

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated November 6, 2014, which held that the appellant is not eligible for funding for a positioning chair because his request failed to meet the required legislative criteria set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The ministry found that the appellant is eligible to receive health supplements under section 62 of the EAPWDR as he is in receipt of disability assistance. The ministry also found that the evidence suggests that the appellant may face a direct and imminent life threatening need pursuant to section 69 of the EAPWDR. However, the ministry determined that the positioning chair that the appellant requested is not a health supplement set out in Schedule C of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – Sections 69 and Schedule C, sections 2, 2.1, 2.2, and 3, 3.1 to 3.12, 4, 4.1, 5, 6, 7, 8, and 9.

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration consists of:

1. Request for Reconsideration signed and dated October 20, 2014 which includes 4 photos of the appellant taken while he eats a meal and a letter from the appellant's occupational therapist (OT) dated October 20, 2014. One photo is from December 2013 showing the appellant sitting upright and eating. The 3 additional photos are from September 2014 which show the appellant's body and head leaning to the left while he eats. The October 20, 2014 letter in part states the following:
 - supportive seat for mealtimes is medically necessary, even if he is ambulatory, and the most appropriate piece of equipment for him at this point;
 - the appellant is diagnosed with Parkinson's disease, blind in the left eye, reduced vision in the right eye and has symptoms of progressive dementia. The Parkinson's disease causes rigidity, shaking and slowness of muscle movement including those involved in swallowing;
 - the appellant requires increased lateral support to minimize the leaning to his right side with the use of laterals and hip guides to help keep him in a more upright position;
 - the positioning chair requested was trialed and it was found that this particular chair best suits the appellant's posture needs and help him to maintain a more upright posture during mealtimes;
 - the appellant is independent, involved in most decision making that is related to his care and will not agree to the use of a wheelchair just for mealtimes.
2. Medical Equipment Request and Justification form signed and dated by the appellant on June 4, 2014, by the appellant's physician on June 5, 2014 and by the appellant's OT on June 12, 2014. The physician lists the appellant's medical conditions as Parkinson's disease, blindness in left eye and learning disabilities and supports the need for a supportive chair. The OT included a letter dated June 12, 2014, which states in part:
 - the appellant's medical conditions as Parkinson's disease, glaucoma, blindness in the left eye, deterioration of vision in the right eye, subcortical encephalopathy (progressive dementia) and learning difficulties;
 - the appellant leans to the right side while in a seated position at mealtime and his head also leans substantially to the right;
 - the appellant has been identified as being at increased risk of having swallowing difficulties and choking, and requiring ongoing monitoring;
 - the recommendation is a chair that will provide good lateral and pelvic support to decrease leaning, is a good height to fit under the dining table, comfortable to sit in, and easy for the appellant to shift in/out of;
 - the recommended positioning chair was trialed, it improved his trunk and head posture substantially, and it has the capacity to tilt in order to be able to work with gravity and help reduce leaning.
3. A quote dated April 25, 2014 for a positioning chair for \$1,942.31. This includes the basic chair and attachments that are specific to the appellant's needs as indicated by the OT in his letters.

A Notice of Appeal signed and dated by the appellant on November 12, 2014, which states that eventually his health will deteriorate and he will need to be in a wheelchair but he does not want one now. He would like to eat in peace and enjoy his meal without reminders from others regarding his

posture.

At the hearing through his representative, who is also the manager of the home he lives in, the appellant stated that:

- although called an “activity chair,” the requested chair is not for activities such as playing cards. Rather it is a positioning chair that comes with wheels and a seat belt, and it is unclear to him why it cannot be considered a wheelchair;
- eating is a big component of his day and it has become unenjoyable and takes much longer (e.g. 1.5 hours to eat a meal) because of his positioning;
- mealtime is also not enjoyable as he is constantly reminded by his care-givers to sit straight to avoid choking;
- he used the positioning chair on a trial basis and found that it corrected his posture so that he could eat upright and continued to sit upright for a couple of weeks after the chair was returned;
- the chair is therapeutic and as essential as a wheelchair;
- other alternatives have been explored but none meet his needs and currently pillows are used to support him at mealtime;
- the positioning chair can only be used for indoor mobility and it is very possible that his condition will deteriorate and therefore he will require a wheelchair in the future;
- he does not like change and currently he does not need or want a wheelchair as it is best to keep him independent and as mobile as possible;
- the stability that the positioning chair provides will keep him more independent and mobile, and it is illogical to put him in a wheelchair at this point as his condition will likely deteriorate further in a wheelchair.

