

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated May 14, 2013 which denied the appellant's request for a supplement to cover the cost of a pedal bike. 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) and the appellant is not eligible for a supplement pursuant to Section 69 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 62 and 69 and Schedule C, Sections 2, 2.1, 2.2, 3, 3.1 to 3.12, 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 included:

- 1) Prescription from a family physician dated February 15, 2013 for physiotherapy re: right knee ACL/pre-patellar bursitis;
- 2) Note from a registered physiotherapist dated April 16, 2013 stating that the appellant has been receiving physiotherapy treatment on her right knee for bursitis, patellar tendon inflammation and patellofemoral irritation. It may be beneficial for her to get a pedal bike for home use to further help her rehabilitate her knee. With proper use, the pedal bike will aid the appellant with swelling management, progress general fitness and improve active range of motion, strength and endurance in her knees so she may more freely participate in activities of daily living;
- 3) Fax to the ministry from an occupation therapist (OT) dated April 24, 2013 stating that the appellant has been working with her physiotherapist in an out-patient setting, and an assessment by the therapist and a quote for a pedal exerciser are attached. The pedal exerciser is necessary to help the appellant continue with her rehabilitation at home;
- 4) Quotation from an equipment supply company dated April 26, 2013 setting out a total cost of \$139.48 for a Angle adjustable pedal exerciser;
- 5) Letter from the ministry to the appellant dated April 26, 2013 advising that her request for funding to purchase a pedal bike is denied; and,
- 6) Request for Reconsideration- Reasons dated May 7, 2013.

The appellant advised that she had consulted an advocate who was not interested in assisting her with the appeal. The appellant indicated to the panel that she was prepared to proceed and to represent herself.

At the hearing, the appellant provided a written statement dated June 11, 2013 which sets out the appellant's reasons why her request for a pedal bike and the full treatment of physiotherapy sessions should be granted. The ministry objected to the admissibility of the portions of the statement relating to physiotherapy treatments and did not object to the balance of the statement. The appellant argued that she does not want to go through a request for physiotherapy again since it took seven months for the initial request to come to a hearing, and she would like her request for extended physiotherapy sessions to be considered on this appeal.

The panel admitted the appellant's statement as it related to the request for a pedal bike, pursuant to Section 22(4) of the Employment and Assistance Act (EAA), as providing further detail relating to the need for the requested item and being in support of information that was before the ministry on reconsideration. The panel did not admit the portions of the statement relating to the appellant's request for additional physiotherapy treatments as this was not in support of information and records that were before the ministry on reconsideration and, therefore, did not meet the test in Section 22(4) of the EAA.

In her Notice of Appeal, the appellant stated that although the words "peddle bike" were not specifically used in the regulation, she believes that discretion was shown in past decisions by the ministry where the ministry has allowed medical equipment to be authorized when it was not specifically named in the regulations. The appellant wrote that she has support for the peddle bike from her physiotherapist, and OT and her physician.

In her Request for Reconsideration, the appellant wrote that a pedal exerciser (a bike without wheels) is an inexpensive form of a recumbent stationary bike. Because it may be put on a table, it can also be used for upper body workout. The appellant wrote that the physiotherapist recommended a recumbent bike as the best machine for her to use for further rehabilitation of her left knee. This is the best apparatus for her injury because the right knee can move the pedals around while her injured knee gets the necessary activity to heal. The appellant wrote that she will use the pedal bike for ongoing daily exercise because both of her knees have progressive osteoarthritis from damage in an auto accident. The pedal exerciser will be beneficial as a daily aid for swelling management. It will also provide benefits for the damaged muscles around her ankle. The appellant wrote that it will strengthen the muscles in her upper legs to support the joints so she can continue

to walk and it will work and strengthen the upper body which will help her lift items.

The appellant wrote that the pedal bike will strengthen the muscles in her upper legs to support the joints so she can continue to walk. It will strengthen her upper body which will help her lift items. The appellant stated that she damaged her knee at the beginning of November 2012, that she has had physiotherapy for it and she does the exercises but, after 6 months, she has not progressed to the point where she has been able to walk without crutches. The appellant wrote that even with crutches the pain is bad and there is considerable swelling and her knee joint gives way. Her physiotherapist says that her joint will be supported when the muscles around it are strengthened by a pedal exerciser.

