

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated August 3, 2012 which denied the appellant's request for a supplement to cover the cost of four couch leg risers. The ministry found that the item requested is not listed as an eligible item in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 62 and 67 and Schedule C, Sections 2, 2.1, 2.2, 3, 3.1 to 3.11, 4, 4.1, 5, 6, 7, 8, 9

PART E – Summary of Facts

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

- 1) Note dated May 14, 2012 from the appellant's physician stating in part that due to severe low back pain and osteoarthritis of the right hip, the appellant needs a cane and also rises for her chesterfield and bed;
- 2) Quotation from a health products supplier dated May 25, 2012 for 4 wood furniture risers in the total amount of \$79.96;
- 3) Quotation from a health products supplier dated June 4, 2012 for 4 furniture blocks and a cane in the total amount of \$96.96;
- 4) Quotation from a carpenter dated July 1, 2012 to design and build 4 couch leg risers in the total amount of \$257.60
- 5) Letter dated July 5, 2012 from the ministry to the appellant denying her request for the 4 couch leg risers;
- 6) Note dated July 31, 2012 from the appellant's physician stating in part that the appellant has been diagnosed with severe osteoarthritis of her right hip and urinary stress incontinence, both conditions requiring surgery, that she at present has very limited mobility and she needs risers to elevate her couch to an appropriate height; and,
- 7) Request for Reconsideration.

Prior to the hearing, the appellant submitted additional documents as follows:

- 1) Radiological Consultation Report dated September 7, 2005 which states in part with respect to a CT of the lumbar spine that there is central canal stenosis moderate at L4-5 and severe at L5-S1, compression of the right S1 root and likely displacement of the left S1 root and mild impingement of traversing L5 roots bilaterally;
- 2) Radiology Report dated May 2, 2008 which states in part with respect to a CT of the lumbar spine that at L2-3 and L3-4 there is moderate circumferential disc bulging, and at L4-5 and L5-S1 there is moderate disc space narrowing associated with degenerative vacuum phenomenon; and,
- 3) Medical Imaging Report dated March 6, 2011 which states in part with respect to a CT of the lumbar spine that at L3-4 a circumferential disc bulge is demonstrated, at L4-5 there is a left paracentral disc herniation which appears new and at L5-S1 there is a circumferential disc-osteophyte complex and marked disc space narrowing.

At the hearing, the appellant submitted a page comprised of excerpts from Wikipedia relating to sitting disability and a diagram of the pelvic bones including the Ischial tuberosities. The ministry did not object to admission of these documents into evidence. The panel reviewed the documents and admitted them, pursuant to Section 22(4) of the Employment and Assistance Act, as providing further detail regarding the appellant's medical condition and being in support of information that was before the ministry on reconsideration.

At the hearing, the appellant stated that she provided the medical Reports of her lumbar spine to show the progression in her condition and the excerpts regarding a sitting disability to explain the impacts of this condition. The appellant referred to the excerpts which state that a "sitting disability" is used to describe notable symptoms for people with severe back pain and that it requires major life adjustments. The appellant pointed out that there are not many public places to lie down in a socially acceptable manner so sufferers often remain at home even though they may be totally ambulatory. The appellant stated that she has suffered with lower back pain since she was in her early 20's and, at that time, it was treated with physiotherapy. The appellant explained that she has worked in office jobs until 2007 in which she spent most of the time sitting. In the 1990's, the appellant experienced her first disc herniation and she tried to stand as much as possible to relieve the pain; by 2005 she was falling and tripping and unable to sit for any length of time but her employer continued to accommodate her. However, in 2007 she had to go on a medical leave from her employment and it was determined that she could not return to that type of job. The appellant explained that she experiences pain in the Ischial tuberosities, which are part of the pelvic girdle, making it difficult to sit.

