

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated May 13, 2014, which denied the Appellant's request for a WG Rehab Walking Total Support System and BXL Steadymate Platform Walker. The Ministry found that the Appellant was not eligible to receive the requested items because they are not eligible health supplements as set out in Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR). The Ministry also found that the Appellant is not eligible for the items as a life-threatening health need under section 69 of the EAPWDR because the information provided by the Appellant does not establish that he faces a direct and imminent life-threatening health need for the WG Rehab Walking Total Support System and BXL Steadymate Platform Walker.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The evidence before the Ministry at reconsideration included:

- Quotations for a BXL Steadymate Platform Walker and WG Rehab Walking Total Support System, dated February 5, 2014.
- A Medical Request and Justification form from the appellant's physiotherapist dated February 5, 2014, with an attached Functional Assessment of the Appellant which states that before the events that led to his hospitalization, the Appellant was able to walk on his own, and that there is no other way, other than by using the recommended equipment, to get him up on his feet due to his excessive weight and deconditioning. In the Functional Assessment, the Appellant's medical diagnosis is described as "Developmental Disability; Spastic Cerebral Palsy; Mental Retardation; Diabetic; Obesity; Asthma; Sleep apnea; right ankle fracture Feb. 2012., that he has a ceiling lift for transfers, an exercise routine, trunk control, normal ROM, Grade 3-5 strength, and a power wheelchair which he can drive to get around in'. The physiotherapist stated that the total support system (walking sling) and platform walker are both needed to work together, and that there is no other way to get him up on his feet, as he continues to improve, he will be able to use the same equipment to walk.
- A Request for Physician's Prescription from the appellant's physiotherapist signed by a physician on February 5, 2014, in which the physiotherapist wrote: "we are applying again for a system to enable him to work on ambulation."
- The Ministry's Medical equipment and devices decision summary, dated April 15, 2014.
- A copy of the Ministry's letter to the Appellant dated April 15, 2014, advising him of their decision to deny the items.
- A letter from the appellant's physiotherapist dated April 23, 2014, stating that the appellant has complex medical issues and if he were to have the requested equipment he would be able to work to improve his current health status and his quality of life, and that he may be able to walk around his home if he is given the opportunity, but not without the requested equipment.
- The Appellant's Request for Reconsideration dated April 25, 2014.

At the hearing the witness stated that he is the Appellant's caregiver. He stated that the Appellant needs the requested equipment in order to walk and to be able to do things independently as well as to get some exercise.

The Appellant's advocate at the hearing was his mother. She stated that what is being requested is a standing walker frame. She stated that the Appellant is too heavy for a standard walker. She stated that he was able to walk until he had an infection that left him with a wheelchair. She stated that he currently has a walker on loan that is the same as he is requesting, but the supplier has asked for it to be returned. She stated that they have found it to be suitable for his size.

With respect to basic mobility, the Advocate stated that the Appellant cannot get around the community well; he must be accompanied. She stated that he was denied outpatient services at a rehabilitation centre because he needs an assistant and is not independent. With respect to mobility indoors, the Advocate stated that the Appellant cannot stand without using a ceiling lift. She stated that he lived alone from 1981 to 2010, before his hospitalization, but now needs 24 hour care. She stated that she and 2 other caregivers help him do daily exercise, cooking, bathing and toileting which he cannot do without assistance, and a walker would help him build his strength. She stated that the Appellant lives with her and a caregiver comes to the apartment every day.

In response to questions from the Ministry, the Advocate stated that they are requesting the walker to use in conjunction with the requested total support system, which work together. She stated that he has a walker on loan, but it was not supplied by the Ministry.

In response to questions from the Panel, the Advocate stated that the Appellant cannot do any daily living activities on his own. She stated that he needs help to board a bus, and use Handydart, he can go short distances in his power wheelchair but needs help getting it out of his residence. The Advocate has to help with banking, bill paying and other aspects of daily living. She stated that prior to his hospitalization he was able to do these things himself. She stated that he was unable to pursue his prior request for this equipment through an appeal because both of them were in hospital at that time. She stated that he has used the requested equipment on loan for a year and it has helped him gain muscle strength and improved his mobility so that he can sit on the edge of the bed. She stated that he has no walker (of his own?) now, and a rehabilitation centre told him he cannot be an outpatient until he is more independent.

