

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”) dated January 28, 2015 which held that the ministry was not able to approve the appellant’s request for a Rifton Pacer Gait Trainer (RPGT) because the appellant did not meet the eligibility requirements set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 69, and Schedule C sections 2(1)(a), 2(1)(c), 2(1.1), 2.1, 2.2, 3, 3.1 - 3.12, 4, 4.1, 5, 6, 7, 8, and 9.

PART D – Relevant Legislation

EAPWDR sections 62 and 69

EAPWDR Schedule C sections 2(1)(a), 2(1)(c), 2(1.1), 2.1, 2.2, 3, 3.1 to 3.12, 4, 4.1, 5, 6, 7, 8, and 9.

PART E – Summary of Facts

The documentary evidence before the ministry at reconsideration included the following:

1. A quote dated June 3, 2015 from a supplier of medical equipment for the purchase of a RPGT and attachments/accessories.
2. A *Medical Equipment Request and Justification* form submitted on behalf of the appellant by her Physical Therapist. It was signed and dated by the Physical Therapist on June 18, 2014 and describes the appellant's medical condition as "*Acquired brain injury, craniotomy, cortical visual impairment and gastro-esophageal reflux, and long QT – syndrome*". It was also signed by a physician (signature illegible) on July 7, 2014 who wrote "Rifton Pacer Gait Trainer K544 517C XL" in response to the question "What type of medical equipment is recommended?" Accompanying this form was a 4-page letter from the appellant's Physical Therapist (PT) that listed the appellant's equipment as follows (items not associated with basic mobility are not included):
 - Quickie Iris Wheelchair (tilt in space) with custom seating
 - Overhead Lift and 6-point sling
 - Easy-Stand Evolv
 - Rifton Pacer gait trainer –size large- on loan from (a rehabilitation facility) May 2014, will have to be returned Sept 2014 – quote for purchase has been obtained
 - Bilateral AFO's
 - Suitcase ramp
 - Wheelchair Accessible Vehicle (make/model)
 - BHM Junior folding floor lift.

The PT explained that the appellant experienced an anoxic brain injury secondary to cardiac arrest in August, 2009. She was in care facilities until May of 2010 when she returned home. Since that time she has been receiving rehabilitation and has made significant gains. Her family, caregivers and therapists have seen definite changes in her alertness and improvement in her motor skills. Additionally, her medications are being gradually reduced. The appellant can move her right leg independently, and is starting to be able to bear weight considerably on this side. She has the head and trunk strength to maintain a sitting position with stand-by supervision for at least 20 minutes, and to sit in her wheelchair for up to 4 hours. She has tolerated 1 hour pool sessions where she is quite active the majority of the time. This has been a . . . successful therapeutic activity for her, to the point that she is able to "walk" independently in chest deep water . . . her progress with hydrotherapy over several years has allowed her to progress to the point of successfully trialling a gait trainer. The appellant is moved between her bed, wheelchair, recliner, commode, and stander via overhead mechanical lift and 6-point universal sling. Recently, she has progressed her weight bearing ability to the point of being able to do a partial weight bearing pivot transfer with mod/max assistance from one helper who is familiar with her. This was previously a heavy two person transfer. If this is continued to be practiced it is very possible that this could become a reasonable or moderate assistance from one person. She has also been using the Easy Stand Evolv mechanical sit-to-stand stander for bilateral lower extremity weight bearing. Currently, she is standing over a 20-minute period. She has also been weight bearing to some extent in the pool, and most recently has been using a gait trainer at home. The PT describes the RPGT and states "(I)t is the minimal equipment necessary in this category to achieve a safe and satisfactory result". She adds that the appellant ". . . is doing quite well in the gait trainer; she is still taking a lot of weight via the seat, but is able to propel the device on her own, and is tolerating being in the gait trainer for periods of around 20 minutes. She concludes that the appellant ". . . has made great gains over the past five years and is continuing to make

strides and progress. In the first several years following her brain injury, (the appellant) was quite medically fragile, and also quite heavily medicated; as such her rehabilitation was limited by these factors. As (the appellant) has been able to tolerate medication decreases recently, she has been much more alert, and has had much more reserves of energy to make functional gains. It is the general feeling of her team that (the appellant) has not yet reached her rehabilitation potential. The gait trainer will allow her and her family to keep progressing her ambulatory status, and will ultimately help her to become more independent in her transfers, etc.”

