

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the "ministry") reconsideration decision dated May 23, 2012, denying the appellant's request for funding for bathroom renovations.

The ministry found that as the appellant is in receipt of disability assistance he is eligible to receive health supplements provided under Section 62 and Schedule C of the *Employment and Assistance Persons with Disabilities Regulations* (EAPWDR). However, the ministry was not satisfied that the bathroom renovations were medical equipment as defined in EAPWDR Schedule C sections 3 or 3.1 to 3.12 or that the bathroom renovation met the criteria for other health supplements set out in Schedule C sections 2, 2.1, 2.2, 4, 4.1, and 5 to 9. The ministry was also not satisfied that the bathroom renovations were required to meet a direct and life threatening health need as required by EAPWDR Section 69.

### PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Regulations* (EAPWDR), Sections 62 & 69 & Schedule C, Sections 2, 2.1, 2.2., 3, 3.1-3.12, 4, 4.1 and 5-9

## PART E – Summary of Facts

At reconsideration, the documents that were before the ministry included the following:

- Quotation from a plumbing store dated January 13, 2013 for the cost of a tub, tub faucet, lever and dry wall tile for a total of \$1,150
- Letter from the appellant's physician dated February 26, 2013 stating that the appellant has hemiparesis from his previous cerebrovascular accident, that his caretaker advises that the appellant has difficulty getting into the bathtub with his left leg because it is weak and that it would be helpful if his bathtub was replaced with a standing shower. The physician also reports that the appellant also needs at least 3-4 urinals to manage with his incontinence symptoms
- Letter from the ministry to the appellant dated March 18, 2013 advising that the ministry could not help the appellant with his request for bathroom renovations
- Letter from the ministry to the appellant dated March 18, 2013 requesting that the appellant submit a written supplier quote for urinals as per his doctor's letter
- Invoice from a medical supplier dated April 3, 2013 with a quote for the cost of one urinal in the amount of \$9.99
- Eligible Health Goods/Services Purchase Authorization dated April 10, 2013 completed by a medical service supplier with a quote for four urinals at a cost of \$39.96
- A completed Request for Reconsideration Form signed by the appellant on April 18, 2013 (RFR) with attached pictures and information of bath seating, transfer bench, portable swivel bath seat with back and aquasense blow molded transfer bench

In his Notice of Appeal, the appellant states that we will provide information shortly.

### *Admissibility of new information*

Prior to the hearing the appellant provided a submission dated June 25, 2013 from himself and his home share provider (the "Submission"). The home share provider states that the appellant is suffering from difficulties due to his April 2006 stroke resulting in left side hemiplegia. The home share provider states that he witnesses the appellant's difficulties getting in and out of the bathtub safely so he often refuses to take his bath. The home share provider states that the appellant's body starts shaking when he tries to bend and lift his leg and he has difficulty lifting his left leg and his left hand and that he only uses his right hand to perform all of his activities of daily living. The Submission states that if the ministry will not fund the requested bathroom renovations then the ministry ought to provide funding for bathing and toileting aids as per the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Schedule C, section 3 and 3.5. The Submission states that the bath lift will offer the appellant more independence, privacy and make it easier for him to get in and out of the bathtub.

The panel has admitted the Submission into evidence as it is in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information relates to the impact of the appellant's physical conditions on his ability to get in and out of the bathtub which is directly related to his request for funding for bathroom renovations.

Prior to the hearing, the ministry provided an email dated July 3, 2013 stating that there would be no submission provided by the Reconsideration Branch as it is relying on the reconsideration decision. However, the ministry states that the initial request was for bathroom renovations which were denied and the request before the EAAT is for a bath lift – an item that was not requested and not denied. The ministry's email did not contain any new information.

With the consent of both parties, the appeal proceeded by way of written hearing.

## PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's reconsideration decision denying the appellant's request for funding for bathroom renovations on the basis that the renovations were not medical equipment as defined in EAPWDR Schedule C sections 3, 3.1 to 3.12, do not meet the criteria for other health supplements set out in EAPWDR Schedule C sections 2, 2.1, 2.2, 4, 4.1, and 5 to 9, and were not required to meet a direct and life threatening health need as required by EAPWDR Section 69.

Pursuant to Section 62 of the EAPWDR, the applicant must be a recipient of disability assistance, or be a dependant 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 as the appellant is a recipient of disability assistance.

