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PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the "Ministry's") Reconsideration Decision dated September 11, 2014 denying the appellant's request for high-density foam pillows.

The Ministry found that as the appellant is in receipt of disability assistance she is eligible to receive health supplements provided under Section 62 and Schedule C of the *Employment and Assistance Persons with Disabilities Regulations* (EAPWDR). However, the Ministry was not satisfied that the high-density foam pillows were medical equipment or supplies or other health supplements as defined in EAPWDR Schedule C sections 2, 2.1, 2.2, 3, 3.1-3.12, 4, 4.1 and 5-9. The Ministry was also not satisfied that the foam pillows were required to meet a direct and life-threatening health need as required by EAPWDR Section 69.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulations (EAPWDR), Sections 62 & 69 & Schedule C, sections 2, 2.1, 2.2, 3, 3.1-3.12, 4, 4.1 and 5-9.

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PART E – Summary of Facts

At reconsideration, the documents that were before the Ministry included the following:

1. A completed Request for Reconsideration Form signed by the appellant on August 19, 2014 requesting additional time to provide her submissions (RFR).

2. Letter from the appellant dated August 28, 2014 stating that she has never and is not requesting a hospital bed as it does not on its own meet her positioning needs. The appellant states that a hospital bed only provides varying degrees of supine positioning but she requires prone positioning and side-lying positioning, avoiding supine positioning as much as possible to help lower her blood pressure and allow for freer breathing. In addition the appellant states that she requires a tempurpedic mattress for her fibromyalgia issues, not a hospital bed. The appellant states that she has a tempurpedic mattress and now only requires the high-density foam pillows for her positioning, posture support, and rehabilitation. The appellant states that the cost to purchase foam pillows is much lower than the cost of a hospital bed so it makes financial and medical sense to provide her with the requested memory foam pillows.

3. Letter from the Ministry to the appellant dated July 8, 2014 with medical equipment and devices decision summary advising that the appellant's request for high-density foam pillows was denied, as the requested pillows are not an eligible item.

4. Letter from the appellant's occupational therapist (OT) dated April 24, 2014, indicating that the appellant has chronic pain, fibromyalgia, and that the appellant reports that her spine is out of alignment. The OT states that the chronic pain and fatigue affect all components of her life, with her sleep being the primary concern. The OT states that the appellant has regular contact with her family doctor, has seen a specialist, and is diligent in following the recommended strategies regarding diet and energy conservation techniques but that her sleep component remains disrupted with frequent waking. The OT states that the appellant has tried other cervical pillows, body pillows, and other foam and memory foam products with no success, so the physicians have recommended a series of custom, dense foam pillows/cushions. The OT states that the appellant trialed the custom cushions and found that they provided the correct support for her necessary positioning. The OT recommends custom high-density foam cushions: 1 – 12" pillow, 1 – 24" pillow, 2-24" pillows and 1 9" round bolster.

5. Medical Equipment Request and Justification dated April 16, 2014 completed by an OT in which the appellant's physician indicates that the appellant has fibromyalgia and requires personalized high-density formal pillows to aid in positioning in bed. Attached was a letter from the appellant's physician dated November 27, 2013 stating that the appellant needs to work continuously on her positioning and postures and as such needs to purchase some high density beveled foam pillows in order to aid in her recovery. The physician states that the appellant requires 3x 24x24 inch pillows, 1x12x12 inch pillow and 1x9x24 inch roll, the latter to support her knees.

6. Quote from a medical equipment provider dated April 10, 2014 for pillows of $1,262.24.

In her Notice of Appeal, the appellant states that she disagrees with the reconsideration decision because the Ministry "guidelines are not one size fits all". The appellant states that she does not require a hospital bed as she has a memory foam bed, but that she requires custom high-density foam pillows.

Prior to the appeal the appellant submitted a letter dated October 2, 2014 stating that she was awarded a Tempur Memory Foam Mattress in 2010 by a previous tribunal which has offered her comfort and rest and that her physicians have prescribed high density foam pillows for positioning, posture, support, and rehabilitation exercises. The appellant states that she does not require a hospital bed as she has the right mattress for her but she requires the prescribed memory foam pillows.

The appellant submitted a letter dated October 15, 2014 attaching her sleep test indicating that her sleep efficiency is 59%. The appellant states that sleep is the most important basic human need, affecting cognitive abilities, energy, function, and ability to hear. The appellant states that as she does not get sufficient sleep, it is very hard for her to live a normal life. The appellant states that her mattress helps ease the pressure of her fibromyalgia but falls short of the support required. The appellant also submitted some diagrams showing body positioning with and without support.

