

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the ministry) reconsideration decision dated June 6, 2013 which denied the appellant's request for a ceiling lift device ("the lift device") on the basis that:

- a. The lift device is not medically essential to facilitate the transfers of the appellant in a bedroom or bathroom as required by Schedule C, section 3.8(2)(a) of the *EAPWDR*; and
- b. The appellant was not eligible for the lift device as a life threatening health need as provided for by section 69 of the *EAPWDR* as the appellant was eligible for a health supplement as set out under Schedule C, sections 2(1)(a) and (f) and 3 of the *EAPWDR*.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*, sections 62 and 69, Schedule C, section 3.8

## PART E – Summary of Facts

The ministry was not in attendance at the hearing. After confirming that the ministry was notified, the hearing proceeded under section 86(b) of the *Employment and Assistance Regulation*.

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

1. The appellant's Request for Reconsideration dated May 29, 2013
2. A three-page written submission dated May 29, 2013 and prepared by the appellant's representative in support of the Request for Reconsideration;
3. A letter dated May 1, 2013 from the ministry to the appellant enclosing a "Medical equipment and devices decision summary of the same date;
4. A one-page fax cover sheet dated March 13, 2013 and prepared by an occupational therapist regarding the application for the installation of a ceiling lift for the appellant;
5. A two-page letter dated March 13, 2013 prepared by an occupational therapist requesting a ceiling lift for the appellant;
6. A one-page letter dated January 4, 2013 prepared by the appellant's representative and endorsed by a physician requesting a ceiling lift for the appellant;
7. A Medical Equipment Request and Justification form dated January 8, 2013 requesting a ceiling lift for the appellant;
8. A quote from a medical equipment supply company for a ceiling lift dated January 2, 2013; and
9. A second quote from a medical equipment supply company for a ceiling lift dated January 2, 2013.

In the Request for Reconsideration prepared by her representative, the appellant argues that she does not own a ceiling track lift system and does not own and has not received funding for a lift device and that the current single-track device that she has does not accommodate transfers to her recliner chair or suitable floor space. The appellant further argues that the existing single-track that she has does not meet her medical needs and that the requested lift device is best suited in the living room of the home where the appellant lives. The appellant argues that the lift device is medically essential insofar as it is needed to assist in her physical therapy which cannot be done in bed. Finally, the appellant argues that the denial of the lift device due to it not being requested for a bathroom or bedroom is far too limited in scope.

In her Notice of Appeal dated June 28, 2013, the appellant's representative submits that limiting funding of lift devices to bedrooms and bathrooms is too narrow to meet the vision and mission of the ministry and the Decision Unit's social and economic potential does not consider effective outcome based practices. The appellant's representative argues further that the ministry does not work in collaboration with ministries and other levels of government as it goes against the objectives of Worksafe BC and Community Living BC.

At the outset of the hearing, the appellant's representative provided written submissions to the panel. These submissions raised issues that were also raised in the appellant's Request for Reconsideration. After reviewing these submissions, the panel admitted them as written testimony in support of the information and records that were before the minister at reconsideration and is therefore admissible pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

The appellant's representative stated that the appellant is a 35 year old woman with Retts Syndrome which is a progressive disability leading to increased immobility. The appellant has lived in a group home for almost 15 years, is confined to a wheelchair and has never received funding for a lift system. The appellant has a single track attached to the ceiling in her bedroom which was left behind by a previous tenant but it is a unidirectional system which allows her to be transferred from her wheelchair to her bed. The appellant does not own an actual lift motor and has to share that which belongs to her roommate. The lift that is the subject of this appeal is multi-directional in nature and was requested to be installed in the living room of the appellant's house as this is the only room suitable for providing range of motion exercises due to the appellant's excessive rigidity

which requires a large open area for staff to safely work in as the appellant's bedroom is too small for that purpose. The appellant's living room is a shared space in the group home that she lives in with 3 other residents.

In response to a question, the appellant's representative confirmed that the requested lift device was intended to be installed in the living room in the group home where the appellant lives.

In response to a question, the appellant's representative stated that the need for the lift device is to assist with the appellant's range of motion therapy in the living room given that there is limited space in her bedroom.

