



PART C – Decision under Appeal

This is an appeal of the June 18, 2014 reconsideration decision of the Ministry of Social Development and Social Innovation (“Ministry”), in which the Ministry denied the Appellant’s request for replacement seat belts for his power wheelchair on the basis the request did not meet the criteria set out in subsections 3(5), 3(2), 3(1)(b)(ii) or 3(1)(b)(iii) of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”), or the criteria set out in 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 – Health Supplements, sections 3 and 3.2.

PART E – Summary of Facts

The Appellant is designated a person with disabilities and receives monthly disability assistance and he meets the criteria under section 62 of the EAPWDR. The Appellant does not dispute that the Ministry did not provide his wheelchair to him. On or about May 22, 2014, the Appellant requested in an email to the Ministry that the Ministry provide him funding to replace two seatbelts on his wheelchair.

The information before the Ministry at reconsideration consisted of the following:

- The Appellant's request for reconsideration dated June 9, 2014 with attached "Appendix A" written submissions on reconsideration in which the Appellant indicated that the replacement of the seatbelts on his wheelchair is a matter of "Client Safety";
- A copy of a letter dated May 14, 2014 from the Appellant's physician stating "please assist the above mentioned who suffers from a disability and requires seatbelts (see attached [sales quote]) for mobility"; and
- A copy of a sales quote from a health care supplies provider dated May 21, 2014 indicating a cost of \$276.87 for two belts (one seatbelt and one leg belt) for the Appellant's wheelchair plus the labour to install the belts.

At the hearing, the Appellant provided a bound book containing 12 tabs of additional documents ("Book of Documents") that he argued are relevant to this appeal. The panel notes that the documents at Tabs 1, 4, 5, 6, and 11 of the Book of Documents are copies of documents that were before the Ministry at reconsideration, including the Ministry's reconsideration package. Tab 7 is a copy of the Appellant's notice of appeal and Tab 8 is a copy of the Appellant's 2-page written argument on this appeal, which he read to the panel at the hearing. The following is a list of the additional documents contained in the Book of Documents at the noted tabs:

- Tab 2: copy of a letter from the Ministry to the Appellant dated May 23, 2014 which advises, "Please have your doctor indicate what these seatbelts are for – make/model/type of equipment." The Ministry's letter is attached to a copy of an email from the Appellant to the Ministry dated May 22, 2014 "requesting funding" to which the Appellant has attached the letter of May 14, 2014 from his physician and the May 21, 2014 sales quote noted above.
- Tab 3: copy of an email from the Appellant to the Ministry dated May 28, 2014 in which the Appellant writes, "Kindly find attached follow-up documentation requested by [the Ministry] in May 23, 2014 letter received by this writer today.... This request is an emergency as this request is in regards to seat belts for a power wheelchair and therefore Client safety is at immediate risk without having correct seatbelt on Wheelchair. Kindly approve as soon as possible." Attached to the Appellant's email is a copy of a prescription note from the Appellant's physician dated May 23, 2014 on which is written, "Wheelchair (Ranger 706)" with a comment typed by the Appellant on the prescription form, "Attached as per [Ministry] request as per May 23, 2014 letter from [Ministry] – to be attached to May 14, 2014 Letter for Seatbelt funding request – this is the equipment the seat belts are for. URGENT REQUEST PLEASE PROVIDE FUNDING ASAP. Thank you."
- Tab 9: a copy of a letter dated June 23, 2014 from the Appellant's physician stating, "The above mentioned is a patient of mine who I support in the application for new seatbelts for his wheelchair. He has lost approximately 80 pounds and his current seatbelts are not sufficient in

securing him to his chair (as they cannot be made smaller). This is a safety concern, particularly when traveling by public transit or taxi.”