3. A letter to the appellant from the ministry dated December 9, 2014 advising that the ministry has denied the appellant’s request for a RPGT.
4. The appellant’s *Request for Reconsideration* signed and dated January 13, 2015 that includes the following statement: *“This request was denied because it was not shown that the RPGT would be used for Functional Mobility. It was stated that it would improve (the appellant’s) weight bearing ability. This is partially correct; however with the continued use of the RPGT, (the appellant) would develop the physical strength to stand on her own and transfer more easily from bed to chair, without the constant use of an overhead lift. She does use the RPGT that was on loan from (a medical facility) to go on walks with other family members and care givers. Just with the short time she had a loan of the RPGT she can walk without assistance other than the RPGT up to approximately 1 km. She can also stand on her own with little support for short periods. Attached are three pictures showing (the appellant) in the RPGT using it for functional mobility and one showing the direct results of its use. Unfortunately there are no other means of physical therapy for (the appellant) as she was denied due to (a specified hospital’s) policies. I respectfully request that you review the materials and reconsider your decision. Thank you for your time. I look forward to your reply.”*

The appellant’s *Notice of Appeal* was signed and dated February 8, 2015 and listed the following reasons for appeal:

- *“Definition of gait trainer/walker by Wikipedia. (wikipedia is not a reliable source and can be edited.)*
- *I and others believe it is a piece of medical equipment and is funded as such by some health care insurances.*
- *There is a medical need for (the appellant) to use a Gait trainer as stated by her PT to progress her ambulatory status.*

Attached to the *Notice of Appeal* was a 4-page submission that included a statement of policy of one health care provider (Aetna). The submission describes “Medical Benefits” provided by the RPGT and presents “Business Cases” which argue that the RPGT can save on costly medical and surgical interventions that might otherwise be needed.

Prior to the hearing, the appellant submitted a *Release of Information* form authorizing her father and her mother as her representatives. In addition, she submitted a Representation Agreement form that listed her mother as her representative and her father as her alternate representative.

At the hearing, the appellant’s father (AF) reported that he had recently had a conversation with someone who had until recently been one of the appellant’s physical therapists. He learned that the ministry had contacted this individual and had a telephone conversation with him regarding the appellant and her needs. The AF noted that there was nothing in the appeal record concerning this

conversation. He also reported that the therapist allowed that he had not provided enough information in the written justification he provided in the appellant's request for the RPGT, to clearly establish the need for this equipment. He noted that the appellant is trapped in a wheelchair and she wants to regain (as much as possible of) the function she had before her acquired brain injury (ABI). The appellant has progressed so far with the use of the RPGT that she is now able to walk 1.67 kilometers in it. As a consequence of its use, the appellant has regained more regular functioning including more regular elimination. In addition, for some time after the ABI, she was mute but she has regained an ability to vocalize. The appellant's gains in ambulatory status have been significant and this has led to her requiring far fewer medications. Accordingly, she is now much more alert and has greater cognitive abilities.

In response to a question from the panel, the AF confirmed that the RPGT would provide stability, balance and support for the appellant in ambulating. In response to another question, the AF indicated that the RPGT does not allow the appellant to go to places that cannot be reached with the wheelchair. He explained that the RPGT is lighter and more mobile than the wheelchair but its size is not smaller than the dimensions of the wheelchair. The AF added that there is one way in which the RPGT has provided enhanced mobility and function for the appellant. Since her ABI she has required a lift and crane to transfer from the wheelchair to the bed and vice versa. But due to her progress since using the RPGT she is now sometimes able to sit on the side of the bed and move from the bed to the wheelchair or to the RPGT, with the assistance of (just) one person, but without the need for the lift.

The AF explained that the wheelchair does provide basic mobility in some situations where the RPGT would not work as effectively such as on rough terrain or on beaches. In response to a question from the panel, the AF concluded that the appellant would not be able to use a "regular" walker.