The appellant stated that she worked at jobs, mostly part-time, that she could perform in a reclining position, including as a medical transcriptionist, but before long she was experiencing pain even while reclining. The appellant stated that her capacity to sit has diminished over time and she reclines when she is at home, either on her couch or in bed. The appellant stated that she uses her scooter to mobilize in the community and that is the most time that she spends sitting. The appellant stated that she also suffers with anxiety and depression and is concerned that the change in weather may result in not being able to get out much and she wants to be proactive and get things set up before her hip surgery, for which she is on a wait list. The appellant stated that she obtained the floor to ceiling pole for use in her bathroom and she had it installed by her couch to see if this would help with getting on and off the couch, as suggested by the ministry. The appellant explained that it required a twisting of her body that was painful and she could not use it for this purpose. The appellant stated that she had provided a quote for a custom carpentry store to supply 4 couch leg risers since the standard risers which are less expensive will not work for her couch. She purchased her couch specifically so that it is sufficiently wide and long for her to comfortably recline. The appellant stated that her friend lent her a set of risers for her bed and that they allow her to get on and off her bed. The appellant stated that risers for the couch will help her to stand up which is the same purpose of a raised toilet seat, namely to help a person stand up from a sitting position.

In her Request for Reconsideration, the appellant adds that she is presently on a wait-list for two surgeries, for a replacement of her right hip and for a bladder sling because of severe stress incontinence. The appellant states that she needs the 4 custom-made risers for her living room couch because the couch is very low and her hip angle is at greater than 90 degrees when she is sitting on the edge and trying to get up. The appellant states that at times she cannot get up until she has already urinated which causes problems with wetting her couch and carpet. The appellant states that after her surgery she will not be able to bend her hip any more than 90 degrees for at least 3 months and she will need to do physiotherapy and exercises to regain her mobility. The appellant states that she needs the risers to lift her couch and they need to be custom made because the legs on her couch are bigger than the standard risers available.

In her Notice of Appeal, the appellant states that her family physician and her orthopedic surgeon have informed her that she will need a walker and a cane during the recuperation following her hip replacement, and that she is already using both of these for safety in her mobilization. The appellant states that the lumbrosacral deterioration shown in the CT scans has resulted in a sitting disability and that she is unable to sit for prolonged periods of time without experiencing pain in her buttocks and down her legs.

The ministry's evidence included that the appellant has been designated as a person with disabilities (PWD). The appellant submitted a request, supported with a note from a physician, for a cane for mobility and 4 couch leg risers to assist her with ascending off the couch. The ministry approved the request for a cane but the 4 couch leg risers were denied as they are not an eligible item under the legislation. The ministry acknowledges that the appellant's medical conditions of pain and osteoarthritis of the right hip combined with urinary stress incontinence support her need for the requested items. The ministry received the two quotes for the couch leg risers.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of 4 couch leg risers because the item requested is not listed as an eligible item in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Pursuant to Section 62 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the applicant must be a recipient of disability assistance, or be a dependent of a person in receipt of disability assistance in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has found that the requirement of Section 62 has been met in that the appellant has been approved as a recipient of disability assistance.

At issue is whether the requested couch risers are an eligible item under Schedule C of the EAPWDR, including:

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. ...

Section 2(1)(c), (2) & (2.1) provides that the following items are health supplements if the other criteria of the section are met: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physiotherapy.

Section 2(1)(f) of Schedule C provides that the following items are health supplements if the other criteria of the section are met: the least expensive appropriate mode of transportation.

Section 2.1 of Schedule C provides that the following are the optical supplements that may be provided under Section 62.1 of the EAPWDR: basic eyewear and repairs, pre-authorized eyewear and repairs.

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 3.11

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.
- (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. ...

Section 3.1 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a cane, a crutch, a walker, an accessory to a cane, a crutch or a walker.

Section 3.2 provides that the following items are health supplements for the purposes of section 3 if the other criteria of the section are met: a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair.

Section 3.3 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a wheelchair seating system, an accessory to a wheelchair seating system.

Section 3.4 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a scooter, an upgraded component of a scooter, an accessory attached to a scooter.

Section 3.5 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: 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 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed.

Section 3.7 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a pressure relief mattress.

Section 3.8 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a floor or ceiling lift device.

Section 3.9 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: 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 provides that the following items are an orthosis which is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a custom-made foot orthotic, custom-made footwear, a permanent modification to footwear, 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 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hearing aid.

Section 4 of the Schedule provides that the health supplement that may be paid under section 63 [*dental supplements*] are basic dental services, if the other criteria of the section are met.

Section 4.1 provides that the health supplement may be paid under section 63.1 for crown and bridgework, if the other criteria of the section are met.

