

## PART C – Decision under Appeal

The decision under appeal is the February 29, 2012 reconsideration decision of the Ministry of Social Development (“the ministry”) which held that the appellant’s request for a lift chair and bath mat did not meet the eligibility criteria of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)* for the provision of health supplements as the requested items were not any of the supplements set out in Schedule C. Additionally, the ministry determined that the eligibility criteria for a health supplement for persons facing a life-threatening health need under s. 69 of the *EAPWDR* were not met.

## PART D – Relevant Legislation

### *Employment and Assistance for Persons with Disabilities Act (EAPWDR)*

- Section 5

### *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR),*

- Sections 62 – 69 and Schedule C

## PART E – Summary of Facts

The evidence before the ministry at reconsideration comprised:

- 1) An October 9, 2009 letter from an occupational therapist (OT) submitted in support of a request for a lift recliner. The OT writes that the appellant has rheumatoid arthritis affecting her knees, shoulder, and hands. The appellant has grab bars and a bath transfer bench to optimize safety for bathing and a medical bed to aid with bed transfers. The appellant "has some difficulty in the standing from a sitting position."
- 2) A September 7, 2011 physician's note stating that the appellant requires an electronic lift chair to help her get up from a sitting position due to chronic pain. The physician strongly recommends the lift chair.
- 3) A letter dated January 8, 2012 from the appellant and her spouse describing the appellant's medical condition and explaining that her spouse is not always able to provide the appellant with assistance getting in and out of a chair leaving the appellant unable to reach the phone. The appellant's need for the lift chair is described as a life threatening situation as she has no way to get out of a chair except with a major struggle that leaves her weak, in severe pain, and at risk for falling. The appellant's knees are reported as continually giving out under her the last couple of months, causing her to fall. The appellant is reported to have slipped in the tub many times, severely hurting her back.
- 4) A letter dated January 11, 2012 from the appellant's spouse providing further description of the appellant's difficulties getting out of a chair to stand due to her knees.
- 5) Quotes for an AMG Safety Bath Mat and a Pride LL670M Lift Chair.
- 6) A December 14, 2011 Re-Request for Bathroom Equipment from an OT for a safety bath mat to help prevent further falls in bathtub while showering.

The following documents were submitted on appeal:

- 1) Notice of Appeal dated March 5, 2012 stating that without the lift chair or mat, the appellant is being put into danger for her life as she cannot get out of the chair without failing and hurting herself and slips in the tub.
- 2) An undated 5-page advocate's submission received by the Tribunal on May 7, 2012.
- 3) A May 8, 2012 physician's note in which the physician writes that he supports the appellant obtaining and using a shower bath mat to prevent further falls.

The Notice of Appeal and May 8, 2012 physician's note were determined to be further description of the appellant's need for the requested lift chair and bath mat and were therefore admitted under s. 22(4) of the *Employment and Assistance Act* as being in support of the information and records before the ministry at reconsideration. The advocate's submission was accepted as argument.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision to deny the requested lift chair and bath mat was reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

Section 5 of the *EAPWDA* is set out below.

5. Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

The relevant sections of the *EAPWDR* are set out below.

- 62 (1) Subject to subsections (1.1) and (1.2), 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 family unit if the health supplement is provided to or for a person in the family unit who is

- (a) a recipient of disability assistance,

- 62.1 – 68 set out similar provisions respecting the health supplements provided under sections 3 through 9 of Schedule C.

- 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 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).

### 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.

(b) Repealed.

(c) subject to subsection (2), a service provided by a person described opposite that service in the following table, delivered in not more than 12 visits per calendar year ..... [The table sets out the following services: acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physiotherapy].....

(f) the least expensive appropriate mode of transportation to or from.....

(1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.....

**3 (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.

**3.1 – 3.4** set out the requirements for the provision of the following medical equipment and devices: canes, crutches and walkers, wheelchairs, wheelchair seating systems, and scooters.

