

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of July 6, 2015, which denied the appellant’s request for a portable lift device on the basis that it was not an eligible item under Schedule C of the *Employment and Assistance for Persons With Disabilities Regulation* (“EAPWDR”).

**PART D – Relevant Legislation**

EAPWDR, section 62 and 69 and Schedule C

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- Quote from an equipment provider dated January 5, 2015 for the cost of a portable lift of \$3,759.06 with prescription for portable lift dated January 23, 2015
- Medical Equipment Request and Justification form dated January 23, 2015 indicating that the appellant has cerebral palsy and would benefit from a portable lift
- Medical Equipment Request and Justification form dated February 2, 2015 indicating that the appellant needs a portable lift to enable support worker to safely transfer him from wheelchair onto other surfaces such as bed or change table for increased access to home and community services
- Letter from a physiotherapist dated March 2, 2015 indicating that the appellant is keen to exercise and participate in community activities but is limited in his ability to participate because of his physical needs. The physiotherapist confirms that he is completely dependent in all areas of his activities of daily living (DLA), needs assistance for all bed mobility, is unable to sit independently, has decreased head control and needs significant postural support. The physiotherapist states that because of his size and muscle weakness he is very difficult to transfer and his care aids are unable to transfer him. He has a ceiling lift at home in his room and bathroom but it limits his transfers to those areas. The physiotherapist states that a portable lift would increase the quality of his life and allow him to participate in more home and community based activities to help improve his strength and maintain his range of motion. The physiotherapist states that exercise is vital to maintain quality of life and decrease pain related issues especially in the population of people with disabilities who are confined to their chair for a large part of the day.
- Request for Reconsideration dated June 9, 2015
- Letter from the appellant dated June 21, 2015 stating that he is an adult with cerebral palsy, is profoundly physically disabled, confined to a wheelchair and unable to move to care for himself or leave his wheelchair without the use of a lifting device. The appellant has a ceiling track lift that assists him with transfers in his bedroom and bathroom but he is seeking a portable lift device to access other areas of his home and in the community. The appellant states that the portable lift device is a medical necessity that will improve his independence and quality of his life.
- Letter from the appellant's advocate dated June 24, 2015 stating that the appellant should receive the requested floor to ceiling lift because the first lift he has is not adequate and the appellant should not be confined to his room or bathroom.

In his Notice of Appeal the appellant states that he disagrees that his current lift is sufficient.

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant funding for a portable lift 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 portable lift is not an eligible item under EAPWDR section 62 or 69 or Schedule C?

The relevant legislation is as follows:

### 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 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 3.11, other than paragraph (a) of section 3 (1).
- (B.C. Reg. 61/2010) (B.C. Reg. 197/2012)

### EAPWDR Schedule C

#### General 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 <i>Hea</i>
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia und
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia unde
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia und

(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.

### **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 3.11 of this Schedule are the health supplements that may be provided by the minister if ...

### **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.

### **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 – scooters**

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

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

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

### **Medical equipment and devices – bathing and toileting aids**

**3.5** (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 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;
- (j) a portable commode chair.

### **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 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.

### **Medical equipment and devices – pressure relief mattresses**

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

skin integrity.

### **Medical equipment and devices – floor or ceiling lift devices**

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

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

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

### **Medical equipment and devices – positive airway pressure devices**

**3.9** (1) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (2) of this section are met:

- (a) a positive airway pressure device;
- (b) an accessory that is required to operate a positive airway pressure device;
- (c) a supply that is required to operate a positive airway pressure device.

### **Medical equipment and devices – orthoses**

**3.10** (1) In this section:

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

"**orthosis**" means

- (a) a custom-made or off-the-shelf foot orthotic;
- (b) custom-made footwear;
- (c) a permanent modification to footwear;
- (d) off-the-shelf footwear required for the purpose set out in subsection (4.1) (a);
- (e) off-the-shelf orthopaedic footwear;
- (f) an ankle brace;
- (g) an ankle-foot orthosis;
- (h) a knee-ankle-foot orthosis;
- (i) a knee brace;
- (j) a hip brace;
- (k) an upper extremity brace;
- (l) a cranial helmet used for the purposes set out in subsection (7);
- (m) a torso or spine brace.

