

## PART C – Decision under Appeal

The appellant appeals the reconsideration decision of the Ministry of Social Development and Social Innovation (ministry) dated December 10, 2014, which denied her request for funding for a Pride Lift Chair and Pride LC-524 Pillow as she did not meet the criteria set out in the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) section 62, section 69 and Schedule C [Health Supplements].

Specifically, the ministry found that that the appellant is not eligible for a lift chair as medical equipment under EAPWDR sections 3 to 3.8 and 3.12 of Schedule C, or as a medical supply under section 2(1) and 2(2) of Schedule C. The ministry further found that the lift chair is not an item set out in any of the other sections of Schedule C, and that the appellant is not eligible under life-threatening health need, pursuant to EAPWDR section 69.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) section 62, section 69 and Schedule C [Health Supplements].

## PART E – Summary of Facts

The information before the ministry at reconsideration consisted of the following documents:

- A note from the appellant's physician (Physiatrist) dated September 12, 2014 which states that the appellant suffers from diabetic neuropathy with Charcot foot and poor mobility. The request is for a "sit to stand chair," to assist patient with "rising from chair."
- A Medical Equipment Request and Justification dated September 4, 2014 requesting a "powered transfer assist chair" and attached letter from the appellant's occupational therapist which states:
  - *Medical History and Physical findings:*
    - Diagnoses: morbid obesity, fibromyalgia, rheumatoid arthritis, chronic pain, asthma, frequent anal fissures, diabetic neuropathy, right Charcot foot, Type 1 Diabetes Mellitus. Reconstructive foot surgery to right foot on June 26, 2013.

### *"Heath and Functional Status*

- Self care: independent except for bathing – assist from community health workers
- Ambulation: uses a manual wheelchair for indoor mobility. Requires support from a 4 wheeled walker for short distances due to increased foot pain, also requires orthopedic shoes with respect to her Charcot foot.
- Bed mobility: full electric hospital bed, uses bed rails, overhead trapeze and grab bar mounted to wall beside bed.
- Communication: Within functional limits (WFL)
- Cognition: WFL
- Sensation: at risk for breakdown due to diabetic neuropathy
- Pressure/Skin condition; increased leg swelling in legs and feet, right leg greater swelling than left leg.
- Home management: Assist from community workers
- IADLS: Mostly independent – receives some assistance from mother and friends
- Living situation: lives with elderly mother in wheelchair accessible apartment in co-op housing.

### *"Functional Issues*

- Needs a Powered transfer-assist chair: [The appellant] is having difficulty with sit to stand. She is morbidly obese, suffers from rheumatoid arthritis (RA), and Charcot foot which in turn she struggles with sit to stand due to insufficient leg and arm strength to transition from her sit to stand. She has used furniture risers and added foam cushions, but the furniture risers are not safe for [the appellant] due to her morbid obesity and home environment set up. A Handipole was trialed but [the appellant] still struggles with her upper body strength and aggravating her RA in order to stand. [The appellant] has difficulties with chair transfers due to previous foot surgery, physical status and overall decreased functioning. She relies in specific seating height surfaces in order to maintain independence with her transfers.

### *"Goal of Requested Equipment*

1. Enable client to be able to be safe and independent with chair transfers
2. Provide relief from sitting in her manual wheel chair as [the appellant] is at risk for skin breakdown and she relies on her wheelchair for mobility.

### *"Equipment Trialed: Pride Lift Chair*

### *"Recommended Equipment and Justification*

- Powered transfer-assist chair to replace [the appellants] low armchair with added cushion and broken furniture risers. [The appellant] requires a chair with a lifting mechanism to allow her to be independent with sit to stand and her transfers back to her wheelchair. The

lift chair trialed is the only chair that will accommodate [the appellants] weight and size requirement.”

