

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated June 19, 2013, which denied the appellant's request for a new Aquatec Ocean SP commode. The ministry determined that the requested item was provided to the appellant by the ministry less than five years ago, therefore she did not meet the necessary regulatory requirements set out in section 3(3)(b) and 3.5(2) of Schedule C of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation to have the item replaced, and that it has not been substantiated by the medical supplier or technician, that the appellant's current commode is beyond repair. The ministry also determined that the appellant did not need a remedy as set out in section 69 of the EAPWD Regulation as she is eligible to receive health supplements as set out above in Schedule C, sections 2(1)(a) and (f) and (3).

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, sections 62 and 69  
Employment and Assistance for Persons with Disabilities Regulation, Schedule C

## PART E – Summary of Facts

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

Evidence before the ministry at the time of reconsideration consisted of:

- Request for Reconsideration dated June 5, 2013.
- A copy of a Ministry Purchase Authorization to supplier A dated June 19, 2013, in the amount of \$463.35 for RAZ Shower Commode Repairs - 4 casters and labour dated June 19, 2013. (P.37)
- A copy of a quotation from supplier A dated June 18, 2013, in the amount of \$463.35 for RAZ Shower Commode Repairs - 4 casters and labour dated June 19, 2013.
- A copy of an invoice from a supplier B in the amount of \$37.50 for RAZ Shower Commode Repairs - labour to tighten casters dated January 7, 2013.
- A copy of a Parts and Source Request Form from supplier B dated March 14, 2013, with instructions indicating that the front left wheel fell off again January 7, 2013. The casters were tightened but the slip wrings are loose. The tech recommended that the appellant's commode have all four wheels replaced. Cost estimate \$600.00 plus labour. The form then has a line running corner to corner with a hand written note on the bottom of the page which states "we recycled this commode for the X home.
- A copy of the ministry Adjudication Overview dated May 16, 2013.
- Copy of the ministry denial letter to the appellant dated May 16, 2013.
- A copy of a ministry Medical Equipment and Device Summary dated May 16, 2013
- A copy of a ministry Medical Equipment and Request and Justification faxed to the ministry April 9, 2013.
- A copy of an Occupational Therapist (OT) Assessment faxed to the ministry April 9, 2013.
- A faxed copy of a quotation dated April 9, 2013; from supplier B for an Aquatec Ocean SP shower commode total price \$1367.10.

In Section 3 of the appellant's Request for Reconsideration dated June 5, 2013, her OT writes that the appellant had her present wheeled shower commode repaired January 7, 2013. That same week this work was completed two wheels fell off which resulted in a staff injury. Supplier B stated it would cost \$600.00 plus labour to replace all four casters and that it would be better to get a new wheeled shower commode. The appellant requires a wheeled shower commode to shower safely and is presently borrowing a shower commode from the hospital rehab department which needs to be returned.

A request to replace the appellant's wheeled shower commode and a quotation from supplier B for an Aquatec Ocean SP shower commode, at a cost of \$1367.10, was faxed to the ministry by the appellant's OT April 9, 2013. In the accompanying letter the OT writes that the appellant is a 55 year old person who has cerebral palsy with spastic deplegia, seizure disorder and significant behavioural challenges. The OT writes that the appellant is a one person pivot transfer to her wheelchair and uses a wheelchair for all mobility. The appellant lives in a group home and is dependant for all aspects of self care. The appellant requires a shower commode for toileting and showering. Her present wheeled shower commode is broken and beyond repair. She is presently borrowing a large wheeled commode from the rehab department. The OT concludes by writing that the appellant was assessed as requiring an Aquatec Ocean SP commode.

Information contained in the Ministry Adjudication Overview dated May 16, 2013, reports that the OT is of the opinion that the appellant's commode is beyond repair. The ministry contacted the OT and explained that the appellant was not eligible for a replacement commode at this time. The OT then reported that heavy transfers led to increased strain on the casters and in her opinion it is not economically feasible to follow through with

repairs as supplier B will charge \$600.00 plus labour. The OT reported that the appellant is currently using a loaner commode which needs to be returned to the rehab unit.

After the ministry Reconsideration Decision was made and prior to the hearing the appellant reported the following in the Reasons section of her Notice of Appeal dated June 25, 2013; "No longer have the commode. When the wheels fell off after was repaired and staff were injured had supplier B get rid of it".

The Tribunal office also received a signed Consent for Release from the appellant dated July 11, 2013, giving the appellant's advocate permission to assist with her appeal, receive information about the appeal, attend the appeal, and make decisions on the appellant's behalf.

At the hearing the ministry stood by the record. In response to a question from the panel the ministry said they were not aware that the appellant's commode had been recycled prior to, or at the time of reconsideration. In response to another question from the panel with regards to the hand written note on supplier B's Parts and Service Request Form stating that the commode had been recycled, the ministry reported they were unaware of who wrote that note or on whose authority the appellant's commode was recycled. The ministry reported that it was most certainly not them.

The panel admitted the written evidence submitted by the appellant in her Notice of Appeal under Section 22(4) of the Employment and Assistance Act, as it was found to be in support of information and records that were before the ministry at the time of reconsideration, and provided confirmation that the appellant's commode had been recycled. The ministry did not object.

