

PART C – Decision under Appeal

The appellant appeals the reconsideration decision of the Ministry of Social Development and Social Innovation (“ministry”) dated October 22, 2013, which denied her request for a “Glide and Go” car transfer seat (the “Seat”) on the basis it did not meet the criteria set out in the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”). The ministry determined that the appellant’s request for the Seat did not meet the legislative criteria for the following reasons: the Seat is not medical supply, as set out in section 2(1)(a) of Schedule C of the EAPWDR; the Seat is not medical equipment, as set out in sections 3 and 3.1-3.11 of Schedule C of the EAPWDR; the Seat is not a therapy, a health supplement or a nutritional supplement, as set out in sections 2(1)(c), 2(2) and 2(2.1) of Schedule C of the EAPWDR; and information has not been provided to establish that the Seat is necessary to avoid an imminent and substantial danger to the appellant’s health, as required by section 69 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 62-69 and Schedule C – Health Supplements, sections 2, 3, and 3.1-3.11.

PART E – Summary of Facts

This appeal was set as an oral in person hearing and on December 9, 2013, the appellant's request to attend the hearing by telephone was approved. Although the panel delayed the commencement of the hearing by 20 minutes, the appellant did not attend the hearing. The panel confirmed that the appellant had received notice of the appeal and the appeal proceeded in the appellant's absence under the authority of section 86(b) of the *Employment and Assistance Regulation*.

The information before the ministry at reconsideration consisted of the following:

- The appellant's request for reconsideration dated October 11, 2013 with an attached 3-page handwritten submission dated October 9, 2013;
- A copy of a quote for the Seat dated August 19, 2013 indicating that the cost of the Seat is \$9,530.00;
- A copy of a one-page letter dated September 24, 2013 from the BC Emergency Health Services indicating that the appellant has used the BC ambulance services 95 times from 2010 through September 3, 2013;
- A one-page report from the BC Ambulance Service indicating the appellant used the ambulance service on September 27, 2013;
- 5 pages of excerpts from a previous 2011 Employment and Assistance Appeal Tribunal decision regarding the appellant's earlier request for the Seat on which the appellant has written notes;
- A copy of a ministry medical equipment request and justification form dated July 19, 2013 (2 pages) which was not completed and signed by a medical practitioner and therapist as required by the legislation, although it is indicated that the appellant is eligible to access medical equipment under the legislation and has no resources available to provide the requested equipment;
- A 2-page handwritten letter from the appellant to the ministry dated April 3, 2012;
- A fax to the appellant from BC Ambulance Service dated April 2, 2013 with 6 pages of computer printout showing the billing information for the appellant's use of the ambulance with the relevant dates.

The ministry also submitted the previous reconsideration decision dated September 30, 2011 denying the appellant's 2011 request for the Seat.

With her notice of appeal dated November 22, 2013, the appellant provided the following documents:

- Handwritten submissions dated November 2013 totaling 6 pages;
- A copy of the quote for the Seat dated August 19, 2013 (same as referenced above);
- Copies of 2 excerpted pages from the earlier 2011 appeal (same as referenced above);
- A one-page copy of a letter dated November 6, 2013 from the BC Emergency Health Services confirming that the appellant had used the BC Ambulance service 102 times from Dec. 2, 2010 through October 11, 2013.

The ministry did not object to the admission of the documents submitted by the appellant with her notice of appeal at the hearing. This panel accepts as evidence the handwritten submissions dated November 2013, and the copy of the November 6, 2013 letter regarding the appellant's use of the BC ambulance services, as written testimony in support of the information and records that were before the minister when the decision being appealed was made under subs. 22(4)(b) of the *Employment*

and Assistance Act.

The ministry confirms that the appellant is a designated person with disabilities in receipt of disability assistance.