Schedule C 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 exclusions, 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 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; (k) a standing frame; (l) a positioning frame; (m) a transfer aid
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3.6	Hospital beds: (a) a hospital bed; (b) an upgraded component of a hospital bed; (c) an accessory attached to a hospital bed; (d) a positioning item on a hospital bed
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- 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; (n) a foot abduction orthosis; (o) a toe orthosis
- 3.11 Hearing instruments
- 3.12 Non-conventional glucose meters
- 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.

With respect to Schedule C, section 3.5,

**"transfer aid"** means a transfer board, transfer belt or slider sheet.  
(B.C. Reg. 197/2012)

### **EAPWDR**

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,

### **Bathroom renovations as medical equipment , EAPWDR Schedule C, section 3 and 3.1 to 3.12**

The ministry's position is that the bathroom renovations are not eligible medical equipment as they are not one of the items specified in EAPWDR Schedule C, section 3.1 to 3.12 as follows:

- 3.1 Canes, crutches and walkers
- 3.2 Wheelchairs
- 3.3 Wheelchair seating systems

- 3.4 Scooters
- 3.5 Bathing and toileting aids: (a) a grab bar in a bathroom;(b) a bath or shower seat;(c) a bath 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; (k) a standing frame; (l) a positioning frame; (m) a transfer aid
- 3.6 Hospital beds: (a) a hospital bed; (b) an upgraded component of a hospital bed; (c) an accessory attached to a hospital bed; (d) a positioning item on 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; (n) a foot abduction orthosis; (o) a toe orthosis
- 3.11 Hearing instruments
- 3.12 Non-conventional glucose meters

The appellant's position is that the bathroom renovations are necessary to help him as he has difficulty getting in and out of the tub due to left sided hemiparesis and weak left leg. Alternatively, as set out in the Submission, the appellant requests that the ministry provide a bath lift as it is a bathing toileting aid set out in EAPWDR Schedule C, section 3.5.

The ministry's position is that bathroom renovations are not one of the medical equipment itemized in EAPWDR Schedule C, section 3.1 to 3.12 so they are not authorized to provide funding for the requested bathroom renovations. In their email, the ministry states that the initial request was for bathroom renovations which were denied and that the appellant's request for a bath lift is an item that was not previously requested or previously denied.

#### *Panel Decision*

The panel finds that the bathroom renovations are not one of the medical equipment and devices set out in EAPWDR Schedule C, sections 3.1 to 3.12.

While Schedule C, section 3.5 itemizes a variety of bathing and toileting aids, bathroom renovations are not a bathing and toileting aid. The panel appreciates that replacing the bathtub with a stand up shower may be beneficial for the appellant and make his ability to bathe much easier. However, bathroom renovations are not provided for in the list of legislated items.

As the bathroom renovations are not eligible medical equipment as defined in EAPWDR Schedule C, section 3.1 to 3.12, the panel finds that the ministry's reconsideration decision denying the appellant's request for funding for bathroom renovations as medical equipment was reasonable.

With respect to the appellant's new request that the ministry provide funding for a bath lift pursuant to EAPWDR Schedule C, section 3.5 the panel notes that this is a new request that was not previously requested or denied. The panel's jurisdiction is limited to determining whether the ministry's reconsideration decision was reasonable and cannot make any determination regarding the appellant's new or alternate request.

**Bathroom renovations as a medical supply - EAPWDR Schedule C, section 2(1)**

The appellant's position is that the bathroom renovations are necessary to help him as he has difficulty getting in and out of the tub due to left sided hemiparesis and weak left leg.

The ministry states that they are not authorized to approve the appellant's request for bathroom renovations as they are not authorized as a medical or surgical supply that is disposable or reusable and required for one of the following purposes specified in Schedule C, section 2(1)(a)(i) as follows: wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care, or limb circulation care.

The ministry also states that bathroom renovations are not lancets, needles and syringes, ventilator supplies or tracheostomy supplies or consumable medical supplies as specified in EAPWDR Schedule C, section 2(1)(a.1) or (a.2). The ministry also states that there is no information provided to establish that the bathroom renovations are necessary to avoid an imminent and substantial danger to health as required by EAPWDR Schedule C, section 2(1)(a)(ii)(c).

