

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry's) reconsideration decision of January 3, 2014 in which the ministry denied the appellant's request for payment for an air cast because the ministry determined that:

- the appellant does not meet the requirements for an air cast as a medical supply, under Schedule C, Section 2(1)(a)(i)(A) and Section 2(1)(a)(ii)(C), Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)
- an air cast is not medical equipment under Schedule C, Sections 3.1 to 3.12 and 3.10(11), EAPWDR
- the appellant does not meet the requirements for an air cast as medical equipment under Schedule C, Section 3(1)(b)(i), EAPWDR.

PART D – Relevant Legislation

Schedule 3 of the EAPWDR.



## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- The ministry's reconsideration decision of January 23, 2014 in which the ministry states that the appellant, a recipient of disability assistance, submitted an invoice on December 24, 2013 from a health services agency to the appellant for an air cast.
- The January 2, 2014 Decision To Be Reconsidered section of the Request for Reconsideration in which the ministry notes the invoice (noted above) was for \$225.00 and provided no indication as to what the invoiced item was, so a ministry worker contacted the health services agency, which advised the worker that the invoice was for "a[n] Air Cast for a fracture."
- The appellant's Request for Reconsideration of January 17, 2014 to which the appellant attached the following:
  - a 2-page letter to the ministry dated January 15, 2014 from the appellant stating that the air cast was a medical necessity due to a medical condition that compromises her immune system and renders her susceptible to infection. The incisions from surgery on her ankle become infected, and an air cast was necessary so that the infected areas could be treated. She states that had she been fitted with a plaster cast instead, the cast would have had to be cut off and replaced with an air cast. The appellant states that the surgeon saved the medical system a lot of money. She states that she had to remove the air cast daily after the surgery to put medication on the wound, which would not have been possible with a plaster cast. She states that she could have lost her foot from the infection, at great cost to the medical system. She states that before the operation, the surgeon did not ask her what kind of cast she wanted. She knew only about plaster casts. She states that post-surgery she went to the hospital three times daily to get antibiotics and so that the doctors could see how the medications were working on the infection. She states that without an air cast it would have been impossible for her to have treated the wound twice a day at home as the doctors at the hospital recommended. The wound needed to be cleaned and covered with ointment and bandages regularly to prevent the infection from becoming more serious.
- a letter addressed "To Whom It May Concern" dated January 15, 2014 from a doctor at the hospital where the appellant was treated. The writer states that the appellant sustained a bad ankle fracture on November 27, 2013 and had surgery on the ankle on November 29, 2013. He writes: "Surgery was complicated by superficial wound infection. As a result of the infection and the need to review, clean and dress the wounds on a daily basis, [the orthopedic surgeon who operated on the appellant] requested an AIRCAST boot to keep the fracture stable and allow access to the wound on a daily basis." He adds that the cast "formed an essential part of the treatment plan."
- A medical expenses record for the appellant from a pharmacy indicating several medications prescribed for the appellant from November 3, 2013 to January 5, 2014. The panel notes that two of the nine medications on the record were prescribed before November 29, 2013, the date the doctor in the document above gives as the date the appellant sustained the ankle fracture.
- A letter to the appellant from the ministry dated December 31, 2013 notifying her that the ministry had determined she was not eligible for a health supplement to pay for an air cast and indicating that the appellant had the right to ask the ministry to reconsider the decision.

• An invoice to the appellant from a health agency dated December 10, 2013 for an item with the code "600T." The total amount due for the item is \$225.00. The panel notes that the ministry in the Decision To Be Reconsidered section of the Request for Reconsideration contacted the health services agency that sent the invoice, which identified the item as "a[n] Air Cast for a fracture."

After reconsideration, the appellant submitted a Notice of Appeal, in which she states, under the heading Reasons for Appeal, that because she is on disability she cannot afford the air cast. She writes that she did not choose the air cast, her doctor did. She writes: "I did not know about asking for permission from the ministry, it was necessity in my case." She concludes: "I meet the requirements. 1. The supplies are required for one of the following purposes [i] A wound care and [ii] (A) prescribed by a medical practitioner [and] (iii) there are no resources available to the family to pay the cost of or obtain the supplies."

The panel accepts the information in the Reasons for Appeal as argument from the appellant.



## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision to deny the appellant's request for payment for an air cast was a reasonable application of the legislation in the circumstances of the appellant or was reasonably supported by the evidence. The ministry determined that:

- the appellant does not meet the requirements for an air cast as a medical supply, under Schedule C, Section 2(1)(a)(i)(A) and Section 2(1)(a)(ii)(C), EAPWDR
- an air cast is not medical equipment under Schedule C, Sections 3.1 to 3.12 and 3.10(11), EAPWDR
- the appellant does not meet the requirements for an air cast as medical equipment under Schedule C, Section 3(1)(b)(i), EAPWDR.

