



PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”) dated December 31, 2013 which held that the appellant was not eligible for an electric bath lift because the ministry determined that the appellant did not meet the eligibility requirements set out in subsections 3(1)(b)(iii) and (3)(2)(b) of Schedule C, or section 69 of the Employment and Assistance for Persons With Disabilities Regulation. The ministry held that an electric bath lift is not the least expensive appropriate medical equipment or device, that an assessment by an occupational therapist or physical therapist did not confirm the medical need for the medical equipment or device, and that the information provided by the appellant did not establish that without an electric bath lift that she faced a direct and imminent life threatening need.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 61.1, 62, and 69, and sections 3 and 3.5 of Schedule C

PART E – Summary of Facts

With the consent of both parties the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act* (EAA).

The documentary evidence before the ministry at reconsideration included the following:

1. A *Medical Equipment Request and Justification* form dated April 8, 2013 requesting an Aquatec fixed back bath lift for the appellant together with a 2 page justification letter (of the same date) signed by the appellant's Occupational Therapist (OT) and the appellant's physician. The letter indicated that the appellant walks indoors with a cane or 4 wheeled walker, and outdoors uses these or a scooter. She also has a stair glide to the basement and out the garage door. The appellant has had greater than three falls in the past year and is at high risk for falls. She continues to have incontinence, impaired balance and reduced leg strength. Her doctor reports her medical condition as follows: "*Neurological disorder with pain, weakness, loss of coordination & tremor; Has also recently been found to have normal pressure hydrocephalus & recently had a V-P shunt. She also has chronic kidney disease & ischemic heart disease*". She has a Braden Scale score of 14, moderate risk for skin breakdown but due to nutrition status, this moves to higher risk. She currently uses a grab bar, bath stool and hand held shower to bathe and always has one of her brothers present during the process. The letter reports that the appellant trialed a bath lift provided by the Red Cross and that it worked well. The letter concludes with the following statement: "*Due to her incontinence, sleeping all night in one position, and very poor nutrition intake, she is at high risk for skin breakdown. Proper cleansing of her peri area is a vital component of skin care management. Soaking in the tub is an effective method to clean herself thoroughly.*"
2. A sales quotation dated April 8, 2013 from a supplier of medical equipment specifying a quote of \$1224.00 for a bath lift.
3. A sales quotation dated October 7, 2013 from a supplier of medical equipment specifying a quote of \$164.70 for a bath transfer bench.
4. A letter dated October 15, 2013 from the appellant's OT to the Ministry of Social Development reporting that as the result of a recent rehabilitation assessment, a padded bath transfer bench is deemed essential to meet the appellant's basic medical needs. The rationale provided for this request is as follows: "*(The appellant) has had more than 3 falls in her home over the past year and due to impaired balance and reduced leg strength, she is at high risk for falls. (The appellant) is incontinent daily of bladder and 3X week of bowel and showers multiple times a week as a result. She has a Braden score of 14 (moderate risk for skin breakdown) but due to poor nutrition status her score moves her to the high risk category. Using a TTB would eliminate the need for (the appellant) to step into and out of the tub, thus reducing her risk for falls.*"
5. A letter dated October 21, 2013 from the Ministry of Social Development to the appellant advising her that the ministry has approved the purchase of a bath transfer bench together with a purchase authorization.
6. A one page *Adjudicator overview* and *Therapist Notes* dated October 21, 2013. Included in the Therapist Notes are the following statement: "*Not sure bath lift is medically essential for basic hygiene.*" In addition, the notes listed the following statement in connection with a message left for the appellant's OT on September 3, 2013 "*Usually the program will only fund a basic bathing aid such as the bath transfer bench and hand held shower.*"
7. A letter dated November 6, 2013 from the appellant's physician recommending that the

appellant be provided with an electric bath lift. The letter states: *"This lady suffers from a neurological disorder which affects her balance and mobility. Bathing is becoming more and more difficult for her. She has a bath bench but it does not provide her with enough support or stability, plus it aggravates her other problems of chronic hemorrhoids and colitis. Please assist her to be provided with an electric bath lift to ensure that she can safely bathe herself in her own home."*

8. The appellant's Request for Reconsideration dated December 6, 2013. This submission went to argument (see Part F below).

The appellant submitted a Notice of Appeal dated January 10, 2014 that outlined the reasons for her appeal. This submission went to argument (see Part F below).

