

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the "Ministry's") Reconsideration Decision dated April 4, 2012 denying the appellant's request for chair blocks.

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 chair blocks were medical equipment as defined in EAPWDR Schedule C sections 3 or 3.1 to 3.12 and that the chair blocks do not meet 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 chair blocks 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, 2.2.2, 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:

- Letter from the appellant's occupational therapist (the "OT") dated November 26, 2012 stating that the appellant's relevant diagnoses are psoriatic arthritis, COPD and obesity requires chair blocks to raise both of his couches that he sits in and to assist him to transfer on and off his couches with more ease and safety (the "2012 OT Letter").
- Quotation from a medical equipment provider dated January 30, 2013 for bed blocks – furniture riser at a cost of \$179.64.
- A completed Request for Reconsideration Form signed by the appellant on March 13, 2013 (RFR) with attached letter from an advocate dated March 28, 2013 (the "Advocate Letter") in which the advocate states that the OT states that the chair blocks are medically essential and that chair blocks should be eligible pursuant to EAPWDR Schedule C section 3.5(0.1) as a transfer aid. The RFR also attached a letter from the OT dated March 27, 2013 (the "2013 OT Letter") in which the OT states that the relevant diagnoses are psoriatic arthritis, COPD and obesity, that chair blocks are medically essential to raise the height of the appellant's couches and to enable him to transfer with more safety on and off his couches.

In his Notice of Appeal, the appellant states that he disagrees with the Ministry's reconsideration decision because his physician has confirmed that the supplement is for 2 of the symptoms listed under section 1.1(b) and that the physician has confirmed that he will face an imminent danger to his life. The panel notes that the appellant's Notice of Appeal relates to a different appeal.

The Ministry did not appear at the hearing. Having confirmed that the Ministry was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

At the appeal, the appellant's advocate clarified that the appellant's Notice of Appeal contains information relating to another appeal and that the Notice of Appeal ought to have read that the appellant disagrees with the Ministry's reconsideration decision because the OT says that the furniture risers are a transfer aid and are medically essential. The panel finds that this is not new information as this confirms the information provided in the appellant's RFR.

At the hearing, the appellant stated that he previously had some pieces of wood (2x4's) that he was using underneath his sofa to act as furniture risers but that they slipped. He stated that the OT advised that they were not suitable and recommended the chair blocks that can be purchased from a medical equipment provider instead, as per the Quote.

The appellant also stated that he is unable to use a transfer board because his wheelchair is higher than his sofa, so while a transfer board would assist him in getting from his wheelchair to his sofa, he cannot use the board to get from the sofa into his wheelchair. The appellant also stated that if he was to use a transfer board, he would need a heavy duty one because of his weight and that would be much more expensive than the chair blocks.

The advocate stated that the appellant has an assistant but she is not present 24 hours a day so it is not realistic to have a transfer board rather than the chair blocks. The appellant also stated that with a transfer board, he would still need personal assistance to get from his sofa to his wheelchair.

The Ministry did not provide any further submissions before the hearing.

Based on the 2012 OT Letter and the 2013 OT Letter, the panel's finding of facts are as follows:

- The appellant has been diagnosed with psoriatic arthritis, COPD (chronic obstructive pulmonary disorder) and obesity

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 chair blocks on the basis that the chair blocks 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	Scoters
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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
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- 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.

The relevant legislation is as follows:

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,

Schedule C

Medical equipment and devices – bathing and toileting aids

3.5 (0.1) In this section:

“transfer aid” means a transfer board, transfer belt or slider sheet.

(B.C. Reg. 197/2012)

(1) The following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to facilitate toileting or transfers of a person or to achieve or maintain a person’s positioning: (B.C. Reg. 197/2012)

- (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 or bedroom; (B.C. Reg. 197/2012)
- (j) a portable commode chair
- (k) a standing frame for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;
- (l) a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;
- ~~(m) a transfer aid for a person for whom the transfer aid is medically essential to transfer from one position to another.~~

Chair blocks (furniture risers) as medical equipment , EAPWDR Schedule C, section 3 and 3.1 to 3.12

The Ministry's position is that the chair blocks 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 Ministry states that section 3.5 provides for medical equipment and devices for bathing and toileting aids and that 3.5(m) specifies that eligible medical equipment includes transfer aids that are medically essential to transfer from one position to another. However, the Ministry's position is that as section 3.5(0.1) specifies that a "transfer aid" means a transfer board, transfer belt or slider sheet, and the chair blocks are not one of these specified items, the Ministry is not authorized to approve the appellant's request.

The appellant's position is that as the OT has completed an assessment and recommended the chair blocks, the legislative criteria of Schedule C, section 3(2)(b) has been met. The advocate stated that the OT confirms, in the 2012 OT Letter and the 2013 OT Letter that the relevant diagnoses are psoriatic arthritis, COPD and obesity and that the chair blocks are medically essential. The advocate stated that as the OT is the medical expert, the appellant's request should not be denied.