### **Medical equipment and devices – hearing instruments**

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

- (a) the hearing instrument is prescribed by an audiologist or hearing instrument practitioner, and
- (b) an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument.

**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.

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The appellant's position is that although he has a ceiling track that provides for lifts in his bedroom and bathroom, a portable lift is a medical necessity to allow for transfers in others areas of his home and the community. The appellant is profoundly physically disabled with cerebral palsy, confined to a wheelchair and requires assistance with all transfers and DLA. The appellant states that he suffers hardship because without a portable lift he is unable to participate in a wide range of typical and even essential DLA such as sitting and relaxing on the living room couch, or, when outside his home, moving to a therapy table for physiotherapy or other treatment. The appellant questions the quality of his life as he is not able to pursue any relevant activities that will maintain his health and make living more enjoyable. The appellant states that his independence is severely limited because without the portable life he cannot gain access to essential community services.

The appellant's advocate and physiotherapist strongly support the portable lift to enhance the appellant's quality of life and allow him to participate in more exercise and community activities.

In particular, the advocate refers to a statement made by the ministry that "*This ministry is dedicated to helping British Columbians in need become more self-sufficient by supporting our most vulnerable citizens, giving families the tools to participate more fully in their communities and helping people become more independent*". The advocate states that this case involves the very core of this quote as the new lift will promote the appellant's independence by allowing him to access the community and socialize with his family by sitting with them in the family room. The advocate states that the appellant should not be confined by restrictive legislation that only allows him a lift for the bedroom and bathroom. The advocate requests that the ministry reconsider this decision on humanitarian grounds.

The ministry's position is that as the appellant is a recipient of disability assistance he is eligible to receive health supplements provided under section 67 and Schedule C of the EAPWDR. However, the ministry's position is that the appellant is not eligible for a portable lift as a medical equipment and device as it does not meet the eligibility criteria set out in the legislation. While EAPWDR Schedule C, section 3.8(1) and (2) provides that a 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 and is medically essential to facilitate transfers of a person in a bedroom or a bathroom. The ministry states that there is no discretion in the legislation to approve a floor to ceiling lift device in a living room or for a portable lift device for community use.



The ministry's position is that the portable lift is not an item set out in the EAPWDR sections 3.1 to 3.12 as it is not a cane, crutch, walker, wheelchair, wheelchair seating system, scooter, defined mobility aid, hospital bed, pressure relief mattress, positive airway pressure device, foot orthotic, hearing instrument or non-convention glucose meter.

The ministry's position is that the appellant is not eligible for a portable lift as a medical supply pursuant to EAPWDR section 2(1)(a)(A-F) as it is not an item required for wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care or limb circulation care.

The ministry found that the portable lift does not meet the requirements for a medical or surgical supply as set out in Schedule C section 2(1)(a.1) as it is not a lancet, needle and syringe, ventilator supplies or tracheostomy supplies. As a portable lift is not a consumable medical supply that is required to thicken food or is required in relation to consumable medical supplies it does not qualify as a medical supply under EAPWDR Schedule C section 2(1)(a.2).

The ministry also states that the portable lift does not meet the criteria as a therapy under EAPWDR Schedule C, sections 2(1)(c), 2(2) or 2(2.1) as it is not acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry or physiotherapy treatment.

The ministry also states that a portable lift does not meet the criteria as one of the other remaining health supplements set out in EAPWDR Schedule C, sections 2(1), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 or 9 as it is not a dental supplement, crown and bridgework supplement, emergency dental supplement, diet supplement, monthly nutritional supplement, natal supplement or infant formula.

The ministry's position is that the portable lift is not a disposable or reusable medical or surgical supply, it is not directly required for one of the purposes set out in EAPWDR Schedule C, section 2(1)(a)(i), information is not submitted to establish that the item requested is necessary to avoid an imminent and substantial danger to health and it is not an item set out in EAPWDR Schedule C section 2(1)(a.1) or 2(1)(a.2).

The ministry states that it is sympathetic to the appellant's circumstances and has reviewed all the categories of health supplements in EAPWDR Schedule C to determine if the appellant's request could be accommodated but determined that the appellant's request for a portable lift does not meet the legislated criteria set out in the EAPWDR.

