

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) reconsideration decision dated May 28, 2014 which held that the Appellant was denied a crisis supplement for an elevating lift chair pursuant to section 57 of the Employment and Assistance for Persons with Disabilities Regulation (the “EAPWDR”).

The Ministry found that the an elevating lift chair was not an unexpected need or expense; that the Appellant had the resources available to meet this need; that the failure to obtain the item would not result in imminent danger to the Appellant’s physical health and that the an elevating lift chair is considered a health care good in Schedule “C” and not permissible under section 57 of the EAPWDR.

PART D – Relevant Legislation

The Ministry relied on the following legislation in making their determination:

- Employment and Assistance for Persons with Disability Act (the “EAPWDA”), section 5
- Employment and Assistance for Persons with Disability Regulation (the “EAPWDR”), section 57 and Schedule “C”

PART E – Summary of Facts

The evidence before the Ministry at reconsideration included the following:

Employment and Assistance Request for Reconsideration dated May 28, 2014 with the following attached documents:

1. Crisis Request for the Appellant date unknown requesting bank statements and general information requesting an elevating lift chair. The following are answers to questions posed on the form:
 - a. What is needed? The response was a “motorized lift chair.”
 - b. What was the unexpected event or expense that prevented you from meeting this need? The response was “to prevent my edema from flaring.”
 - c. What resources have you accessed to try to meet this need? The following were checked: friends and family, set up payment plan, attend thrift stores, local resources and tried to reduce expenses.
 - d. Other resources accessed? The response was “two thrift stores.”
 - e. What is the direct threat to your health and safety? The response was “to stop blood clots and my edema from spreading.”
2. TD Account Activity account showing the Appellant's March expenditures. The Appellant had a starting balance on March 3, 2014 of \$2,473.25 and ending balance on March 25, 2014 of \$50.35.
3. TD Account Activity account showing the Appellant's February 3 expenditures. The Appellant had a negative balance on February 3, 2014 of (\$10.70) and ending balance on February 28, 2014 of \$1,473.25.
4. Letter from the Appellant dated March 25, 2014 to “whom it may concern” stating that he is applying for a crisis supplement for a comforter chair and that he is applying for the chair to keep his legs elevated so his edema does not bother him.
5. Sales quotation dated March 3, 2014 for a comforter wide large dual motor life chair with deluxe heat and massage system in the total amount of \$2,789.10.

The Appellant additionally submitted in his Notice of Appeal dated June 18, 2014 that he did not agree with the decision. He stated that the reclining chair will prevent imminent danger to his physical health and that it's not an item in Schedule “C.”

At the hearing, the Appellant relied on the following documentation:

1. Letter from the Appellant's medical practitioner dated May 29, 2014 to “whom it may concern” (the “Letter”) stating the following:

“[The Appellant] has been my patient for more than ten years and in that time he has experienced edema and a number of blood clots in addition to his severe arthritis. In order to avoid further life threatening blood clots and edema, I recommend that [the Appellant] use a reclining chair with capabilities of also lifting him forward to help him get up from the

sitting/reclining positions.”

2. An internet article titled “Blood clots can be deadly, but they are often preventable and treatable” listing the dangers of clots, who’s at risk, prevention measures, recognizing symptoms and treatment.
3. An online website question and answer article with the question “Can the ministry make me use money from my trust to pay for something that would usually be paid for by the ministry? For example, can the ministry ask me to pay for a health expense out of my trust that the ministry usually pays for under schedule c of the BCEA legislation?”

The answer: “No. Ministry policy says that a person will not be disqualified from receiving disability assistance just because the person has a trust. The amount the person can spend on disability costs from a trust is meant to pay for the things that are not covered by the ministry or for fees for services that are covered but which exceed the maximum allowable amount.”

The appellant stated he was using a borrowed elevating lift chair and no longer has use of that chair.