- A sales quotation from a supplier of equipment dated September 2, 2104 quoting a Pride Lift Chair and head pillow, total amount \$1852.80
- A note from the appellant’s doctor (Physiatrist) dated August 28, 2014 that states: “[The appellant] has various health issues that affect her activities of daily living and impairs her ability to mobilize. Medical diagnoses include but not limited to: morbid obesity, fibromyalgia, rheumatoid arthritis, diabetic neuropathy, and right Charcot foot. She requires a power-assisted transfer chair to help maintain her mobility and supporting her activities of daily living.”
- A Request for Physician’s Prescription dated August 1, 2014 signed by the appellant’s doctor (General Practitioner) requesting a, “Positioning chair- to allow [the appellant] transfer out of her manual wheelchair to provide relief from sitting, and to a high enough surface to allow her to transfer independently. As well, a positioning chair will allow her to elevate her legs to promote a decrease in leg/foot swelling.”
- The original ministry’s decision dated November 6, 2014 stating that although the applicant is eligible for medical equipment under EAPWDR section 62 and has submitted an assessment by a therapist as required, the applicant did not meet the eligibility criteria for a health supplement since, “a lift chair is not an eligible item.” An attached note indicates that previous equipment provided includes a hospital bed and a manual wheelchair and seating.

In the appellant’s request for reconsideration dated November 26, 2014 she states, “I require this positioning device to transfer from my wheelchair to a sitting area. This is vital in order to stop the pain associated with adema and solving pressure from the past operation trauma.”

### **New evidence**

Before the hearing, the appellant submitted a letter from her doctor dated January 7, 2015 in support of the appellant acquiring a power-assisted transfer chair. That letter states that the appellant has, “morbid obesity, diabetes with neuropathy and right Charcot foot, fibromyalgia, rheumatoid arthritis and chronic pain. She has undergone a Charcot reconstruction of her left foot. She has ongoing pain in that side and limited ability to mobilize. She is at risk of Charcot progression of her other foot. There are no longer any other surgical options available to [the appellant] and any assistance with mobility that would off load her feet would be beneficial.” (Note: at the hearing the appellant noted a typo in this letter. Her reconstruction was on her right foot, not her left foot.)

The ministry received the letter before the hearing and at the hearing stated that it did not object to this letter being accepted as evidence.

The panel finds that the balance of the information in this letter is in support of the information and records before the ministry at reconsideration because it repeats the current diagnoses and tends to substantiate the information contained in the medical records before the ministry. Accordingly, the panel admits this evidence under section 22(4)(b) of the *Employment and Assistance Act* (EAA).

At the hearing, the appellant stated that she attended a recent doctor (General Practitioner) appointment on Monday January 12. No documents were provided. The appellant said that she requested an emergency appointment when her care worker could not put on her shoe. At the appointment the doctor told the appellant that she could be suffering from a blood clot in her right leg.

He said it was not adema, since it was causing hardness in only one leg, not both. The doctor has ordered tests and will be looking into this further. The appellant is very concerned she might lose her leg. She was in hospital for two months in July and August last year and had two surgeries on her feet. Prior to that she had a diabetic ulcer on her right toe. She said she comes from a family of sufferers of adema so knows the importance of elevating her legs to increase circulation.

The ministry did not object to the appellant's oral testimony being included as evidence.

The panel finds that the appellant's testimony is in support of the information and records before the ministry at reconsideration as it relates to the problems in the appellant's legs and feet and thus corroborates the information contained in the medical records before the ministry. Accordingly, the panel admits this evidence under section 22(4)(b) of the EAA.

At the hearing the appellant referred to each the above letters from her doctors and therapist and made several arguments which are set out in Part F of the panel's decision. The ministry referred to reconsideration decision for its position.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which denied the appellant's request for funding for a Pride Lift Chair and Pride LC-524 Pillow, is reasonably supported by the evidence or whether it is a reasonable application of the applicable enactment in the circumstances of the appellant.

**The relevant sections** of the legislation are: EAPWDR Section 62, which sets out the requirements to qualify for medical supplements generally; EAPWDR Section 69, which sets out the requirements in life threatening situations, and Schedule C, which set out the specific requirements to qualify for specific medical equipment.

### General health supplements

**62** (1) Subject to subsections (1.1) and (1.2), the minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who is

(a) a recipient of disability assistance,

### 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).

### 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;

(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;

(b) Repealed. [B.C. Reg. 236/2003, Sch. 2, s. 2 (b).]