- Tab 10: affidavit sworn by the Appellant on July 4, 2014 in which the Appellant swears that he has “lost 100 Lbs between December 4, 2013 and June 26, 2014” with attached exhibits photographs of the seatbelt and leg belt on the Appellant’s chair “as of June 30, 2014.”
- Tab 12: affidavit sworn by the Appellant on July 10, 2014. In this affidavit, the Appellant swears that the money he used to purchase and install new seatbelts on his wheelchair was his money that came out of his “monthly marked food funds making this an emergency purchase.” The Appellant attached as exhibits to this affidavit the following four documents:
 - A copy of an invoice from a health care supplies provider dated July 8, 2014 for \$226.78 for the purchase of 2 seatbelts for the Appellant’s wheelchair;
 - A copy of the Appellant’s sales receipt for the seatbelts;
 - A copy of an invoice from the seatbelt installation company dated July 8, 2014 indicating that the cost of the labour for installing the seatbelts on the Appellant’s wheelchair on July 8, 2014 was \$50.00;
 - A copy of the Appellant’s sales receipt to the seatbelt installation company for \$50; and
 - A copy of his monthly statement from a food services provider dated July 9, 2014 indicating the Appellant’s charge for the month ending June 30, 2014 is \$272.75.

The Ministry had no objection to the admission of the Appellant’s Book of Documents, noting that the documents at Tabs 2 and 3 were in the Ministry’s files. In his submission on reconsideration, the Appellant argued that the replacement of the seatbelts on his wheelchair was a safety issue as he could fall out of the wheelchair when using public transit or a taxi and injure himself. The letter from the Appellant’s doctor at Tab 9 states that the replacement of the seat belts is “a safety concern, particularly when travelling by public transit or taxi,” which supports the information in the Appellant’s submissions on reconsideration and the panel admits these documents as written testimony in support of the information and records before the Ministry when the decision under appeal was made under section 22(4)(b) of the *Employment and Assistance Act*. However, the panel notes that the information in the letter from the Appellant’s doctor at Tab 9 regarding the Appellant’s weight loss was not information before the Ministry at reconsideration and it is not in support of such information; therefore, the panel does not admit this information as evidence.

The information set out in the affidavit and the attached photographs at Tab 10 relate to the Appellant’s weight loss, which information was not before the Ministry at reconsideration. The information set out in the affidavit at Tab 12 and the attached exhibits relate to the Appellant’s July 8, 2014 purchase of seatbelts for the wheelchair, subsequent to the reconsideration decision. The Appellant argues that the reason he required new seat belts for his wheelchair is as a result of his weight loss, the actual cost of the replacement seatbelts was close to the estimated cost before the Ministry at reconsideration, he had to purchase the replacement seatbelts to ensure his physical safety while travelling in his wheelchair and, as a result of the purchase, he will not be able to pay for his food. The panel finds that the documents set out at Tabs 10 and 12 are not in support of information and records that were before the Ministry at the time the decision under appeal was made, as required by s. 22(4) of the *Employment and Assistance Act* – the Appellant’s purchase of the seatbelts occurred after the reconsideration decision was issued. Therefore, the panel does not admit as evidence at this appeal the information at Tabs 10 and 12 of the Book of Documents.

During the hearing, the Ministry and the Appellant referred to the Ministry’s online resources which

contains the Ministry's Medical Equipment and Devices procedure dated October 1, 2012, available on the Ministry's website. In it, the Ministry sets out the procedure for its workers to follow in considering a request for medical equipment and devices which are under \$500 and which are over \$500. The Ministry procedure was read out at the hearing and the Ministry agreed to provide copies of it to the panel and the Appellant.

In the appeal materials provided by the Ministry, the Ministry included a copy of a decision of another panel of this Tribunal dated March 14, 2013 in which the panel confirmed the Ministry's February 18, 2013 reconsideration decision denying the Appellant's request for funding for brake repairs and a custom toggle switch for his wheelchair. In this appeal decision, the panel referred to a copy of a medical equipment request and justification form completed by the Appellant's physician on December 14, 2012, with the accompanying functional assessment from an occupational therapist dated December 18, 2012. The Appellant argued that because the Ministry in its reconsideration decision had noted that he did not provide a functional assessment from an occupational therapist with his request for replacement seatbelts, this panel should note that an occupational therapist's report was before the Ministry in December 2012. The Appellant requested that the Ministry provide to the panel and to him a copy of the December 2012 functional assessment and the Ministry's file on the previous reconsideration.