In her statement provided at the hearing, the appellant wrote that she has multiple disabilities that are the result of an auto accident that happened in 1982. Both of her knees have been painful over the years with flare-ups that keep her from walking. After managed rest, she was able to walk again with the help of a cane. Her right knee has been more painful for months and was not getting better. The appellant wrote that, in November 2012, she experienced extreme pain in her knee. The OT explained that the X-Ray showed that she lost the bursae (the small fluid-filled pads that act as cushions among the bones and the tendons and muscles, near the joints) on 3 out of 4 points in her knee. The appellant wrote that this will require a knee replacement and she is on a waiting list to see an orthopedic surgeon.

The appellant wrote that if she strengthens the muscles around her knee it is possible that she could put off the replacement operation. The appellant stated she does not want to have a knee replacement unless the pain forces her to, so she is motivated to strengthen her muscles. She was told after the auto accident that she would not walk again, so she highly values the ability to walk. The appellant wrote that she is being treated for the addiction of over-eating and part of the treatment requires exercise. The physician who is treating her said she is supportive of the use of a pedal bike for muscle strength and weight loss.

The appellant wrote that she has lost muscle strength in her back due to a lumbar vertebra fracture, a compressed thoracic fracture above the lumbar and destroyed connective tissue. The appellant stated that she had a major operation that cut through her stomach muscles which took away her lifting strength. The appellant wrote that keeping the muscles in her arms strong is important for the minimum amount of lifting that she can do, which keeps her living independently. She could use the pedal bike on a table to keep her arm muscles strong. The appellant wrote that she looked into the possibility of using equipment at a community center gym and there were many barriers to her doing this, but stated the main consensus was that she is still in the physiotherapy part of her recovery.

The appellant wrote that people who have used the pedal apparatus to help maintain strength in one leg find that they can do more exercising because the good leg turns the pedals and takes the weakened leg with it and gives it more exercise that just exercising the weakened leg on its own. The appellant stated that she has been using crutches for the past 7 months and this has left her mostly housebound except for medical appointments. The appellant stated that several professionals support her application for a pedal bike, including a physiotherapist, two OT's and two physicians.

At the hearing, the appellant stated that since the accident in 1982 she has experienced pain in her knee but approximately 7 months ago, when she was at her doctor's office, her knee gave way and the pain was excruciating. The appellant stated that the pedal bike is an appropriate piece of equipment for her because she has a smaller apartment and it can sit on the floor or on the table and, financially, it is a smaller cost than many other types of equipment. The appellant stated that the pedal bike will provide exercise for both of her knees and both of them are damaged.

The ministry relied on its reconsideration decision which included evidence that the appellant was previously a recipient of disability assistance and is currently in receipt of MSO [medical services only] benefits. The appellant is eligible to receive health supplements provided under Section 62 and Schedule C of the EAPWDR.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of a pedal bike 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) 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 medical services only benefits.

At issue is whether the requested pedal bike is 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)(a.1) of Schedule C provides that the following medical or surgical supplies are health supplements if the other criteria of the section are met: lancets, needles and syringes, ventilator supplies, and tracheostomy supplies.

Section 2(1)(a.2) of Schedule C provides that the following consumable medical supplies are health supplements if the other criteria of the section are met: supplies required to thicken food.

Further, Section 2(1.1) of Schedule C, provides that, for the purposes of Section 2(1)(a), "medical or surgical supplies" do not include nutritional supplements, food, vitamins, minerals or prescription medications.

Section 2(1)(c) of Schedule C 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, physical therapy.

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.

Section 2.2 of Schedule C provides that the minister may pay a health supplement under Section 62.2 of the EAPWDR for an eye examination if the other criteria of the section are met.

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 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. ...

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 of the Schedule 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 or bedroom; a portable commode chair; a standing frame or a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility; and a transfer aid for a person for whom the transfer aid is medically essential to transfer from one position to another.