(c) subject to subsection (2), a service provided by a person described opposite that service in the following table, delivered in not more than 12 visits per calendar year,

- (i) for which a medical practitioner or nurse practitioner has confirmed an acute

need,

(ii) if the visits available under the Medical and Health Care Services Regulation, B.C. Reg. 426/97, for that calendar year have been provided and for which payment is not available under the *Medicare Protection Act*, and

(iii) for which there are no resources available to the family unit to cover the cost:

Item	Service	Provided by	Registered with
1	Acupuncture	acupuncturist	College of Traditional Chinese Medicine under the <i>Health Professions Act</i>
2	Chiropractic	chiropractor	College of Chiropractors of British Columbia under the <i>Health Professions Act</i>
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia under the <i>Health Professions Act</i>
4	Naturopathy	naturopath	College of Naturopathic Physicians of British Columbia under the <i>Health Professions Act</i>
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia under the <i>Health Professions Act</i>
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia under the <i>Health Professions Act</i>

(d) and (e) Repealed. [B.C. Reg. 75/2008, s. (a).]

(f) the least expensive appropriate mode of transportation to or from

- (i) an office, in the local area, of a medical practitioner or nurse practitioner,
- (ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,
- (iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or
- (iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*,

provided that

- (v) the transportation is to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, and
- (vi) there are no resources available to the person's family unit to cover the cost.

(g) Repealed. [B.C. Reg. 75/2008, s. (a).]

- (1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.
- (2) No more than 12 visits per calendar year are payable by the minister under this section for any combination of physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services.
- (2.1) If eligible under subsection (1) (c) and subject to subsection (2), the amount of a general health supplement under section 62 of this regulation for physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services is \$23 for each visit.
- (3) If the minister provided a benefit to or for a person under section 2 (3) of Schedule C of the Disability Benefits Program Regulation, B.C. Reg. 79/97, the Income Assistance Regulation, B.C. Reg. 75/97 or the Youth Works Regulation, B.C. Reg. 77/97, as applicable, for the month during which the regulation was repealed, the minister may continue to provide that benefit to or for that person as a supplement under this regulation on the same terms and conditions as previously until the earlier of the following dates:
- (a) the date the conditions on which the minister paid the benefit are no longer met;
  - (b) the date the person ceases to receive disability assistance.

## Schedule C

### Optical supplements

**2.1** The following are the optical supplements that may be provided under section 62.1 *[optical supplements]* of this regulation:

- (a) basic eyewear and repairs;
- (b) pre-authorized eyewear and repairs.

### Eye examination supplements

**2.2** The minister may pay a health supplement under section 67.2 *[eye examination supplements]* of this regulation for an eye examination that,

- (a) if provided by an optometrist, is provided for a fee that does not exceed \$44.83, or
- (b) if provided by an ophthalmologist, is provided for a fee that does not exceed \$48.90.



**Medical equipment and devices**

~~3~~ (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.12 of this Schedule are the health supplements that may be provided by the minister if

(a) the supplements are provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation, and

(b) all of the following requirements are met:

(i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;

(ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;

(iii) the medical equipment or device is the least expensive appropriate medical equipment or device.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

(a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;

(b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(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.

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a 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.

(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) 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.

#### **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.

#### **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.

### **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.

### **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.

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

(a) an assessment by an occupational therapist or a physical therapist has confirmed that it is unlikely that the person for whom the scooter has been prescribed will have a medical need for a wheelchair during the 5 years following the assessment;

(b) the total cost of the scooter and any accessories attached to the scooter does not exceed \$3 500 or, if subsection (3.1) applies, \$4 500;

(c) the minister is satisfied that the item is medically essential to achieve or maintain basic

mobility.

(3.1) The maximum amount of \$4 500 under subsection (3) (b) applies if an assessment by an occupational therapist or a physical therapist has confirmed that the person for whom the scooter has been prescribed has a body weight that exceeds the weight capacity of a conventional scooter but can be accommodated by a bariatric scooter.

(4) 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.

(5) A scooter intended primarily for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

### **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.

#### **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:

- (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.

(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.

#### **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.

(2) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is 5 years from the date on which the minister provided the item being replaced.

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

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

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

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

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

(3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years from the date on which the minister provided the item being replaced.

**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.

The appellant's position is that she really needs a lift chair to sit stand and to raise her legs for circulation. At the hearing the appellant referred to each the above letters from her doctors and therapist and argued that:

- The cost to the medical system in the long run (including hospitalization, doctor's appointments and home support) would be significantly more than the cost of this chair. For example, when she

did not get proper shoes for her Charcot foot, two of her foot bones disintegrated.