In his testimony at the hearing, the Appellant told the panel that he requested funding from the Ministry to replace two seatbelts on his wheelchair because he had lost a lot of weight in the previous 10 months and the belts no longer held him in place. The Appellant told the panel that once he lost weight, the waist seatbelt provided with his wheelchair was too large and could not be shortened to hold him in place. The Appellant told the panel that the other belt on his wheelchair around his shins used to hold his legs in place was one he had purchased himself and it needed to be replaced because it was not the proper leg belt for his wheelchair and needed to be upgraded. The Appellant told the panel that he had replaced the seatbelt and the leg belt on his wheelchair in early July 2014 and paid for it himself.

Other Procedural Issues

The Appellant told the panel that he intends to pursue a judicial review of the panel's decision and he wanted the panel to note in this decision the following procedural issues he raised.

The Ministry representative at the hearing had been involved with the Appellant's file, but did not write the reconsideration decision under appeal. The Appellant asked the panel to record his objection to the Ministry representative's attendance at the hearing on the grounds that the Ministry representative is biased. The panel records his objection, but notes that the Appellant does not assert that the panel – the decision-maker on this appeal – is biased.

The Appellant asked the panel to record his request that the panel order the Ministry to reimburse him for his disbursements – the Appellant says he incurred costs in the order of \$200-\$250 to produce the Books of Documents and that he had to pay for the delivery of appeal materials to him. The panel has no authority to award costs on an appeal.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry's decision to deny the Appellant's request for replacement seatbelts for his wheelchair on the basis the request did not meet the criteria set out in subsections 3(5), 3(2), 3(1)(b)(ii) or 3(1)(b)(iii) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"), or the criteria set out in section 69 of the EAPWDR was reasonable based on the evidence or a reasonable application of the legislation in the appellant's circumstances.

Legislation

The following are the relevant provisions of the legislation (the EAPWDR) applicable to the Appellant's request for replacement seatbelts for his wheelchair.

62. General health supplements

- (1) Subject to subsections (1.1) and (1.2), the minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] 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) a recipient of disability assistance,

...

69. Health supplement for persons facing direct and imminent life threatening need.

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).

Schedule C – Health Supplements

3. Medical equipment and devices

- (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.

(3) Subject to section (6), the minister may provide as a health supplement a replacement of medical equipment or medical device, previously provided by the minister under this section that is damaged, worn out or not functioning if,

- (a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and
- (b) the period of time, if any, set out in sections 3.1 to 3.11 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

(4) Subject to section (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.

(5) Subject to section (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if

- (a) at the time of the repair the requirements in this section and section 3.1 to 3.11 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and
- (b) it is more economical to repair the medical equipment or a medical device than to replace it.

(6) The minister may not provide a replacement of medical equipment or a medical device under section (3) or repairs of medical equipment or a medical device under section (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

3.2 Medical equipment and devices – wheelchairs

(1) In this section, “wheelchair” does not include a stroller.

(2) Subject to subsection (4) 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 wheelchair;
- (b) an upgraded component of a wheelchair;
- (c) an accessory attached to a wheelchair.

(3) The period of time referred to in section 3(3)(b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years after the minister provided the item being replaced.

(4) A high-performance wheelchair for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

The following sections of Schedule C of the EAPWDR are not relevant to the Appellant’s request for replacement seatbelts for his wheelchair: 3.1 – canes, crutches and walkers; 3.3 – wheelchair seating systems; 3.4 – scooters; 3.5 – bathing and toileting aids; 3.6 – hospital bed; 3.7 – pressure relief mattresses; 3.8 – floor or ceiling lift; 3.9 – positive airway pressure devices; 3.10 – orthoses; 3.11 – hearing aids.