**3.5 (1)** The following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to facilitate transfers of a person or to achieve or maintain a person's positioning:

- (a) a grab bar in a bathroom;
- (b) a bath or shower seat;
- (c) a bath transfer bench with hand held shower;
- (d) a tub slide;
- (e) a bath lift;
- (f) a bed pan or urinal;
- (g) a raised toilet seat;
- (h) a toilet safety frame;
- (i) a floor-to-ceiling pole in a bathroom;
- (j) a portable commode chair.

(2) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is 5 years from the date on which the minister provided the item being replaced.

**3.6 (1)** Subject to subsection (3) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to facilitate transfers of a person to and from bed or to adjust a person's positioning in bed:

- (a) a hospital bed;
- (b) an upgraded component of a hospital bed;
- (c) an accessory attached to a hospital bed.

3.7 – 3.11 set out the requirements for the provision of the following medical equipment and devices: pressure relief mattresses, floor or ceiling lift devices, positive airway pressure devices, orthoses, and hearing aids.

4 – 9 set out the requirements for the provision of the following supplements: dental, crown and bridgework, emergency dental, diet, monthly nutritional, natal, and infant formula. (3) The following are the requirements in relation to an item referred to in subsection (2) of this section:

The ministry's position is that the requested lift chair is not any of the items which may be provided as a health supplement under Schedule C of the *EAPWDR*, relying on the following argument.

- 1) The lift chair is not a hospital bed or component of or accessory to a hospital bed as described in s. 3.6 of Schedule C even though the appellant reports that she would "use the lift chair as a positioning device, ie. as a bed." Additionally, the ministry was not satisfied that the lift chair is medically essential to facilitate transfers or adjust positioning in bed as is required under s. 3.6 of Schedule C and that the other legislated criteria are not met.
- 2) The requested bath mat is not one of the items set out in s. 3.5 of Schedule C as bathing and toileting aids and the other criteria of this section are not met even though both the OT and physician indicate the bath mat would be useful in the appellant's situation.
- 3) Neither the lift chair nor the bath mat meet the eligibility criteria of s. 2 of Schedule C as they are not medical or surgical supplies required for any of the purposes set out in ss. (1)(a)(i) and the other criteria set out in this section are not met.
- 4) Even though the items have been prescribed by a medical practitioner, the lift chair and bath mat are not any of the items set out in sections 2.1, 2.2, 3.1 - 3.4, 3.7 - 3.11, 4 - 9 of Schedule C and the criteria for each of these health supplements has not been met.
- 5) Neither the lift chair nor the bath mat is one of the therapies set out in s. 2(c) of Schedule C and the other criteria for therapy are not met.

The ministry also takes the position that the appellant is not eligible for the requested items under s. 69 of the *EAPWDR* which provides supplements to meet a life-threatening health need because:

- 1) the appellant does not require a remedy under s. 69 as she is eligible to receive health supplements under the *EAPWDR* under sections 62 -68;
- 2) s. 69 only allows for the provision of health supplements set out in sections 2(1)(a) and (f) and 3 of Schedule C which does not include a lift chair or bath mat; and
- 3) the requirements set out in s. 2(1) and 3 to 3.11 of Schedule C have not been met.

The appellant's position, simply put, is that her request for a lift chair and bath mat meets the eligibility requirements of the legislation. At reconsideration, the appellant's spouse argues that there is nothing in the Act that prevents the ministry from supplying any medical equipment necessary and that the Act takes precedence over policy. On appeal, the appellant's advocate argues that the ministry did not adjudicate "from a benevolence purpose" and has not applied all applicable sections of the legislation. Specifically, the advocate argues that the ministry should have considered the appellant's request under s. 57 of the *EAPWDR* which sets out the eligibility criteria for a crisis supplement. The advocate argues that s. 57 allows for the provision of a crisis supplement to assist with unexpected items of need or expenses as long as they are not (a) a supplement described in Schedule C or (b) any other health care goods or services and that it is very evident from the

reconsideration decision that the Minister does not consider the requested items to fall within either of those categories. The advocate argues that the eligibility criteria for a crisis supplement have been met as the appellant does not have the resources to pay for the expenses and the medical opinion confirms that the failure to meet the expense of the item will result in imminent danger to the appellant's physical health given her past falls and risk of future falls. The advocate does not appear to advance an argument specific to the criterion set out in s. 57 that the crisis supplement be required to meet an unexpected need or obtain an item unexpectedly needed.