- All her doctors said that she needs the lift chair so she could elevate her leg and prevent further medical issues. She would not be asking for it, if it were not a necessity and not a luxury.
- One of her doctors said, "If they go back in [surgery] she might lose the limb." So she fears that without the chair she may have her foot cut off.
- In her opinion, all the letters suggest that her only option is to go with the lift chair and that the doctors clearly don't want her putting any pressure on her right foot because there is a chance it could crumble even more.
- If she lost a limb the cost of physiotherapy and helping a person function in the world would cost more in the long run. As she said, "I have saved my leg three times and I do not want it chopped off the fourth time."
- She needs the chair to sit for a portion of the day to raise her leg up so that leg swelling can go down. She has no other choice, since she can't move around.
- She argued, "I realize it's a lot of money but compared to health care and the agony of it all, it's a small amount. Even one day in the hospital is hundreds of dollars."
- She had tried a handipole but it did not work and had used bed blocks to lift her chair but that they had broken. She also used pillows but that was not enough.
- She emphasized her notice of appeal dated December 23, 2014 which states, "the chair is a necessity, not a luxury! Without it I could end up with more problems medically. I have already had reconstruction surgery on June 27, 2013 and was in hospital for 2 months. I would not ask for it, if it was not a necessity."
- When asked by the panel, she said she did not know the difference between a positioning chair and a lift chair.

The ministry's position is that the ministry has no legal authority to fund the lift chair. As described in the reconsideration decision, a lift chair is not listed as eligible and in fact is listed as an item that they do not fund, pursuant to section 3(5) of the EAPWDR. In response to questions from the panel, the ministry acknowledged that the ministry does fund a "positioning chair" but was unclear about the difference between a lift chair and a positioning chair.

## Issues

Regarding section 62 eligibility, the reconsideration decision acknowledges that, "Since you are in receipt of disability assistance, you are eligible to receive health supplements provided under section 62 and Schedule C of the EAPWD regulation."

There are three issues in this case:

- Does the appellant's request for the Pride Lift and Pride pillow fall within the requirements of medical equipment as described in EAPWDR Schedule C sections 3.1-3.8 and 3.12?
- Does the appellant's request for the Pride Lift and pillow fall within the requirements of medical supply described in Schedule C sections 2 or any of the other supplements described in Schedule C?
- Is the appellant eligible for the lift chair as a life threatening health need under s. 69?

**Issue 1.** Does the request for a Pride lift Chair and Pride pillow fall within the list of possible equipment of supplies in sections 3.1-3.8 and 3.12?

Regarding section 3.1, 3.2, 3.3, 3.4 the appellant has not requested a cane; a crutch; a walker; or an accessory to a cane, a crutch or a walker: a "wheelchair"; an upgraded component of a wheelchair; or an accessory attached to a wheelchair; a device to maintain a person's positioning in a wheelchair, a wheelchair seating system or an accessory to a wheelchair seating system; a scooter; an upgraded component of a scooter or an accessory attached to a scooter.

Regarding section 3.5, the minister can fund any of the following transfer and positioning aids as long as 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."

However, section 3.5 (0.1) states that:

"positioning chair" does not include a lift chair;

"transfer aid" means a transfer board, transfer belt or slider sheet.

The issue is whether a lift chair falls within the definition of positioning chair or transfer aid (which is medically essential to transfer from one position to another).

The evidence indicates that the appellant needs the lift chair both to lift her from a sit to stand position, often from a low chair and to elevate her legs to improve circulation and prevent further harm to her legs and feet on which she had surgery.

Her doctors and therapists all agree on the diagnosis which is that she is morbidly obese, suffers from rheumatoid arthritis, and Charcot foot, struggles with sit to stand and has insufficient leg and arm strength to transition from sit to stand.



The evidence is also that she used bed risers which are not safe, and that foam cushions and a handipole were trialed but did not work. Her sit to stand is made more difficult due to previous foot surgery, her physical status and overall decreased functioning. She relies on specific seating height surfaces in order to maintain independence with her transfers.