The Ministry acknowledged that they received the above documents prior to the appeal hearing but after the decision was rendered. The Ministry stated that the additional documents were taken into consideration after the decision was rendered and it did not change the decision.

The elevating lift chair has also been referred to in the Record of the Ministry Decision as a motorized lift chair, elevating chair, and reclining chair. The Panel will refer to the chair as the elevating lift chair for clarity.

The Panel finds that the additional documents provided by the Appellant clarified his situation and was admissible under section 22(4) of the *Employment and Assistance Act* as it was in support of the records before the Ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue is whether the Ministry's decision to deny the Appellant an elevating lift chair is a reasonable application of the legislation in the circumstances of the Appellant or is reasonably supported by the evidence.

The Ministry relied on section 57 of the EAPWDR to find that the Appellant was not eligible for a crisis supplement. The section has been reproduced below:

(A) Crisis supplement

57 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if

- (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and
- (b) the minister considers that failure to meet the expense or obtain the item will result in
 - (i) imminent danger to the physical health of any person in the family unit, or
 - (ii) removal of a child under the *Child, Family and Community Service Act*.

(2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.

(3) A crisis supplement may not be provided for the purpose of obtaining

- (a) a supplement described in Schedule C, or
- (b) any other health care goods or services.

(4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:

- (a) if for food, the maximum amount that may be provided in a calendar month is \$20 for each person in the family unit,
- (b) if for shelter, the maximum amount that may be provided in a calendar month is the smaller of
 - (i) the family unit's actual shelter cost, and
 - (ii) the maximum set out in section 4 of Schedule A or Table 2 of Schedule D, as applicable, for a family unit that matches the family unit, and
- (c) if for clothing, the amount that may be provided must not exceed the smaller of
 - (i) \$100 for each person in the family unit in the 12 calendar month period preceding the date of application for the crisis supplement, and
 - (ii) \$400 for the family unit in the 12 calendar month period preceding the date of application for the crisis supplement.

(5) The cumulative amount of crisis supplements that may be provided to or for a family unit in a year must not exceed the amount calculated under subsection (6).

(6) In the calendar month in which the application or request for the supplement is made, the amount under subsection (5) is calculated by multiplying by 2 the maximum amount of disability assistance or hardship assistance that may be provided for the month under Schedule A or Schedule D to a family unit that matches the family unit.

(7) Despite subsection (4) (b) or (5) or both, a crisis supplement may be provided to or for a family unit for the following:

- (a) fuel for heating;
- (b) fuel for cooking meals;
- (c) water;
- (d) hydro.

Schedule "C" is the section that defines health supplements for the purposes of the EAPWDR. Schedule "C" has not been reproduced given the large volume of this section but will be discussed and referenced below.

Ministry Argument

In determining that the Appellant was not eligible for an elevating lift chair for failure to meet the legislative requirements pursuant to section 57 of the EAPWDR, the Ministry stated the following:

Crisis supplements are available to recipients of income assistance, disability assistance, and hardship. To meet the crisis supplement criteria the requested item must be required to meet an unexpected expense, or obtain an item unexpectedly needed, the family unit has no resources available to meet the need, and failure to provide the item will result in imminent danger to the physical health of one or more of the family members or removal of a dependent child by MCFD. A supplement may not be provided for the purpose of obtaining a supplement described in Schedule C, or any other health care goods or services.

The Ministry argued that the Appellant was not eligible for a crisis supplement as the requirements as defined under section 57(a)(b) of the EAPWDR were not met by the Appellant. The Ministry concluded that the Appellant had not established that the item was an unexpected need, that he did not have the resources to purchase the lift chair on his own and that the failure to purchase the item will result in imminent danger to the Appellant's physical health.

The Ministry further concluded that the elevating lift chair was described in Schedule "C" and therefore a health supplement that is not eligible under section 57(3) of the EAPWDR.

