

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the "Ministry") February 4, 2013 reconsideration decision in which the Ministry determined that the Appellant, a recipient of disability assistance, was not eligible for an Ergochair Comfort Lift and Tilt Chair with gel cushion modification because that chair is not authorized by sections 62 and 69, and Schedule C of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") Sections 62 and 69, and Schedule C.

PART E – Summary of Facts

The Appellant did not appear at the hearing. The Appellant's advocate and witnesses advised the Panel that the Appellant's deteriorating health prevented her from coming to the hearing. The advocate was prepared to proceed in the Appellant's absence. The Panel confirmed that the Appellant was notified of the hearing and then proceeded in her absence.

For its reconsideration decision the Ministry had the following evidence:

1. Appellant's Medical Equipment Request and Justification signed by the Appellant, by a doctor and by an occupational/physical therapist in November, 2012. with the following information from the doctor and equipment prescription:

- Medical conditions are morbid obesity, diabetes, skin breakdown of legs, difficulty mobilizing.
- Specific equipment prescribed is an ergochair/comfy chair with pressure relief.

2. Assessment by the occupational therapist as follows:

Medical Information

- Has a developmental disability, significant behavioral challenges, diabetes that is hard to manage; is obese and has significant skin breakdown due to a combination of vascular insufficiency, complications from uncontrolled diabetes, limited mobility, pressure and shear.
- Hygiene is a concern; has MRSA and GERD likely contributing to some respiratory issues and has pulmonary fibrosis contributing to shortness of breath and difficulty mobilizing.
- Has incontinence issues mainly stress related due to effort moving.
- Legs need to be elevated due to vascular insufficiency and oedema in lower legs.

Environment

- Lives in a basement suite within a home share setting; caregivers provide twice a day personal care and meals, and transport the Appellant in the caregiver's care when needed.

Functional Information

- Standing tolerance is very limited (about 5 minutes), walking tolerance is limited; walks short distances with a walker, mainly within her home; gait is wide based and flat footed; difficulty getting to medical appointments due to limited capacity.
- Spends most of the day in a recliner chair with footrest elevated; legs are abducted to accommodate her girth and rest on the outskirts of the footrest.
- Daily, necessary supplies are put on a chair side table, reachable without getting up.
- Difficulty getting up and often needs assistance; has difficulty sliding forward in the chair; relies on arm strength and armrests to maneuver out of the chair; difficulty bending forward due to girth and breathing difficulties; difficulty with standing and floor to ceiling pole might help.

Current Equipment

- Would qualify for a wheelchair, and based on her mobility and function – would be very difficult for her to get in and out of a wheelchair without power assist.
- Would be unable to propel her own wheelchair and unsafe for caregivers to push her.
- Unsafe for her to have a power chair; therefore, have not pursued one.
- Current chair is in very poor repair; getting increasingly difficult for her to get in and out of the chair; struggles and gets into respiratory distress; develops skin breakdown under her legs.

Recommendation

- Custom made chair with the following components: bariatric size given obesity and weight; easy to clean given hygiene issue, incontinence and MRSA; equal gel cushion on seat (1 ¾) and leg rests (1 ¼) for pressure relieving qualities; fastened on all four corners; removable for washing; lycra-style cover for pressure relief; extra cover for washing; armrests closely

approximated on each side so arms can be use to get in and out of chair; reclining/open hip angle to allow for maximum respiratory functions and minimize risk of GERD; wide footrests to accommodate leg width.

Goals

- Pressure relief to allow skin healing; ease transfers; position to elongate trunk to enhance respiratory capacity and reduce risk of GERD; elevate legs to improve circulation.

Specifics

- Ec 200 Comfort Chair, extra heavy duty; equagel cushion; delivery and set up.
- Quote attached with information sheet for Ergochair model ec 200 described as a "Comfort Lift and Tilt Chair" that is "an adapted lift chair".

3.. Appellant's request for reconsideration with a December 20, 2012 letter from a community health nurse providing the following information about the Appellant:

- Has Type 2 Diabetes and is over 300 pounds; spends almost all waking hours in a chair, eats all meals there, only gets up to go to the toilet.
- Has skin breakdown including 2 small non-healing wounds on her buttocks for over a year; chair with gel cushion modification required to prevent further skin deterioration – very difficult to heal any open wounds - imperative for a preventive focus.
- Has experienced shearing of the skin on the backs of her lower legs (especially the left) from efforts to get herself forward and back in a regular easy chair when getting up or sitting down, so in last 3 months has developed multiple open wounds on the back of her lower legs, which are non-healing.
- Unsafe for life skills workers to help her forward because of her current weight.
- Inability to get in and out of a chair easily contribute to occasional functional incontinence impacting skin integrity and putting her at risk for serious infections in her open wounds.
- Can take her 5 minutes to get up from her chair so at risk for responding to emergencies.
- Exertion results in temporary shortness of breath and discomfort in her legs contributing to not getting up and moving around more frequently, with a negative impact on her overall health.

