

PART C – Decision under Appeal

The Appellant appeals the reconsideration decision of the Ministry of Social Development and Social Innovation (“Ministry”) dated July 15, 2014, in which the Ministry denied the Appellant’s request for a ceiling lift on the basis that the ceiling lift was not medically essential to facilitate the Appellant’s transfers in his bathroom or bedroom, as required by section 3.8(2)(a) of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation*.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), s. 62 and Schedule C, Health Supplements, sections 3 and 3.8.

PART E – Summary of Facts

The evidence before the Ministry at the reconsideration included the following:

- A Ministry Medical Equipment Request and Justification Form signed by the Appellant and his physician on February 5, 2014 on which the physician indicates the medical equipment requested is a “ceiling lift in bathroom” and which states that the assessment of the Appellant’s occupational therapist is attached;
- A two-page letter dated February 17, 2014 from the Appellant’s occupational therapist assessing the Appellant’s request for a ceiling lift (“February assessment”) (discussed below);
- A health care equipment provider quotation dated January 20, 2014 showing that the cost of the requested ceiling lift is \$3,060.00;
- The Ministry’s medical equipment and devices decision summary dated May 2, 2014 (2 pages) on which the Ministry adjudicator has indicated that the Appellant’s request for the ceiling lift meets all the applicable legislative criteria except that of s. 3.8(2) with the following explanation: “The client currently has a working ceiling lift device with track in his bedroom and bathroom for basic transfer needs. As the client has a lifting device, the Minister is not satisfied that a second lift device is medically essential to facilitate transfers in his bedroom or bathroom”;
- A letter from the Appellant’s occupational therapist dated July 3, 2014 responding to the Ministry’s denial of the Appellant’s request for a ceiling lift (discussed below); and
- The Appellant’s request for reconsideration to which is attached a one-page submission prepared by an advocate, as well as the Appellant’s one-page written statement, both dated July 14, 2014.

The Appellant is designated a person with disabilities – he has cerebral palsy with quadriplegia, type 2 Diabetes, chronic dependent lower extremity edema and spinal scoliosis. He uses a power wheelchair and lives in a self-contained apartment and receives home care assistance approximately 5 hours per day. The Ministry has provided the Appellant one ceiling lift, which consists of a sling-type seat that is hooked to a track mounting on the ceiling. Two tracks are mounted in the Appellant’s apartment: one in the bathroom and one in the bedroom. The ceiling lift (sling seat) must be detached from the track in one room, moved to the other room, and then reattached to the other track in order to be used.

In the February assessment, the Appellant’s occupational therapist indicates that because of his medical conditions, the Appellant is no longer able to transfer himself from his wheelchair to the toilet or shower using a low standing pivot transfer and a floor-to-ceiling pole. She indicates that the Appellant is unable to move the ceiling lift from his bedroom into the bathroom without assistance from another person. The occupational therapist notes that the Appellant cannot control his bowel movements and “because of his inability to transfer from [wheelchair] to commode or toilet, he has [bowel movements]” while in his wheelchair. She indicates that if his home care worker is not available, the Appellant “remains sitting in his feces until his caregiver arrives in the morning for his usual shift.” The occupational therapist writes that the Appellant “has recurrent skin integrity concerns on his buttocks and the inability to clean himself after a [bowel movement] will contribute to additional skin breakdown.” She indicates that the Appellant’s bedroom is not large enough to accommodate a commode and that she assessed the options available to the Appellant “to resolve [his] problems related to unscheduled bowel movements and lack of assistance to transfer or clean him after” and recommends a second ceiling lift for use with the existing track in the Appellant’s

bathroom. In the February assessment, the occupational therapist also notes that “there are no options for additional care on an ‘as needed’ basis.”

In her letter of July 3, 2014, the Appellant’s occupational therapist answers the following questions posed by the Appellant’s advocate: “In your opinion, does this person have a medical need for a ceiling lift in his bathroom?” and “In your opinion, is the client’s existing lift sufficient to meet his transfer needs?” The occupational therapist writes that because his “physical abilities are declining with the aging process” the Appellant “is no longer able to transfer himself independently using a standing transfer” and now relies on the ceiling lift. The occupational therapist indicates that the Appellant is able to don and doff the hygiene transfer sling independently, but that his bedroom is not wide enough for a commode and he “is unable to move the ceiling lift from his bedroom to the bathroom to perform his transfer then return it to his bedroom to transfer himself to bed.” She indicates that the Appellant “requires a ceiling lift in his bathroom, to use with the existing ceiling track, as his medical condition does not allow him to transfer on/off the toilet in any other fashion that is safe and expedient.”