The Ministry responded that they are bound by the legislation, and each type of equipment has specific requirements for approval. She stated that the Appellant is designated as a Person with Disabilities (PWD); therefore he is eligible to receive health supplements provided under section 62 and Schedule C of the EAPWDR. The Ministry stated in the Reconsideration Decision that with respect to the total support system, it does not meet the requirements to be considered as medical or surgical supplies because it is not directly related to one of the purposes set out in the legislation, it does not meet the requirements for equipment and devices set out in sections 3.1 to 3.12 of Schedule C, EAPWDR specifically because it is not a standing frame, it does not meet the legislative criteria for the other equipment and devices as set out in those sections and the purpose of the requested items is more in the nature of rehabilitation, not to enhance the Appellant's ability to perform DLA's. The Ministry found that the requested items are not set out in any other section of Schedule C, EAPWDR. The Ministry stated in the Reconsideration Decision that information has not been provided that the Appellant is not able to access the equipment at the rehabilitation centre as an outpatient; therefore the criterion of having no resources available to pay the cost of the equipment was not met. With respect to section 69 of the EAPWDR, the Ministry stated that it has not been established that the items requested are required to meet a life-threatening health need.

In response to questions from the Panel, the Ministry stated that with reference to weight bearing they referred to the physiotherapist's report dated February 5, 2014, which refers to the Appellant's excessive weight as a reason he needs the platform walker. The Ministry argued that nothing in the relevant legislation refers to performing DLA's as a criterion for provision of these items. With respect to basic mobility, the Ministry responded that the physiotherapist's description of the function of the requested items refers to allowing the Appellant to put more weight on his forearms. The Ministry confirmed that the Appellant currently has a ceiling lift for transfers.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's decision dated May 13, 2014, which denied the Appellant's request for a WG Rehab Walking Total Support System and BXL Steadymate Platform Walker. The Ministry found that the Appellant was not eligible to receive the requested items because they are not eligible health supplements as set out in Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation*, and the Ministry found that the Appellant is not eligible for the items as a life-threatening health need under section 69 of the EAPWDR because the information provided by the Appellant does not establish that he faces a direct and imminent life-threatening health need for the WG Rehab Walking Total Support System and BXL Steadymate Platform Walker.

Legislation

The EAPWDR provides in section 62 that the minister may provide any health supplement set out in section 2 or 3 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 recipient of disability assistance. The Ministry acknowledges that the Appellant receives disability assistance, and would therefore be eligible for health supplements under section 62.

Section 69 of the EAPWDR sets out the criteria for health supplements for persons "facing a direct and imminent life threatening health need" as follows:

69. The minister may provide to a family unit any health supplement set out in section 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, 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 3.11, other than paragraph (a) of section 3(1).

General Health Supplements – Section 2

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;

...

(a.1) the following medical or surgical supplies that are ... either disposable or reusable

- (i) lancets;
- (ii) needles and syringes;
- (iii) ventilator supplies required for the essential operation or sterilization of a ventilator;
- (iv) tracheostomy supplies;

(a.2) consumable medical supplies ...

...

(b) subject to subsection (2), a service provided by a person described opposite that service in the following table, delivered in not more than 12 visits per calendar year ...

Item	Service	Provided by	Registered with
1	Acupuncture	...	...
2	Chiropractic	...	....
3	Massage Therapy	...	....
4	Naturopathy	...	...
5	Non-surgical podiatry	...	...
6	Physical therapy	...	...

Medical equipment and devices – Section 3

3. (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in section 3.1 to 3.11 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.

The following medical equipment and devices, and medical supplements, are expressly set out in sections 2.1, 2.2, 3.1-3.12, 4, 4.1, 5, 6, 7, 8, and 9 of Schedule C as follows:

- optical supplements – section 2.1;
- eye examination supplements – section 2.2;
- canes, crutches and walkers – section 3.1:

3.1 (1) Subject to subsection (2) 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 cane;
- (b) a crutch;
- (c) a walker;
- (d) an accessory to a cane, a crutch or a walker.

(2) A walking pole is not a health supplement for the purposes of section 3 of this Schedule.

