

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of April 15, 2014, which denied the appellant's request for a floor-to-ceiling pole for his living room. The ministry determined that the appellant did not meet the program criteria because a floor-to-ceiling pole is an eligible item only when it is intended for use in a bathroom or bedroom pursuant to Section 3.5 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation. Additionally, the ministry determined that the floor-to-ceiling pole is not listed under any of the other health supplements in schedule C and the criteria of section 69 were not met because the floor-to-ceiling is not required to meet a life-threatening health need.

### PART D – Relevant Legislation

Employment and Assistance for persons with Disabilities Regulation (EAPWDR), Sections 62 and 69.  
Employment and Assistance for persons with Disabilities Regulation, Schedule C.

## PART E – Summary of Facts

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

- A Request for Aids or Adaptations dated March 14, 2014 signed by the appellant's Occupational Therapist (OT).
- A Physician Referral/Orders dated February 17, 2014 signed by the appellant's physician.
- A Quotation for an installed Superpole dated March 13, 2014 for \$226.80.
- The appellant's Request for Reconsideration dated April 4, 2014 where it was indicated by the appellant's physician that the appellant's condition has worsened; he is now blind and has difficulty standing and walking; and he needs a Superpole in the bathroom and living room.

In the Request for Aids or Adaptations, the appellant's OT recommended therapeutic equipment; specifically an installed Superpole which for the purpose of the legislation is called a floor-to-ceiling pole, for the appellant who has a history of arthritis and diabetes and has reduced mobility, poor balance and requires assistance to ambulate and transfer. The appellant is at risk for falls and is in need of a Superpole next to the chair in the living room where he regularly sits. The pole will assist with safe transfers in and out of his chair and is different than the pole that was recently approved, provided and installed in his bedroom for bed transfers.

In the Physician Referral/Orders, it is reported that the appellant has been assessed by the OT and is in need of a floor to ceiling pole in the living room next to the chair where he regularly sits, in order for him to safely transfer in and out of his chair.

In the Notice of Appeal dated April 23, 2014, it is written that the appellant's health has worsened, and he needs equipment to get up. It further states that the appellant has dementia and blindness and both his OT and Doctor have said the equipment is needed.

At the hearing, the appellant's son who represented him stated that he does not work and stays home to look after his father whose health has been failing particularly since March. The appellant's son testified that his father is 5' 11" and weighs 170 lbs., has a hard time to get up on his own and that he helps his father to get up about 6 times every night to go to the bathroom. The appellant's son stated that he was told by a case worker that he could get help and that a Superpole was recommended for the living room where the appellant's spends most of his time. In response to a question by the panel, the appellant's son indicated that the appellant also uses a walker.

The panel determined the additional oral evidence from the appellant's son was admissible under section 22(4) of the EAA as it was in support of the record before the minister at reconsideration as it provided particulars about the appellant's condition and needs.

No additional evidence was provided by the ministry on appeal.

### **Findings of Fact**

The appellant is designated as a Person with Disability 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 in this appeal is whether the ministry reasonably determined that the appellant is ineligible for an installed floor-to-ceiling pole for his living room as a health supplement as the criteria pursuant to sections 62 and 69 and Schedule C, of the Employment and Assistance for Persons with Disabilities Regulation were not met.

### Relevant Legislation

#### EAPWDR ,Schedule C

#### 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.

#### 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.

#### General Health Supplements – medical supplies

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.

Sections 2.1, 2.2, 4, 4.1,5, 6, 7, 8 and 9 set out additional 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 including optical and dental, that are not that are relevant to the request.

## 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).

The appellant's position is that that he requires a floor to ceiling pole in his living room next to the chair where he regularly sits and spends most of his days, in order for him to safely transfer in and out of this chair. The appellant's physician and occupational therapist agree that the Superpole in the living room would provide the appellant assistance to ambulate and transfer, as he is at risk of falls because of his worsening condition.

The ministry's position is as follows:

1. The criteria of section 3.1 to 3.12 of Schedule C set out the specific eligibility requirements for each category. Super poles are set out under EAPWD Regulation, Schedule C, section 3.5 - bathing and toileting aids as follows:
  - (i) a floor-to-ceiling pole in a bathroom or bedroom.

The EAPWD Regulation, Schedule C, section 3.5 (1)(i) specifies that only a super pole in a bathroom or bedroom is a health supplement for the purposes of section 3. A "transfer aid" is defined as a transfer board, transfer belt or slider sheet; a super pole is not one of these. A super pole is not one of the other items set out in the EAPWD Regulation Schedule C, section because it is not listed under medical equipment and devices to include: a cane, walker, wheelchair, scooter, a grab bar, a floor or ceiling lift device, a positive airway pressure device, a custom-made orthotic and/or a hearing aid or non-conventional glucose meter.

2. The criterion of section 2(1)(a) of Schedule C was not met because the super pole is not listed under disposable or reusable medical or surgical supplies required for any of the purposes set out in section 2(1)(a.1); wound care, ongoing bowel care, catheterization, incontinence, skin parasite care and/or limb circulation care; and are not supplies required to thicken food pursuant to section 2(1)(a.2).
3. The criteria of section 2(1)(c) and 2(2) of Schedule C were not met because the super pole is not required as therapy provided to include: acupuncture, chiropractic service, massage therapy, naturopathy, non-surgical podiatry and/or physiotherapy therapy.

4. The criteria of sections 2.1, 2.2, 4, 4.1,5, 6, 7, 8 and 9 of Schedule C were not met because the super pole is not listed under the remaining health supplement legislation; and
5. The criteria of section 69 were not met because the super pole is not required to meet a life-threatening health need, and because a super pole in the living room is not a health supplement listed in Schedule C.

The panel finds that the ministry has reasonably determined that pursuant to the above noted legislation, the floor-to-ceiling pole (Superpole) as specifically requested for the living room, is not listed as a supplement under section 3.5 of Schedule C as it is not to be installed in a bedroom or bathroom, and is not listed under medical or surgical supplies, under medical equipment and devices, or as a therapy or under the remaining health supplements. Additionally, the panel finds the Superpole was reasonably determined by the ministry as not required to meet a life-threatening health need as required by section 69 of the EAPWDR.

The panel notes that while the appellant's physician and occupational therapist agree that the Superpole in the living room would provide the appellant assistance to safely ambulate and transfer, the ministry has no discretion to authorize the purchase. Although the panel acknowledges the fact that the appellant has a real need for the floor-to-ceiling pole to be installed in his living room, the legislation is very specific that this item is not a health supplement for the purposes of section 3 and 3.5 of Schedule C of the EAPWDR, if it is not installed in a bedroom or a bathroom.

The panel finds that the ministry's decision that the appellant was not eligible for a floor-to-ceiling pole for the living room was a reasonable application of the applicable enactment in the circumstances of the appellant and therefore confirms the ministry's decision.