Prior to the hearing, the Appellant submitted a letter dated October 3, 2014 from his occupational therapist. In this letter, the occupational therapist reiterates that the Appellant is “not on any scheduled bowel routine” and “may need to toilet at any time during the day or evening and multiple times in each 24 hour period.” She writes that the Appellant “cannot possibly access the toilet independently or use his existing ceiling lift to transfer himself onto a commode in his bedroom” and that this is causing “bowel accidents.” The Ministry did not object to the admission of the October 3, 2014 letter from the Appellant’s occupational therapist.

The panel finds that the October 3, 2014 letter from the Appellant’s occupational therapist restates the information she provided in the February assessment and in her July 3, 2014 letter; in particular, that the Appellant cannot control his bowel movements and cannot independently move his ceiling lift from his bedroom to his bathroom. The panel admits the October 3, 2014 letter of the occupational therapist under section 22(4)(b) of the *Employment and Assistance Act* as written testimony in support of information that was before the Ministry at the time the decision being appealed was made.

As noted in the original decision and confirmed in the reconsideration decision, the Appellant receives disability assistance and is eligible to receive health supplements (in this case, a ceiling lift) under section 62 and Schedule C of the EAPWDR. The Ministry does not dispute that the Appellant has requested pre-authorization for the ceiling lift from the minister, that he has no resources available to him to pay for the ceiling lift, that the requested ceiling lift is the least expensive appropriate one available, and that its cost is less than \$4,200.00. The Ministry does not dispute that the Appellant’s physician has prescribed the ceiling lift and, as noted in the original decision, an assessment by the Appellant’s occupational therapist has confirmed the medical need for the ceiling lift.

At the hearing, the Appellant told the panel that he cannot move the ceiling lift from his bedroom to his bathroom by himself as he is physically incapable of connecting it to the ceiling tracks. The Appellant told the panel he has had bowel accidents when he is alone and that he is not able to clean himself without his caregiver. He told the panel that he has been hospitalized for the sores that result when he is unable to clean himself after a bowel accident.

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the Ministry's reconsideration decision of July 15, 2014, denying the Appellant's request for a ceiling lift on the basis that his request does not meet the eligibility criteria set out in section 3.8(2)(a) of Schedule C of the EAPWDR that the minister is satisfied that the ceiling lift is medically essential to facilitate transfers of the Appellant in a bedroom or bathroom.

Applicable Legislation

The Appellant meets the criteria set out in section 62 of the EAPWDR which provides as follows:

General health supplements

s. 62(1) Subject to subsections (1.1) and (1.2), the minister may provide any health supplement set out in section ... 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,

....

The eligibility requirements for medical equipment and devices, which includes a ceiling lift, are set out in section 3 of Schedule C of the EAPWDR. Floor or ceiling lift devices are specifically addressed in section 3.8 of Schedule C of the EAPWDR.

Schedule C – Health Supplements

Medical equipment and devices

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.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8, 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.

Subsection 3(2.1) of Schedule C applies to medical equipment or devices referred to in section 3.9 (breathing devices). Subsection 3(3) sets out the requirements for replacement of medical equipment previously provided by the minister under this section, subs. 3(4) addresses the repair of medical equipment previously provided by the minister, and subs. 3(5) addresses repairs of medical equipment not previously provided by the minister, none of which apply to the Appellant's request.

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 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 \$4200 or, if the cost of the floor or ceiling lift device does exceed \$4200, 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.

Submissions

The Appellant says that his request for a ceiling lift for his bathroom meets the requirement of subsection 3.8(2)(a) because it is medically essential to facilitate his transfers in his bathroom. He argues his occupational therapist indicated in the February assessment that he is no longer able to transfer himself from his wheelchair to the toilet using a low standing transfer and pole and that he is unable to move the ceiling lift from his bedroom to his bathroom without assistance from his caregiver or another person. The Appellant argues that in the February assessment, the occupational therapist indicated that because of his inability to transfer himself to the toilet, he has had bowel movements while sitting in his wheelchair, has remained sitting in feces until his caregiver has arrived to clean him, and that this creates recurrent skin integrity concerns on his buttocks. The Appellant argues that in the July 3, 2014 letter, his occupational therapist reiterated that the requested ceiling lift for his bathroom is medically necessary because he is unable to move the ceiling lift himself and his medical condition “does not allow him to transfer on/off the toilet in any other fashion that is safe and expedient.” The Appellant also points to the October 3, 2014 letter in which his occupational therapist reiterated that he “cannot possibly access the toilet independently or use his existing ceiling lift to transfer himself onto a commode in his bedroom” and that this is causing “bowel accidents.” The Appellant argues that subs. 3.8 restricts the cost of a requested ceiling lift, but does not restrict the number of ceiling lifts that the Ministry may provide.

