

**PART C – Decision under Appeal**

The Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated 12 November 2014 determined the appellant was not eligible for walking poles as they are not: a medical supply under s. 2(1) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR); a medical device or medical equipment under sections 3, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11 or 3.12 of Schedule C of the EAPWDR; a therapy or health supplement set out in any other section of the EAPWDR; and, because there was no evidence she faced a direct and imminent life threatening need and, even if she did, it is not one of the items that she could obtain under s. 69 of the EAPWDR.

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 62 and 69.  
Employment and Assistance for Persons with Disabilities Regulation, Schedule C.

## PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- The appellant is designated as a person with disabilities (PWD) and receives financial assistance accordingly.
- A letter dated 4 October 2012 from a physician, specialized in sports medicine stating that the appellant suffers from bilateral knee osteoarthritis and recommends exercise and walking with “support poles”.
- A letter dated 23 October 2012 by the appellant’s physician stating: “Please provide funding for walking poles as prescribed by [the sports medicine specialist] for bilateral knee osteoarthritis to prevent further joint damage + promote exercise + healing.”
- A receipt dated 9 November 2012 from a sports’ store for an item called “McKinley cut B” for \$49.99 plus taxes, total \$55.99 with a handwritten note on it: “Walking poles (2)”.
- A 2-page letter dated 16 September 2014 by the ministry to the appellant denying her claim for walking poles because they were not an eligible item.
- A Request for reconsideration dated 14 October 2014 by the appellant and indicating it was submitted to the ministry on 16 October 2014 stating the following:
  - On 23 October 2012, with the medical notes by the sports medicine specialist and her physician, she went to the ministry’s office and met with a worker who looked at the notes, said “no” and handed the paperwork back to her, refusing to enter the request in the ministry database.
  - The appellant then went to several stores for the prescribed poles and was directed to a sports’ store where, on 9 November 2012 she bought a pair of walking poles that she was advised were the most reasonably priced for what was required.
  - She had to borrow the money for the poles from neighbours who loaned her \$60.00.
  - The appellant indicated she did not have the money to pay for the poles and must visit 3-4 food banks per month to keep food in her house since her income is limited to her PWD monthly assistance.
  - Prior to having her walking poles, the appellant fell several times, some of which resulted in nasty injuries.
  - On 16 November 2012, the appellant returned to the ministry office to claim reimbursement for the poles with all her documentation and met the same worker as previously who again said “no” and declined to enter the request in the ministry’s database.
  - It is only in the summer of 2014 that the appellant realized after discussion with a third party, that the worker did not have the authority to act as he did and did not follow the required process.
  - With that information, the appellant went back to the ministry’s office on 21 July 2014 with her documents and her claim was duly processed and entered in the ministry’s database.
  - She went to the ministry’s office on 3 occasions, 5 and 18 August and 2 September 2014 but did not get an answer with respect to her claim.
  - On 23 September 2014, the appellant received the letter from the ministry dated 16 September 2014 denying her claim. She received her reconsideration package on 3 October 2014 and requested an extension to file the Request for reconsideration.
  - Attached to her Request for reconsideration was an article from a newspaper about the “province not obeying United Nations agreement” dated 2 July 2014.
- The appellant’s Request for reconsideration was submitted to the ministry on 16 October 2014

and the reconsideration decision was made on 12 November 2014.

With her Notice of Appeal dated 20 November 2014, the appellant stated that her original request was casually dismissed by a ministry worker and reiterated the information included with her Request for reconsideration, adding that her family unit is composed of only her and that she exists on a very limited income. She shopped responsibly and thoroughly to find the required medical prescription at the lowest possible price.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant was not eligible for walking poles as they are not: a medical supply under s. 2(1) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR); a medical device or medical equipment under sections 3, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11 or 3.12 of Schedule C of the EAPWDR; a therapy or health supplement set out in any other section of the EAPWDR; and, because there was no evidence she faced a direct and imminent life threatening need and, even if she did, it is not one of the items that she could obtain under s. 69 of the EAPWDR, was either a reasonable application of the legislation or reasonably supported by the evidence.

Section 62 of the EAPWDR provides the authority to the minister to provide health supplements, including medical equipment and devices:

**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 (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(a) a recipient of disability assistance,...