In her notice of appeal dated February 15, 2013, the Appellant wrote that without a recliner that can assist her with keeping her feet up most of the day to limit edema and get her into a sitting position to eat, she has to be in bed all day. In bed, she is forced to eat lying on her side because sitting up is so difficult. The Appellant stated that her nursing team and doctor fear that she will choke or aspirate her food while doing this. The Appellant submitted that this is a life threatening situation.

At the hearing, the advocate pointed out that the appeal record did not have the written submission she and the community health nurse provided with the reconsideration request together with the nurse's December 2012 letter. The advocate provided a copy to the Panel and asked that it also be considered as her written argument for this appeal hearing. The reconsideration decision does refer to her February 4, 2013 letter. This written submission had information about the Appellant's circumstances as well as argument about the legislation and how it applies in the Appellant's case. The arguments are set out in Section F. The Ministry did not object to the admission of this document.

In that joint submission from the advocate and nurse the Appellant is described as having COPD, severe diabetes, gout and as being grossly obese (weighs 440 lbs). She has difficulty controlling her feet, so she has to have them securely placed before she can use her wheeled walker to stand up. The Appellant spends most of her day in a recliner with her feet elevated to minimize severe edema.

The same mobility issues and skin problems set out in the equipment request and nurse's December 2012 letter are identified. Also, in that submission the advocate explained that the Appellant requested a "comfy chair", but a representative from a specialized equipment store categorized it as a "lift chair". That representative indicated that a manufactured custom chair for the Appellant would cost \$20,000, but he could adapt a mass-produced lift chair for the Appellant's needs.

At the hearing, both the community health nurse who wrote the December 2012 letter and the Appellant's care giver testified. They provided more recent information about the Appellant's medical conditions and said that she functions at about an 11-12 year old level. She was recently hospitalized because of breathing issues and was just released with an oxygen supply. Both witnesses said that the Appellant is very unstable and her overall health is deteriorating. They said that the Appellant has difficulty walking and standing, and can only stand for about 5 minutes. They described how the Appellant used a wheelchair for about 2 weeks but it hurt her and was unsafe. The witnesses also said that the Appellant no longer uses her reclining chair because sores were developing and she experienced serious skin problems. So, she now stays in bed except to get up to use the commode. For safety reasons because of the Appellant's weight, caregivers are not allowed to help her up, move her legs or push her in a wheelchair.

The nurse testified that the worst thing for the Appellant's condition is staying in bed, lying on her side. With her lung conditions, the Appellant should be sitting up and she risks aspiration by eating lying on her side. Body positioning is the issue and the Appellant needs extra tools for this due to her weight and skin conditions. With the right chair, the Appellant could get into a seated position to eat, could raise and lower her legs, and could stretch her lungs if in the right position. The nurse and caregiver both stated that the chair should have a separate positioning functioning for the upper body and for the legs. The right positioning chair would increase the Appellant's mobility and improve her overall health.

The nurse submitted a letter dated March 5, 2013 in which she provided an update of the Appellant's situation similar to her testimony. She summarized the Appellant's condition as a 440 lb. woman who has nowhere to sit, who is therefore in bed for almost 24 hours and who is asking for a custom chair to accommodate her needs.

The Ministry did not object to the admissibility of the March 5, 2013 letter or to the oral testimony from the two witnesses.

The Panel finds that the information part of the advocate's written submission, the testimony from the nurse and caregiver, and the March 5, 2013 letter all provided additional details about the Appellant's medical conditions and her need for a specialized chair. Therefore, pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the information in the documents and the testimony as evidence in support of the Ministry's reconsideration decision.

At the hearing, Ministry referred to the regulations and relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for an Ergochair Comfort Lift and Tilt Chair with gel cushion modification because it is not authorized by sections 62 and 69, and Schedule C of the EAPWDR.

The following sections of the EAPWDR apply to the Appellant's circumstances in this appeal:

General health supplement

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.

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) 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;

2(1)(a.1) the following medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all the requirements described in paragraph (a)(ii) and (iii) are met in relation to the supplies: (i) lancets; (ii) needles and syringes; (iii) ventilator supplies required for the essential operation or sterilization or a ventilator; (iv) tracheostomy supplies;

2(1)(a.2) consumable medical supplies, if the minister is satisfied that all of the following requirements are met: (i) the supplies are required to thicken food; (ii) all the requirements described in paragraph (a)(ii) and (iii) are met in relation to the supplies.

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.

3.1 – cane, crutch, walker and accessories; 3.2 wheelchair, upgraded component of wheelchair, accessory to a wheelchair; 3.3 wheelchair seating system, accessory to wheelchair seating system; 3.4 scooter; 3.5 grab bars, bath seats, commode chairs, transfer aids; 3.6 hospital bed; 3.7 pressure relief mattress; 3.8 floor or ceiling lift device; 3.9 positive airway pressure device; 3.10 orthotics; 3.11 hearing instrument; 3.12 non-conventional glucose meter.