Following reconsideration, and before the hearing, the appellant's OT submitted a letter dated January 23, 2014 to the ministry in support of the appellant's appeal that provided a summary of the OT recommendations and the equipment request process. She reports that the appellant's Braden Scale score of 14 indicates moderate risk for skin breakdown but due to her poor nutritional status she moves to the high risk category. She states: *"Skin breakdown is a very serious and devastating health condition and is best if avoided."* The rest of this submission went to argument (see Part F below).

The ministry provided a response dated January 31, 2014 that advised that the ministry would not provide a written submission as it is relying upon the reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably denied the appellant's request for an electric bath lift based upon EAPWDR sections 3(1)(b)(iii) and 3(2)(b) of Schedule C because it determined that an electric bath lift is not the least expensive appropriate medical equipment or device, and that the appellant did not meet the eligibility requirement for an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device. Additionally, the ministry determined that the appellant did not satisfy the requirements for section 69 of the EAPWDR in that the information submitted with her *Request for Reconsideration* did not establish that without an electric bath lift she faced a direct and imminent life threatening need. Specifically, the issue is whether the ministry's decision is reasonably supported by the evidence, or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is the following:

From the EAPWDR:

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).

From Schedule C of the EAPWDR:

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 3.12 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:
 - (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.

Medical equipment and devices — toileting, transfers and positioning aids

3.5 (0.1) In this section:

"positioning chair" does not include a lift chair;

"transfer aid" means a transfer board, transfer belt or slider sheet.

- (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;
 - (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.

The appellant's *Notice of Appeal* states that she needs to be able to soak in a bath because *"My rear is so sore because of constant hand cleaning, constant accidents"*. But she reports that her legs lack sufficient strength to enable her to get in and out of a bathtub. She states that she is taking many pain pills but reports that they are not helping and she has constant headaches. In her *Request for Reconsideration*, the appellant confirms her request for an electric bath lift. She indicates that she now has three bars and a rusty metal bench in her tub, and that the tub is coated with a non-slip surface. Because of the medications she takes she cannot control her bowel. She suffers from hemorrhoids and her opening is very sore. She would love to be able to soak in the tub to

take away some of the burning feeling but her legs don't have the strength to get down or up from a bath. The appellant states that she has a shunt to drain fluid in order to provide relief from headaches but the shunt is not working very well. She reports that she has worn pads "24/7" for many years because she has no control and consequently, she gets a lot of infections. She believes that being able to soak in a tub would help to overcome this problem as well.

The letter from the appellant's OT to the ministry dated January 23, 2014 is in support of the appellant's request for an electric bath lift. In that letter, the OT reviews the summary of OT recommendations and the equipment request process. The OT reports that the original equipment request was submitted in April 2013 and stated that a bath lift was the required equipment. In September 2013, the ministry contacted the appellant's OT and ". . . indicated that MSD does not fund bath lifts but more basic bathing equipment would be funded." The ministry requested a reassessment of the appellant's transfer needs which was done in October 2013. The appellant's OT requested a padded tub transfer bench for the appellant. The OT noted that this equipment will meet her transfer needs but not her skin integrity needs, and was being requested due to denial of a bath lift. The letter states that in November 2013, the appellant's physician wrote a letter of support for a bath lift for the appellant due to her impaired mobility and her management of colitis and hemorrhoids, and as a consequence of his concern for the appellant's skin integrity and falls risk. The appellant's OT concludes this summary of events by stating that the padded tub transfer bench had only been recommended on the understanding that a bath lift would not be approved by the ministry. She concludes her letter by stating: "*The recommendation from rehabilitation and medical perspectives is that a bath lift is the most basic equipment needed to meet her basic medical needs, as this includes transfers and skin integrity, both of which are vital for (the appellant's) health.*"

The ministry's Reconsideration Decision notes that the appellant is eligible to receive health benefits set out in section 3 of Schedule C but that her request for an electric bath lift was denied on three grounds:

