

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated May 17, 2013 which denied the appellant's request for a supplement to cover the cost of an XY Gantry Lift System. The ministry found that the following requirements of Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met:

-the cost of the floor or ceiling lift exceeds \$4,200 contrary to Section 3.8(2)(b).

The ministry also found that the appellant is not eligible for a supplement for a life threatening health need as the requirements in Section 69 of the EAPWDR had not been met.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 62 and 69 and Schedule C, Sections 3 and 3.8

PART E – Summary of Facts

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

- 1) Letter dated December 9, 2009 from the ministry to the appellant approving her request for a Waverley Glen Transportable Lift for the total cost of \$3,227.77;
- 2) Prescription dated May 4, 2012 for the appellant for a patient lift- bath
- 3) Medical Equipment Request Tracking Sheet for the period August 1, 2012 through November 20, 2012;
- 4) Letter dated November 20, 2012 from the ministry to the appellant approving her request for an XY Gantry Lift System-ministry maximum of \$4,200 minus the previously approved amount (\$3,227.76) for a total remaining cost of \$972.24;
- 5) Purchase Authorization dated November 20, 2012 from the ministry to a service provider for an XY Gantry Lift System-ministry maximum of \$4,200 minus previously approved amount (\$3,227.76) for a total remaining amount of \$972.24;
- 6) Quote dated January 17, 2013 from a medical equipment supplier for a tub room upgrade from monorail to 10' X 7' gantry, using existing tracking, motor and sling for a total cost of \$2,216.20;
- 7) Funding Request for Bathroom Ceiling Track Upgrade dated February 20, 2013 signed by an occupational therapist (OT) and stating in part that the appellant is diagnosed with cerebral palsy, congenital encephalopathy and significant developmental delay. She is non-verbal, lives in a group home with 24-hour support, and is dependent for all care. The appellant has a number of positioning concerns including a progressing scoliosis and pressure areas over her pelvis, spine and shoulders. She has no safety awareness and continually rocks in bed and in her wheelchair. She is dependent for all care. With respect to bathroom transfers, the appellant is transferred using an overhead straight track and portable lift in and out of the bath. An assessment has been made of the bathroom transfers for the appellant and another resident who also uses the bathroom and the single rail track for bathing. The assessment of the ceiling track specialist is that the single rail installation is positioned correctly for one of the residents but the other resident requires a different "drop point" in the tub and so the staff are "side loading" the lift to accommodate this. This procedure contravenes a section of the Occupation Health & Safety Regulation and is hazardous to both the resident and care giver. The recommendation is that the existing tracking be remodeled into an XY gantry system using existing hardware plus additional materials. The existing lift motor may be used on this system. With this in place, all residents may be accommodated in a safe manner. The OT requests funding for track to change the present monorail system to an XY gantry to provide a safe transfer method for the residents using the system, who are all ministry clients. The existing tracking, motor and sling will be used;
- 8) Medical Equipment Request and Justification dated February 21, 2013 with the note "attached" in response to the request to describe the appellant's medical condition and to specify the medical equipment required to meet the appellant's needs;
- 9) Memo dated March 27, 2013 to the ministry from the OT stating in part that the tracks in the appellant's bedroom and bathroom are both straight tracks and are more than 20 years old. In October/ November of 2013, funding was requested for an XY gantry track system and C450 lifts for safety in transfers in the bedroom and bathroom. The full cost of this request was not approved and no changes were made to the systems in place. The bathroom straight track is not safe for the appellant nor her care givers. Additional tracking is needed to upgrade from a monorail to a gantry system and provide safe transfer methods in the bathroom. There are no other funding sources. The request is for funding in the amount of \$2,216.20 and if the previous credit of \$972.24 could be applied to the request, the new request is in the amount of \$1,243.96;
- 10) Medical Equipment Request Tracking Sheet for the period March 26, 2013 through April 16, 2013;
- 11) Letter dated April 26, 2013 from the appellant's group home supervisor 'To Whom It May Concern' stating in part that when the group home was established in 1993, ceiling tracks were put into place to aid in the transfer of residents. The tracks are no approximately 20 years old and an upgrade would be extremely helpful in continuing to support the appellant in her day-to-day living. The appellant gets transferred from bed to chair, chair to bath, bath to chair, and chair to bed using the old system several times per day. This system places the battery powered unit directly in the appellant's face each and every time. The ceiling