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, and a positioning item on 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: breathing devices.

3.10 (1) In this section:

"off-the-shelf" , in relation to an orthosis, means a prefabricated, mass-produced orthosis that is not unique to a particular person;

"orthosis" means

- (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.

(2) Subject to subsections (3) to (11) of this section, an orthosis is a health supplement for the purposes of section 3 of this Schedule if

- (a) the orthosis is prescribed by a medical practitioner or a nurse practitioner,
- (b) the minister is satisfied that the orthosis is medically essential to achieve or maintain basic functionality,
- (c) the minister is satisfied that the orthosis is required for one or more of the following purposes:
 - (i) to prevent surgery;
 - (ii) for post-surgical care;

(iii) to assist in physical healing from surgery, injury or disease;

(iv) to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition . . .

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 instrument.

Section 3.12 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 non-conventional glucose meter.

Section 4 of Schedule C 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 [*emergency dental and denture supplement*] of the EAPWDR are emergency dental services.

Section 6 of Schedule C 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 provides as follows:

- 7 The amount of a nutritional supplement that may be provided under section 67 [*nutritional supplement*] of this regulation is the sum of the amounts for those of the following items specified as required in the request under section 67 (1) (c):
- (a) for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to \$165 each month;
 - (b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]
 - (c) for vitamins and minerals, up to \$40 each month.

Section 8 of Schedule C 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 Schedule C provides that the minister may provide infant formula under section 67.1 of the EAPWDR if the other criteria of the section are met.

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 requested item, a pedal bike, is not an eligible item as a medical or surgical supply set out in Section 2(1)(a) of Schedule C of the EAPWDR as it does not meet all of the criteria. The ministry argued that information has not been provided to establish that the pedal bike is a disposable or reusable medical or surgical supply required for one of the purposes set out in the section, namely: wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care, or limb circulation care. The appellant's position is that several professionals support her application for a pedal bike, including a physiotherapist, two OT's and two physicians to help with the rehabilitation of her left knee along with other health benefits. The appellant argued that while the pedal bike is not specifically named as an item, she believes that the ministry has allowed medical equipment to be authorized when it was not specifically named in the past, and the panel has the discretion to find that the pedal bike should be named as an item.

The appellant described the pedal bike as a bike without wheels which is an inexpensive form of a recumbent stationary bike that, because it may be put on a table, can also be used for upper body workout. The appellant wrote that the pedal bike will strengthen the muscles in her upper legs to support the joints so she can continue to walk and it will strengthen her upper body which will help her lift items. The panel finds that the ministry reasonably concluded that the pedal bike, as described as exercise equipment, is not required for one of the purposes of wound care, ongoing bowel care, catheterization, incontinence, skin parasite care or limb circulation care, as set out in Section 2(1)(a)(i) of Schedule C of the EAPWDR. Pursuant to Section 24 of the *Employment and Assistance Act* (EAA), the panel's jurisdiction on this appeal is limited to a determination of whether the ministry's reconsideration decision was reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances. Therefore, the panel finds that the ministry's decision, which concluded that the pedal bike does not meet all of the legislative criteria as set out in Section 2(1)(a) of Schedule C of the EAPWDR, was reasonable.

The ministry's position is that the appellant is eligible to receive health supplements under Section 62 of the EAPWDR but the pedal bike is not an eligible item as medical equipment specifically set out in Sections 3 and 3.1 through 3.12 of Schedule C of the EAPWDR. The appellant did not argue that the pedal bike is listed as an eligible item of medical equipment but, rather, that it should be on the ministry's list of eligible items as it has the potential of providing significant health benefits to her at a relatively small cost of \$139.48. In her Request for Reconsideration, the appellant argued that the ministry has made exceptions in the past and she knows of another person who was supplied with a pedal exerciser. The appellant argued that the pedal bike is an orthosis apparatus that is medically essential for her to achieve and maintain basic functionality, that it will assist in physical healing from an injury, it will improve physical functioning that has been impaired by a neuro-musculo-skeletal condition, and it could prevent surgery.