1. The ministry concluded that the electric bath lift did not satisfy the eligibility requirement set out in section 3(1)(b)(iii) of Schedule C of the EARWDR as it was not the least expensive appropriate medical equipment or device. The ministry noted that the appellant's OT had submitted a recommendation that the ministry provide the appellant with a padded tub transfer bench with taps on the left. The decision stated that the cost of the electric bath seat is \$1224.00 while the bath transfer seat costs \$164.70. The ministry concluded that the appellant's OT had confirmed that a bath transfer seat is the least expensive appropriate equipment.
2. The ministry concluded that the requested bath lift did not meet the eligibility requirement set out in section 3(2)(b) of Schedule C of the EAPWDR which specifies that an assessment be provided by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device. The reconsideration decision concluded that the October 15, 2013 letter from the appellant's OT to the ministry confirmed that a bath transfer bench was deemed essential for the appellant's basic medical needs, and did not confirm a need for an electric bath lift.
3. The ministry concluded that the appellant did not qualify for an electric bath lift

under section 69 of the EAPWDR since the information submitted with the request for reconsideration does not establish that without an electric bath lift the appellant faces a direct and imminent life threatening need. Moreover, the remedy provided under section 69 only applies if all the requirements specified in sections 3 to 3.12 of Schedule C of the EAPWDR are met. Since the ministry has concluded that the appellant's request does not satisfy the eligibility requirement set out in section 3(1)(b)(iii), the appellant is not eligible for the remedy proposed under section 69.

Panel findings

Section 3(1)(b)(iii)

The panel notes that the quote provided for a bath transfer bench was \$164.70 and for an electric bath lift was \$1224.00. Accordingly, it is clear that the bath transfer bench is a less expensive piece of equipment than the electric bath lift. But the central question is whether the bath transfer bench is appropriate medical equipment for the needs of the appellant. The appellant's OT and her physician have stated that the bath transfer bench does not meet the appellant's needs. In her letter of January 23, 2014 to the ministry, the appellant's OT states that the bath transfer bench "*... will meet her transfer needs but not her skin integrity needs.*" In his letter of November 6, 2013, the appellant's physician states that "*She has a bath bench but it does not provide her with enough support or stability, plus it aggravates her other problems of chronic hemorrhoids and colitis.*" On the other hand, the majority of the panel members note that in her letter of October 15, 2013 the appellant's OT had stated that the bath transfer bench was "*... deemed essential to meet this client's basic medical needs.*" The majority of the panel members question how equipment judged to be essential to meet the appellant's basic medical needs just 5 months ago could now be considered insufficient to meet the needs of the appellant. Moreover, the appellant has presented no evidence to show that her physical condition has deteriorated significantly since March 2013 when the bath lift was initially requested by the appellant's OT and physician.

Finally, the panel notes that the legislation in section 3 of Schedule C of the EAPWDR specifies that the ministry "may" provide the requested medical equipment. The panel views the essential difference between the bath transfer bench and the requested bath lift is that with the former the person washes herself with a held-held shower nozzle, while the latter allows her to soak in bathwater. The appellant's doctor has stated that the appellant's current bath bench "*does not provide her with support or stability, plus it aggravates her other problems of hemorrhoids and colitis.*" He goes on to recommend the appellant be provided a bath lift. The appellant's OT states that a "*bath bench will meet her transfer needs but neglect her skin integrity needs. A bath lift will meet her transfer needs and her skin integrity needs.*" In sum, while both the doctor and the OT have described her medical conditions and the limitations of a bath bench and made a recommendation of a bath lift, the majority of the panel members note that neither medical professional has clearly explained why the appellant's skin integrity needs can only be met by means of soaking in a tub, and cannot be met by cleansing in a shower. The panel considers it a reasonable exercise of the minister's discretion to expect a recommendation for medical equipment to be supported by information that would substantiate the request. As the argument substantiating the reason why the appellant

needed to soak to meet her skin integrity needs was not provided, the majority of the members of the panel finds that the ministry reasonably determined that the "least cost appropriate" criterion had not been met. A dissenting opinion appears at the end of the decision.

Section 3(2)(b)

The ministry also concluded that the appellant had not satisfied the eligibility requirement set out in section 3(2)(b) of Schedule C of the EAPWDR which specifies an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment. The ministry argued that the October 15, 2013 from the appellant's OT to the ministry " . . . *has confirmed the medical need for a transfer bath bench and has not confirmed that you (the appellant) have a medical need for an electric bath lift.* The panel observed that the letter of April 8, 2013 from the appellant's OT and her physician to the ministry stated that the bath lift was deemed essential to meet the client's basic medical needs. Accordingly, the panel concludes that the patient's OT had (separately) recommended both the bath lift and the bath transfer bench as essential medical equipment for the appellant. Consequently, the panel was not satisfied that the ministry had reasonably determined that the eligibility requirement set out in section 3(2)(b) of Schedule C of the EAPWDR had not been met.