Her doctors and therapist, however, do not all agree on the type of device she needs. Their letters refer to different devices:

- The physiatrist's note dated September 12, 2014 states that the appellant needs a "sit to stand chair," to assist patient with rising from chair.
- The occupational therapist's letter dated September 4, 2014 requested a "powered transfer assist chair" to help her sit to stand.
- The physiatrist's note dated August 28, 2014 states that the appellant needs a "power-assisted transfer chair."
- The general practitioner's prescription dated August 1, 2014 said she needed a "positioning chair."

In addition, the panel notes that the quotation from the supplier is for a Pride Lift Chair and head pillow, not any other device. As well, the occupational therapist's letter stated that the lift chair that the appellant trialed is the only chair that will accommodate the appellant's weight and size.

As well, the appellant's request for reconsideration dated November 26, 2014 she states that she needs this particular lift chair: "I require this positioning device to transfer from my wheelchair to a sitting area. This is vital in order to stop the pain associated with adema and solving pressure from the past operation trauma."

In summary, although the ministry is permitted to fund a positioning chair pursuant to section 3.5 (1) (l), section 3.5 (0.1) specifically states that a positioning chair does not include a lift chair. Although the ministry is permitted to fund a transfer aid, pursuant to section 3.5 (1) (m), section 3.5 (0.1) specifically states that transfer aid is a transfer board, transfer belt or slider sheet – not a lift chair.

Regarding section 3.6, 3.7, 3.8 and 3.12 the appellant has not requested a hospital bed; an upgraded component of a hospital bed; an accessory attached to a hospital bed; or a positioning item on a hospital bed; a pressure relief mattress; a floor or ceiling lift device; a non-conventional glucose meter.

**Issue 2.** Does the request for a Pride lift Chair and Pride pillow fall within the list of medical supply in Schedule C section 2 and other sections in Schedule C?

Regarding s. 2 (1), 2 (a.1), 2 (a.2), 2.1 and 2.2 the appellant did not request medical or surgical supplies that are either disposable or reusable for the following purposes: wound care; ongoing bowel care required due to loss of muscle function; catheterization; incontinence; skin parasite care; limb circulation care; disposable or reusable lancets; needles and syringes; ventilator supplies required for the essential operation or sterilization of a ventilator; tracheostomy supplies; consumable supplies that are required to thicken food; optical supplements, or eye examination supplements.

Regarding the other sections referenced in the reconsideration decision the appellant did not request

any of the following: section 4 (dental), 4.1 (crown and bridgework), 5 (emergency dental supplements), 6 (diet supplements), 7 (MNS), 8 (natal supplements) and 9 (infant formula).

### **Issue 3. Is there a life threatening health need?**

Section 69 permits the Minister to provide health supplements including *medical equipment and devices* under of Schedule C, if the person is not otherwise eligible for the health supplement under this regulation, if the minister is satisfied that 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.”

In the reconsideration decision the ministry found that the appellant does not require a remedy under s. 69 as she is otherwise eligible under s. 62 and that s. 69 only allows for the provision of supplements set out in Schedule C, s. 2(1)(a) and (f) and s. 3 health supplements. The panel also notes that that there was no evidence in the appeal record or in the oral testimony relating to any life threatening health need.

In summary the evidence shows that:

- None of Schedule C, sections 3.1- 3.4 and 3.6-3.8 and 3.12 apply to the appellant’s circumstances since the appellant did not request any of these particular medical devices.
- Regarding Schedule C, section 3.5 (1) (l), although the ministry is permitted to fund a “positioning chair,” section 3.5 (0.1) specifically states that a positioning chair does not include a lift chair and the quotation the appellant provided was for a lift chair.
- Regarding Schedule C, section 3.5 (1) (m), although the ministry is permitted to fund a “transfer aid,” section 3.5 (0.1) specifically states that transfer aid is a transfer board, transfer belt or slider sheet, not a lift chair.
- None of the other sections of Schedule C apply since the appellant did not request any of these particular medical devices.

### **Conclusion**

Based on the evidence and above analysis of the legislation, the panel finds that the ministry’s reconsideration decision to deny the appellant’s request for funding for a Pride Lift Chair and Pride LC-524 pillow, as she did not meet the criteria set out in the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) , Schedule C and section 69, is reasonably supported by the evidence, and is a reasonable application of the applicable enactment in the circumstances of the appellant. Accordingly, the panel confirms the ministry’s reconsideration decision.