

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the "ministry") reconsideration decision dated June 24, 2015, denying the appellant's request for a Roho Cushion because a cushion is an ineligible item if not part of a wheelchair seating system.

However, the ministry found that the information provided did not establish that the eligibility criteria defined in EAPWDR Schedule C sections 2(1)(a), 2(1)(a.1) for medical or surgical supplies were met, or that the cushion met the criteria for medical equipment and devices as set out in Schedule C, sections 3 and 3.1 to 3.12. The cushion did not meet the criteria as a therapy pursuant to sections 2(1)(c), 2(2) and 2(2.1), or as one of the remaining health supplements as set out in sections 2.1, 2.2, 4, 5, 6, 7, 8 and 9.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulations (EAPWDR), Section 62 and Schedule C, Sections 2, 3, 4, 5, 6, 7, 8 and 9.

PART E – Summary of Facts

At reconsideration, the information before the ministry included the following:

- March 31, 2015 – a letter from the appellant’s occupational therapist recommending that a High Profile Roho Cushion be provided for the appellant because it will allow her to be seated without excessive pressure on her bottom. The therapist stated that the appellant has a history of rectal cancer with bony metastasis as well as hypertension and thyroid cancer. She recently had surgery to remove her sacrum and coccyx as well as part of her lower bowel, resulting in needing a colostomy. Because of numbness as well as her reconstructed anatomy, the appellant is at high risk for pressure areas on her bottom and ischial tuberosities and has a history of wounds in that area. She has been using a High Profile Roho cushion from the Red Cross to help relieve the pressure but requires one of her own. A quote from a medical equipment supply company dated March 26, 2015 was attached to the letter, indicating a price of \$518.32 for a Roho Cushion.
- April 17, 2015 – a Medical Equipment Request and Justification form completed by a medical practitioner in which the appellant’s condition is described as “Metastatic rectal cancer recovering from surgery involving sacral removal of involved sacrum” and recommending a Roho Cushion.
- May 5, 2015 – the appellant submitted a request for a Roho Cushion.
- June 3, 2015 – a second letter from the appellant’s occupational therapist in which the content of the March 31, 2015 letter is duplicated and an additional statement is added that the appellant uses the cushion in a manual wheelchair when she is unable to mobilize without a wheelchair.
- June 4, 2015 – a letter from the appellant’s physician certifying that the appellant would benefit from a Roho pillow for sitting due to previous surgeries including extensive sacral surgery complicated by infections.
- June 8, 2015 – the ministry denied the request for a Roho Cushion.
- June 15, 2015 – a letter from the appellant’s neurosurgeon stating that the appellant was referred to him on April 28, 2014 for evaluation of a coccygeal mass and on December 1, 2014, she underwent an enbloc resection of her sacrum which has left her without sacral support and peri-anal sensory loss, putting her at risk for pressure sores. He stated that the appellant has been using a Roho cushion for several months and feels it has been beneficial to her posterior region. Due to the appellant’s lack of sacral support and the high risk of pressure sores he feels that the Roho cushion is beneficial and supports her request.
- June 15, 2015 – a letter from the appellant submitted with her Request for Reconsideration in which she stated that she requires a Hi-Profile Roho cushion for the following reasons:
 1. It allows [her] to be able to sit in a manual wheelchair when medically necessary;
 2. It protects [her] posterior from extensive pressure when seated.
 - a) In November 2014, [she] had surgery to remove her coccyx and part of her sacrum, up to level S2 on her right side.
 - b) A post-surgical infection in January 2015 required further surgery to drain the infection and to remove a moderate amount of gluteal muscle. Plastic surgery was required to create a gluteal muscle flap to close the wound. Because of multiple surgeries to the posterior sacral area, [she is] prone to increased pressure problems due to lack of skin sensation and irregular sacral bone surface for sitting.
 - c) [She has] lost sensation in [her] lower pelvis, seated area, due to the removal of sacral nerves in the first surgery. This has resulted in a recent hospitalization for

pain control when [she] sat for an extended period and did not sense the pressure on [her] altered sacrum.

On July 6, 2015 the appellant submitted a Notice of Appeal in which she stated she disagrees with the ministry's decision not to grant her a High Profile Roho Cushion because the Roho Cushion is a necessary medical equipment device for her condition and therefore she asks the ministry to reconsider her case.

At the hearing, the appellant was accompanied by a consulting occupational therapist whom she has known for more than 15 years and from whom she seeks advice once or twice monthly. The appellant stated that she has spent little time with the home care occupational therapist (who provided the letters) and relies upon the consulting therapist for help.

The therapist stated that she has seen the appellant in a variety of environments including home care and acute care. She knows the nature of the appellant's surgery and has seen the surgical site.

The panel considered the therapist to be an expert witness for this hearing.

The witness testified that she disagrees with the definition of the cushion as seating. She stated that in 2010 the ministry changed its definition of seating which meant that a Roho Cushion could only be provided when a person is in a wheelchair. She further stated that 'sitting is sitting' and it shouldn't matter where the cushion is used as long as it is used for sitting.