Appellant Argument

The Appellant argued that he is applying for the crisis supplement to purchase an elevating lift chair to keep his legs elevated so his edema does not bother him and to further prevent edema flare ups and related blood clots. He further submitted an elevating lift chair is not an item in Schedule "C" and therefore permissible under section 57 of the EAPWDR.

Panel Decision***Unexpected Expense or Need***

Section 57(1)(a) of the EAPWD states that the Ministry may provide a crisis supplement to or for a family unit that is eligible for disability assistance if the family unit or person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed.

The Ministry stated at the appeal hearing that the Appellant's edema has been an ongoing issue and the requirement of the elevating lift chair has also been ongoing therefore did not meet the definition of "unexpected." The Ministry stated that in order for the Appellant to be able to rely on the argument that the elevating lift chair was an unexpected expense or an item unexpectedly needed the requirement of the elevating lift chair had to be unforeseen or not expected.

The Ministry held that the elevating lift chair was neither an unexpected expense nor an item unexpectedly needed as the Appellant ought to have anticipated or expected that he would eventually have to purchase a similar elevating lift chair to the one he was using given his ongoing medical condition.

The Appellant argued that the immediate and unexpected requirement of an elevating lift chair is to prevent blood clots and his edema from spreading as recommended by his doctor. The unexpected expense and need he suggested is therefore related to his medical condition.

The Appellant explained that although he has had edema for a number of years he did not need an elevating lift chair as he had access to a similar chair. When he no longer has access to that particular chair he informed his doctor and his doctor, in turn, agreed and recommended the Appellant use an elevating chair to avoid further life threatening blood clots and the spread of his edema.

While the Appellant argues the requirement of the elevating lift chair is to prevent blood clots and the spread of his edema, there is insufficient evidence to substantiate the need for the elevating lift chair is an unexpected expense or unexpectedly needed.

Given the history of the Appellant's medical condition, his former reliance on a similar "borrowed" chair and past discussion with his doctor regarding the need for the elevating lift chair, the evidence supports that the elevating lift chair is more an item that the Appellant knew he needed for a considerable time prior to his request for a crisis supplement and could have reasonably anticipated that eventually he would be required to obtain his own.

For these reasons, the Panel finds the Ministry was reasonable in their findings that the purchase of the an elevating lift chair was not an unexpected cost or an item that was unexpectedly needed pursuant to section 57(1)(a) of the EAPWDR.

Unable to Meet the Expense

Section 57(1)(a) of the EAWDR also requires that the family unit or a person in the family is unable to meet the expense or obtain the item because there are no resources available to the family unit.

The Ministry argued that the Appellant had resources available to him that were held in trust to meet the expense. The Appellant argued that he did not have resources in trust to cover the costs of the an elevating lift chair and explained at the appeal hearing that the trust was in his wife's name and he was not entitled to the money.

The Appellant argued that he did not feel the Ministry had the authority to compel him to use trust monies that did not belong to him. The Appellant submitted an online question and answer (the "Q&A") that addressed whether or not the Ministry could compel the Appellant to use money from his trust to pay for something that the Ministry would otherwise pay for. The answer stated that a person will not be disqualified from receiving disability benefits just for having a trust.

The Appellant submitted the Q&A to confirm that he could not be compelled to use his wife's trust monies on policy grounds, but the facts before the Panel can be distinguished from the Q&A submitted by the Appellant. The Q&A assumes the item the recipient is being encouraged to pay out of trust is an item that is assumed to be "usually" paid for by the Ministry. In this case is one where the Ministry has determined the eligibility of the appellant to obtain the item under section 57, a crisis supplement. Section 57(1)(a) requires that the family unit is unable to meet the expense because there are no resources available to the family. The Ministry held that there is a resource available to the Appellant, that being his wife's trust monies, and that the Appellant could rely on this resource to finance the elevating lift chair.

The Appellant is required under this section to establish that there are no other resources or means to obtain the item requested.

