

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated May 2, 2014, which denied the appellant's request for a supplement to cover the cost of a floor-to-ceiling pole for her living room. The ministry found that the item requested is not listed as an eligible item in Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) and the appellant is not eligible for a supplement pursuant to Section 69 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 62 and 69 and Schedule C, Sections 2, 2.1, 2.2, 3, 3.1 to 3.12, 4, 4.1, 5, 6, 7, 8, 9

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Note dated March 6, 2014 in which an Occupational Therapist (OT) wrote that the appellant has MS [Multiple Sclerosis], is non-ambulatory and uses a wheelchair for mobility. She has one handi-pole at her bedside (recently purchased) and now needs a second one at wheelchair transfer site in the living room. She needs a horizontal bar for stability on both bars now;
- 2) Quote dated March 6, 2014 from a home health products supply company to the OT indicating the total price of \$459.90 for a “superpole with bar (installed), and a handwritten note that it includes the horizontal bar times 2 for both poles she has already;
- 3) Letter dated March 12, 2014 from the ministry to the appellant denying her request for the superpole for her living room;
- 4) Fax Transmission sheet dated March 19, 2014 in which the OT wrote that the appellant needs this second pole in the living room as this is where she transfers to/from her power wheelchair. There is no room in her bedroom for safe power wheelchair transfers. The first handi-pole was not quoted with the horizontal bar, which the appellant needs on both poles to transfer safely and independently. The second quote includes the horizontal bars for both poles and a pole for the living room; and,
- 5) Request for Reconsideration dated April 20, 2014.

In her Request for Reconsideration, the appellant wrote that she needs a floor-to-ceiling bar in the living room to help her to change from the chair to her electric chair.

In her Notice of Appeal, the appellant expressed her disagreement with the ministry’s reconsideration decision and wrote that:

- She has to have the pole to transfer since there is no room in the bedroom to transfer from the manual wheelchair to the power wheelchair.
- She needs to have the pole in the bedroom to transfer from her wheelchair to the bed and commode.
- Originally, she did not order a horizontal pole for the first pole so the quote includes the quote of one handi-pole and two horizontal bars that attach to each handi-pole.
- She is at risk of falling without this equipment.
- Right now she has the poles in place on loan and if they are removed she will not be able to transfer safely and independently. She needs this basic equipment for her safety.
- She does not walk at all. She uses a manual or power wheelchair for all mobility.

At the hearing, the appellant stated that:

- She knows that the pole is not supposed to go in the living room but they have a very small apartment that used to have one bedroom, which they split into 2 bedrooms so their son would have his own space and he could get some sunlight. They bought the apartment when their son was young and he is now grown and lives with his wife in another residence and works every day.
- Asked if the apartment can be converted back to one bedroom, the appellant stated that it would be too costly to remove the paneling and change things back.
- She has a hospital bed in one bedroom and it does not leave much room.
- Her bedroom does not have a door and leads directly to the living room, and all the

baseboards have been taken out so there is room to move with her chair.

- She has a pole in her bedroom to get from her chair into bed. It has a horizontal bar to hold onto. The appellant clarified that this floor-to-ceiling pole in her bedroom was provided to her by the ministry.
- She has grab bars and a shower seat in her bathroom to help her transfer and position in the bathroom.
- There is no way to put a pole in her bathroom as there is not enough room. The only place she can put a pole to get from her regular chair to the electric wheelchair is in the living room.
- Her electric chair is only used for travelling outside by herself and she keeps it in a little space in her living room.
- Asked if her electric wheelchair could fit into the bedroom, the appellant stated that she thought it could but there would not be much room to turn around. She uses her manual wheelchair in the house and the electric wheelchair only outside, to go shopping for example.
- Her electric wheelchair will not fit in the bathroom.
- Her husband is self-employed and she is not sure if he would be available to help with her transfers between chairs on a regular basis. When he is home, he can help with transfers but he also has his own problems since he was recently diagnosed with diabetes and he has a problem with his feet and cannot walk well.
- She currently has a pole in the living room with a horizontal bar which the OT arranged for her and which is on loan.