She explained that normally a person would sit on their coccyx sacrum. However, when that part of the spine is removed the boney structure is uneven and the seating position changes. In the case of the appellant, she has also lost sensation in the area as a result of plastic surgery and when seated, she is unable to feel the pressure of sitting which causes pressure sores. Uneven pressure on the sacroiliac joint (coccyx and sacrum) can also cause sciatica.

The witness further explained that a Roho Cushion is air-filled so that uneven boney parts are not riding on a hard surface. It is the only cushion that can relieve pressure and reduce sores – a simple solution to prevent hospitalization, pain and costly medications.

When asked by the panel if the Roho Cushion is used for positioning in a wheelchair, the witness stated that although it can be manipulated for that purpose, it is a pressure relieving device.

The appellant provided further details which corroborated her previous written testimony.

She explained that she is currently using a cushion on loan thanks to the goodness of a non-profit society. When they need it back, she could once again end up in hospital. Even with the cushion she can end up in hospital. For example, she spent several hours sitting on a Roho Cushion while driving but still ended up being unable to walk and taken to hospital as a result of the inflammation.

The appellant stated that she does not have indefinite use of the cushion on loan. The society has very few cushions and she will have to return the cushion when it is needed for a higher priority case – for example, someone coming out of hospital. Cushions are loaned for a limited period of time, typically a maximum of three months. An exception is when an individual is diagnosed with a terminal

illness. The appellant stated that her cancer was originally diagnosed as being terminal and she has had extended use of the cushion. However, she believes she is no longer terminal and should this be confirmed, she will have to return the cushion.

The panel referred to the letter dated June 3 from the occupational therapist in which is stated the appellant "uses the cushion in a manual wheelchair when she is unable to mobilize without a wheelchair." The panel asked the appellant to describe her need for and use of a wheelchair. She explained that she uses a wheelchair when she first comes out of hospital but normally uses a walker and cane to get around. However, she said it would be great to have her own chair in case she wanted to use it.

The ministry relied on its reconsideration decision and summarized its position. The ministry representative stated that she understands the ministry does not want to deny the appellant the Roho Cushion; however it is not part of a wheelchair system and is not listed anywhere as an item that the ministry is authorized to approve.

The appellant responded, stating that she understands the legislation does not accommodate her need but she submitted her appeal and appeared at the hearing because she feels that she needs to bring attention to the fact that she and no doubt many others suffer as a result of the wording in the legislation.

The appellant and her witness questioned the ministry about whether the notes from such a hearing are ever read and taken into consideration with respect to recommending changes to legislation. The ministry stated that decisions are read and notes made for future recommendations for changes. The ministry representative suggested that the appellant could contact her MLA. She also suggested researching other social service agencies to see if they could assist with the purchase of a cushion.

In accordance with Section 22(4)(b) of the Employment and Assistance Act, the panel admitted the oral submissions from the appellant and witness as testimony corroborating and therefore in support of the information that was before the minister at reconsideration.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's reconsideration decision denying the appellant's request for a Roho Cushion. The ministry found that the information provided did not establish that the eligibility criteria defined in EAPWDR Schedule C sections 2(1)(a), 2(1)(a.1) for medical or surgical supplies were met, or that the cushion met the criteria for medical equipment and devices as set out in Schedule C, sections 3 and 3.1 to 3.12. The cushion did not meet the criteria as a therapy pursuant to sections 2(1)(c), 2(2) and 2(2.1), or as one of the remaining health supplements as set out in sections 2.1, 2.2, 4, 5, 6, 7, 8 and 9.

Pursuant to Section 62 of the EAPWDR, the minister may provide any health supplement set out in Section 2 [general health supplements] or Section 3 [medical equipment and devices] of Schedule C to or for a family unit if the person is a recipient of disability. In this case, the ministry has found that the requirement of Section 62 has been met as the appellant is a recipient of disability assistance.

Relevant legislation is as follows:

General health supplements

(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,

Schedule C

General health supplements

2 (1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation:

(a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:

- (i) the supplies are required for one of the following purposes:
- (A) wound care;
 - (B) ongoing bowel care required due to loss of muscle function;
 - (C) catheterization;
 - (D) incontinence;
 - (E) skin parasite care;
 - (F) limb circulation care;

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.

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.

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.

Medical equipment and devices – bathing and toileting aids

3.5 (0.1) In this section:

“positioning chair” does not include a lift chair;

“transfer aid” means a transfer board, transfer belt or slider sheet.

(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 – 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.

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 ministry's position**Medical or surgical supplies, EAPDWR Schedule C, Section 2(1)**

The ministry's position is that it is not authorized to approve the appellant's request for a Roho Cushion because it is not a medical or surgical supply that is disposable or reusable and required for one of the purposes specified in Schedule C, Subsection 2(1)(a): wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care, or limb circulation care. The ministry also finds that Roho Cushions are not lancets, needles and syringes, ventilator supplies or tracheostomy supplies as specified in Schedule C, Subsection 2(1)(a)(i).

A Roho Cushion does not meet the criteria as a therapy. Schedule C, Subsections 2(1)(c), 2(2) and 2(2.1) set out that the ministry may provide no more than 12 visits per calendar year for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physical therapy treatments. The ministry argues that a Roho Cushion is not one of these. In addition, the ministry finds that the information provided does not establish the other legislated criteria set out in these sections for this health supplement have been met.