3.5 (0.1) In this section “positioning chair” does not include a lift chair;

(1) The following units are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to facility toileting or transfers of a person or to achieve or maintain a person’s positioning (i) a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility.

The Parties' Positions

The Ministry determined that the information provided did not establish that the Appellant met the eligibility criteria in section 62 and Schedule C of the EAPWDR. The Ministry decided that the requested chair with gel cushion modification was not listed in section 3 of Schedule C. The Ministry also stated that the information provided did not establish the criteria for each of the listed health supplements. The Ministry considered the request under section 2(1) of Schedule C and it determined that the requested chair is not a disposable or reusable medical or surgical supply. In addition, the Ministry determined that the requested chair is not a therapy or any of the other supplements listed in Schedule C.

The Ministry also determined that the Appellant is not eligible to receive the chair under section 69 of the EAPWDR, as a supplement for a person facing a direct and imminent life threatening health need. The Ministry noted that from the information submitted by the Appellant she may face a direct and imminent life-threatening health need for the item because of skin integrity issues. However, it noted that the requested chair is not a health supplement listed in section 2(1) or 3 of Schedule C, and her request does not meet the requirements in those sections.

The Appellant's position is that the purpose of the Employment and Assistance for Person with Disabilities Act is to provide benefits to disabled people to help mitigate the severity of their disabilities. However, the EAPWDR fetters the Ministry's discretion to the point where legitimate and direly essential equipment, such as what the Appellant needs, is being denied. Both section 62 and section 69 of the EAPWDR restrict the Ministry's ability to authorize very badly needed, specialized equipment for the Appellant, because those regulations limit the Ministry's authority to the list of supplements and equipment specifically set out in Schedule C. The advocate submitted that until last year, under section 69, the Ministry was not limited to the specific supplements and equipment listed in Schedule C and it could authorize equipment and supplies to a person with a life-threatening condition. Now, the advocate argued, the amended regulation is unreasonable and not consistent with the Act.

The advocate also pointed out that in Schedule C, section 3.5, the Ministry can authorize a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility. However, section 3.5 (0.1) of Schedule C states that a "positioning chair" does not include a lift chair, but there is no definition of a positioning chair.

The Panel's Findings

The Panel finds that a doctor completed the medical equipment request, describing the Appellant's medical conditions and prescribing a custom ergo chair. Also, an occupational/physiotherapist provided a detailed assessment of the Appellant's medical conditions, her living circumstances, her mobility challenges and skin conditions, as well as detailed recommendations about what the Appellant needs and why. There was also additional information about the Appellant's conditions and needs from the community health nurse. Therefore, based on this evidence, the Panel finds that it was not reasonable for the Ministry to determine that the information from the Appellant did not satisfy the criteria in section 3(2) of Schedule C of the EAPWDR.

The Panel further finds that the medical supply representative provided information about how to provide the Appellant with a chair that is less expensive than a custom built one. Therefore, it was not reasonable for the Ministry to determine that the Appellant did not satisfy section 3(1)(b)(iii). There was nothing in the record about the Appellant's resources, although the Panel does note that the Appellant receives disability assistance, functions at an 11-12 year old level and is confined to her bed, so it is unlikely that she has the resources to pay for the chair she needs. However, because there was no evidence about the Appellant's resources the Panel finds that the Ministry reasonably determined that the information did not satisfy the requirement in section 3(1)(b)(ii) of Schedule C.

The Panel notes that the requested chair was described in different ways by the witnesses, in the doctor's prescription/medical equipment request and in the occupational therapist's assessment. The nurse and the caregiver stated that, because of her size and various medical conditions, the Appellant needs a custom chair. They also referred to the need for separate power functions for her upper body and for her legs. The doctor prescribed an ergochair/comfy chair with pressure relief. In her assessment, the occupational therapist specified an Ec 200 Comfort Chair, extra heavy duty. In the specification sheet in the record, this model is described as a "lift chair". The Panel also notes that, although a "positioning chair" can be authorized under section 3.5 of Schedule C, a positioning chair does not include a "lift chair". Based on the specifications for an Ec 200 Comfort Chair described as a lift chair, the Panel finds that the Ministry reasonably determined that the Appellant requested a lift chair which it could not authorize under section 3.5 of Schedule C.

The Panel also finds that the Ministry considered both section 62 and 69 of the EAPWDR, as well as, all parts of sections 2 and 3 of Schedule C, which list the various types of supplements, specific equipment and therapies the Ministry is authorized to provide. Based on the language in sections 62 and 69 limiting the Ministry to the supplements in section 2 and 3, the Panel finds that the Ministry reasonably determined that it was restricted to providing only the supplements, equipment, supplies or therapies specified in sections 2 and 3 of Schedule C and it reasonably determined that those sections do not authorize lift chairs.

In conclusion, the Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances. The Panel, therefore, confirms that decision.