Submissions

The Appellant does not dispute the fact that the Ministry did not provide him with his wheelchair. The Appellant argues that he requires replacement seatbelts for his wheelchair because the seatbelts are too big to maintain him safely in his wheelchair. He says he has lost a great deal of weight in the past year and the seatbelt around his waist cannot be cinched in tight enough to keep him in the wheelchair. He says that the belt around his legs needs to be upgraded to the proper leg belt for his wheelchair. He argues that the information he provided to the Ministry in May 2014 with his request

for funding – the doctor’s note of May 14, 2014 together with his own email communications – demonstrates that he needs the replacement seatbelts for his wheelchair for his safety when travelling on public transit or in taxis (without a properly fitting seatbelt, he could fall out of the wheelchair if the vehicle stopped suddenly). He also points to his doctor’s letter of June 23, 2014 as evidence supporting his claim that his weight loss has necessitated replacement seatbelts for his own safety. Referring to subsection 3(5) of Schedule C of the EAPWDR, the Appellant argues that the information in the May 21, 2014 quote that it would cost \$276.87 to replace the seatbelts demonstrates that the replacement of the seatbelts is economical (more economical than replacing his expensive wheelchair).

The Ministry does not dispute that the Appellant is a designated person with disabilities in receipt of disability assistance and he meets the requirement set out in section 62(1)(a) of the EAPWDR. In the reconsideration decision, the Ministry noted that the Appellant did not provide any of the following information to the Ministry to support his request for replacement of the seatbelts of his wheelchair:

- whether there are other resources available to the Appellant to pay the cost of or obtain the replacement seatbelts;
- whether the requested replacement seatbelts are the least expensive appropriate medical equipment or device;
- an assessment by an occupational or physical therapist confirming the medical need for the replacement of the seatbelts;
- information on the condition or reparability of the existing seatbelts on the Appellant’s wheelchair; and
- a medical professional’s substantiation that the Appellant has a life threatening need for the requested replacement seatbelts.

The Ministry thus determined that the Appellant’s request for replacement seatbelts for his wheelchair did not meet the criteria set out in subsections 3(1)(b)(ii), 3(1)(b)(iii), 3(2), or 3(5) of Schedule C EAPWDR, or the criteria set out in section 69 of the EAPWDR.

Panel Decision

Under subsection 3(1)(b) of Schedule C of the EAPWDR, the minister may provide the medical equipment and devices listed in sections 3.1 through 3.11 if the minister is satisfied that all of the following requirements are met: the family unit has received the pre-authorization of the minister for the medical equipment or device requested (subs. 3(1)(b)(i)); there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device (subs. 3(1)(b)(ii)); and the medical equipment or device is the least expensive appropriate medical equipment or device (subs. 3(1)(b)(iii)). In addition to the requirements set out in subsection 3(1)(b) of Schedule C, subsection 3(2) of Schedule C of the EAPWDR provides that the request must meet the requirements set out in sections 3.1 to 3.8 and the Appellant must provide to the minister one of both of the following, as requested by the minister: a prescription of a medical practitioner or nurse practitioner for the medical equipment or device, or an assessment by an occupational or physical therapist confirming the medical need for the medical equipment or device. The legislation requires that the Appellant’s request for replacement seatbelts for his wheelchair must satisfy all the applicable requirements.

The Appellant’s request for replacement seat belts for his wheelchair must meet all of the requirements set out in subs. 3(1)(b) of Schedule C of the EAPWDR. The Appellant does not dispute

that he did not receive the pre-authorization of the minister for the replacement of the requested seat belts for his wheelchair (as required by subs. 3(1)(b)(i) of Schedule C).

Subsection 3(1)(b)(ii) of Schedule C, EAPWDR requires that there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device. The Ministry noted that the Appellant had not provided information to allow the minister to determine whether he has financial resources available to pay the cost of or obtain the requested replacement seatbelts. The panel finds the Ministry's determination that the Appellant did not meet the requirement that he has no resources available set out in subsection 3(1)(b)(ii) is reasonable based on the evidence.