A Roho Cushion does not meet the criteria for health supplements as set out in Sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, and 9: optical supplements, eye examination supplements, dental supplements, crown and bridgework supplements, emergency dental supplements, diet supplements, monthly nutritional supplements, natal supplements and infant formula.

In addition, the ministry finds that the information provided does not establish the other legislated criteria set out in these sections for each of these health supplements have been met.

Medical equipment and devices, EAPDWR Schedule C, Sections 3 and 3.1 to 3.12

The ministry's position is that it is not authorized to approve the appellant's request for a Roho Cushion because a cushion is not medical equipment or a medical device as provided by Section 3 and 3.1 to 3.12. In particular, Section 3.1 sets out that the ministry may provide wheelchair seating systems if the minister is satisfied that the item is medically essential to achieve or maintain a person's positioning in a wheelchair. The ministry argues that the information provided does not demonstrate that the appellant requires the item requested for achieving or maintaining positioning in

a wheelchair.

Section 3.5 identified items the ministry may provide to achieve or maintain a person's positioning including a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility. The ministry argues that information has not been provided to demonstrate that the appellant requires a wheelchair to achieve or maintain basic mobility or that the item requested is required to achieve or maintain positioning.

Subsection 3.7(1) sets out that the ministry may provide a pressure relief mattress if the minister is satisfied that the pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity. The ministry argues that although the item requested may be required for these purposes, it is not a mattress for sleeping but a cushion for sitting.

In addition the ministry finds that the information provided does not establish the other legislated criteria set out in these sections for each of the health supplements have been met.

The ministry finds that a Roho Cushion is not an item set out in any of the other sections of the EAPWDR Section C.

The appellant's position

The appellant argued that a Roho Cushion is a necessary medical equipment device for her condition. She stated that the legislation seems arbitrary; that to her and many others the legislation does not address their needs.

She stated that she is shocked that a person in her situation who needs custom seating to relieve possible hospitalization and pain cannot receive this cushion because of wording in the legislation. She referred to a statement in the conclusion of the Reconsideration Decision: "The ministry is sympathetic with the circumstances of your case and has reviewed all the categories of health supplements set out in the EAPWD Regulation, Schedule C to determine if your request could be accommodated. The ministry also acknowledges that you would benefit from the item requested."

Panel decision

Under Section 62 (1)(a) of the EAPWDR, the ministry may provide a health supplement to a person who is eligible for disability assistance, such as the appellant, if the applicable requirements in the regulation are satisfied.

The panel notes that the ministry reviewed all of the categories of health supplements set out in the EAPWD Regulation, Schedule C to determine if the appellant's request could be accommodated. The panel also recognizes that the ministry acknowledges that the appellant would benefit from the requested Roho Cushion.

The panel finds that the item requested is not listed and does not meet the eligibility criteria defined in EAPWDR Schedule C sections 2(1)(a), 2(1)(a.1) for medical or surgical supplies nor does it meet the criteria for medical equipment and devices as set out in Schedule C, sections 3 and 3.1 to 3.12, nor any of the other criteria listed in Sections 4,5,6,7,8 or 9.

Section 2(1)(a) sets out that the ministry may provide either disposable or reusable medical or surgical supplies if they are required for wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care and limb circulation care. There is no information provided to demonstrate that the item requested is a disposable or reusable medical or surgical supply. There is no information provided to demonstrate that the item requested is required for one of the purposes set out in Section 2(1)(a)(i) such as bandages, dressings, skin ulcer products, gel pads, protectors, burn garments, etc.

Schedule C Section 3 sets out the general requirements for all equipment and devices. Sections 3.1 to 3.12 set out the specific eligibility requirements for each category. Sections of particular relevance are 3.3(1), 3.5 and 3.7.

As per Section 3.3(1), the ministry is authorized to provide wheelchair seating systems if the minister is satisfied that the item is medically essential to achieve or maintain a person's positioning in a wheelchair. The information provided does not demonstrate that the appellant requires the cushion for achieving or maintaining positioning in a wheelchair.

As per Section 3.5 the ministry may provide a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility. Information is not provided to demonstrate that the appellant requires a wheelchair to achieve or maintain basic mobility or that the cushion is required to achieve or maintain positioning.

As per Section 3.7 the ministry may provide a pressure relief mattress if the minister is satisfied that the pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity. Although the Roho Cushion may be required for these purposes, it is not a mattress for sleeping but a cushion for sitting.

Schedule C, Sections 4, 5, 6, 7, 8, and 9 authorize the ministry to provide supplements as follows: Section 4: Dental supplements and crown and bridgework supplements; Section 5: Emergency dental supplements; Section 6: Diet supplements; Section 7: Natal supplements; Section 9: Infant formula. Information is not provided to demonstrate that the item requested meets the legislated criteria for these supplements.

In conclusion, the panel finds that the ministry's denial of the appellant's request for a crisis supplement for a Roho Cushion was a reasonable application of the legislation in the appellant's circumstances and confirms the ministry's reconsideration decision.