The ministry relied on its reconsideration decision. The appellant is in receipt of disability assistance and is eligible to receive health supplements provided under Section 62 and Schedule C of the EAPWDR.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of a floor-to-ceiling pole for her living room because the item requested is not listed as an eligible item in Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) and the appellant is not eligible for a supplement pursuant to Section 69 of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Pursuant to Section 62 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), the applicant must be a recipient or previous recipient of disability assistance or be a dependent 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 in that the appellant has been approved as a recipient of disability assistance.

At issue is whether the requested floor-to-ceiling pole for the living room and two horizontal bars are eligible items under Schedule C of the EAPWDR, including:

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. . . .

Section 2(1)(a.1) of Schedule C provides that the following medical or surgical supplies are health supplements if the other criteria of the section are met: lancets, needles and syringes, ventilator supplies, and tracheostomy supplies.

Section 2(1)(a.2) of Schedule C provides that the following consumable medical supplies are health supplements if the other criteria of the section are met: supplies required to thicken food.

Further, Section 2(1.1) of Schedule C, provides that for the purposes of Section 2(1)(a) "medical or surgical supplies" do not include nutritional supplements, food, vitamins, minerals or prescription medications.

Section 2(1)(c) of Schedule C provides that the following items are health supplements if the other criteria of the section are met: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy.

Section 2(1)(f) of Schedule C provides that the following items are health supplements if the other criteria of the section are met: the least expensive appropriate mode of transportation.

Section 2.1 of Schedule C provides that the following are the optical supplements that may be provided under Section 62.1 of the EAPWDR: basic eyewear and repairs, pre-authorized eyewear and repairs.

Section 2.2 of Schedule C provides that the minister may pay a health supplement under Section 62.2 of the EAPWDR for an eye examination if the other criteria of the section are met.

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. ...

Section 3.1 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a cane, a crutch, a walker, an accessory to a cane, a crutch or a walker.

Section 3.2 provides that the following items are health supplements for the purposes of section 3 of the Schedule if the other criteria of the section are met: a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair.

Section 3.3 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a wheelchair seating system, an accessory to a wheelchair seating system.

Section 3.4 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a scooter, an upgraded component of a scooter, an accessory attached to a scooter.

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.
- (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.

Section 3.6 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed, and a positioning item on a hospital bed.

Section 3.7 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a pressure relief mattress.

Section 3.8 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a floor or ceiling lift device.

Section 3.9 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: breathing devices.

Section 3.10 provides that the following items are an orthosis which is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a custom-made or off-the-shelf foot orthotic, custom-made footwear, a permanent modification to footwear, off-the-shelf footwear required for a specific purpose, off-the-shelf orthopedic footwear, 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, a foot abduction orthosis, and a toe orthosis.

Section 3.11 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hearing instrument.

Section 3.12 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a non-conventional glucose meter.

Section 4 of the Schedule provides that the health supplement that may be paid under section 63 [*dental supplements*] are basic dental services, if the other criteria of the section are met.

Section 4.1 of Schedule C provides that the health supplement may be paid under section 63.1 for crown and bridgework, if the other criteria of the section are met.

Section 5 of Schedule C provides that the health supplement that may be paid for under Section 64 [*emergency dental and denture supplements*] of the EAPWDR are emergency dental services.

Section 6 of Schedule C provides that the amount of a diet supplement that may be provided under section 66 [*diet supplements*] is set out for various conditions, if the other criteria of the section are met.

Section 7 of Schedule C provides as follows:

- 7 The amount of a nutritional supplement that may be provided under section 67 [*nutritional supplement*] of this regulation is the sum of the amounts for those of the following items specified as required in the request under section 67 (1) (c):
- (a) for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to \$165 each month;
 - (b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]
 - (c) for vitamins and minerals, up to \$40 each month.

Section 8 of Schedule C provides that the amount of a natal supplement that may be provided under section 68 [*natal supplements*] is set out, if the other criteria of the section are met.

Section 9 of Schedule C provides that the minister may provide infant formula under section 67.1 of the EAPWDR if the other criteria of the section are met.

Section 69 of the EAPWDR provides as follows:

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).

Horizontal Bars

In her Noted dated March 6, 2014, the OT included a reference to two horizontal bars to affix to the floor-to ceiling poles for stability. The appellant's position, as set out in her Notice of Appeal, is that she did not originally order a horizontal pole for the first pole so the quote includes the quote of one handi-pole and two horizontal bars that attach to each handi-pole. The panel notes that the ministry did not include this item in its original decision as the denial, as set out in the letter to the appellant dated March 12, 2014, related only to the floor-to-ceiling pole. At reconsideration, the ministry pointed out that there are not sufficient details regarding cost and installation of the horizontal bars for the ministry to make a decision regarding this item.

