

PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision dated 08 February 2012 which determined that the appellant was not eligible for a specified set of high density beveled foam pillows because the ministry determined that the item is not a medical equipment or device – pressure relief mattresses, under section 3.7 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation, nor as a hospital bed under section 3.6 of Schedule C, nor is it an item listed under any of the medical equipment and devices as set out elsewhere in sections 3.1 to 3.11 of Schedule C and the information provided does not establish the other legislative criteria, set out in the sections for each of these health supplements, have been met.

In addition, the ministry determined that the appellant is not eligible for the beveled foam pillows as a medical supply under section 2(1)(a) of Schedule C, or elsewhere as an eligible health supplement under Schedule C. The ministry also determined she is not eligible for the item under the legislated criteria as a life threatening health need as a person not otherwise eligible for any of the specified Schedule C health supplements under section 69 of the Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C

PART E – Summary of Facts

The appellant failed to appear at the hearing at the scheduled time, date and place. After waiting 15 minutes and after verifying that the appellant had received notification of the hearing at least 2 business days before the hearing date by examining the Canada Post tracking sheet showing successful delivery of the Rescheduled Notice of Hearing, the hearing proceeded under section 86(b) of the EAR.

The evidence before the ministry at reconsideration included the following:

- A letter from the appellant's physician, a medical practitioner under the legislation, dated 16 November 2011. He writes:

“[The appellant] is well-known to me and is gradually progressing with a multidisciplinary approach to her chronic pain management. She needs to work continuously on her positioning and posture and as such needs to purchase some high density beveled foam pillows in order to aid in her recovery. She requires 3x 24x24 inch pillows, 1x 12x12 inch pillow and 1x 10x24 inch roll, the latter to support her knees. Please assist where possible.”
- The appellant's Request for Reconsideration dated 31 January 2012. Under Reasons, she states that she had contacted numerous retail outlets and was advised that the type of pillows sought are not considered bedding and are not available at retail. She writes that her doctor, a BC physician, requires her to have the items for positioning, posture and rehabilitation, not as bedding. She explains, with diagrams, how the items are needed for daytime rest and night positioning in bed. She states that she can't adjust her degree of recline with a wedge. During the day, with beveled pillows and a wall, this allows for degree and comfort variation and adjustment. At night the pillows could be angled by varying degrees, with the roll supporting her knees, or the pillow under her hips/stomach with the roll at her ankles. Again she can't use wedges to position herself in bed to sleep. She explains that square or cubed pillows with thick sides or edges cause stress and pressure soreness, not comfort, and are not adjustable.
- Attached to the Request for Reconsideration, three different quotes from specialty suppliers dated late November 2011 for the requested pillow set with removable cotton coverings, with estimated costs ranging from \$640 to \$770.

In her Notice of Appeal dated 20 February 2012 the appellant states: “The pillows that I have applied for qualify for financial support, and are medically prescribed for me and necessary for my medical well-being, as set forth in the EAPWD legislation.”

At the hearing the ministry confirmed that the appellant has PWD designation and is in receipt of disability assistance. The ministry stood by its position at reconsideration.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably determined that the appellant was not eligible for a specified set of high density beveled foam pillows because:

- the item is not a medical equipment or device – pressure relief mattresses under section 3.7 of Schedule C of the EAPWDR, nor under section 3.6 as a hospital bed and the information provided does not establish the other legislative criteria, set out in the sections for either of these health supplements, have been met.
- the item is not any of the medical equipment and devices listed elsewhere in sections 3.1 to 3.11 of Schedule C and the information provided does not establish the other legislative criteria, set out in the sections for each of these health supplements, have been met.
- the item is not a medical supply under section 2(1)(a) of Schedule C, or elsewhere as an eligible health supplement under Schedule C.
- the request does not meet the legislated criteria as a life threatening health need for a person not otherwise eligible for any of the specified Schedule C health supplements under section 69 of the EAPWDR.

The relevant legislation is set out in the EAPWDR:

Schedule C of the EAPWDR sets out the categories of health supplements the minister is authorized to provide to family units eligible under Division 4 (sections 62.1 to 70.01) of the EAPWDR.

Section 1 of Schedule C contains relevant definitions.

The remaining sections deal with specific categories of health supplements, with category-specific criteria relating to such matters as limits, purpose and replacement. These sections and the categories of supplement covered are listed below:

Section	Category
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2 (1)	General health supplements
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| (a) | Medical or surgical supplies that are disposable or reusable and 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; |
| (c) | The following services: acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy. |
| (f) | Travel for the purposes of medical care. |

2.1	Optical supplements
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2.2	Eye examination supplements
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3	Medical equipment and devices – general provisions
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3.1	Canes, crutches and walkers
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3.2	Wheelchairs
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3.3	Wheelchair seating systems
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3.4	Scooters
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3.5	Bathing and toileting aids: (a) a grab bar in a bathroom;(b) a bath or shower seat;(c) a bath
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- 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.
- 3.6 Hospital beds: (a) a hospital bed; (b) an upgraded component of a hospital bed; (c) an accessory attached to a hospital bed.
 - 3.7 Pressure relief mattresses
 - 3.8 Floor or ceiling lift devices
 - 3.9 Positive airway pressure devices
 - 3.10 Orthoses: (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.
 - 3.11 Hearing aids
- 4 Dental supplements
 - 4.1 Crown and bridgework supplement
 - 5 Emergency dental supplements
 - 6 Diet supplements
 - 7 Monthly nutritional supplement
 - 8 Natal supplement
 - 9 Infant formula
 - 10 Transitional nutritional supplement for bottled water.

The position of the ministry is that it has reviewed all possible legislated eligibility criteria and concluded that the requested items do not fall under any of the categories of health supplements listed in Schedule C.

The position of the appellant is that the pillows that she has applied for qualify for financial support, and are medically prescribed for me and necessary for my medical well-being, as set forth in the EAPWD legislation.

The panel has reviewed the EAPWDR, including Schedule C, and finds that the legislation does not establish any discretionary authority for the minister to make exceptions and provide any health care products other than those set out in Schedule C.

The panel finds that bevelled pillows and roll pillows, or more generally "positioning devices," are not included as eligible supplies, equipment or treatments under Schedule C.

The appellant has provided evidence from a medical practitioner that the requested items would have a therapeutic benefit. However, no argument has been made, legislation cited, or evidence presented that the requested items fall into any of the categories of health supplement listed in Schedule C. As the panel has found that the legislation does not establish any discretionary authority for the minister to make exceptions and provide any health care products other than those set out in Schedule C, the panel finds the ministry determination that the appellant was not eligible for the requested items was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.