Section 5 of Schedule C provides that the health supplement that may be paid for under Section 64 of the EAPWDR are emergency dental services.

Section 6 of the Schedule provides that the amount of a diet supplement that may be provided under section 66 [*diet supplements*] is set out for various conditions, if the other criteria of the section are met.

Section 7 of the Schedule and Section 67 of the EAPWDR provides that the minister may provide a nutritional supplement.

Section 8 of the Schedule provides that the amount of a natal supplement that may be provided under section 68 [*natal supplements*] is set out, if the other criteria of the section are met.

Section 9 of the Schedule provides that the minister may provide infant formula under section 67.1 of the EAPWDR if the other criteria of the section are met.

The ministry's position is that the appellant is eligible to receive health supplements under Section 62 of the EAPWDR but that the requested item, a couch riser, is not an eligible item as medical equipment specifically set out in Sections 3.1 through 3.11 of Schedule C of the EAPWDR. The ministry acknowledges that the appellant's medical conditions of pain and osteoarthritis of the right hip combined with urinary stress incontinence support her need for the requested item. The appellant's position is that although the couch risers are not specifically listed as an item in Sections 3.1 through 3.11, that they function in a similar manner to a raised toilet seat in a bathroom, as set out in Section 3.5(1)(g) of the Schedule. The appellant points out that the raised toilet seat functions to assist a person to transfer on and off the toilet with less flex in the knees, much like the couch risers allow a person to transfer on and off the couch, that it could also be called a toilet seat "riser", and that both items are required to do this action safely and comfortably. The appellant argues that the couch risers are a relatively inexpensive safety item compared to an item like the floor or ceiling lift devices. The appellant also points out that it was the ministry who suggested that she request and use the floor-to-ceiling pole in place of the couch risers, even though this is an item listed in Section 3.5 under "bathing and toileting aids", which shows some flexibility with the ministry in substituting items that are designed for use in other rooms.

The panel finds that the ministry reasonably determined that the requested couch riser is not specifically set out in Section 3.1 through 3.11 of Schedule C of the EAPWDR as it is not: a cane, a crutch or a walker; a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair; a wheelchair seating system, an accessory to a wheelchair seating system; a scooter, an upgraded component of a scooter, an accessory attached to a scooter; a grab bar in a bathroom, a bath or shower seat, a bath transfer bench, 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, or a portable commode chair; a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed; a pressure relief mattress; a floor or ceiling lift device; 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; a custom-made foot orthotic, custom-made footwear, a permanent modification to footwear, 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; or a hearing aid. Although the appellant argues that the couch riser is similar in function to a raised toilet seat, as set out in Section 3.5, the panel finds that Section 3 stipulates that only the listed items are health supplements that may be provided, and the Section does not provide for items potentially similar in function to those listed. The panel finds that the ministry reasonably concluded that the couch riser does not meet the requirements of Sections 3.1 to 3.11 of Schedule C of the EAPWDR.

The ministry's position is that the appellant's request for a supplement to cover the cost of a couch riser does not meet the criteria of the other sections of Schedule C of the EAPWDR, including sections 2(1)(a) or (c) or (f), 2(2) and 2(2.1), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9, since a couch riser is not any of the items covered, namely: a medical or surgical supply that are either disposable or reusable and required for specific purposes and necessary to avoid an imminent and substantial danger to health, a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physiotherapy; medical transportation, optical supplements; eye examination supplements; a dental supplement; a crown and bridgework supplement; emergency dental supplements; diet supplements; monthly nutritional supplements; natal supplements; or infant formula. The appellant does not dispute that the request does not fall within any of these other sections of Schedule C. The panel finds that the ministry's decision, which concluded that the couch riser is not an item listed in the other sections of Schedule C of the EAPWDR, was reasonable.

In conclusion, the panel finds that the ministry's decision to deny the request for a supplement to cover the cost of 4 couch risers as not meeting the legislated criteria of Schedule C, Sections 3, 3.1 to 3.11, or Section 2(1)(a) or (c) of (f), 2(2) and 2(2.1), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, and 9, was a reasonable application of the applicable enactment in the circumstances of the appellant and, therefore, confirms the decision.