## PART F – Reasons for Panel Decision

The issue on the appeal is the reasonableness of the ministry's decision to deny the appellant's request for a ceiling lift device on the basis that:

- a. The lift device is not medically essential to facilitate the transfers of the appellant in a bedroom or bathroom as provided for by Schedule C, section 3.8(2)(a) of the *EAPWDR*; and
- b. The appellant was not eligible for a ceiling lift device as a life threatening health need as provided for by section 69 of the *EAPWDR* need as the appellant was eligible for a health supplement as set out under Schedule C, sections 2(1)(a) and (f) and 3 of the *EAPWDR*.

The applicable legislation is found in the *EAPWDR* as follows:

### General health supplements

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

The applicable provision that addresses medical equipment and devices is found in Schedule C of the *EAPWDR* 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

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.

### **Positions of Parties**

The appellant takes the following position:

1. She is eligible for funding of a new lift device;
2. The requirement that the lift device be restricted to use in the bedroom and/or bathroom as provided by section 3.8(2)(a) of Schedule C of the *EAPWDR* is too rigid to meet the needs of persons with disabilities;
3. The requirement as set out above contravenes the mandate of Worksafe BC; and
4. The requirement as set out above contravenes the mandate of Community Living BC, a crown agency that reports to the ministry.

The ministry's position as set out in the Reconsideration Decision is that:

1. The lift device is not medically essential to facilitate transfers of the appellant in a bedroom or bathroom; and
2. The appellant does not require a remedy under section 69 of the *EAPWDR* because she is eligible to receive health supplements set out under Schedule C, sections 2(1)(a) and 3

### **Jurisdiction of Panel**

Section 24 of the *Employment and Assistance Act* provides that the role of the panel is to determine whether the reconsideration decision is reasonably supported by the evidence or whether it is a reasonable application of the applicable enactment in the circumstances of the appellant. As such, the panel does not have jurisdiction to make a determination as to whether section 3.8(2)(a) of Schedule C of the *EAPWDR* contravenes or otherwise offends the mandates of either Worksafe BC or Community Living BC as set out above (appellant's positions numbered 3 and 4).

### **Eligibility for lift device under Schedule C of the *EAPWDR***

Section 3.8(2)(a) of Schedule C of the *EAPWDR* provides that a ceiling lift device is a health supplement for the purposes of section 3 if the minister is satisfied that it is medically essential to facilitate transfers of a person in a bedroom or bathroom. In the present case, the panel finds that in the appellant's Medical Equipment Request and Justification form, the medical equipment recommended is a "Gantry Lift" and under the heading "Specifications of Medical Equipment Required to Meet the Applicant's Need" the therapist who completed the form states "Gantry Lift for living room." Further, in the fax cover sheet dated March 13, 2013, the same therapist writes "Please find attached the application for the installation of a Gantry Lift in the living area of the group home." Lastly, at the hearing the appellant's representative conceded that the Gantry Lift which is the lift device which is the subject of this appeal would indeed be intended for use in the living room in the appellant's group home.

The panel finds that the evidence in this matter supports a conclusion that the lift device in question is specifically intended to be utilized in the living room of the appellant's group home and as such, the panel concludes that the ministry was reasonable in determining that the lift device is not medically essential to facilitate the transfers of the appellant in a bedroom or bathroom as provided for by Schedule C, section 3.8(2)(a) of the *EAPWDR*.

#### **Eligibility as life threatening health need under section 69 of the *EAPWDR***

Section 69 of the *EAPWDR* provides that the minister may provide to a family unit any health supplement set out in sections 2(1)(a) and (f) and 3 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 the regulation and if the minister is satisfied that, *inter alia*, 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.

In this case however, the appellant has requested a lift device for the living room and as such, the panel finds that it does not constitute a "Health Supplement" as contemplated by Schedule C of the *EAPWDR* as section 3.8 specifically defines a ceiling lift device as one that is used to facilitate transfers in a bedroom or bathroom.

As the appellant's request for a lift device does not meet the definition of a "Health Supplement", the ministry is not able to provide that to the appellant under section 69 of the *EAPWDR* regardless of whether there is evidence of a direct and imminent life threatening need and as such, the panel concludes that the ministry was reasonable in determining that the appellant was not eligible for a ceiling lift device on the basis that she was facing a direct and life threatening health need as provided for by section 69 of the *EAPWDR*.

#### **Conclusion**

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for a lift device was a reasonable application of the applicable enactment in the circumstances of the appellant, and therefore confirms the decision.