#### Findings of Fact

- The appellant is a Person with Disabilities and has been diagnosed with deplegia, seizure disorder and significant behavioural challenges, is a one person pivot transfer to her wheelchair and uses the wheelchair for all mobility.
- The appellant lives in a group home and is dependent for all aspects of self care.
- The appellant requires a wheeled shower commode for toileting and showering.
- The appellant was provided with a wheeled shower commode by the ministry in February 2010.
- The ministry authorized a supplier to undertake repairs (4 new casters) to the appellant's wheeled shower commode June 19, 2013.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision which denied the appellant's request for a new Aquatec Ocean SP commode was a reasonable application of the legislation or was reasonably supported by the evidence. The ministry determined that the requested item was provided to the appellant by the ministry less than five years ago, therefore she did not meet the necessary regulatory requirements set out in section 3(3)(b) and 3.5(2) of Schedule C of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation to have the item replaced, and that it has not been substantiated by the medical supplier or technician, that the appellant's current commode is beyond repair. The ministry also determined that the appellant did not need a remedy as set out in section 69 of the EAPWD Regulation as she is eligible to receive health supplements as set out above in Schedule C, sections 2(1)(a) and (f) and (3). In arriving at their decision the ministry relied upon the following legislation:

### 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,
  - (b) a person with disabilities who has not reached 65 years of age and who has ceased to be eligible for disability assistance because of
    - (i) employment income earned by the person or the person's spouse, if either the person or the person's spouse
      - (A) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
      - (B) is aged 65 or more and a person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
    - (ii) a pension or other payment under the *Canada Pension Plan* (Canada), or
    - (iii) money received by the person or the person's spouse under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,
  - (c) a person who was a recipient of disability assistance on the day he or she became 65 years of age and a dependant of that person, if the dependant was a dependant of the person on that day and remains a dependant of that person,
  - (d) a dependant of a person referred to in paragraph (a) or (b) (iii),
    - (d.1) a dependant of a person referred to in paragraph (b) (i), if any person in the family unit
      - (i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
      - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
    - (d.2) a dependant of a person referred to in paragraph (b) (ii),
    - (d.3) a dependant of a person referred to in paragraph (f), if any person in the family unit
      - (i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
      - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,

- (e) a dependent child of a recipient of hardship assistance,
- (f) a person with disabilities who has ceased to be eligible for disability assistance because of an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or the person's spouse, if
  - (i) the person is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
  - (ii) the person is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, or
- (g) a person whose family unit ceases to be eligible for disability assistance because of financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*, during the term of the agreement.

(1.1) A person eligible to receive a health supplement under subsection (1) (b) (ii) or (d.2) may receive the supplement

- (a) while any person in the family unit is
  - (i) under age 65 and receiving a pension or other payment under the Canada Pension Plan, or
  - (ii) aged 65 or more and receiving the federal spouse's allowance or the federal guaranteed income supplement, and
- (b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(1.2) A person eligible to receive a health supplement under subsection (1) (c) may receive the supplement

- (a) while any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, and
- (b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(1.3) A person who was eligible to receive a health supplement under subsection (1) (b) (i), (d.1), (d.3) or (f) but ceases to be eligible for medical services only may continue to receive the supplement for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(2) A person referred to in subsection (1) (b) or (f) and his or her dependants and a person referred to in subsection (1) (c) cease to be eligible for any supplement under this Division if the person's family unit takes up residence outside British Columbia.

#### **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

### **Medical equipment and devices**

#### **Schedule C Health Supplements**

**Section 3** (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.

#### **Medical equipment and devices — toileting, transfers and positioning aids--Section 3.5**

- (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:
  - (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;
  - (j) a portable commode chair;
- (2) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is 5 years from the date on which the minister provided the item being replaced.

The panel finds there is no dispute by either party that the appellant has met the regulatory requirements set out above in section 62 of the EAPWD Regulation as she is a Person with Disabilities, and in recipient of disability assistance. The panel further finds no dispute that the appellant is not eligible to receive the requested item as a life-threatening health need as set out above in section 69 of the EAPWD Regulation as she is eligible to receive health supplements as set out above in Schedule C, sections 2(1)(a) and (f) and (3).

The appellant's position is that her commode was beyond repair, she no longer has the commode, and that when

the wheels fell off and a staff member was injured, supplier B got rid of it. The ministry's position is that the requested item was provided to the appellant by the ministry less than five years ago and based on the information provided it has not been confirmed by the medical supplier or technician that the appellant's wheeled shower commode is beyond repair. The ministry signed a Purchase Authorization June 18, 2013, for the required repair work to be completed on the appellant's wheeled shower commode by supplier A.

The panel finds that the EAPWD Regulation Schedule C section 3 subsection (3)(a) and(b) set out above, describe the circumstances under which a damaged, worn out or not functioning medical device or piece of medical equipment, previously provided by the ministry, can be replaced.

The panel finds that there is no dispute that the appellant was provided with the requested item (a wheeled shower commode) by the ministry in February 2010, and that it is currently not functioning. The panel further finds that while there appears to be a dispute between the parties in regards to whether it is more economical to replace than repair the requested item, the panel finds this to be a mute point as the period of time referred to in section 3 (3) (b) of Schedule C with respect to replacement of a damaged, worn out or not functioning medical device or piece of medical equipment, is set out in Schedule C section 3.5 (2), and is 5 years. While the panel understands the appellant's position regarding the recycling of her wheeled shower commode, the panel notes that that the ministry appeared not to be aware of this at the time of their reconsideration decision and they appear to have made every effort to ensure that the appellant's wheeled shower commode was repaired.

For the reasons noted above the panel finds the ministry's decision that the appellant is not eligible to receive a replacement wheeled shower commode prior to February 2015, was a reasonable application of the applicable legislation and confirms the ministry's decision.