

### PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated July 24, 2014 that denied the appellant's application for funds to cover the cost of a portable floor lift for use at home and on family trips. The ministry found that the appellant met the requirements to receive health supplements under the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 62 however the device he is seeking funding for was not an eligible device as described in EAPWDR Schedule C.

### 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 (EAPWDR) Schedule C

## PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

The information before the ministry at the time of reconsideration included the following:

- A quote from a medical equipment supply company dated March 12, 2014. The quote is for one patient lift and extra battery pack priced at \$3425.16 and for two spacers with head support priced at \$662.40 for both.
- A letter from the appellant's physiotherapist dated March 26, 2014. The letter described the appellant as a young man who is completely dependent on others for care. He lives at home with his parents and has a lift installed in the bathroom and his bedroom however he would like a portable lift in the living room to lift him out of his wheelchair onto the floor and back again. The physiotherapist adds that the appellant requires time on the floor in the living room to move around and to do his exercises, as this is the only space large enough to do this in the home.
- A medical equipment request form dated March 25, 2014 requesting the ministry provide funding for a portable floor lift. The form states the appellant has severe developmental delay, no leg/arm function, and is totally dependent for mobility.
- A letter from the appellant's physiotherapist dated June 23, 2014. The letter contains the same information as the March 26, 2014 letter.
- The Request for Reconsideration dated July 10, 2014 completed by the appellant's parents on his behalf. The parents write they want to keep their son in their home as long as possible however they need a lift to assist them getting him in and out of his wheelchair. Both parents are in their sixties and his mother suffers from arthritis making it difficult to move him. They have had the lift above their son's bed and in the bathroom for many years.

With the Notice of Appeal the appellant's mother submitted a letter reading that the appellant is non-verbal and totally dependent on others for all aspects of his daily life. Although he has a lift installed above his bed and the bathtub, he enjoys spending time on the living room floor to stretch, exercise, roll, and explore. Other than time the appellant spends in his walker daily for exercise, he has limited mobility. The appellant's parents are in their sixties and in order for them to allow him to get from his chair to the floor and back again, they need the assistance of a mechanical lift because they suffer from health limitations and it is becoming too difficult to lift him. The appellant's mother clarified that the lift is not intended for vacations, but rather, the lift will be used at home, at his respite family, and eventually to a home-share situation in the future. She was concerned that the suggestion that the lift would be used on family vacations was the reason that the request for ministry funding was denied and she wanted to be clear that the lift was not going to be used simply for family vacations.

The panel finds as fact:

- The appellant has requested funding for a piece of medical equipment, a mechanical floor lift, to assist him in and out of his chair to access the floor in the living room for exercises and recreation.
- The appellant has a lift installed in his bedroom and another one in the bathroom

## PART F – Reasons for Panel Decision

The decision under appeal is the reasonableness of the ministry's decision to deny the appellant's application for funds to cover the cost of a portable floor lift for use at home in the living room and on family trips. The ministry determined that it did not meet the criteria set out in the applicable legislation. The ministry found that the appellant met the requirements to receive health supplements under the EAPWDR sections 62 however the device he is seeking funding for was not an eligible device as described in EAPWDR Schedule C.

The applicable legislation is the EAPWDR section 62, 69 and the EAPWDR Schedule C:

### **EAPWDR Section 62**

62 (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.

### **EAPWDR Section 69**

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).

### **EAPWDR Schedule C**

#### **2 General health supplements**

(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;

(a.1) the following medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies:

(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, if the minister is satisfied that all of the following requirements are met:

- (i) the supplies are required to thicken food;
- (ii) all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies;

### **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.

### **3.5 Medical equipment and devices — toileting, transfers and positioning aids**

(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.

### **Medical equipment and devices — floor or ceiling lift devices**

**3.8** (1) In this section, "floor or ceiling lift device" means a device that stands on the floor or is attached to the ceiling and that uses a sling system to transfer a person.

(2) A floor or ceiling lift device is a health supplement for the purposes of section 3 of this Schedule if the following requirements are met:

(a) the minister is satisfied that the floor or ceiling lift device is medically essential to facilitate transfers of a person in a bedroom or a bathroom;

(b) the cost of the floor or ceiling lift device does not exceed \$4 200 or, if the cost of the floor or ceiling lift device does exceed \$4 200, the minister is satisfied that the excess cost is a result of unusual installation expenses.