***Panel Decision***

The panel finds that bathroom renovations are not required for wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care, or limb circulation care as required by EAPWDR Schedule C, section 2(1)(a)(i). The panel also finds that the bathroom renovations are not lancets, needles and syringes, ventilator supplies or tracheostomy supplies or consumable medical supplies as specified in EAPWDR Schedule C, section 2(1)(a.1) or (a.2).

Although the information establishes that the appellant has difficulties getting into the bathtub and that it would be beneficial for the appellant to have the bathroom renovations there is no information to establish that the bathroom renovations are necessary to avoid an imminent and substantial danger to health as required by EAPWDR Schedule C, section 2(1)(a)(ii)(c).

As the bathroom renovations are not required for any of the purposes specified in EAPWDR Schedule C, section 2(1)(a), the panel finds that the ministry's decision that the bathroom renovations were not an eligible medical supply was reasonable.

**Bathroom renovations as other health supplements – Schedule C, section 2, 2.1, 2.2, 4, 4.1, and 5-9**

The ministry's position is that although EAPWDR Schedule C, section 2(1)(c), 2(2) and 2(2.1) provides for up to 12 visits per calendar year of \$23 per visit for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physiotherapy treatments, bathroom renovations do not qualify as a health supplement because they are not one of the defined therapies.

The ministry also states that the bathroom renovations do not fit into any of the other remaining health supplements authorized by EAPWDR Schedule C, section 2.1, 2.2, 4, 4.1 and 5-9 as follows: optical supplements, eye examination supplements, dental supplements, crown and bridgework

supplements, emergency dental supplements, diet supplements, monthly nutritional supplements, natal supplements and infant formula, so they cannot approve the appellant's request for bathroom renovations.

The appellant's position is that the bathroom renovations will be helpful given his difficulties with getting in and out of the tub.

*Panel Decision*

The panel finds that bathroom renovations are not one of the therapies set out in EAPWDR Schedule C, section sections 2(1)(c), 2(2) and 2(2.1), and are not one of the other remaining health supplements specified in EAPWDR Schedule C, section 2.1, 2.2, 4, 4.1 and 5-9. Accordingly, the panel finds that the ministry's decision that bathroom renovations are not an eligible health supplement set as required by EAPWDR Schedule C, section 2(1)(c), 2(2), 2(2.1), 2.1, 2.2, 4, 4.1 or 5-9 was reasonable.

**Life Threatening Health Need – EAPWDR section 69**

The ministry's position is that the evidence does not establish that the appellant is facing a direct and imminent life-threatening health need, or that bathroom renovations are necessary to meet a direct and imminent life-threatening health need as required by EAPWDR Section 69.

In addition, the ministry's position is that EAPWDR Section 69 only applies to items that are defined as a health supplement set out in EAPWDR Schedule C, section 2(1)(a) and (f) and section 3 to 3.11. As the bathroom renovations are not one of the specified health supplements, the ministry's position is that the appellant's request does not meet the legislated criterion.

The appellant's position is that he has hemiplegia and that he suffers getting in and out of the bathtub so the bathroom renovations are required to help promote his safe bathing.

*Panel Decision*

EAPWDR section 69 applies where a person faces a direct and imminent life threatening need and a health supplement is necessary to meet that need. The term "*imminent*" also requires a degree of immediacy.

The panel notes while the appellant's physician confirms that the appellant has a serious health condition and difficulty getting in and out of the tub with his left leg which is weak, there is no medical evidence indicating that the appellant faces a direct and imminent life threatening need or that the bathroom renovations are necessary to meet a direct and imminent life threatening need. While the panel notes that the appellant may benefit from the bathroom renovations, that is not sufficient to satisfy the criteria of EAPWDR section 69.

The panel notes that section 69 refers to certain health supplements set out in Schedule C and applies only to the provision of those supplements if other criteria are met. As the panel has found that the ministry reasonably determined that the requested bathroom renovations are not an eligible supply, equipment or treatment under all of the relevant sections of Schedule C, and therefore not



one of the Schedule C supplements specified in section 69, the panel finds that the ministry reasonably determined that the appellant was not eligible for the bathroom renovations under EAPWDR section 69.

*Conclusion*

In conclusion, the panel finds that the ministry's reconsideration decision to deny the appellant's request for bathroom renovations was reasonable based on the evidence and was a reasonable application of the legislation in the appellant's circumstances. The panel confirms the ministry's reconsideration decision.