Employment and Assistance for Persons with Disabilities Regulation.

- General health supplements

**2 (1)** The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation:

(a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:

(i) the supplies are required for one of the following purposes:

- (A) wound care;
- (B) ongoing bowel care required due to loss of muscle function;
- (C) catheterization;
- (D) incontinence;
- (E) skin parasite care;
- (F) limb circulation care;

(ii) the supplies are

- (A) prescribed by a medical practitioner or nurse practitioner,
- (B) the least expensive supplies appropriate for the purpose, and
- (C) necessary to avoid an imminent and substantial danger to health;

(iii) there are no resources available to the family unit to pay the cost of or obtain the supplies;

- 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.

- Section 3.1 to 3.12 (summary of the legislation) indicating the relevant section followed by the corresponding medical equipment and devices

3.1 – a cane; a crutch, a walker; an accessory to a walker

3.2 – a wheelchair; an upgraded component of a wheelchair; an accessory to a wheelchair

3.3 – a wheelchair seating system; an accessory to a wheelchair seating system

3.4 – a scooter; an upgraded component of a scooter; an accessory to a scooter

3.5 – a grab bar in a bathroom; a bath or shower seat; a bath transfer bench with a hand held shower; a tube slide; a bath lift; a bed pan or urinal; a raised toilet seat; a toilet safety frame; a floor-to-ceiling pole in a bathroom; a portable commode chair

3.5 – a hospital bed; an upgraded component of a hospital bed; an accessory attached to a hospital bed

3.7 – a pressure relief mattress

3.8 – a floor or ceiling lift device (means a device that stands on the floor or is attached to the ceiling that uses a sling to transfer a person)

3.9 – a positive airway pressure device; an accessory that is required to operate a positive airway pressure device; a supply that is required to operate a positive airway device

3.10 – a custom-made or off-the-shelf foot orthotic; custom-made footwear; a permanent modification to footwear; off-the-shelf footwear required to accommodate a custom-made orthosis; an ankle brace; an ankle-foot orthosis; a knee-ankle-foot orthosis; a knee brace; a hip brace; an upper extremity brace; a cranial helmet; a torso or spine brace

3.11 – a hearing aid

3.12 – a non-conventional glucose meter

- Section 3.10(11)



(11) The following items are not health supplements for the purposes of section 3 of this Schedule:

- (a) a prosthetic and related supplies;
- (b) a plaster or fiberglass cast;
- (c) a hernia support;
- (d) an abdominal support;
- (e) a walking boot for a fracture.

The panel notes that Schedule C, Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sets out eligibility requirements for health supplements under different categories:

- Section 2 deals with eligibility for “medical or surgical supplies”
- Section 3 deals with eligibility for “medical equipment and devices”

**Eligibility for an air cast as a medical supply**

With respect to Schedule C, Section 2(1)(a)(i)(A), EAPWDR, the appellant's position is that the air cast is required for wound care. The ministry's position is that the evidence shows the orthopedic surgeon requested the air cast to keep the fracture stable and allow access to the wound, not for the purpose of wound care.

The panel notes that appellant's doctor wrote in his letter of January 15, 2014 that an AIR CAST boot “formed an essential part of the treatment plan” for the appellant. The panel finds that insofar as access to the wound is considered an essential part of the treatment plan, it can be reasonably construed as an essential part of wound care. The panel therefore finds to be unreasonable the ministry's determination with respect to Schedule C, Section 2(1)(a)(i)(A), EAPWDR.

With respect to Schedule C, Section 2(1)(a)(ii)(B) EAPWDR [dealing with least expensive supplies appropriate for the purpose] and Section 2(1)(a)(iii) EAPWDR [dealing with lack of resources available to the family unit to pay the costs of or obtain the supplies], EAPWDR, the ministry does not address these provisions in its discussion of Section 2 in its reconsideration decision.

With respect to Schedule C, Section 2(1)(a)(ii)(C), EAPWDR, the ministry's position is that the appellant did not establish that the air cast is required to avoid an imminent and substantial danger to health. The appellant's position is that she suffered from serious infections post surgery that required constant attention and could have led to the loss of her foot. The ministry's position, as we have seen, is that the air cast is not essential for wound care. The panel notes that in his letter of January 15, 2014 the appellant's doctor states that the surgeon ordered an AIRCAST boot “as a result of the

infection and the need to review, clean and dress the wounds on a daily basis." Since the panel finds that the air cast is required for wound care and the evidence shows that the purpose of the wound care is to treat the appellant's infection, the panel finds the air cast is necessary to avoid an imminent and substantial danger to health. The panel therefore finds to be unreasonable the ministry's determination with respect to Schedule C, Section 2(1)(a)(ii)(C), EAPWDR.