The ministry representative stated that she had consulted with the ministry's Supervisor of Medical Equipment on the matter of whether the RPGT was a "walker". She reported that they had concluded that ". . . they had no problem calling it a walker" and that it was "OK to call it (the RPGT) a walker". She noted that the essential issue in this appeal centers around the interpretation of the phrase ". . . medically essential to achieve or maintain basic mobility". She explained that the ministry considers basic mobility to be getting from point A to point B. The ministry does not deny that the appellant has had a clear and significant benefit from the use of the RPGT but that is not what the legislation covers. She noted that there are occasions in which an individual on disability assistance may be funded to receive and use two pieces of equipment as mobility aides – although she indicated that this is rare – but where a wheelchair is not meeting the person's need to get from A to B then a second device such as a scooter might be provided. She stated that the legislation doesn't deal with rehabilitation. In some cases, she noted the equipment provided for basic mobility might be a more expensive option than another mobility aid but if the more expensive option meets the eligibility requirement and the less expensive option does not then the more expensive option will be chosen. She concluded by stating that she felt the reconsideration decision wasn't clear enough on the reasons that the RPGT was denied. It was not clearly explained.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant's request for a Rifton Pacer Gait Trainer 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 appellant did not meet the criteria set out in the EAPWDR?

The relevant legislation is as follows:

From the EAPWDR:

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).

Schedule C Health Supplements

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 H |
| 2 | chiropractic | chiropractor | College of Chiropractors of British Columbia under th |
| 3 | massage therapy | massage therapist | College of Massage Therapists of British Columbia u |
| 4 | naturopathy | naturopath | College of Naturopathic Physicians of British Colum |
| 5 | non-surgical podiatry | podiatrist | College of Podiatric Surgeons of British Columbia ur |
| 6 | physical therapy | physical therapist | College of Physical Therapists of British Columbia u |

(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.

2.1 Optical supplements

2.2 Eye examination supplements

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.

3.2 Medical equipment and devices — wheelchairs

(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.

3.3 Medical equipment and devices — wheelchair seating systems

3.4 Medical equipment and devices — scooters

3.5 Medical equipment and devices — toileting, transfers and positioning aids

3.6 Medical equipment and devices — hospital bed

3.7 Medical equipment and devices — pressure relief mattresses

3.8 Medical equipment and devices — floor or ceiling lift devices

3.9 Medical equipment and devices — breathing devices

3.10 Medical equipment and devices — orthoses

3.11 Medical equipment and devices — hearing instruments

3.12 Medical equipment and devices — non-conventional glucose meters

4. Dental supplements

4.1 Crown and bridgework supplement

5. Emergency dental supplements
6. Diet supplements
7. Monthly nutritional supplement
8. Natal supplement
9. Infant formula

The Appellant's Position

The AF stated that while it is true that the appellant has a wheelchair, he argued that nowhere in the legislation does it specify that a recipient of disability assistance cannot have more than one device in support of meeting basic mobility needs. He argued that the appellant has a medical need for the RPGT since it contributes to a healthy heart in addition to numerous other significant physical improvements in the appellant's condition. The statement of "Medical Benefits" in the 4-page submission accompanying the *Notice of Appeal* also reported that being upright and mobile (in the RPGT) improves respiration, digestion, circulation, bowel/bladder function, and bone development. The AF explained that he had also included in the material submitted to the ministry, a business case which he argued demonstrates that the ministry could reasonably expect to save money by providing the appellant with the requested RPGT, since over the expected lifetime of the appellant the costs of replacement wheelchairs could be significantly reduced and the savings would more than cover the cost of the RPGT.

The AF concluded by noting that the *Reconsideration Decision* had stated that the RPGT was not medically essential for the appellant. He challenged this conclusion by arguing that a doctor had specified the RPGT as recommended for the appellant.

The Ministry's Position

The *Reconsideration Decision* confirmed that as a recipient of disability assistance, the appellant is eligible to receive the health supplements set out in the EAWPDR. The ministry reviewed each category of Section C of the EAPWDR under which the appellant might qualify for the RPGT and the ministry concluded the following:

- the RPGT does not qualify as medical equipment. The ministry considered whether the RPGT could be defined as a walker but concluded that it could not since in the ministry's view " . . . the gait trainer is a device intended for rehabilitation and to train individuals to walk, A walker is for support, stability and balance, not to train for ambulation". Nonetheless, as noted previously, at the hearing the ministry allowed that the RPGT was considered to be a walker. The *Reconsideration Decision* also stated that even if a gait walker is defined as a piece of medical equipment, the minister is not satisfied that the physical therapist confirms the *medical need* for the gait trainer as her other medical equipment enables her to mobilize. The minister is not satisfied that a RPGT is medically essential to achieve or maintain basic mobility. Accordingly, even if the RPGT is considered to be a walker it does not meet the criteria to qualify under section 3(2)(b) and 3.1(1) of Schedule C of the EAPWDR as medical equipment and devices;