The appellant's position is that as the chair blocks will raise the sofa and promote his transfer from one position to another, easier and more safely, they meet the definition of a "transfer aid" within the legislation. The advocate also states that the term "transfer aid" is very general and contemplates many items so while the definition of transfer aid only lists three items (transfer board, transfer belt or slider sheet), the other listed items of Schedule C, section 3.5 (grab bar, bath or shower seat, bath transfer bench, tub slide, bath lift, bed pan, raised toilet seat, toilet safety frame, floor to ceiling pole, standing frame or positioning chair) broadens the list. The advocate states for example, that section 3.5(1)(g) specifies a raised toilet seat and that the furniture risers sought by the appellant do the same thing.

The appellant stated that Schedule C, section 3.5(m) refers to a transfer aid that is medically essential and that an assessment of what is medically essential can only be determined by looking at the specific individual's needs. He pointed out that Schedule C, section 3.5 is mostly to do with bathroom items but that a transfer board can be used in other areas too so it should not be limited to items for the bathroom. The appellant stated that there are many other items missing from the specified list, many of which he knows that the Ministry approves on a regular basis. The appellant also states that if all the items that the Ministry approved were listed there, the list would be several pages long.

The appellant states that a transfer board is more expensive than the chair blocks he is requesting and that the chair blocks are the least expensive medically essential items for his circumstances as recommended by the OT and his rehabilitation person.

The appellant states that chair blocks should be approved as they can be considered a "transfer aid" as defined in EAPWDR Schedule C section 3.5 as they are medically essential to facilitate his transfers.

Panel Decision

The panel finds that the chair blocks are not one of the medical equipment and devices set out in EAPWDR section 3.1 to 3.12. In particular the chair blocks are not one of the medical equipment and devices specified in section 3.1 to 3.4 or 3.6 to 3.12 as chair blocks are not canes, crutches or walkers, wheelchairs, wheelchair seating systems, scooters, hospital beds, pressure relief mattress, floor or ceiling lift devices, positive airway pressure device, orthoses, hearing instruments or non-conventional glucose meters.

While Schedule C, section 3.5(m) provide for a transfer aid that is medically essential to transfer from one position to another, section 3.5(0.1) clearly specifies that a "transfer aid" means a transfer board, transfer belt or slider sheet. While the OT states that the appellant requires chair blocks to raise his couches at least four inches and while the chair blocks may facilitate the appellant's transfers to and

from his wheelchair and sofa and provide a purpose similar to that of a transfer board, section 3.5(0.1) clearly specifies a "transfer aid" to mean a transfer board, transfer belt or slider sheet. The panel appreciates that from the appellant's perspective, the chair blocks may accomplish a similar purpose as a transfer board, but the chair blocks are a different piece of equipment than a transfer board and chair blocks are not provided for in the list of legislated items.

The panel notes that the appellant is making effort to obtain the least expensive equipment that will be satisfactory in his circumstances as he appreciates that the Ministry typically only approves funding for the least expensive appropriate item. However, as the chair blocks 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 chair blocks as medical equipment was reasonable.

Chair blocks as medical supplies - EAPWDR Schedule C, section 2(1)

The Ministry states that they are not authorized to approve the appellant's request for chair blocks 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 chair blocks 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 appellant's position is that as the chair blocks are medically essential and are the least expensive item that will accommodate his need for transfers, the Ministry should approve his request.

Panel Decision

The panel finds that the chair blocks 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 chair blocks 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). As the chair blocks 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 chair blocks were not an eligible medical supply was reasonable.

Chair blocks 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, chair blocks do not qualify as a health supplement because they are not one of the defined therapies.

The Ministry also states that the requested chair blocks 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 chair blocks.

The appellant's position is that the chair blocks are medically essential, are the least expensive item that will accommodate his need for transfers, are recommended by the OT, and are medically essential, so the Ministry should approve his request.

Panel Decision

The panel finds that the chair blocks 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 the chair blocks 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 chair blocks 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) or section 3. As the chair blocks 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 serious medical conditions, that his assistant is not there 24 hours per day, that the chair blocks are medically essential and required for his transfers, and that the Ministry's refusal to grant his request for chair blocks is unreasonable.

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 that while the 2013 OT Letter states that the "...chair blocks are medically essential to enable the appellant to transfer with more safety on and off his couches", there is no medical evidence indicating that the appellant faces a direct and imminent life threatening need or that the chair blocks are necessary to meet a direct and imminent life threatening need. While the panel notes that the appellant would benefit greatly from the chair blocks and they would make his transfers to and from his wheelchair and sofa easier and safer, 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 item is 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 chair blocks under EAPWDR section 69.

Conclusion

In conclusion, the panel finds that the Ministry's Reconsideration Decision to deny the appellant's request for chair blocks 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.