In her submissions, the appellant indicates that she uses a wheelchair. She says that she does not have a transfer seat to transfer her from her wheelchair into her vehicle (which is equipped with hand controls) and that as a result, she has not been able to drive her car since July 2010. The appellant relies on the BC ambulance service to provide her transportation, but indicates that when she uses the transfer boards/seats provided for ambulance rides, this causes her injuries. The appellant says that she requires the requested Seat so that she can use her vehicle to pick up her mail and her medications, attend medical appointments, shop for groceries and other commitments.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant's request for the Glide and Go car transfer seat ("Seat") was reasonable based on the evidence or a reasonable application of the legislation in the appellant's circumstances. The ministry denied the appellant's request for the Seat on the basis that the Seat did not meet the legislative criteria for the following reasons: the Seat is not a classified medical supply (as set out in section 2(1)(a) of Schedule C of the EAPWDR); the Seat is not indicated as medical equipment (as set out in sections 3 and 3.1-3.11 of Schedule C of the EAPWDR); the Seat is not a therapy, a health supplement or a nutritional supplement (as set out in sections 2(1)(c), 2(2) and 2(2.1) of Schedule C of the EAPWDR); and information provided has not established that the Seat is necessary to avoid an imminent and substantial danger to the appellant's health (as required by section 69 of the EAPWDR).

Legislation

The following is a summary of the relevant provisions of the legislation applicable to the appellant's request for the Seat. Although the ministry referred to several sections of the EAPWDR and Schedule C of the EAPWDR in its reconsideration decision (as discussed below), the panel has only reproduced in full the most relevant provisions.

62. General health supplements

(1) Subject to subsections (1.1) and (1.2), the minister may provide any health supplement set out in section 2 [*general health supplements*] 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,

...

In sections 62.1 through 65 of the EAPWDR, the requirements for optical, eye examination, dental, crown and bridgework, emergency dental and denture, and orthodontic supplements are set out. Sections 66 and 67 of the EAPWDR set out the requirements for diet and nutritional supplements.

69. Health supplement for persons facing direct and imminent life threatening need.

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).

Schedule C – Health Supplements

2. General health supplements

(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:
 - [subsections A – F set out the list of wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care or 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.

Subsection 2(1)(a.1) of Schedule C of the EAPWDR provides that the following medical or surgical supplies (lancets, needles and syringes, ventilator supplies or tracheostomy supplies) that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all the requirements described in paragraph (a)(ii) and (iii) are met in relation to the supplies. Subsection 2(1)(a.2) sets out the requirements for supplements that are consumable medical supplies (supplies required to thicken food). Subsection 2(1)(c) sets out the requirements for medical supplements that are therapy services (acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, and physical therapy). The number of allowable visits and the amounts payable for visits are set out in subsections 2(2) and 2(2.1).

Provisions for health supplements that are for optical, eye examination, dental, crown and bridgework, denture, emergency dental, natal and infant formula, are set out in sections 2.1, 2.2, 4.1, 5, 8 and 9 of Schedule C of the EAPWDR.

3. Medical equipment and devices

(1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.12 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:
 - (iv) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;
 - (v) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
 - (vi) 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.

Subsection 3(2.1) applies to medical equipment or devices referred to in section 3.9 – breathing devices. Subsection 3(3) sets out the requirements for replacement of medical equipment previously provided by the minister under this section, subsection 3(4) sets out the requirements for the repair of medical equipment previously provided by the minister, and subsection 3(5) sets out the requirements for repairs of medical equipment not previously provided by the minister.

3.2 Medical equipment and devices – wheelchairs

(1) In this section, “wheelchair” does not include a stroller.

(2) Subject to subsection (4) of this section, 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 achieve or maintain basic mobility;

- (a) a wheelchair;
- (b) an upgraded component of a wheelchair;
- (c) an accessory attached to a wheelchair.

(3) The period of time referred to in section 3(3)(b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years after the minister provided the item being replaced.

(4) A high-performance wheelchair for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

3.3 Medical equipment and devices – wheelchair seating systems

(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 achieve or maintain a person’s positioning in a wheelchair;

- (a) a wheelchair seating system;
- (b) an accessory to a wheelchair seating system.

(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 2 years from the date on which the minister provided the item being replaced.

3.5 Medical equipment and devices – bathing and toileting aids

(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:

- (l) a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;

Specific medical equipment and medical devices are listed in Schedule C of the EAPWDR as follows: canes, crutches and walkers (s. 3.1); scooters (s. 3.4); hospital bed (s. 3.6); pressure relief mattresses (s. 3.7); floor or ceiling lift devices (s. 3.8); breathing devices (s. 3.9); orthoses (s. 3.10); hearing instruments (s. 3.11); and non-conventional glucose meters (s. 3.12).

Submissions

The appellant is a designated person with disabilities in receipt of disability assistance and she meets the requirement set out in section 62(1)(a) of the EAPWDR.