- The RPGT does not qualify as a medical or surgical supply. It is not a supply required for wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care, or limb circulation care. Additionally, the RPGT is not lancets, needles and syringes, ventilator supplies required for the essential operation or sterilization of a ventilator, or tracheotomy supplies. Also, the RPGT is not nutritional supplements, food, vitamins, minerals, or prescription medications. Section 2(1.1) sets out that for the purposes of subsection (1)(a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

Accordingly, the RPGT does not qualify as medical supplies under section 2(1) of Schedule C of the EAPWDR as medical equipment and devices;

- The RPGT does not qualify as therapy. It is not acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, or physical therapy. Accordingly, the RPGT does not qualify as therapy under section 2(1)(c) of Schedule C of the EAPWDR;

- the RPGT does not qualify as optical supplements, eye examination supplements, wheelchairs, wheelchair seating systems, scooters, bathing and toileting aids, hospital bed, pressure relief mattresses, floor or ceiling lift devices, breathing devices, orthoses, hearing instruments, non-conventional glucose meters, dental supplements, crown and bridgework supplement, emergency dental supplements, diet supplements, monthly nutritional supplement, or natal supplement..

Accordingly, the RPGT does not qualify under sections 2.1, 2.2, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 4, 4.1, 5, 6, 7, 8, or 9 of Schedule C of the EAPWDR.

Finally, the ministry considered whether the appellant qualified for the RPGT under section 69 of the EAPWDR. The ministry concluded that there was no evidence to establish that the appellant faced a direct and *imminent* life threatening health need for the RPGT. As the appellant did not satisfy the criteria for section 69 of the EAPWDR she was not eligible for the RPGT under this legislation.

The ministry accepts that the appellant has clearly enjoyed significant benefits from the use of the RPGT but argued that the legislation does not address the issue of rehabilitation – only basic mobility.

The ministry concluded that while sympathetic with the appellant's case, a review of all categories of health supplements set out in Section C of the EAPWDR determined that the appellant's request for an RPGT did not meet the legislated criteria set out in the EAPWDR.

Panel Decision

The panel examined the ministry's arguments regarding the appellant's eligibility for the medical equipment and supplies listed under sections 2(1)(a), 2(1)(c), 2(1.1), 2.1, 2.2, 3.2 – 3.12, 4, 4.1, 5, 6, 7, 8, and 9 of Schedule C of the EAPWDR. The panel also noted that no evidence was presented by the appellant that indicated that the appellant considered the RPGT as qualifying under any section of Schedule C of the EAPWDR other than section 3.1. Accordingly, the panel concluded that the ministry had reasonably determined that the RPGT did not qualify as any of the items listed in those sections identified by the ministry.

Additionally, the panel noted that no evidence had been presented by the appellant to establish that she faced a direct and imminent life-threatening need for the RPGT. Accordingly, the panel concluded that the ministry reasonably determined that the appellant did not qualify for the RPGT under section 69 of the EAPWDR.

A central argument advanced by the ministry in the *Reconsideration Decision* concerned the contrast between the definitions and functions of a walker and that of the RPGT. At the hearing, the ministry allowed that the RPGT was a "walker" so the panel set aside the contrasting definitions and focused upon the contrasting functions outlined by the ministry. The minister cited the definition of gait trainer from Wikipedia and noted that it " . . . assists a person who is unable to walk independently to learn or relearn to walk safely and efficiently as part of gait training. Gait trainers are intended . . . to provide the opportunity to improve walking ability. A gait trainer offers both unweighting support and postural