The Appellant in his Crisis Request did respond that he has made efforts to find other resources to offset the cost of the elevating lift chair, including reducing his spending, setting up a payment plan and asking friends and family but at the appeal hearing he gave evidence that did not support these efforts.

With respect to reducing his spending habits, the Appellant claimed that this was near impossible given his limited income. The Appellant stated that he did eventual try to reduce his spending habit but this is not reflected in the bank statements he submitted to the Ministry.

The Appellant also indicated that he did not set up a payment plan with the company that sells elevating lift chairs as the company did not offer this service. The Appellant did not reveal if he sought out other similar companies to see if this could be an option.

The panel finds the appellant is part of a family unity and that his wife's trust fund is a resource available to the appellant; as well, there is insufficient evidence that there are not other resources available. dAs such, the panel determines that the Ministry's decision that the Appellant does have resources available to him to purchase an elevating lift chair was reasonable pursuant to section 57(1)(a) of the EAPWDR.

Imminent Danger to Physical Health

Section 57(1)(b) also requires the Ministry to consider whether the failure to meet the expense or obtain the item will result in imminent danger to the physical health.

The Ministry was not satisfied that the Appellant established the failure to obtain the elevating lift chair would result in imminent danger to the Appellant's physical health. The Appellant argues that he needed an elevating lift chair to prevent his edema from spreading and stop related blood clots.

While the Appellant has suffered an ongoing battle with edema and has used an elevating lift chair to help minimize the side effects in the past there is insufficient evidence to support that the Appellant's inability to obtain the elevating lift chair will result in imminent danger to his health.

First, if there is lack of proof or medical basis to suggest that an elevating lift chair will prevent the spread of edema or blood clots. The Appellant submitted an article explaining the dangers of blood clots which offers tips and remedies to help prevent them from occurring, but the article is not on point and does not discuss blood clots and the prevention in relation to an elevating lift chair. The article merely points out that blood clots can be deadly but preventable with the use of medication and other more holistic measures. None of which are related to "chairs" be it elevating, reclining or otherwise.

The Appellant also submitted a note from his doctor recommending the use of an elevating lift chair to prevent life threatening blood clots. The panel notes that the letter is written on plain white paper not on the doctor's letterhead and also lacks the medical vocabulary and content that one would expect to see on a doctor's note. None the less, while the letter states blood clots are threatening, and that is not a disputed fact, there is insufficient evidence that failure to provide the elevating lift chair would result in imminent danger to health.

For these reasons, the panel determines the Ministry that failure to obtain the elevating lift chair would result in imminent danger to the appellant's physical health was reasonably supported by the evidence.

Schedule "C"

Section 57(3) of the EAPWDR states that the crisis supplement may not be provided for the purpose of obtaining a supplement that is described in Schedule "C" of the EAPWDR.

The Ministry argued that while the elevating lift chair is not specifically mentioned in Schedule "C" that Schedule "C" is not an exhaustive list and does not specifically cover every applicable health care supplement but describes health care supplements in general. The Ministry explained that the industry standards considers or defines the elevated lift chair as a health care equipment and as such falls within the ambit of Schedule "C."

The Appellant argued that the elevating lift chair was not listed in Schedule "C" and therefore was an item that could be covered as a crisis supplement.

On review of Schedule "C" it is clear that an elevating lift chair is not specifically defined within the section. While it would appear that an elevating lift chair could be characterized as a health care supplement it is nevertheless not specifically included in Schedule "C" and therefore does not fall within this section.

For these reasons, the Panel finds the Ministry was not reasonable in their findings that the elevating lift chair is described in Schedule "C" of the EAPWDR and not permissible under section 57 of the

EAPWDR.

As the requirements of section 57 of the EAPWDR were not met, the Panel finds the Ministry's determination that the Appellant be denied a crisis supplement for an elevating lift chair was reasonably supported by the evidence and confirms the decision.