In her written submissions, the appellant says that she requires the Seat "as it is the only way she can transfer from her wheelchair to her vehicle" – she says that she does not have a car transfer board and that the Seat is the only option that will work for her circumstances. The appellant indicated that the ministry paid for the hand controls for her car so that she could use her car as her medical transportation car as she lives outside the city limits; however, she has not been able to use her car since the summer of 2010. She says that she needs to be able to use her own vehicle for general mobility so that she can get to stores to pick up her medication, pick up her mail, buy groceries, and attend medical appointments. The appellant said several times in her submissions that the transfer boards/seats used by the ambulance service cause her injuries every time she uses the ambulance (which she does frequently as she is no longer able to use her own car). The appellant says that an occupational therapist did not complete an assessment for her because the ministry told the occupational therapist that the requested Seat was not eligible medical equipment. The appellant says that the requested Seat should be covered under s. 3.5 of Schedule C of the EAPWDR as the Seat is a transfer aid which is medically essential to transfer her from one position (her wheelchair) to another (her car). The provided information in the form of an estimate indicates that the Seat costs \$9,530.00.

In the reconsideration decision, the ministry determined that the Seat did not meet the criteria set out in subs. 2(1)(a) of Schedule C of the EAPWDR as a "medical supply" because the Seat was not a disposable or reusable medical or surgical supply required for one of the listed reasons (wound care, ongoing bowel care due to loss of muscle function, catheterization, incontinence, skin parasite care or limb circulation care). The ministry also determined that the Seat did not meet the requirements of subs. 2(1)(a.1) as one of the listed medical or surgical supplies (lancets, needles and syringes, ventilator supplies, or tracheostomy supplies). The ministry determined that the Seat was not a consumable medical supply as provided for in subs. 2(1)(a.2) (supplies required to thicken food). The ministry further found that the Seat was not directly required for one of the purposes set out in section 2(1)(a)(i) of Schedule C of the EAPWDR.

In the reconsideration decision, the ministry determined that the Seat is not eligible as medical equipment as it is not one of the supplements listed in sections 3.1 through 3.12 of Schedule C of the EAPWDR (3.1 - canes, crutches and walkers; 3.2 – wheelchairs; 3.3 – wheelchair seating systems; 3.4 – scooters; 3.5 – bathing and toileting aids; 3.6 – hospital bed; 3.7 – pressure relief mattresses; 3.8 – floor or ceiling lift devices; 3.9 – positive airway pressure devices; 3.10 – orthoses; 3.11 – hearing instruments; or 3.12 – non-conventional glucose meters). The Ministry also found that the information provided did not establish the other legislated criteria set out in these sections.

In the reconsideration decision, the ministry determined that the Seat does not meet the criteria as a

therapy under sections 2(1)(c), 2(2) and 2(2.1) of Schedule C of the EAPWDR and that the information provided did not establish the other legislated criteria set out in these sections had been met. The ministry also determined that the requested Seat was not a health supplement as set out in sections 2.1, 2.2, 4. 4.1, 5, 8 and 9 of Schedule C of the EAPWDR (supplements for optical, eye examination, dental, crown and bridgework, denture, emergency dental, natal and infant formula). The ministry also determined that the requested seat is not a diet and/or nutritional supplement under sections 66 or 67 of the EAPWDR.

In its reconsideration decision, the ministry determined that the appellant was not eligible to receive the requested Seat under section 69 of the EAPWDR that can be provided for a person facing a direct and imminent life threatening health need. The Ministry found that the information submitted in the appellant's application and request for reconsideration did not establish that she faces a direct and imminent life-threatening health need for the Seat.

At the hearing, the ministry reiterated its position that the appellant's request for the Seat does not meet the legislative criteria – that the Seat does not fit within any of the listed items that the Ministry can provide as medical equipment or medical supplements. The ministry also noted that even if the Seat fit within one of the categories of medical equipment listed in sections 3.1 through 3.8 or 3.12 of Schedule C of the EAPWDR, section 3(2) of Schedule C of the EAPWDR requires that the appellant also provide to the ministry a prescription by a medical or nurse practitioner for the Seat, or provide an assessment by an occupational or physical therapist confirming the medical need for the Seat, or both, but that there is no record of any of these documents in the appellant's file. The ministry also noted that s. 3.5 of Schedule C of the EAPWDR is only applicable to medical equipment that is used for transferring a person from a wheelchair for toileting or bathing, and argued that the appellant's request for the Seat is so she can transfer from her wheelchair to her vehicle which is not the purpose of s. 3.5. The ministry reiterated that the appellant had not provided information that she was facing a direct and imminent life-threatening need for the Seat. The ministry noted that the appellant says she is injured when she uses the transfer seats/boards with the ambulances, but that there was no evidence that these injuries are life-threatening.