Subsection 3(1)(b)(iii) of Schedule C, EAPWDR requires that the medical device is the least expensive appropriate medical equipment or device. The Appellant provided the Ministry with one quote for replacement of the seatbelts. The panel finds the Ministry's determination that the Appellant did not meet the requirements set out in subsection 3(1)(b)(iii) is reasonable based on the evidence as one quote is insufficient to determine whether the cost presented is the least expensive because there are no other quotes for comparison.

Subsection 3(2) of Schedule C, EAPWDR requires a prescription of a medical practitioner for the medical equipment or device and an assessment by an occupational therapist or physical therapist confirming the need for the medical equipment or device if requested by the minister. While the Appellant argues he needs the replacement seatbelts for his wheelchair for his safety when travelling on public transit or in taxis (without a properly fitting seatbelt, he could fall out of the wheelchair if the vehicle stopped suddenly), an assessment by an occupational therapist or physical therapist confirming the medical need for the requested wheelchair seat belts was not provided. Further, the Ministry argues that while the doctor writes that the Appellant "requires seat belts", it is not clear whether replacement seatbelts are "required" - as per the legislation - as it is not known whether the wheelchair has existing seat belts. The panel finds the Ministry's determination that the Appellant did not meet the requirements set out in subs. 3(2) was reasonable based on the evidence as the "requirement" for the seatbelts is unclear and no further assessment of an occupational or physical therapist was provided to support the Appellant's request. The Appellant also did not provide information on whether his wheelchair has existing seatbelts or whether replacement of the existing seatbelts on his wheelchair was required because of a default in the existing seat belts.

Subsection 3(5) of Schedule C, EAPWDR states that the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the Ministry if it is more economical to repair the medical equipment or device than to replace it (subs. 3(5)(b)). The Appellant does not dispute that the Ministry did not provide his wheelchair to him. The Ministry argues that although it did not provide the wheelchair to the Appellant, the request is for "replacement" seat belts, not "repair" of seat belts, as required by subs. 3(5). The Ministry found that the Appellant had not established that replacement of the existing seat belts was required due to default in the existing seat belts or that repair of the existing seatbelts was not possible. The panel finds the Ministry's determination that the Appellant did not meet the requirements set out in subs. 3(5) was reasonable based on the evidence as the Appellant did not seek "repair" of the seat belts of his wheelchair and did not provide information on whether his wheelchair has existing seatbelts or whether replacement of the existing seatbelts on his wheelchair was required because of a default in the existing seat belts

Section 69 EAPWDR states the minister may provide any health supplement set out in sections

2(1)(a) and (f) and 3 of Schedule C of the EAPWDR if the minister is satisfied that the person faces a direct and imminent life threatening need and there are no resources available to the family unit with which to meet that need. The Appellant argues that the replacement of the seatbelts on his wheelchair is necessary to avoid imminent danger to his physical health – he says without the properly fitted seatbelts, he is at risk of falling out of the wheelchair during transport and injuring himself. The Ministry argued that aside from the Appellant’s opinion that without “correct seat belts” there is a safety risk, there is no substantive information on the condition of the existing seatbelts or evidence from either the equipment supplier, an occupational or physical therapist, or the Appellant’s physician to confirm the Appellant’s opinion that he faced a safety risk without the correct seatbelts on his wheelchair. The panel has already found the Ministry’s determination that the Appellant did not meet the requirement of having no resources is reasonable based on the evidence. As there is no substantive information on the condition of the existing seatbelts, the panel finds the Ministry’s determination that the Appellant did not meet the requirements set out in s. 69 EAPWDR to be reasonable based on the evidence.

On the basis of the foregoing, the panel finds that the Ministry was reasonable in determining that the Appellant’s request for replacement seatbelts did not meet the legislative criteria set out in subsection 3 of Schedule C of the EAPWDR or in section 69 of the EAPWDR.

Therefore, the panel confirms the Ministry’s reconsideration decision to deny the Appellant’s request for the replacement of the seatbelts of his wheelchair as the legislative requirements set out in the EAPWDR were not met.