alignment to enable gait practice. It functions as a support walker and provides more assistance for balance and weight-bearing than does a traditional rollator walker, or a walker with platform attachments. It also provides opportunities to stand and to bear weight in a safe, supported position. “ In the light of this functional description, the ministry concluded that the gait trainer (RPGT) is a device intended for rehabilitation and to train individuals to walk. By contrast, the ministry concluded that a walker is for support, stability, and balance, not to train for ambulation. But the panel finds this contrast to be unreasonable and unsupportable. Walkers do have a rehabilitative capacity and are used as rehabilitative devices by some people in some circumstances. For example, a person receiving a knee replacement as a result of arthritis will typically employ the use of a wheelchair for basic mobility when leaving the hospital. This is usually followed by the use of a walker for purposes of balance and basic mobility and for strengthening muscles weakened through both the disuse and surgery. The next step in the continuum is typically a combination of a walker, crutches and the use of a cane before being able to resume walking unaided. While the ultimate goal is for the person to resume walking unaided, this may not always occur. Accordingly, the ministry’s assertion that a walker is not a piece of equipment used for rehabilitation is not a reasonable conclusion in the view of the panel. Consequently, since the ministry has agreed that the RPGT can be considered a walker insofar as the definitions of a walker and the RPGT are concerned, and the panel has rejected the ministry’s contention that there is a significant difference between the functions of a walker and the RPG, the panel concludes that the ministry unreasonably determined that the RPGT is not a walker.

The panel noted that both the AF and the PT emphasized the significant gains that the appellant has made in the last few years in terms of her rehabilitation. The panel also noted however, that whereas the AF gave significant credit to the use of the RPGT in contributing to these gains, the PT was less clear in describing the benefits attributable to the RPGT. In the 4-page letter dated June 18, 2014 which she provided with the *Medical Equipment Request and Justification* form, she included mention of the use of the RPGT, but also cited the benefits derived from weekly swimming sessions and hydrotherapy, as well as physical therapy sessions at home. Accordingly, this evidence does not clearly establish the contribution(s) made by the RPGT toward the rehabilitation gains and therefore does not satisfy the criterion in section 3(2)(b) of Schedule C of the EAPWDR. The Request for Reconsideration form appears to have been written by the PT (but this is not certain). In it, the writer states that “Just with the short time she had a loan of the Rifton Gait Trainer, she can walk without assistance other than the Rifton Gait Trainer up to approximately 1 km.”

The ministry argued that the legislation does not explicitly identify rehabilitation as a criterion for the provision of medical equipment and devices. The panel accepts that this is a reasonable conclusion. Section 3.1(1) of Schedule C of the EAPWDR provides that a walker is a health supplement if the minister is satisfied that the walker is “. . . medically essential to achieve or maintain basic mobility”. This is the critical test. The ministry argues that the wheelchair alone meets the appellant’s needs for basic mobility – it allows her to get from point A to point B. The AF does not accept this view, but did allow in his oral testimony that the wheelchair provided basic mobility for the appellant in situations where the RPGT would not – such as on rough terrain or at a beach. The AF argued that the legislation does not disallow the provision of two pieces of equipment (or more) such as a wheelchair and the RPGT. The panel accepts that this is true but according to the wording of the legislation both pieces of equipment must be needed in order to provide basic mobility. If one piece of equipment is sufficient to provide basic mobility then the other piece of equipment is not necessary, and is thereby not allowed. The panel concludes that the ministry reasonably determined that the wheelchair alone met the basic mobility needs of the appellant.

The AF also provided a business case to argue that the ministry could save money on the lifetime costs that could be estimated for the appellant making certain assumptions regarding the appellant's life span, the number of wheelchairs that would be required were she to have such a lifespan and the cost of wheelchairs. Section 3 (1)(b)(iii) does specify that the medical equipment and devices provided by the minister are to be the least expensive appropriate medical equipment or device. But the ministry did not deny on this basis and the AF's cost saving argument does not address the criteria at issue.

In summary, the panel evidence is that the continued use of the RPGT by the appellant can reasonably be expected to contribute to increased function and capacity by the appellant and that it seems possible that such gains would be forfeit if the appellant does not have access to the continued use of the RPGT. Nonetheless, the legislative test for the provision of the RPGT is not related to rehabilitation outcomes or needs – it deals with achieving or maintaining basic mobility. Accordingly, the panel concludes that the ministry reasonably determined that the appellant did not meet the legislated criteria set out in the EAPWDR for an RPGT.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for a Rifton Pacer Gait Trainer was a reasonable application of the legislation in the circumstances of the appellant.

The panel therefore confirms the ministry decision.