track is angled to accommodate her transfer but is fixed in place which creates issues with the body mechanics it takes to accomplish the transfers and subjects the appellant and her support staff to injury with each transfer made. An XY gantry system would eliminate this possibility and make her transfers safer, easier, and faster for all involved;

- 12) Letter dated April 27, 2013 from the appellant's mother stating in part that she views this safer, updated piece of equipment vital for the appellant's safety and well-being;
- 13) Letter dated May 3, 2013 from a director of community living to the ministry stating in part that the appellant is not an easy person to transfer as she is in constant motion, rocking and making the transfer with her current lift unsafe. With the XY, her rocking ability is minimized greatly allowing for easier transfer; and,
- 14) Request for Reconsideration- Reasons dated May 3, 2013.

At the hearing, the appellant provided the following additional documents:

- 1) Funding Request for Waverley Glen XY Gantry System with C450 Ceiling Lift dated May 25, 2012 signed by the same OT who prepared the subject Request and stating in part that a request is made for the XY Gantry systems and C450 lifts in both the bedroom and in the bathroom. If the appellant was not in danger of injury from the ceiling lift, a request would be made for the portable lift. It is the only solution found to reduce the risk of injury to the appellant in the use of the lift;
- 2) Medical Equipment Request and Justification dated May 4, 2012 with the note "attached" in response to the request to describe the appellant's medical condition and to specify the medical equipment required to meet the appellant's needs; and,
- 3) Quote dated April 20, 2012 from a medical equipment supplier for a 8' X 8' Waverley Glen XY Gantry system with C450 ceiling lift, one sling, installation, materials and shipping for a total cost of \$4,200.00.

The ministry did not object to the admissibility of the additional documents. The panel admitted all of the documents, pursuant to Section 22(4) of the Employment and Assistance Act, as providing further detail relating to the appellant's requests for a ceiling lift device and being in support of information that was before the ministry on reconsideration.

In the Request for Reconsideration, the advocate wrote that the appellant has complex needs and her movements to and from her wheelchair is done by a ceiling lift. The current track is one directional and a lift. The lift often comes very close to the appellant's face. Her current lift is not ideal for her level of care.

In the Notice of Appeal, the advocate expressed disagreement with the ministry's reconsideration decision and wrote that the appellant's current system no longer meets her needs. The current straight track lift is not safe for her and has been in place for over 20 years. Due to her complex needs, and her constant rocking, the lift often comes very close to her face, putting her at risk for injury. By changing to the XY Gantry system, it would provide a safer transfer method for the appellant.

At the hearing, the appellant's advocate, the Director of a Community Service Society, stated that the appellant has cerebral palsy and she rocks so much that she has moved her wheelchair when the brakes have been engaged. One time, the appellant rocked so hard that her wheelchair jumped off the sidewalk and tipped over. The current ceiling lift used for the appellant is a single track with a portable motor that has to be attached. With the single track, the lift has to be pulled over to where the appellant is located in the room and she must be "side-loaded," which is hard on the system and on the staff. Also the motor hangs down and the appellant has been hit in the face with the lift. The appellant is in movement with her rocking about 99% of the time and as she gets older her needs increase. The staff have to constantly watch that the appellant is not hit in the face and they sometimes have to have two staff members load her onto the lift because of these difficulties. The appellant's doctor has treated her for bruises to her face. The advocate stated that they are afraid that if the appellant is hit in the face hard enough, she could suffer a concussion. Also, when the lift is used in the bathroom the electric motor is directly over water in the tub and there is concern that there may be a problem. The Workers' Compensation Board (WCB) has raised concerns, at another residence, about this type of lift

being side-loaded and the potential for injury. The advocate stated that she believes it is just a matter of time before an accident occurs. The advocate pointed out that a request was made for the C450 motor as part of the lift system in her letter dated May 3, 2013. The advocate stated that her Community Service Society is not funded for this equipment, the group homes have no money, and the appellant's mother is not able to help financially. The advocate stated that the appellant's group home is set up for medically fragile persons and meets high needs standards.