- wheelchairs – section 3.2;
- wheelchair seating systems – section 3.3;
- scooters – section 3.4;
- bathing and toileting aids – section 3.5;
- hospital bed – section 3.6;
- pressure relief mattress – section 3.7;
- floor or ceiling lift devices – section 3.8;

- positive airway pressure devices – section 3.9;
- orthoses – section 3.10;
- hearing instruments – section 3.11;
- non-conventional glucose meters – section 3.12;
- dental supplements – section 4;
- crown and bridgework supplement – section 4.1;
- emergency dental supplements – section 5;
- diet supplements – section 6;
- monthly nutritional supplement – section 7;
- natal supplement – section 8; and
- infant formula – section 9.

The Appellant's position is that he meets the legislative requirements for provision of the requested items; he has no resources to pay the cost of or obtain the items, and the rehabilitation centre has refused to take him as an outpatient. The Appellant argued that there is no definition of walker in the legislation, and he requires a walker that is able to carry his weight for basic mobility. He argued that he would be able to do more DLA's on his own with a walker that is suited to his size. In his Notice of Appeal, the Appellant argued that the requested walking support system provides the equivalent function as a standing frame for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility.

The Ministry's position is that the Appellant has not established that he meets the legislative requirements for provision of the WG Rehab Walking Total Support System and BXL Steadymate Platform Walker. In addition, the Ministry stated in the Reconsideration Decision that the Appellant did not establish that he could not access the equipment at a rehabilitation centre. The Ministry argued that the information provided by the Appellant does not establish that the eligibility criteria for the requested items set out in the legislation have been met. The Ministry argued that the Appellant is not eligible for the requested equipment as medical supplies because the items requested are not among those set out in section 2 of Schedule C, of the EAPWDR; that he is not eligible for provision of the items under section 3 of Schedule C, EAPWDR because the legislative criteria for each of the items listed in that section have not been met and because the purpose of the items requested is more in the nature of rehabilitation or treatment than to achieve or maintain basic mobility. As well, she argued that the support system and walker promote weight bearing, not transfer use.

With respect to the Appellant's resources to pay the cost or obtain the requested items through a rehabilitation centre, the Panel accepts the Appellant's oral evidence that he has been refused treatment as an outpatient, and is therefore unable to access the equipment there. The Appellant stated in his Notice of Appeal as well that the rehabilitation centre had advised him that he will not be eligible to attend as an outpatient unless he increases his level of function. The Panel finds that the Ministry's determination that the Appellant's application does not meet the requirement of section 3(1)(b)(ii) of Schedule C, EAPWDR was not reasonable.

With respect to the Ministry's denial of the WG Rehab Walking Total Support System and BXL Steadymate Platform Walker, the Panel notes that the physiotherapist stated that there is no other way for the Appellant to get up on his feet and that he needs specialized equipment due to his weight. The Panel notes that the walking sling and platform walker are described by the physiotherapist as working together. The Panel accepts the Appellant's oral evidence that his wheelchair does not allow him the mobility to access bathing or toileting independently. The Panel notes the comments made in the physiotherapist's letter dated April 23, 2014, in which she refers to the requested equipment as allowing the Appellant to work daily so that he is able to regain his ability to walk. In her letter of February 5, 2014, the physiotherapist referred to the Appellant's need for the requested equipment to help keep him standing and stated that there is no other way to get him up on his feet. The Panel finds that the evidence indicates that due to the Appellant's weight, a specialized walker is required;

however the effect of the requested equipment is primarily rehabilitation. Although the legislation provides for provision of a walker, the evidence from the physiotherapist states that both pieces of equipment are required, and the purpose of the requested equipment is to keep him standing rather than to achieve or maintain basic mobility. There is no provision in the legislation for a rehabilitation walking total support system. Considering the physiotherapist's comment that if the Appellant were to have the requested equipment he would be able to work daily to improve and that he has the potential to improve his ability to mobilize by using the requested equipment, the Panel finds that the Ministry reasonably concluded that the purpose of the equipment is primarily rehabilitation, whereas s. 3.1 of Schedule C of the EAPWDR requires that a walker be medically essential to achieve or maintain basic mobility. With respect to basic mobility, the Panel notes that the Appellant has been provided with a manual wheelchair which provides basic mobility indoors and a power wheelchair for use outdoors.

The Panel therefore confirms the Ministry's reconsideration decision as reasonably based on the evidence.