*Panel Decision:*

Eligibility for portable lift as medical equipment

The EAPWDR Schedule C, sections 3.1 to 3.12 specifies that medical equipment and devices include items such as a cane, crutch, walker and accessories, wheelchair, scooter, various assistive devices, hospital bed, pressure relief mattress, lift devices, positive airway pressure device, orthotics, hearing instrument, or a non-conventional glucose meter.

EAPWDR Schedule C, section 3.8(1) and (2) provides that a 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 and is medically essential to facilitate transfers of a person in a bedroom or a bathroom. While the information provided indicates that the appellant would benefit from a portable lift to increase his independence and quality of life in his home and in the community, particularly with community activities and exercise, the legislation does not provide for a portable lift as requested as the legislation limits the lift to facilitate transfers of a person in a bedroom or a bathroom, which is what the appellant already has in his home.

While the appellant's advocate asks that the portable lift be approved on humanitarian grounds, taking into account the minister's statement that the ministry is dedicated to helping our most vulnerable citizens, the panel's jurisdiction is limited to determining whether the ministry's reconsideration decision was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel finds that the portable lift does not fit in the criteria listed in EAPWDR Schedule C, sections 3.1 to 3.12 and concludes that the ministry's decision that the appellant was not eligible for a portable lift as medical equipment was reasonable.

#### Eligibility for portable lift as a medical supply

The EAPWDR, Schedule C, section 2(1)(a) sets out that the ministry may provide either disposable or reusable medical or surgical supplies for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care or limb circulation care if the supplies are prescribed by a medical practitioner, the least expensive supplies appropriate for the purpose and necessary to avoid an imminent and substantial danger to health, and there are no resources available to the family unit to pay the cost of or obtain the supplies.

The panel finds that the portable lift is not a supply required for one of the legislated purposes, being wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care or limb circulation care the panel finds that the portable lift does not meet the legislated requirements for eligibility as a health supply under EAPWDR Schedule C, section 2(1)(a).

The panel also finds that the portable lift is not a medical or surgical supply for any of the purposes prescribed by EAPWDR, Schedule C, section 2(1)(a.1) or 2(1)(a.2) so the panel finds that the ministry's decision that the appellant was not eligible to receive a portable lift as a medical supply was reasonable.

#### Eligibility for health supplements under EAPWDR Schedule C, sections 2.1 to 9

EAPWDR, Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, and 9 set out that the ministry may provide: optical supplements, eye examination supplements, dental supplements, crown and bridgework supplements; emergency dental supplements, diet supplements; monthly nutritional supplements; natal supplements; and infant formula. EAPWDR section 67(3) sets out that the ministry may provide a nutritional supplement for an acute short-term need.

The panel finds that as a portable lift is not one of the other health supplements specified in EAPWDR Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 or 9, the ministry's decision that the appellant was not eligible for funding for a compression bra as a health supplement was reasonable.

#### Eligibility for portable lift as a therapy

EAPWDR, Schedule C, sections 2(1)(c), 2(2) and 2(2.1) set out that the ministry may provide no more than 12 visits per calendar year in the amount of \$23 for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physiotherapy treatments but as a compression bra is not one of these therapies it is not eligible for funding under these sections of the EAPWDR.

Although the appellant states that he requires the portable lift to enable him to participate in activities such as physiotherapy, occupational therapy, massage therapy, moving to/from gym equipment exercises, moving to a change table for swimming or adapted recreation, the panel finds that as a portable lift is not one of the specified therapies under EAPWDR Schedule C, sections 2(1)(c), 2(2) and 2(2.1), the ministry's decision that the appellant is not eligible for a portable lift as a therapy was reasonable.

#### Health supplement for persons facing direct and imminent life threatening health need – EAPWDR section 69

The panel finds that the appellant has cerebral palsy and is profoundly physically disabled and is severely limited with his independence in that he requires assistance with all DLA and transfers. The panel also finds that the appellant is limited from accessing some community activities and has a decreased quality of life as a result. While the information provided indicates that he would benefit greatly from a portable lift, there is no information indicating that the appellant faces a direct and imminent life threatening health need for which the portable lift is required. Accordingly, the panel finds that the ministry's decision that the appellant was not eligible for a portable lift pursuant to EAPWDR Section 69 was reasonable.

#### Conclusion

The panel acknowledges that a portable lift has been recommended by the appellant's physiotherapist and physician and would be beneficial for his condition. However, having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for coverage for a portable lift is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.