(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 from the date on which the minister provided the item being replaced.

The appellant's argument is that he requires the portable floor lift for his general well being and to ease the burden on his parents who have limitations to their ability to lift him into and off of the floor due to their age and health problems.

The ministry's argument is that the appellant does not qualify to have the cost of the portable floor lift provided by the ministry because the request does not meet the criteria set out in EAPWDR Schedule C.

The panel reviewed the reconsideration decision and all of the sections of the legislation applicable to the appellant's request. Since the ministry determined that the appellant meets the criteria of the EAPWDR section 62 the panel will determine the reasonableness of the ministry's decision that found the appellant's request ineligible based on the other sections of the EAPWDR.

First the panel considered the reasonableness of the ministry's determination that the appellant's request does not meet the requirements as medical equipment as set out in the EAPWDR schedule C, section 3 including the criteria set out in section 3.5, Bathing and Toileting Aids. This section requires that the item be medically essential to facilitate toileting or transfers of a person to achieve or maintain a person's positioning. The ministry determined that only a floor lift in the bedroom or bathroom is a health supplement for the purposes of this section. The panel finds the ministry was reasonable as the purpose of the requested mechanical lift is for use in rooms other than the bedroom or bathroom because the appellant already has lifts in both the bedroom and bathroom. The letter from the physiotherapist described the appellant's need for a portable lift for use in the living room to lift him out of his wheelchair onto the floor and back again as this is the only floor space large enough for the appellant to do his exercises in the home. The panel notes that the appellant's request would more appropriately fall under the EAPWDR Schedule C, section 3.8, Floor or Ceiling Lift Devices since the description of the requested lift more accurately falls under this description versus the description in section 3.5. The requirement of the device being used for transfers in a bedroom or a bathroom is the same as section 3.5 therefore the determination in ineligibility based on this criteria would be the same. The panel finds that he ministry was reasonable in this determination.

Regarding the ministry's determination that the appellant's request does not meet the requirements as medical supply as set out in the EAPWDR Schedule C, section 2 (1)(a) the panel considered that the ministry found the appellant's request did not meet the description as a medical supply since it is not directly required for one of the listed purposes, namely: wound care, bowel care, catheterization, incontinence, skin parasite care, or limb circulation care. The ministry also found that the request did not establish the need for the lift was necessary to avoid an imminent and substantial danger to his health. The panel finds the ministry was reasonable since the stated use of the lift is to facilitate lifting and transferring the appellant in his home which is not a purpose as described in this section and the appellant has provided any evidence that the lift is necessary to avoid an imminent and substantial danger to his health.

Regarding the ministry's determination that a portable floor lift is not an item set out in any of the other sections of the EAPWDR Schedule C the panel finds that the EAPWDR Schedule C specifies health supplements (including optical, eye, dental, diet, natal), therapies, and medical devices that

the ministry may provide funding for, to applicants that meet the requirements. The panel finds that the ministry was reasonable to determine that a portable floor lift for use at home is not a device that is included in any other section of the EAPWDR Schedule C.

Regarding the ministry's determination that the appellant's request for a portable lift does not meet the requirement as a life-threatening need as set out in the EAPWDR section 69, the panel considered that the ministry found that the appellant's need for the floor lift was not to prevent a direct and imminent life-threatening risk because his application fails to establish such a risk. While the physiotherapist wrote in her letter that the appellant requires time on the floor in the living room to move around and to do his exercises, the panel finds that the ministry reasonably concluded that the evidence does not establish that the appellant faces a direct and imminent life-threatening health need. The panel finds that the EAPWDR section 69 provides an applicant, who is otherwise ineligible for a health supplement under this legislation, with a health supplement set out in the EAPWDR Schedule C, sections 2(1)(a) and (f) and 3. The panel finds that it was not disputed that the appellant is eligible for health supplements under Section 62 of the EAPWDR, and the ministry reasonably determined that 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. Also, Since the appellant's request is for a portable floor lift for use in the living room at home, it is not an item listed in any of the above listed sections of Schedule C, as discussed above, and therefore would not be an eligible item under section 69 regardless of whether it is found to be necessary to meet a life-threatening need. The panel finds that the ministry was reasonable to determine that the appellant's request for a portable lift does not meet the requirement as a life-threatening need as set out in the EAPWDR section 69.

The panel finds that the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.