Medical Equipment and Devices

The ministry's position is that the appellant is eligible to receive health supplements under Section 62 of the EAPWDR but the floor-to-ceiling pole for the living room is not an eligible item as medical equipment specifically set out in Sections 3 and 3.1 through 3.12 of Schedule C of the EAPWDR. The ministry's position is that the floor-to-ceiling pole for the appellant's living room is not an eligible item under Section 3.5 of Schedule C of the EAPWDR. The ministry argued that Section 3.5(1)(l) specifies that only a floor-to-ceiling pole in the bathroom or bedroom is a health supplement for the purposes of Section 3 of Schedule C. The ministry argued that Section 3.5(0.1) defines a "transfer aid" as a transfer board, transfer belt, or slider sheet and a floor-to-ceiling pole is not one of these. The appellant's position is that she needs the pole to transfer from her manual wheelchair to her power wheelchair and the floor-to-ceiling pole has to be placed in the living room as there is not sufficient room in the bedroom for her to transfer. The appellant argued that she does not walk at all and she uses a manual or power wheelchair for all mobility and needs to be able to transfer to her power wheelchair to go outside by herself.

Panel decision

The panel finds that the ministry reasonably determined that the requested the floor-to-ceiling pole for the living room is not specifically set out in Section 3.1 through 3.12 of Schedule C of the EAPWDR as it is not: a cane, a crutch or a walker, or an accessory to a cane, a crutch or a walker; a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair; a wheelchair seating system, an accessory to a wheelchair seating system; a scooter, an upgraded component of a scooter, an accessory attached to a scooter; a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed, or a positioning item on a hospital bed; a pressure relief mattress; a floor or ceiling lift device; a breathing device; a custom-made or off-the-shelf foot orthotic, custom-made footwear, a permanent modification to footwear, off-the-shelf footwear, off-the-shelf orthopedic footwear, 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, a foot abduction orthoses, or a toe orthosis; a hearing instrument or a non-conventional glucose meter. Section 3.5(1)(l) provides that the listed items are health supplements for the purpose of Section 3 of the Schedule and includes a floor-to-ceiling pole in a bathroom or bedroom. The appellant stated at the hearing that she currently has a floor-to-ceiling pole in her bedroom that was provided to her by the ministry to assist with her transfers from her chair to her bed and that there is not sufficient room for a pole in her bathroom. Asked if her power wheelchair could fit into the bedroom so that her transfers between chairs could be performed in the bedroom, the appellant stated that she thought it could but there would not be much room to turn around. As the sub-section restricts floor-to-ceiling poles to those installed in a bathroom or bedroom, the panel finds that the ministry reasonably determined that the requested floor-to-ceiling pole for the appellant's living room is not included in Section 3.5 of Schedule C of the EAPWDR.

Medical or Surgical Supplies

The ministry's position is that the floor-to-ceiling pole for the living room is not a disposable or reusable medical or surgical supply set out in Section 2(1) of Schedule C of the EAPWDR as it does not meet all of the criteria. The ministry argued that information has not been provided to establish that the floor-to-ceiling pole for the living room is a disposable or reusable medical or surgical supply required for one of the purposes set out in the section, namely: wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care, or limb circulation care. The ministry argued that information is not provided to establish that the floor-to-ceiling pole for the living room is necessary to avoid an imminent and substantial danger to health. The ministry argued that the floor-to-ceiling pole for the living room is not set out in subsections 2(1)(a.1) or 2(1)(a.2) as it is not lancets, needles and syringes, ventilator supplies, or tracheostomy supplies and it is not a supply required to thicken food. The appellant's position is that she is at risk of falling without this equipment and she needs this basic equipment for her safety and it is, therefore, necessary to avoid an imminent and substantial danger to her health.