The Ministry has determined that the Appellant’s request for a ceiling lift meets the requirements set out in subs. 3(1), 3(2) and 3.8(2)(b) of Schedule C of the EAPWDR. The Ministry does not dispute that the Appellant receives disability assistance and is eligible to receive health supplements (in this case, a ceiling lift) under section 62 and Schedule C of the EAPWDR (as required by subs. 3(1)(a)). The Ministry does not dispute that the Appellant has requested pre-authorization for the ceiling lift from the minister, that he has no resources available to him to pay for the ceiling lift, that the requested ceiling lift is the least expensive appropriate one available (the requirements set out in subs. 3(1)(b)), and that the cost of the ceiling lift is less than \$4,200.00 (as required by subs. 3.8(2)(b)). The Ministry does not dispute that the Appellant’s physician has prescribed the ceiling lift (as required by subs. 3(2)(a)) and that an assessment by the Appellant’s occupational therapist has confirmed the medical need for the ceiling lift (as required by subs. 3(2)(b)).

The Ministry determined that the Appellant's request did not meet the criteria set out in subs. 3.8(2)(a) of Schedule C of the EAPWDR. The Ministry noted that the information provided by the Appellant's occupational therapist established that he currently has "the medical equipment necessary to facilitate transfers in [his] bedroom and bathroom" and that the Appellant's "medical condition requires that a caregiver transfer the ceiling lift from the track in the bedroom to the track in the bathroom." The Ministry determined that "the issue appears to be dependent upon caregiver staffing rather than lack of necessary medical equipment" and denied the Appellant's request for a ceiling lift under subs. 3.8(2)(a) on the basis that the minister was not satisfied that a ceiling lift is medically essential to facilitate the transfers of the Appellant in his bedroom or bathroom. In oral submissions, the Ministry said it saw the issue in this case as a caregiver support issue. The Ministry also said it had no policy or criteria to aid in the determination of what was "medically essential" but that the Ministry relied upon the medical information provided by the Appellant.

Panel's Decision

In order to obtain a ceiling lift, the Appellant's request must meet all of the relevant criteria set out in subsections 3 and 3.8 of Schedule C of the EAPWDR. As noted above, the Ministry agrees that the Appellant's requested ceiling lift meets all of the criteria set out in subsections 3(1), 3(2) and 3.8(2)(b) of Schedule C. The only issue on this appeal is whether the Appellant's request meets the criteria of subs. 3.8(2)(a); that is, that the minister is satisfied that the requested ceiling lift for the Appellant's bathroom is medically essential to facilitate the transfers of the Appellant in his bathroom.

The panel notes that in the February assessment, July 13 and October 3, 2014 letters, the Appellant's occupational therapist indicates that the Appellant cannot transfer himself from his wheelchair to the toilet using his ceiling lift without the assistance of another person – he is incapable of performing this task independently. She also noted that there are "no options for additional care on an "as needed" basis." The Appellant testified that he currently has only 5 hours per day of care and expects a reduction in these hours, and his occupational therapist noted in her July 3 and October 3, 2014 letters that he does not always have personal care when he requires it. The occupational therapist's information is that the Appellant has no control over his bowel movements and because he is incapable of independently transferring himself from his wheelchair to the toilet or shower, the Appellant has had to remain seated in his own feces when his caregiver is not working and this has caused skin breakdown. The panel accepts the Appellant's evidence that he has been hospitalized as a result of the sores caused by sitting without being able to clean himself.

The panel notes that the Ministry's denial of the Appellant's request for a ceiling lift for his bathroom does not consider the occupational therapist's information that his inability to independently transfer himself from his wheelchair to his toilet has serious medical consequences to the Appellant. The panel also notes the Ministry's denial does not address the occupational therapist's evidence that the Appellant can no longer transfer himself from his wheelchair to the toilet or shower using a low standing pivot transfer and a floor-to-ceiling pole. Accordingly, the panel finds that the Ministry's denial of the Appellant's requested ceiling lift on the basis that the minister is not satisfied that it is medically essential to facilitate the transfers of the appellant in his bathroom as required by subs. 3.8(2)(a) of Schedule C of the EAPWDR is not reasonable based on the evidence provided by the Appellant's occupational therapist. The denial on this basis is also not reasonable because the Ministry misapprehended the occupational therapist's evidence with respect to a caregiver being able to transfer the ceiling lift for the Appellant. Contrary to the Ministry's decision, this evidence of the

occupational therapist, together with the evidence that the Appellant does not have full-time care, demonstrates the medical impact that having only one ceiling lift has on the Appellant and the need for an additional ceiling lift for his bathroom. The panel further finds that the Ministry's denial of the Appellant's requested ceiling lift is not a reasonable application of subs. 3.8(2)(a) to the Appellant who cannot independently transfer himself from his wheelchair to his toilet or shower using his existing ceiling lift.

Accordingly, the panel rescinds the Ministry's reconsideration decision and refers the decision back to the minister for a determination as to the amount.