The advocate further argues that the words "may", "severity", and "significant" should be interpreted broadly with consideration of the purpose of the legislation and specifically in view of the purpose of the crisis supplement section which, the advocate argues, is to allow the minister to provide a crisis supplement for only those items that cannot be requested and approved elsewhere in the legislation. The panel notes that the words "severity" and "significant" do not appear anywhere in s. 57. The advocate also submits that the regulations and schedules are subordinate to the legislation.

With respect to the ministry's determination that the eligibility requirements of Schedule C of the *EAPWDR* were not met, the panel finds that the ministry has reasonably determined that the requested lift chair is not a hospital bed. While the appellant has indicated that her intended use of the lift chair is as a positioning device, or bed, the plain meaning of "hospital bed" and its components or accessories cannot be reasonably interpreted as including a lift chair. The panel also finds that the ministry was reasonable in concluding that the other criteria set out in s. 3.6 of Schedule C for a hospital bed were not met including that the requested lift chair was not medically essential to facilitate transfers or adjust positioning in bed.

The panel finds that the ministry has reasonably determined that based on a plain reading of the *EAPWDR* the requested bath mat is not one of the bathing and toileting items set out in s. 3.5 of Schedule and that neither the requested lift chair nor the bath mat are therapies or items set out in sections 2(c), 2.1, 2.2, 3.1 - 3.4, s. 3.7 - 3.11, or 4 - 9 of Schedule C and that the criteria for each of these health supplements has not been met.

The panel finds that the ministry reasonably determined that neither the requested lift chair nor bath mat are medical or surgical supplies required for any of the purposes set out in s. 2(1)(a)(i) of Schedule C and the other criteria set out in this section are not met.

In conclusion, the panel finds that based on a plain reading of the language in Schedule C the ministry reasonably determined that the appellant is not eligible for the lift chair or bath mat under any of the provisions of Schedule C.

As the requested items are not any of the health supplements set out in Schedule C, the panel finds that the ministry reasonably determined, while acknowledging that appellant's medical condition results in limitations, that the appellant is not eligible for the lift chair and/or bath mat under s. 69 of the *EAPWDR* which only allows for the provision of certain Schedule C health supplements, namely those set out in s. 2(1)(a) and (f) and s. 3, and for persons who are not otherwise eligible for Schedule C supplements.

Finally, the panel considered the advocate's argument that the ministry failed to consider the appellant's request under the appropriate legislation namely, the crisis supplement legislation. While

s. 57(1) of the EAPWDR sets out the criteria for the provision of a crisis supplement, ss. (3) expressly provides that 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. While the panel accepts the advocate's argument that the reconsideration decision is clear in finding that the requested lift chair and bath mat are not supplements described in Schedule C, the panel does not accept the argument that the reconsideration decision is clear in finding that the requested items are not "other health care goods." The panel can find nothing in the reconsideration decision making such a declaration or implying that the requested items are not health care goods. Based on the information provided in support of the appellant's request for the lift chair and bath mat, which is a safety rather than decorative mat, the panel finds that the ministry has reasonably treated the appellant's request as one for health care goods and accordingly, has not considered the request under the crisis supplement legislation.

In reaching its decision, the panel acknowledges the argument that the Regulation and policy are subordinate to the Act. While it is unclear what section of the *EAPWDA* the appellant's advocate argues should be relied on to grant the appellant's request, the panel notes that s. 5 of the *EAPWDA* is the enabling authority for the Regulation, including Schedule C and s. 57 [crisis supplements], to set out what supplements may be provided and to establish the eligibility criteria for each supplement. As such, together, the *EAPWDA* and the *EAPWDR* establish the criteria the ministry is required to assess a request for any benefit/supplement.

The panel finds that the ministry's reconsideration decision is a reasonable application of the applicable enactment in the appellant's circumstances and confirms the decision.