Section 69

The ministry also concluded that the requirements for the remedy provided in section 69 of the EAWPDR had not been met by the appellant. This provision states that the minister may provide a health supplement (including medical equipment and devices) to a person who is otherwise not eligible for the health supplement if the person faces a direct and imminent life threatening need. The ministry concluded that the appellant did not qualify for an electric bath lift under section 69 of the EAPWDR since the information submitted with the request for reconsideration does not establish that without an electric bath lift the appellant faces a direct and imminent life threatening need.

The panel finds the ministry's determination that the information submitted does not establish the appellant faces a direct and imminent life threatening need for an electric bath lift is reasonably supported by the evidence.

Having reviewed and considered all of the evidence and the relevant legislation, the majority of the panel finds that the ministry's decision that the appellant was not eligible for an electric bath lift was a reasonable application of the legislation in the circumstances of the appellant.

The panel therefore confirms the ministry's decision.

Dissenting Panel Member's Opinion

EAPWDR, schedule C, subsection 3(1)(b)(iii)

The central issue is whether the ministry was reasonable in finding a bath transfer bench is the least expensive appropriate medical device for the needs of the appellant, pursuant

to the EAPWDR, schedule C, subsection 3(1)(b)(iii).

The appellant is described by her physician as having multiple medical conditions, including a neurological disorder affecting her balance and mobility, with weakness and loss of co-ordination; normal pressure hydrocephalus; chronic hemorrhoids and colitis; kidney disease and heart disease. The occupational therapist reported the appellant uses a cane or walker indoors, is incontinent, and is at high risk for skin breakdown.

Both the appellant's physician and the occupational therapist have stated that a bath transfer bench does not meet the appellant's needs. The physician endorsed the OT's prescription for a bath lift in the April 8, 2013 *Medical Equipment Request and Justification* form, in which the reasons given are the appellant's impaired balance, high risk and fear of falling, impaired sensation of her legs, and high risk for skin breakdown due to incontinence, requiring proper cleansing of her peri area described as vital, for which soaking in the tub is effective.

In his November 6, 2013 letter, the physician says *"She has a bath bench but it does not provide her with enough support or stability, plus it aggravates her other problems of chronic hemorrhoids and colitis."*

In the Reconsideration Decision, the ministry relies on the occupational therapist's October 15, 2013 letter in which the OT recommended a padded tub transfer bench, from which the ministry quotes *"Further to a recent rehabilitation assessment, the following equipment is deemed essential to meet this client's basic medical needs."*

The occupational therapist says in her January 23, 2014 letter that the padded tub transfer bench had been recommended only because the request for a bath lift was denied by the ministry. She noted the bench would meet the appellant's transfer needs, but not her skin integrity needs. The OT reports that the appellant's Braden Scale score of 14 indicates moderate risk for skin breakdown but due to her poor nutritional status she moves to the high risk category. The OT says *"Skin breakdown is a very serious and devastating health condition and is best if avoided."* She goes on to say *"The recommendation from rehabilitation and medical perspectives is that a bath lift is the most basic equipment needed to meet (the appellant's) basic medical needs, as this includes transfers and skin integrity, both of which are vital for (the appellant's) health."*

This panel member accepts the occupational therapist's January 23, 2014 explanation for her Oct 15, 2013 recommendation for a padded bath bench, i.e. she submitted it only because the earlier request for a bath lift had been denied.

The information provided to the ministry includes

- the appellant is not physically and safely able to get in and out of, or sit in her bath tub, without appropriate bathing equipment
- both physician and occupational therapist recommended a bath lift
- both physician and occupational therapist said a bath bench would not meet the appellant's needs
- the appellant is at high risk of skin breakdown due to incontinence

- skin breakdown is a serious health condition
- cleansing the peri area is described as vital
- soaking in the tub is effective for cleansing the peri area
- the occupational therapist's opinion that a bath lift is the most basic equipment needed to meet the appellant's needs including transfers and skin integrity

Upon considering the information from the physician and the occupational therapist, the dissenting panel member finds the ministry's determination that a bath transfer bench was the least expensive appropriate medical device for the needs of the appellant is not reasonably supported by the evidence.

Having reviewed and considered the evidence and the relevant legislation, the dissenting panel member finds the ministry's decision that the appellant is not eligible for an electric bath lift was not reasonably supported by the evidence, and therefore disagrees with the majority's decision to confirm the ministry's decision.