At the hearing, the appellant's OT stated that the appellant's current set up is a single straight-track system that only provides for pick up in the room in the area directly under the track whereas the XY Gantry System is a set of perpendicular tracks that allow for pick up anywhere in the room. The OT stated that the existing track is 20 years old and that now it is only the XY Gantry system that is used, especially in the hospitals. The OT stated that the existing lift system included a portable motor that hangs down as compared with the C450 included with the XY Gantry lift system that is situated on the ceiling but is not portable. Since the C450 is not portable and the appellant requires a lift in her bedroom as well as the bathroom, they had to consider which was the higher priority for the purposes of the request for funding from the ministry so they decided to request the system for the bathroom since there is a higher risk of injury there. The OT stated that an assistive technology advisor for injury prevention had done an evaluation of the appellant's current set up and it is included in her Funding Request dated February 20, 2013. The advisor stated that the "side loading" contravenes the safety regulations because of risk of injury and is hard on the equipment and requiring replacement of expensive straps. The OT clarified that WCB investigated another site where the same type of lift that the appellant currently uses had hit a resident, but WCB has not investigated the residence where the appellant is situated. The OT explained that the "side loading" is required to attach the sling and that it creates tension in the system. The OT agreed that the WCB considers the potential for injury to employees as this is their mandate and they do not have funding for equipment.

The OT first stated that the initial request for the XY Gantry Lift System made in May 2012 was denied and then clarified that it was approved but that the cost of the previous amount for a new motor (\$3,227.76) had been deducted from the \$4,200 requested, leaving an approved amount of \$972.24. The OT stated that the motor on the appellant's lift system broke down and that the ministry replaced the portable motor back in 2009 at a cost of \$3,227.77 and the other type of motor, the C450, was not generally used in the community and the ministry was not providing it. Since then, the price for the C450 motor has come down substantially and is the only system generally being used now. The OT clarified that a ceiling lift device includes the ceiling track, the motor, and the sling. The OT clarified that as part of her request for funding in the Medical Equipment Request and Justification dated February 21, she would have attached her letter dated February 20, 2013, the Quote dated January 17, 2013, and the doctor's prescription. The OT agreed that the Quote only set out the cost for an upgrade to the tracking system and that the existing motor and sling would be used. The OT stated that she had gone to the medical equipment supplier with the authorization for \$972.24 but he had said there was nothing they could do for that amount. The OT stated that it is likely that the ministry expected them to find alternate funding for the balance but the problem is that charitable monies are almost non-existent for adults since the priority is always given to children under the age of 19 years. The OT stated that the authorization provided in November 2012 has never been used.

At the hearing, the appellant's caregiver stated that the motor on the appellant's current lift system is quite heavy and she fears that the appellant will hurt her head because of her rocking movements. The caregiver stated that she wants to transfer the appellant safely but she flails around and there is not much space in her bedroom or the bathroom. The caregiver stated that if the appellant hits her foot on her dresser, for example, she could really hurt herself. The caregiver stated that if the appellant rocks too much while she is in the process of transferring to the bath, she could hit her head on the lift and suffer a concussion. Another resident has the XY Gantry lift system and they have tried it for the appellant. They found the XY Gantry system does not allow the appellant to move as much while she is being transferred and the motor does not hang down. The caregiver stated that the current lift system does not meet the appellant's particular needs and it makes her job very difficult.