In summary, regarding eligibility for an air cast as a medical supply, the panel finds the ministry's determinations to be unreasonable with respect to Schedule C, Section 2(1)(a)(i)(A) and Section 2(1)(a)(ii)(A) and with respect to 2(1)(a)(ii)(C), EAPWDR. The panel therefore finds to be unreasonable the ministry's determination that the appellant is not eligible for an air cast as a medical supply.

### **Eligibility for an air cast as medical equipment**

The panel chooses to deal first with the ministry's determination that an air cast is not medical equipment under Schedule C, Section 3, EAPWDR. The panel will deal with the ministry's determination of the appellant not meeting the eligibility requirements for medical equipment separately in its subsequent discussion of the requirements under Schedule 3(1)(b), EAPWDR.

The ministry contends that an air cast is an ineligible item as medical equipment. The ministry considers an air cast to be a walking boot for a fracture and points out that a walking boot for a fracture is not an eligible item under Schedule C, Section 3.10(11), EAPWDR. The panel notes that in his letter of January 15, 2014 the appellant's doctor indicated that the surgery was required because the appellant sustained an ankle fracture. The doctor refers to the appellant's need for an "AIRCASST boot." The panel, however, notes that Schedule C, Section 3.10(11)(e), EAPWDR refers to a walking book for a fracture, not to an air cast or an air cast boot. The panel therefore finds to be unreasonable the ministry's decision with respect to Schedule C, Section 3.10(11), EAPWDR that an air cast is an ineligible item.

With respect to Schedule C, Section 3(1), EAPWDR, the panel notes that the legislation states in part that the medical equipment and devices described in Sections 3.1 to 3.12. EAPWDR are the health supplements that may be provided by the minister. The panel notes that an air cast is not included in the equipment and devices set out in Schedule C, Sections 3.1 to 3.12. As an air cast is not set out in these sections, the panel finds to be reasonable the ministry's determination that an air cast is not a health supplement that may be provided by the minister as medical equipment under Schedule C, Section 3, EAPWDR.

Prior Approval: Next the panel will consider the reasonableness of the ministry's determination that the appellant did not meet the requirements for medical equipment and devices under Schedule 3, Section 3(1)(b), EAPWDR. The panel notes that the ministry does not address the requirements under Schedule 3, Section 3(1)(b)(ii-iii). With respect to Schedule 3, Section 3(1)(b)(i), EAPWDR, however, the ministry contends that because the appellant did not obtain pre-approval for the air cast, she does not meet the requirements of this provision. The panel notes that in her document of January 15, 2014 and again at the hearing, the appellant states that she was not informed pre-surgery that she was going to be getting an air cast. She states that when she woke up after surgery "it was a big surprise to see this air cast on my foot." The ministry representative at the hearing addressed this issue, without being asked to do so by the panel, by stating that the ministry showed



"flexibility" with regard to the requirement for pre-approval, notably in cases when a client "had no opportunity to get permission" from the ministry. The panel notes that the appellant states in her Reasons for Appeal that she did not know about asking for permission from the ministry. The panel notes, however, that under Schedule 3, Section 3(1)(b)(i), EAPWDR, a requirement that must be met is that the family unit has received the pre-authorization of the minister for the medical equipment or device. As the evidence shows that pre-authorization was not obtained, the panel finds the ministry's determination to be reasonable with respect to Schedule 3, Section 3(1)(b)(i).

In conclusion, while the panel finds the ministry's decision to be unreasonable that an air cast is an ineligible item under Schedule C, Section 3.10(11), EAPWDR the panel finds

- the ministry's decision to be reasonable with respect to Schedule 3, Section 3(1)(b)(i), EAPWDR
- the ministry's decision to be reasonable that an air cast is not a health supplement that may be provided by the minister as medical equipment under Schedule C, Section 3, EAPWDR.

The panel, however, finds the ministry's determinations to be unreasonable with respect to Schedule C, Section 2(1)(a)(i)(A) and Section 2(1)(a)(ii)(A) and with respect to 2(1)(a)(ii)(C), EAPWDR, regarding the appellant's eligibility for an air cast as a medical supply. The panel notes that pre-approval is not a requirement under Section 2, EAPWDR dealing with medical or surgical supplies. The panel therefore rescinds the ministry's decision to deny the appellant payment for an air cast. Therefore the ministry's decision is overruled in favor of the appellant