Panel decision

The panel finds that the floor-to-ceiling pole for the living room functions as equipment to assist with the appellant's transfers from her manual wheelchair to her power wheelchair and is not required for one of the purposes of wound care, ongoing bowel care, catheterization, incontinence, skin parasite care or limb circulation care, as set out in Section 2(1)(a)(i) of Schedule C of the EAPWDR. Although the appellant argued that she is at risk of falling without this equipment and she needs this basic equipment for her safety, she also acknowledged that she has a floor-to-ceiling pole in her bedroom and that it might be used for the transfers and also that her husband is sometimes available to assist with these transfers. The panel finds that the ministry's conclusion that information is not provided to establish that the floor-to-ceiling pole for the living room is necessary to avoid an imminent and substantial danger to health, pursuant to Section 2(1)(a)(ii)(C) of Schedule C, was reasonable. The panel finds that the ministry reasonably concluded that the floor-to-ceiling pole for the living room is not set out in subsections 2(1)(a.1) or 2(1)(a.2) as it is not lancets, needles and syringes, ventilator supplies, or tracheostomy supplies and it is not a supply required to thicken food. The panel finds that the ministry's decision, which concluded that the floor-to-ceiling pole for the living room does not meet all of the applicable legislative criteria as set out in Section 2(1) of Schedule C of the EAPWDR, was reasonable.

Other Health Supplements

The ministry's position is that the appellant's request for a supplement to cover the cost of a floor-to-ceiling pole for the living room does not meet the criteria of the other sections of Schedule C of the EAPWDR, including sections 2(1)(c), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9, since a floor-to-ceiling pole for the living room is not any of the items covered, namely: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy; optical supplements; eye examination supplements; a dental supplement; a crown and bridgework supplement; emergency dental supplements; diet supplements; monthly nutritional supplements; natal supplements; or infant formula. The appellant does not dispute that the requested floor-to-ceiling pole for the living room does not fall within any of these other sections of Schedule C. The panel finds that the ministry's decision, which concluded that the floor-to-ceiling pole for the living room is not an item listed in the other sections of Schedule C of the EAPWDR, was reasonable.

Life-threatening Health Need

With respect to Section 69 of the EAPWDR, the ministry's position is that this section is intended to

provide a remedy for those persons who are facing a direct and imminent life-threatening need for these supplements and who are not otherwise eligible to receive them. The ministry argued that the appellant does not require a remedy under Section 69 as she is eligible to receive health supplements set out under Schedule C, Sections 2 and 3. The ministry argued that the information submitted does not establish that the appellant faces a direct and imminent life-threatening health need for the floor-to-ceiling pole for the living room. The ministry further argued that information has not been provided to demonstrate that the requirements of Section 69(d) are met as a floor-to-ceiling pole for the living room is not set out under Schedule C, Section 2(1)(a) [*medical supplies*] or Section 2(1)(f) [*medical transportation*] or in Sections 3 to 3.12. The appellant's position is that she is at risk of falling without this equipment and she needs this basic equipment for her safety and she, therefore, faces a direct and imminent life threatening need.

Panel decision

The panel finds that the ministry reasonably determined that the appellant is eligible for health supplements under Section 62 of the EAPWDR, whereas Section 69 applies to provide a health supplement to a person in the family unit who is otherwise not eligible for the health supplement under the EAPWDR. The appellant acknowledged that she has a floor-to-ceiling pole in her bedroom and that it might be used for the transfers between her wheelchairs and also that her husband is sometimes available to assist with these transfers, and there was no other evidence of a life threatening need for the floor-to-ceiling pole for the living room. The panel finds that the ministry's conclusion that the information submitted does not establish that the appellant faces a direct and imminent life-threatening health need for the floor-to-ceiling pole for the living room, pursuant to Section 69(a), was reasonable. The panel also finds that the ministry reasonably determined that the requirements of Section 69(d) are not met as a floor-to-ceiling pole for the living room is not set out under Schedule C, Section 2(1)(a) as medical or surgical supplies or under Section 2(1)(f) as a mode of medical transportation, or under Sections 3 to 3.12, as detailed above. Therefore, the panel finds that the ministry's decision, which concluded that all of the criteria in Section 69 of the EAPWDR are not met, was reasonable.

Conclusion

In conclusion, the panel finds that the ministry's decision to deny the request for a supplement to cover the cost of a floor-to-ceiling pole for the living room as not meeting the legislated criteria of Schedule C, Sections 3, 3.1 to 3.12, or Section 2(1)(a) or (c), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, and 9 or Section 69 of the EAPWDR, was a reasonable application of the applicable enactment in the circumstances of the appellant and, therefore, confirms the decision.