At the hearing, the appellant's mother stated the appellant moves so much that she has moved the wheelchair around as she has been seated at the hearing and so one can imagine how much that makes getting her into a little sling very challenging. The appellant's mother stated that the doctor said her daughter also becomes hypotonic which means that she sometimes becomes like "dead weight" and it is very hard to hold her. The appellant's mother stated that the motor that hangs down on the appellant's current lift system is a large metal box which is very heavy. When her daughter is loaded into the lift, the metal box is right in her face and her body is often flailing around. She does not know how the caregivers manage to load her safely into the lift. The appellant's mother stated that when her daughter is being put into the lift in her bathroom, it scares her because of the water and she bumps things and gets scratches. The appellant's mother stated that she believes that her daughter's current set up is an "accident waiting to happen."

The ministry did not raise an objection to the admissibility of evidence from the witnesses on behalf of the appellant, and the panel admitted the evidence as relating to the appellant's need for an XY Gantry Lift System and being in support of information before the ministry on reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

The ministry relied on its reconsideration decision. At the hearing, the ministry explained that the Health Assistance Branch deals with the requests for equipment over the cost of \$500 and applies the ministry policy and legislation in making the decision.

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 an XY Gantry Lift System because the requirements in Section 3 and 3.8 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) were not met and the appellant is not eligible for a supplement pursuant to Section 69 of the 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 or previous 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.

Section 3 of Schedule C of the EAPWDR provides as follows:

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 3.12 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 or section 3.12, 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.
- (2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section 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 a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.
- (3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if
- (a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and
 - (b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.
- (4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.
- (5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if
- (a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule,

- as applicable, are met in respect of the medical equipment or device being repaired, and
- (b) it is more economical to repair the medical equipment or device than to replace it.
- (6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

Section 3.8 of Schedule C of the EAPWDR provides as follows:

Medical equipment and devices — floor or ceiling lift devices

- 3.8 (1) In this section, "floor or ceiling lift device" means a device that stands on the floor or is attached to the ceiling and that uses a sling system to transfer a person.
- (2) A floor or ceiling lift device is a health supplement for the purposes of section 3 of this Schedule if the following requirements are met:
- (a) the minister is satisfied that the floor or ceiling lift device is medically essential to facilitate transfers of a person in a bedroom or a bathroom;
- (b) the cost of the floor or ceiling lift device does not exceed \$4 200 or, if the cost of the floor or ceiling lift device does exceed \$4 200, the minister is satisfied that the excess cost is a result of unusual installation expenses.
- (3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years from the date on which the minister provided the item being replaced.

Section 69 of the EAPWDR provides as follows:

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 3.12, other than paragraph (a) of section 3 (1).

The ministry's position is that the appellant is eligible to receive health supplements under Section 62 of the EAPWDR but that the cost of the floor or ceiling lift exceeds \$4,200 contrary to Section 3.8(2)(b) of Schedule C of the EAPWDR. The ministry argued that the appellant was approved for a transportable lift in November 2009 in the amount of \$3,227.76 and was approved for an upgrade to the system in November 2012 in the amount of \$972.24, which totals \$4,200. The ministry argued that the total upgrade cost of the XY Gantry lift system is \$2,216.20 and since the \$972.24 was not used for the upgrade in November 2012, the appellant is actually requesting \$1,243.96 (i.e. \$2,216.20 minus \$972.24 equals \$1,243.96). The ministry argued that information is not provided to establish that the XY Gantry lift system is necessary to address a direct and imminent life threatening need which the appellant faces.

The appellant's position is that several professionals support her application for an XY Gantry lift system, including her doctor, the director of her residence, her OT, and her caregiver and that it is the ceiling lift device which is required to safely meet the appellant's particular medical needs. The appellant argued that the potential for injury and possible concussion with her existing lift system poses a life threatening need which can be met by the XY Gantry lift system.