The appellant also provided an online photo of a basic model of the positioning chair. The chair is wide, with large cushions and comes with adjustable armrests.

The witness, who is a caregiver at the appellant’s home, stated that:

- the appellant leans to the right when eating and will take much longer to eat his meals;
- he does not enjoy his meals because he is constantly reminded to sit upright because of the choking hazard;
- he will not finish his meal because he is in pain from leaning too long to one side;
- she noticed that when he used the positioning chair on a trial basis, his posture corrected, he was sitting more upright in other chairs, and was able to participate in other activities such as exercise class.

At the hearing the ministry relied on its reconsideration decision and added that the ministry considers all additional information. If a wheelchair becomes medically essential for the appellant, the ministry will consider the medical information provided by the appellant at that time. However the positioning chair is not a wheelchair, it cannot be used outdoors and is not medically essential for mobility at this point.

Admissibility of New Information

The ministry did not object to the admission of the new information. The panel found that the online photo of the positioning chair provided information regarding how the appellant would use the chair and how it is similar or dissimilar to a wheelchair. The panel admitted this additional information as

APPEAL #

being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision which held that the appellant is not eligible for funding for an activity chair because his request failed to meet the legislative criteria set out in the EAPWDR was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the positioning chair requested is not a health supplement set out in Schedule C of the EAPWDR?

The relevant legislation is as follows:

Schedule C of the EAPWDR

General health supplements

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;
 - (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

Section 2(1)(c) provides that the following items are health supplements if the other criteria of the section are met: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy.

Section 2(1)(f) of Schedule C provides that the following items are health supplements if the other criteria of the section are met: the least expensive appropriate mode of transportation.

Section 2.1 of Schedule C provides that the following are the optical supplements that may be provided under Section 62.1 of the EAPWDR: basic eyewear and repairs, pre-authorized eyewear and repairs.

Section 2.2 of Schedule C provides that the minister may pay a health supplement under Section 62.2 of the EAPWDR for an eye examination if the other criteria of the section are met.

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.

Section 3.1 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a cane, a crutch, a walker, an accessory to a cane, a crutch or a walker.

Section 3.2 provides that the following items are health supplements for the purposes of section 3 if the other criteria of the section are met: a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair.

Section 3.3 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a wheelchair seating system, an accessory to a wheelchair seating system.

Section 3.4 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a scooter, an upgraded component of a scooter, an accessory attached to a scooter.

Medical equipment and devices — toileting, transfers and positioning aids

3.5 (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.

Section 3.6 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed, and a positioning item on a hospital bed.

Section 3.7 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a pressure relief mattress.

Section 3.8 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a floor or ceiling lift device.

Section 3.9 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: breathing devices.

Section 3.10 provides that the following items are an orthosis which is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a custom-made or off-the-shelf foot orthotic, custom-made footwear, a permanent modification to footwear, off-the-shelf footwear for a specific purpose, off-the-shelf orthopaedic footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, a hip brace, an upper extremity brace, a cranial helmet, a torso or spine brace, a foot abduction orthosis, or a toe orthosis.

Section 3.10 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a prosthetic and related supplies, a plaster or fiberglass cast, a hernia support, an abdominal support, a walking boot for a fracture.

Section 3.11 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hearing instrument.

Section 3.12 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a non-conventional glucose meter.

Section 4 of Schedule C provides that the health supplement that may be paid under section 63 [dental supplements] are basic dental services, if the other criteria of the section are met.

Section 4.1 provides that the health supplement may be paid under section 63.1 for crown and bridgework, if

the other criteria of the section are met.

Section 5 of Schedule C provides that the health supplement that may be paid for under Section 64 [emergency dental and denture supplement] of the EAPWDR are emergency dental services.

Section 6 of Schedule C provides that the amount of a diet supplement that may be provided under section 66 [diet supplements] is set out for various conditions, if the other criteria of the section are met.

Section 7 of the Schedule provides as follows:

7 The amount of a nutritional supplement that may be provided under section 67 [nutritional supplement] of this

regulation is the sum of the amounts for those of the following items specified as required in the request under section

67 (1) (c):

(a) for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to \$165 each month;

(b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]

(c) for vitamins and minerals, up to \$40 each month.

Section 8 of Schedule C provides that the amount of a natal supplement that may be provided under section 68 [natal supplements] is set out, if the other criteria of the section are met.

Section 9 of Schedule C provides that the minister may provide infant formula under section 67.1 of the EAPWDR if the other criteria of the section are met.