The panel finds that the ministry reasonably determined that the requested pedal bike is not specifically set out in Section 3.1 through 3.12 of Schedule C of the EAPWDR as it is not any of the following: a cane, a crutch or a walker, or an accessory to 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 bedroom, a portable commode chair, a standing frame or a positioning chair, or a transfer aid; a hospital bed, an upgraded component of a

hospital bed, an accessory attached to a hospital bed, or a positioning item on a hospital bed; a pressure relief mattress; a floor or ceiling lift device; a breathing device; a custom-made or off-the-shelf foot orthotic, custom-made footwear, a permanent modification to footwear, off-the-shelf footwear, off-the-shelf orthopedic 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, a foot abduction orthoses, or a toe orthosis; a hearing instrument or a non-conventional glucose meter. Although the appellant argued that the pedal bike should be included in Schedule C, the panel finds that Section 3 stipulates that the items specifically described in Section 3.1 to 3.12 are the health supplements that may be provided.

The ministry's position is that the appellant's request for a supplement to cover the cost of a pedal bike does not meet the criteria of the other sections of Schedule C of the EAPWDR, including sections 2(1)(c), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9, since a pedal bike is not any of the items covered, namely: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physiotherapy; 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 requested pedal bike does not fall within any of these other sections of Schedule C. The panel finds that the ministry's decision, which concluded that the pedal bike is not an item listed in the other sections of Schedule C of the EAPWDR, was reasonable.

With respect to Section 69 of the EAPWDR, the ministry's position is that this section is intended to provide a remedy for those persons who are facing a direct and imminent life-threatening need for these supplements and who are not otherwise eligible to receive them. The ministry argued that the appellant does not require a remedy under Section 69 as she is eligible to receive health supplements set out under Schedule C, Sections 2 and 3. The ministry further argued that information has not been provided to demonstrate that the requirements of Section 69(d) are met as a pedal bike is not set out under Schedule C, Section 2(1)(a) [*medical supplies*] or Section 2(1)(f) [*medical transportation*] or in Sections 3 to 3.12. The appellant's position is that she was told after the auto accident in 1982 that she would not walk again, so she highly values the ability to walk. The appellant argued that the pedal bike will strengthen the muscles in her upper legs to support the joints so she can continue to walk, and it will also strengthen her upper body which will help her lift items to complete her daily living activities. The appellant argued that it is possible if she strengthens the muscles around her knee then she could put off having a recommended knee replacement operation. The appellant argued that several professionals support her application for a pedal bike, including a physiotherapist, two OT's and two physicians. The appellant did not argue that the pedal bike is listed as an eligible item of medical supply, transportation, or equipment but, rather, that it should be on the ministry's list of eligible items because it will help with her knee rehabilitation and other health benefits at a relatively low cost.

The panel finds that the ministry reasonably determined that the appellant is eligible for health supplements under Section 62 of the EAPWDR, whereas Section 69 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 also finds that the ministry reasonably determined that the requirements of Section 69(d) are not met as a pedal bike is not set out under Schedule C, Section 2(1)(a) as medical or surgical supplies or under Section 2(1)(f) as a mode of medical transportation, or under Sections 3 to 3.12, as detailed above. Although the appellant argued that the pedal bike should be on the ministry's list of eligible items in Schedule C because it will help with her knee rehabilitation and other health benefits at a relatively low cost, Section 3 stipulates that the items that are specifically described in Sections 3.1 to 3.12 are the health supplements that may be provided. Therefore, the panel finds that the ministry's decision, which concluded that Section 69 of the EAPWDR does not apply to the appellant's circumstances, was reasonable.

In conclusion, the panel finds that the ministry's decision to deny the request for a supplement to cover the cost of a pedal bike as not meeting the legislated criteria of Schedule C, Sections 3, 3.1 to 3.12, or Section 2(1)(a) or (c), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, and 9 or Section 69 of the EAPWDR, was a reasonable application of the applicable enactment in the circumstances of the appellant and, therefore, confirms the decision.