Schedule C, Health Supplements, provides for what specific items the minister may approve. None of the items at s. 2 are close or similar to walking poles, being mostly medical or surgical supplies. S. 3(1) (Medical equipment and devices) is relevant to this appeal:

**3** (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 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...

In the list of items described in s. 3.1 to 3.11, only s. 3.1 deals with walking poles:

**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.

Finally, health supplements may be provided in exceptional circumstances, for persons facing direct and imminent life threatening health needs:

**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 acknowledged that the appellant is a recipient of disability assistance and is eligible to receive health supplements under s. 62 of the EAPWDR. However, the ministry argued that walking poles do not qualify as an eligible medical equipment since it is not on the list of equipment / devices that the ministry could provide under s. 3.1 to 3.12 of Schedule C of the EAPWDR and is specifically excluded under s. 3.1(2) of Schedule C of the EAPWDR. The ministry further argued that walking poles cannot be considered as a medical supply since it is not for any of the purposes set out under s. 2(1)(a)(i) and is not part of the list of medical supplies that the ministry could provide under s. 2(1)(a.1) or (a.2) of Schedule C of the EAPWDR. Additionally, the ministry indicated that walking poles are not an item set out in any of the other sections of the EAPWDR for therapy or remaining health supplements. Finally the ministry argued that there was no evidence based on the information submitted by the appellant that she faced direct and imminent danger to her health if walking poles were not made available to her and that even if this evidence was provided, walking poles are not a health supplement or medical equipment and devices set out in s. 2(1)(a) and (f) and 3 of Schedule C of the EAPWDR.

The appellant argued that she was not treated fairly by the ministry despite having provided documentation showing that 2 doctors prescribed walking poles and despite it was a required medical need. She argued that she bought the best poles available for that purpose at the lowest price possible and that before having those poles she had fallen several times, some of which caused nasty injuries. She stated she provided the ministry with information showing that the walking poles were essential to avoid imminent and substantial damage to her health and that she did not have the resources to buy those poles. She finally argued that the province was not obeying article 20 of the United Nations Convention on the Rights of Persons with Disabilities signed by Canada in March 2010 by not providing the walking poles despite that doctors had identified them as a particular need for her.

The panel will deal first with the argument that the decision violates the UN Convention on the Rights of Persons with Disabilities: the panel's jurisdiction is based on s. 24 of the Employment and Assistance Act (EAA):

**24** (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

- (a) reasonably supported by the evidence, or
- (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

(2) For a decision referred to in subsection (1), the panel must  
(a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and

(b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister.

The panel's jurisdiction is clearly limited to applying the legislation as enacted by the provincial legislature and determine whether the ministry's decision is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. Thus the panel does not have the jurisdiction to make a decision with respect to this argument.

The panel notes that s. 62 of the EAPWDR is very specific that health supplements, including medical equipment or devices, can be provided to an eligible person only if they are part of the items set out in s. 2 or 3 of Schedule C of the EAPWDR. Subsection 3.1(2) of Schedule C specifically excludes walking poles as a health supplement and no other section of the legislation comes close to authorizing the minister to consider walking poles as a health supplement, a medical supply or medical equipment / devices and the panel finds the ministry reasonably determined the walking poles were not an eligible item.

The appellant argued that the walking poles were essential to avoid imminent and substantial damage to her health but the evidence is to the effect that they are required "to maximize conservative therapy", to "prevent further joint damage and promote exercise and healing"; the panel finds there is no evidence on record that the appellant was facing direct and imminent danger for her life but even if it was the case, s. 69 of the EAPWDR does not allow the ministry to provide any supplement, equipment or device other than those authorized under s. 2, 3 or 3.1 to 3.12 of Schedule C of the EAPWDR which, as the panel found, did not include walking poles. In other words, if the device is not listed in the EAPWDR, the ministry does not have the authority to provide it to a recipient. Thus, the panel finds the ministry reasonably determined the items requested by the appellant, the walking poles, were not an item that is included in s. 2, 3 or any other section of Schedule C of the EAPWDR and that consequently, the appellant was not eligible for the device under s. 62 or 69 of the EAPWDR.

For those reasons, the panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.