Section 3.8 of Schedule C of the EAPWDR provides that a ceiling lift device is a health supplement for the purposes of Section 3 of Schedule C if the cost of the ceiling lift device does not exceed \$4,200 or, if the cost of the ceiling lift device does exceed \$4,200, the ministry is satisfied that the excess cost is a result of unusual installation expenses. The panel finds that it is not disputed that the Medical Equipment Request and Justification dated February 21, 2013 attached a Quote dated January 17, 2013 from a medical equipment supplier for a Gantry system at a total cost of \$2,216.20. The panel finds that the cost of the ceiling lift device, at a stated price of \$2,216.20 does not exceed \$4,200. The panel finds that the ministry's determination that \$2,216.20 exceeds \$4,200 was not reasonably supported by the evidence. The ministry argued that the appellant was approved for a transportable lift in November 2009 in the amount of \$3,227.76 and was approved for an upgrade to the system in November 2012 in the amount of \$972.24 and that since these two amounts total \$4,200, the appellant is not eligible for any further funding for a ceiling lift device. However, the ministry did not refer to a section in the legislation to support the ministry's cumulative totaling of amounts over time for a maximum amount for a ceiling lift device, nor specify the time period to which this cumulative total applies. Section 3.8 also provides that if the cost of the ceiling lift device is found to exceed \$4,200 that the ministry is to consider whether the excess cost is a result of unusual installation expenses, and the ministry has not considered this part of the section in its decision.

In the letter dated December 9, 2009 the ministry approved the appellant's request for a Waverley Glen Transportable Lift . Pursuant to Section 3(3) of Schedule C of the EAPWDR, a replacement of that equipment is permitted if it is damaged, worn out, or not functioning but only if the period of time specified in Section 3.8(3) has passed, or five years from the date on which the ministry provided the item being replaced. The ministry did not rely on Section 3(3) or 3.8(3) of Schedule C in its decision. In November 2012 the ministry approved the appellant's request for a replacement ceiling lift device, being the XY Gantry Lift System which had been supported by a quote for \$4,200, but the ministry only authorized the sum of \$972.24 by deducting the cost of the ceiling lift device provided approximately three years earlier. Although the Quote dated January 17, 2013 for the work described by the OT appears to be more in the nature of repairs to the previously approved system, covered by Section 3(4) of Schedule C, the appellant's request submitted in February 2013 was treated by the ministry as a request for an XY Gantry ceiling lift device, or a replacement of the XY Gantry Lift System approved approximately a year and a half earlier. As the ministry's decision relied on a finding that the cost for the ceiling lift device requested in February 2013 exceeded \$4,200 pursuant to Section 3.8(2)(b) of Schedule C of the EAPWDR, rather than applying the sections in Schedule C applicable to replacements and repairs of equipment previously provided by the ministry, the panel also finds that the ministry decision was not a reasonable application of the applicable enactment in the appellant's circumstances.

Section 69 of the EAPWDR applies to provide a health supplement to a person in the family unit who is otherwise not eligible for the health supplement under the EAPWDR. The panel finds that not only is the appellant eligible for health supplements under Section 62 of the EAPWDR, but the ministry found in November 2012 that she was eligible for the XY Gantry Lift System in particular. While the appellant argued that the potential for injury and possible concussion with her existing lift system poses a life threatening need which can be met by the XY Gantry lift system, the appellant has been using this system since December 2009, or for over three years, and there was no evidence of injuries sustained by the appellant as a result of this lift system besides a description by her caregivers of some bruises and scratches. The panel finds that the ministry reasonably determined that there was insufficient evidence to support a direct and imminent life threatening need for the XY Gantry lift system. Therefore, the panel finds that the ministry's decision, which concluded that the criteria in Section 69 of the EAPWDR are not met, was reasonable.

APPEAL #

In conclusion, the panel finds that the ministry's decision to deny the request for a supplement to cover the cost of an XY Gantry Lift System because the requirements in Section 3 and 3.8 of Schedule C of the EAPWDR were not met was not reasonably supported by the evidence and was not a reasonable application of the applicable enactment in the circumstances of the appellant and, therefore, the panel rescinds the decision. Therefore, the decision is overturned in favour of the appellant.