see her doctor about a spine brace "*...as she needs something for her back*".

The panel finds that although the Obus Forme Lowback Backrest Support and an Obus Forme Contoured Seat Cushion were prescribed by the appellant's doctor, they are not one of the eligible health supplements defined in EAPWD Regulation, Schedule C, Sections 3 and 3.1 to 3.11. In particular the panel finds that the requested items are not a pressure relief mattress as defined in Section 3.7 or an orthosis as defined in Section 3.10. The panel finds that the conclusion by the ministry that the criteria of EAPWD Regulation Schedule C, Sections 3 and 3.1 to 3.11 were not met was reasonable.

EAPWD Regulation Section 69 states that 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 person's family unit is receiving 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 3.11, other than paragraph (a) of section 3 (1).
- (B.C. Reg. 61/2010)

The ministry states that they are not able to provide the requested Obus Forme Lowback Backrest Support and an Obus Forme Contoured Seat Cushion under Section 69 of the EAPWD Regulation as there is no evidence to demonstrate that they are intended to provide a remedy for a person who is facing a direct and imminent life-threatening health need and who is not otherwise eligible to receive them. The ministry states that as the appellant is a recipient of disability assistance, she is eligible for health supplements under Schedule C, sections 2 and 3 of the EAPWD Regulation and does not require a remedy under Section 69.

The panel finds that the ministry's conclusion that EAPWD Regulation Section 69 is not applicable to the appellant was reasonable. In addition, the panel finds that the ministry's conclusion that the information did not establish that the appellant had a life threatening health need was reasonable.

In conclusion, the panel finds that the ministry's Reconsideration Decision was reasonably supported by the evidence and a reasonable application of the legislation in the appellant's circumstances and confirms the ministry's decision.