The appellant provided letters from her physician dated November 16, 2011 and November 27, 2013, that indicate that the appellant was gradually progressing with a multidisciplinary approach to her chronic pain management. The physician states that the appellant needs to work continuously on her positioning and postures and as such needs to purchase some high density beveled foam pillows in order to aid in her recovery. The physician states that the appellant requires 3x 24x24 inch pillows, 1x12x12 inch pillow and 1x9x24 inch roll, the latter to support her knees.

The panel has admitted the appellant's written submissions and letters from her physician into evidence as they are in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act.* In particular, the new information relates to the appellant's health conditions and basis for the request for high-density foam pillows.

The Ministry relied on the reconsideration decision and did not submit any further information.

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.*

Based on the documents, the panel's finding of facts are as follows:

- The appellant has fibromyalgia and chronic pain
- The appellant received a Tempur Memory Foam Mattress in 2010
- The appellant's physician recommended that she obtain high density memory foam pillows

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PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the Ministry's Reconsideration Decision denying the appellant's request for high density foam pillows on the basis that the pillows were not medical equipment as defined in EAPWDR Schedule C sections 3.1 to 3.12, do not meet the criteria for other health supplements set out in EAPWDR Schedule C sections 2, 2.1, 2,2, 4, 4,1, and 5-9, and were not required to meet a direct and life threatening health need as required by EAPWDR Section 69.

The relevant legislation is as follows:

EAPWDR

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 3.11, other than paragraph (a) of section 3 (1).

Schedule C

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.

(B.C. Reg. 66/2010)

(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 and equipment devices – Section 3

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 (B.C. Reg. 197/2012)

(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:
(B.C. Reg. 197/2012)

(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.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section 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 a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(B.C. Reg. 197/2012)

(3) Subject to subsection (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 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed. (B.C. Reg. 197/2012)

(4) Subject to subsection (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 subsection (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 repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and (B.C. Reg. 197/2012)

(b) it is more economical to repair the medical equipment or device than to replace it.

(6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.
(B.C. Reg. 61/2010)

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Medical equipment and devices – canes, crutches and walkers

3.1 (1) Subject to subsection (2) 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 cane;

(b) a crutch;

(c) a walker;

(d) an accessory to a cane, a crutch or a walker.

(2) A walking pole is not a health supplement for the purposes of section 3 of this Schedule.

(B.C. Reg. 61/2010)

Medical equipment and devices – wheelchairs

3.2 (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.

(B.C. Reg. 61/2010)

Medical equipment and devices – wheelchair seating systems

3.3 (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 achieve or maintain a person's positioning in a wheelchair:

(a) a wheelchair seating system;

(b) an accessory to a wheelchair seating system.

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

(B.C. Reg. 61/2010)

Medical equipment and devices - scooters

3.4 (1) In this section, **"scooter"** does not include a scooter with 2 wheels.

(2) Subject to subsection (5) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (3) of this section are met:

(a) a scooter;
(b) an upgraded component of a scooter;
(c) an accessory attached to a scooter.

Medical equipment and devices – bathing and toileting 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.
(B.C. Reg. 197/2012)

(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: (B.C. Reg. 197/2012)
(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; (B.C. Reg. 197/2012)

(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.

Medical equipment and devices – hospital bed

3.6 (1) Subject to subsection (3) 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 facilitate transfers of a person to and from bed or to adjust or maintain a person's positioning in bed:
(B.C. Reg. 197/2012)
(a) a hospital bed;

(b) an upgraded component of a hospital bed;

(c) an accessory attached to a hospital bed;
(d) a positioning item on a hospital bed. (B.C. Reg. 197/2012)
(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.
(3) The following items are not health supplements for the purposes of section 3 of this Schedule:
(a) an automatic turning bed;

(b) a containment type bed.
(B.C. Reg. 61/2010)

Medical equipment and devices – pressure relief mattresses

3.7 (1) A pressure relief mattress is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that the pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity.