Panel Decision

The panel notes that nowhere in her written submissions does the appellant challenge the following determinations made by the ministry regarding her request for the Seat: that the Seat does not meet the legislative criteria for medical supplies set out in subsections 2(1)(a), 2(1)(a.1) or 2(1)(a.2) of Schedule C of the *EAPWDR*, that the Seat does not meet the legislative criteria for a therapy set out in subsections 2(1)(c), 2(2) and 2(2.1) of Schedule C of the EAPWDR; that the Seat is not a health supplement as set out in sections 2.1, 2.2, 4. 4.1, 5, 8 and 9 of Schedule C of the EAPWDR (supplements for optical, eye examination, dental, crown and bridgework, denture, emergency dental, natal and infant formula); or that the Seat is not a diet and/or nutritional supplement under sections 66 or 67 of the EAPWDR.

Under section 3(1)(b) of Schedule C of the EAPWDR, the minister may provide the medical equipment and devices listed in sections 3.1 through 3.12, if the minister is satisfied that **all of the following requirements are met**: the family unit has received the pre-authorization of the minister for the medical equipment or device requested; there are no resources available to the family

unit to pay the cost of or obtain the medical equipment or device; and the medical equipment or device is the least expensive appropriate medical equipment or device. Further, subsection 3(2) of Schedule C of the EAPWDR provides that in addition to the requirements set out under section 3(1)(b), for requested medical equipment or devices referred to in sections 3.1 to 3.8 and 3.12, the family unit must provide to the minister one or both of the following, as requested by the minister: a prescription of a medical practitioner or nurse practitioner for the medical equipment or device; and/or an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

The panel stresses that the legislation requires that the minister must be satisfied that **all** of the requirements of subs. 3(1)(b)(i) through (iii) and subs. 3(2) of Schedule C of the EAPWDR must be met before the requested medical equipment will be provided. As well, the requested medical equipment or device must fall within the listed medical equipment or device set out in sections 3.1 through 3.12 of Schedule C of the EAPWDR.

As submitted by the appellant, the requested Seat is for the purpose of transferring the appellant from her wheelchair into her motor vehicle. The panel finds that the requested Seat is not itself a wheelchair, an upgraded component of a wheelchair or an accessory to a wheelchair (such as a gel seat), as required by section 3.2 of Schedule C of the EAPWDR. Further, the panel finds that the requested Seat is not a wheelchair seating system or an accessory to a wheelchair seating system as required by section 3.3 of Schedule C of the EAPWDR. Finally, the panel notes that section 3.5 of Schedule C of the EAPWDR applies to medical equipment or devices that are bathing and toileting aids. Although the appellant describes the Seat as a positioning chair, saying that she is a person for whom a wheelchair is medically essential to achieve or maintain basic mobility and thus meets the requirements of section 3.5, the Seat is so she can transfer from her wheelchair to her vehicle – it does not assist her with bathing and toileting and for this reason does not meet the requirements of section 3.5 of Schedule C of the EAPWDR.

Accordingly, the panel finds that the ministry's determination that the requested Seat does not meet the requirements as medical equipment or devices under sections 3.2, 3.3 and 3.5 of Schedule C of the EAPWDR is reasonable based on the evidence.

The ministry found that there was no information to establish that the appellant faces a direct and imminent life threatening need or the Seat, which is the requirement set out in section 69 of the EAPWDR. Although the appellant refers to injuries she sustains when she uses the transfer seats or boards to move from her wheelchair to the ambulance, there is no information to establish that these injuries are direct and imminently life threatening. Accordingly, the panel finds that the ministry's determination that the appellant has not met the requirement set out in section 69 of the EAPWDR is reasonable based on the evidence.

Therefore, the panel confirms the ministry's decision to deny the appellant's request for the Seat as the legislative requirements set out in section 69 and Schedule C of the EAPWDR were not met.