Section 69 of the EAPWDR provides as follows:

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

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).

The Ministry's Position

The ministry's position is that the appellant is eligible for a health supplement pursuant to section 62 of the EAPWDR. However, the requested positioning chair is not an eligible item as medical or surgical supply item set out in Section 2(1)(a) of Schedule C of the EAPWDR nor is it an eligible as a medical equipment or device set out in Section 3 and Section 3.1 through 3.12 or any of the items listed in Sections 2, 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9, of Schedule C of the EAPWDR. The ministry argued that Section 3.5(0.1) of Schedule C specifies that a "positioning chair" is a health supplement for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility and

the appellant is ambulatory with a walker and, therefore, does not meet the eligibility criterion. At the hearing, the ministry argued that the positioning chair is not a wheelchair as it is listed as a separate item and cannot be used for mobility outdoors. Therefore, it is not an item the ministry can provide.

The Appellant's Position

The appellant's position is that the positioning chair corrects his posture and he does not want to use a wheelchair just for mealtimes. The positioning chair is medically essential to prevent him from choking and essential to keep his independence and mobility. At the hearing, the appellant argued that the positioning chair has wheels that can be used for mobility indoors and is similar to a wheelchair.

The Panel's Decision

Section 2 (1)(a) of Schedule C of the EAPWDR sets out that the ministry may provide specific health supplements that are medical or surgical supplies, if the recipient is eligible under section 62 of the EAPWDR. The ministry determined that the appellant is eligible under section 62. However, the specific health supplements listed in this section are for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care, or limb circulation care. The positioning chair that the appellant has requested is not a medical or surgical supply as listed under the section. As a result the panel finds that the ministry reasonably determined that the evidence establishes that the appellant is not eligible for a health supplement for a positioning chair pursuant to section 2 (1)(a) of Schedule C of the EAPWDR.

Section 3 of Schedule C of the EAPWDR stipulates that the medical equipment and devices described in Sections 3.1 to 3.12 of Schedule C are the health supplements that may be provided by the ministry if the recipient is eligible under section 62 of the EAPWDR. The ministry determined that the appellant is eligible under section 62. However, sections 3.1 to 3.4 and 3.6 to 3.12 of Schedule C list specific medical equipment or devices that do not match the description of a positioning chair and therefore the positioning chair is not medical equipment or a device that can be provided under these sections. Section 3.5 (1)(l) does describe a positioning chair; however, it specifically states that the positioning chair is for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility. The panel finds that the evidence does not establish that a wheelchair has been found to be medically essential for the appellant to achieve or maintain basic mobility as the appellant currently ambulates with a walker and that the appellant does not wish to use a wheelchair at this time. While the positioning chair may be similar to a wheelchair in that it is a chair that can be supplied with wheels, the panel finds that the primary purpose of a positioning chair is to position a person unlike a wheelchair which is used primarily for mobility. As well, the positioning chair cannot be used for outdoor mobility and it is an item that is listed in Schedule C of the EAPWDR as being distinct from a wheelchair. As a result the panel finds that the ministry reasonably determined that the evidence establishes that the appellant is not eligible for a health supplement for a positioning chair pursuant to section 3 or Sections 3.1 through 3.12 of Schedule C of the EAPWDR.

The appellant does not dispute that the requested positioning chair does not fall within any of these other sections of Schedule C. The panel finds that the ministry's decision, which concluded that the positioning chair is not an item listed in sections 2, 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9, of Schedule C of

the EAPWDR, was reasonable.

The panel also finds that the ministry reasonably determined that the requirements of Section 69(d) are not met as a positioning chair is not set out under Schedule C, Section 2(1)(a) as medical or surgical supplies or under Section 2(1)(f) as a mode of medical transportation, or under Sections 3 to 3.12, as detailed above.

Conclusion:

The panel finds that the ministry reasonably concluded that the evidence establishes that the appellant's request did not fully meet the legislative criteria set out in the EAPWDR to be eligible for a positioning chair. Specifically, the positioning chair requested is not an item that can be supplied by the ministry as it is not listed in sections 2, 2.1, 2.2 or 3, 3.1 to 3.12, or 4, 4.1, 5, 6, 7, 8, and 9 of Schedule C or Section 69(d) of the EAPWDR. The panel therefore finds that the ministry's decision to deny the appellant an activity chair was a reasonable application of the legislation and supported by the evidence. The panel confirms the ministry's reconsideration decision.