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;

Medical equipment and devices – positive airway pressure devices

3.9(1) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule:

(a) if all of the requirements set out in subsection (2) of this section are met:

(i) a positive airway pressure device,

(ii) an accessory that is required to operate a positive airway pressure device, or

(iii) a supply that is required to operate a positive airway pressure device;

(b) if the minister is satisfied that the item is medically essential to monitor breathing,

(i) an apnea monitor,

(ii) an accessory that is required to operate an apnea monitor, or

(iii) a supply that is required to operate an apnea monitor;

(c) if the minister is satisfied that the item is medically essential for clearing respiratory airways,

(i) a suction unit,

(ii) an accessory that is required to operate a suction unit, or

(iii) a supply that is required to operate a suction unit;

(d) if the minister is satisfied that the item is medically essential for clearing respiratory airways,

(i) a percussor,

(ii) an accessory that is required to operate a percussor, or

(iii) a supply that is required to operate a percussor;

(e) if the minister is satisfied that the item is medically essential to avoid an imminent and substantial danger to health,

(i) a nebulizer,

(ii) an accessory that is required to operate a nebulizer, or

(iii) a supply that is required to operate a nebulizer;

(f) if the minister is satisfied that the item is medically essential to moisturize air in order to allow a tracheostomy patient to breathe,

(i) a medical humidifier,

(ii) an accessory that is required to operate a medical humidifier, or

(iii) a supply that is required to operate a medical humidifier;

(g) if the minister is satisfied that the item is medically essential to deliver medication,

(i) an inhaler accessory device,

(ii) an accessory that is required to operate an inhaler accessory device, or

(iii) a supply that is required to operate an inhaler accessory device;

(2) The following are the requirements in relation to an item referred to in subsection (1) (a) of this section:

(a) the item is prescribed by a medical practitioner or nurse practitioner;

(b) a respiratory therapist has performed an assessment that confirms the medical need for the item;

(c) the minister is satisfied that the item is medically essential for the treatment of moderate to severe sleep apnea.

(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 (1) of this section is as follows:

(a) in the case of an item referred to in subsection (1) (a) (i), 5 years from the date on which the minister provided the item being replaced;

(b) in the case of an item referred to in subsection (1) (a) (ii) or (iii), one year from the date on which the minister provided the item being replaced;

(c) in the case of an apnea monitor, suction unit, percussor, nebulizer or medical humidifier, 5 years from the date on which the minister provided the item being replaced;

(d) in the case of an inhaler accessory device, one year from the date on which the minister provided the device being replaced;

(e) in the case of an accessory or supply for an item referred to in paragraph (c) or (d), one year from the date on which the minister provided the device being replaced.

(4) A ventilator is not a health supplement for the purposes of section 3 of this Schedule.

(B.C. Reg. 61/2010) (B.C. Reg. 197/2012)

Medical equipment and devices - orthoses

3.10 (1) In this section,

"off-the-shelf", in relation to an orthosis, means a prefabricated, mass-produced orthosis that is not unique to a particular person;

"orthosis" means

(a) a custom-made or off-the-shelf foot orthotic;
(b) custom-made footwear;

(c) a permanent modification to footwear;
(d) off-the-shelf footwear required for the purpose set out in subsection (4.1) (a);
(e) off-the-shelf orthopaedic footwear;

(f) an ankle brace;
(g) an ankle-foot orthosis;

(h) a knee-ankle-foot orthosis;

(i) a knee brace;
(j) a hip brace;

(k) an upper extremity brace;

(l) a cranial helmet used for the purposes set out in subsection (7);
(m) a torso or spine brace;
(n) a foot abduction orthosis; (B.C. Reg. 197/2012)
(o) a toe orthosis. (B.C. Reg. 197/2012)
(B.C. Reg. 144/2011)

Medical equipment and devices-hearing instrument

3.11 A hearing instrument is a health supplement for the purposes of section 3 of this Schedule if

(a) the hearing instrument is prescribed by an audiologist or hearing instrument practitioner, and

(b) an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument.

(B.C. Reg. 61/2010) (B.C. Reg. 85/2012)

Medical Equipment and devices – non-conventional glucose meters

3.12 (1) In this section, **"non-conventional glucose meter"** includes

(a) a continuous glucose monitoring meter, and

(b) a talking glucose meter.

(2) A non-conventional glucose meter is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that

(a) the glucose meter is medically essential to test blood glucose levels, and

(b) the person for whom the non-conventional glucose meter has been prescribed is unable to use a conventional glucose meter.

(3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of a non-conventional glucose meter is 5 years from the date on which the minister provided the glucose meter being replaced.

(B.C. Reg.197/2012)

High Density Foam Pillows as medical equipment , EAPWDR Schedule C, section 3 and 3.1 to 3.12

The Ministry's position is that the high density foam pillows are not eligible medical equipment as they are not one of the items specified in EAPWDR Schedule C, section 3.1 to 3.12 as follows:

3.1 Canes, crutches and walkers
3.2 Wheelchairs
3.3 Wheelchair seating systems
3.4 Scooters
3.5 Bathing and toileting aids: (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;(j) a portable commode chair; (k) a standing frame; (l) a positioning frame; (m) a transfer aid
3.6 Hospital beds: (a) a hospital bed; (b) an upgraded component of a hospital bed; (c) an accessory attached to a hospital bed; (d) a positioning item on a hospital bed
3.7 Pressure relief mattresses
3.8 Floor or ceiling lift devices
3.9 Positive airway pressure devices
3.10 Orthoses: (a) a custom-made or off-the-shelf foot orthotic; (b) custom-made footwear; (c) a permanent modification to footwear; d) off-the-shelf footwear required for the purpose set out in subsection (4.1)(a); (e) off-the-shelf orthopaedic footwear; (f) an ankle brace;(g) an ankle-foot orthosis; (h) a knee-ankle-foot orthosis; (i) a knee brace; (j) a hip brace; (k) an upper extremity brace; (l) a cranial helmet used for the purposes set out in subsection (7); (m) a torso or spine brace; (n) a foot abduction orthosis; (o) a toe orthosis
3.11 Hearing instruments
3.12 Non-conventional glucose meters

The Ministry's position is that the high density foam pillows are not one of the legislated supplements and the Ministry is not authorized to approve the appellant's request. In particular, the Ministry notes that as per Schedule C, section 3.6(1)(d), positioning items can only be considered for use in a hospital bed but that the appellant does not have a hospital bed.

The appellant's position is that she does not and has not requested funding for a hospital bed as it only provides support for varying degrees of supine positioning but she requires prone positioning and side-lying positioning, avoiding supine positioning as much as possible to help lower her blood pressure and allow for freer breathing. The appellant's position is that she has a tempurpedic mattress and now only requires the high-density foam pillows for her positioning, posture support and rehabilitation. The appellant states that the cost to purchase foam pillows is much lower than the cost of a hospital bed so it makes financial and medical sense for the Ministry to provide her with the requested pillows.

Panel Decision

The panel finds that the high density foam pillows are not one of the medical equipment and devices set out in EAPWDR section 3.1 to 3.12. In particular, the pillows are not one of the medical equipment and devices specified in section 3.1 to 3.4, 3.5 or 3.6 to 3.12 as the high density foam pillows are not canes, crutches or walkers, wheelchairs, wheelchair seating systems, scooters, hospital beds, pressure relief mattress, floor or ceiling lift devices, positive airway pressure device, orthoses, hearing instruments or non-conventional glucose meters.

The panel appreciates that from the appellant's perspective, the high density foam pillows will provide the required positioning that is not provided by a hospital bed. However, as the high density foam pillows are not eligible medical equipment as defined in EAPWDR Schedule C, section 3.1 to 3.12, the panel finds that the Ministry's reconsideration decision denying the appellant's request for high density foam pillows as medical equipment was reasonable.

High density foam pillows as medical supplies - EAPWDR Schedule C, section 2(1)

The Ministry's position is that they are not authorized to approve the appellant's request for high density foam pillows as they are not a medical or surgical supply that is disposable or reusable and required for one of the following purposes specified in Schedule C, section 2(1)(a)(i): wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care, or limb circulation care. In addition the Ministry's position is that information is not provided to establish that the items requested are necessary to avoid an imminent and substantial danger to health.

The Ministry also states that foam pillows are not lancets, needles and syringes, ventilator supplies or tracheostomy supplies or consumable medical supplies as specified in EAPWDR Schedule C, section 2(1)(a.1) or (a.2).

The appellant's position is that she has chronic pain, fibromyalgia, fatigue and that her sleep efficiency is very poor. The appellant's position is that sleep is the most important basic human need, affecting cognitive abilities, energy, function, and ability to hear. The appellant states that as she does not get sufficient sleep, it is very hard for her to live a normal life. The appellant states that her mattress helps ease the pressure of her fibromyalgia but falls short of the support required. The appellant's position is that her physician and OT recommended the foam pillows as she requires them for her sleep and rehabilitation, so they should be approved.

Panel Decision

The panel finds that the high density foam pillows are not required for wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care, or limb circulation care as required by EAPWDR Schedule C, section 2(1)(a)(i). The panel also finds that the pillows are not lancets, needles and syringes, ventilator supplies or tracheostomy supplies or consumable medical supplies as specified in EAPWDR Schedule C, section 2(1)(a.1) or (a.2). As the pillows are not required for any of the purposes specified in EAPWDR Schedule C, section 2(1)(a),

the panel finds that the Ministry's decision that the pillows were not an eligible medical supply was reasonable.

The panel notes that the appellant's position is that her sleep efficiency is only 59% and that sleep is the most important basic human need and that the pillows are recommended by the physician and OT and that the OT states that the appellant is diligent with her rehabilitation. However, the panel finds that the Ministry reasonably determined that the information provided does not indicate that the high density foam pillows are necessary to avoid an imminent and substantial danger to health as required by section 2(1)(ii)(c).

High density foam pillows as other health supplements – Schedule C, section 2, 2.1, 2.2, 4, 4.1, and 5-9

The Ministry's position is that although EAPWDR Schedule C, section 2(1)(c), 2(2) and 2(2.1) provides for up to 12 visits per calendar year of $23 per visit for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physiotherapy treatments, the high density foam pillows do not qualify as a health supplement because they are not one of the defined therapies.

The Ministry also states that the requested foam pillows do not fit into any of the other remaining health supplements authorized by EAPWDR Schedule C, section 2.1, 2.2, 4, 4.1 and 5-9 as follows: optical supplements, eye examination supplements, dental supplements, crown and bridgework supplements, emergency dental supplements, diet supplements, monthly nutritional supplements, natal supplements and infant formula, so they cannot approve the appellant's request for foam pillows.

The appellant's position is that the foam pillows are medically essential, are the least expensive item that will accommodate her need for supportive positioning and rehabilitation, are recommended by her physician and OT, and essential for her sleep, so the Ministry should approve her request.

Panel Decision

The panel finds that the high density foam pillows are not one of the therapies set out in EAPWDR Schedule C, section sections 2(1)(c), 2(2) and 2(2.1), and are not one of the other remaining health supplements specified in EAPWDR Schedule C, section 2.1, 2.2, 4, 4.1 and 5-9. Accordingly, the panel finds that the Ministry's decision that the foam pillows are not an eligible health supplement set as required by EAPWDR Schedule C, section 2(1)(c), 2(2), 2(2.1), 2.1, 2.2, 4, 4.1 or 5-9 was reasonable.

Life Threatening Health Need – EAPWDR section 69

The Ministry's position is that while they sympathize with the appellant and recognize that the medical evidence indicates that the appellant may benefit from high density foam pillows, the evidence does not establish that the appellant is facing a direct and imminent life-threatening health need, or that the pillows are necessary to meet a direct and imminent life-threatening health need as required by EAPWDR Section 69.

In addition, the Ministry's position is that EAPWDR Section 69 only applies to items that are defined

as a health supplement set out in EAPWDR Schedule C, section 2(1)(a) and (f) or section 3. As the high density foam pillows are not one of the specified health supplements, the Ministry's position is that the appellant's request does not meet the legislated criterion.

The appellant does not specifically state that she faces a life threatening health need but that her lack of sleep causes her to have problems in all aspects of normal life, including her cognitive abilities, energy, function, and ability to hear. The appellant states that as she does not get sufficient sleep, it is very hard for her to live a normal life.

Panel Decision

EAPWDR section 69 applies where a person faces a direct and imminent life threatening need and a health supplement is necessary to meet that need. The term "*imminent*" requires a degree of immediacy.

While the panel notes the evidence that the appellant would benefit from the high density foam pillows, that is not sufficient to satisfy the criteria of EAPWDR section 69. The information provided from the appellant's physician is a recommendation for high density foam pillows but there is no evidence indicating that the appellant faces a direct and imminent life threatening need or that the high density foam pillows are necessary to meet a direct and imminent life threatening need.

Based on this evidence, the panel finds that the Ministry reasonably concluded that the appellant did not satisfy the legislative criteria of EAPWDR Section 69.

Conclusion

In conclusion, the panel finds that the Ministry's Reconsideration Decision to deny the appellant's request for high density foam pillows was reasonable based on the evidence and was a reasonable application of the legislation in the appellant's circumstances. The panel confirms the Ministry's Reconsideration Decision.