

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision dated November 2, 2015 wherein the ministry denied the appellant’s request for a manual wheelchair, a Roho cushion, and an amputee board (collectively referred to in this decision as “the Requested Items.”) The appellant is a recipient of disability assistance, and the ministry determined that the appellant was not eligible for the Requested Items as the following legislative criteria were not satisfied:

- That the Requested Items be the least expensive appropriate medical equipment or device as required by section 3(1)(b)(iii) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”);
- That the assessment of an occupational therapist or a physical therapist demonstrates the medical need for the Requested Items as required by Schedule C section 3(2)(b);
- That the manual wheelchair be medically essential to achieve or maintain basic mobility, as required by Schedule C section 3.2(2);
- That the Roho cushion and amputee board be medically essential to achieve or maintain a person’s positioning in a wheelchair as required by Schedule C section 3.3(1); or
- That the Requested Items meet the criteria as a health supplement for a person facing a direct and imminent life threatening need under s. 69 of the EAPWDR.

## PART D – Relevant Legislation

EAPWDR section 69 [*health supplement for persons facing direct and imminent life threatening health need*]; and Schedule C.

## PART E – Summary of Facts

With the consent of the parties the hearing was conducted in writing in accordance with section 22(3) of the *Employment and Assistance Act*.

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

- The ministry’s approval, dated January 14, 2014, of the appellant’s request for a power wheelchair with captain seat.
- An assessment from an occupational therapist (the “OT”) dated August 7, 2015 (the “Assessment”). The Assessment refers to diagnoses of diabetes mellitus type I, left leg amputation below knee, (June 22, 2015), circulatory problems, falls, stroke (2011), and cellulitis. The report recommends “a light weight manual wheel chair with adjustability and pressure reduction seating.” In the Assessment, the OT explained that after the amputation of her leg the appellant was learning to walk and transfer again, and was using a manual wheelchair on loan from an agency. The loaner manual wheelchair would have to be returned to the agency after two months. The OT stated that the appellant’s power wheelchair does not have rehab seating, that the appellant would be learning to walk with a prosthesis that she did not yet have, and that the manual wheelchair would help the appellant to strengthen her upper body.
- A Medical Equipment Request and Justification form (the “MERJ”) requesting a manual wheelchair for the appellant. The MERJ contains a prescription for a manual wheelchair signed by a physician on August 10, 2015. Attached to the MERJ was the Assessment and a quote for the Requested Items in the amount of \$3,820.64.
- A prescription form dated September 22, 2015 from the appellant’s physician, stating: “This patient needs a manual wheelchair with amp board. She is an amputee & may not be able to use her prosthesis at all times due to skin breakdown or for longer distances. Needs amp board to prevent knee contracture.”
- A letter from the OT dated September 28, 2015, wherein the OT stated that:
  - Though the appellant has a prosthetic left leg she will continue to require a manual wheelchair and high profile Roho cushion to assist with mobility that is safe.
  - She is at high risk of further skin breakdown and cannot tolerate being up on her left prosthetic leg for long periods of time.
  - The appellant’s power wheelchair doesn’t provide her with the ability to attend therapy sessions in another community as it is not transportable in regular vehicles provided by family, friends, and the local community support agency.
  - The appellant needs to use the manual wheelchair in her suite on a daily basis in order to keep her upper body strength up.
  - The power wheelchair blocks access to the bathroom in the appellant’s suite.
  - The amputation constitutes a sudden and major change in the appellant’s physical functioning.

Admissibility of Additional Information

On appeal the appellant provided the following submissions:

1. A written statement in which she stated that:
  - The community support agency that provides her medical transportation does not have a van that transports a power wheelchair.
  - She had been using the loaner manual wheelchair for transport to medical appointments.
  - She has moved from the apartment that was too constricted for the power wheelchair...”this is no longer an issue.”
  
2. A letter dated December 9, 2015 from a different occupational therapist and a physiatrist stating that:
  - The appellant experienced decreased function and skin breakdown on her residual left leg, which was precipitated by an acute condition of cellulitis in her right leg. Accordingly, she had difficulty walking with her prosthesis and became heavily reliant on her power wheelchair.
  - The power wheelchair malfunctioned and the appellant was thrown from the chair. The power wheelchair required servicing, causing the appellant to use her prosthesis for an extended period of time. The skin breakdown and swelling changed the fit of her prosthesis.
  - The appellant has had to be admitted back into an intensive outpatient amputee rehabilitation program.
  - A power wheelchair is not a reliable alternative to a manual wheelchair “as there are arguably periods of time when the power wheelchair would not be available to meet her basic mobility and transfer needs (e.g. while charging or while being serviced). When the power wheelchair is not available for use, it presents as a significant safety concern in the event of an evacuation where [the appellant] would not have the time to properly done (sic) her prosthesis and mobilize quickly.”
  - The appellant is willing to consider donating her power wheelchair if it meant acquiring a manual wheelchair, but this would significantly impact her community independence and function.

The panel finds that the appellant’s submissions are consistent with and tend to corroborate information that was before the ministry at the time of reconsideration. Accordingly the panel as accepted both documents into evidence in accordance with section 22(4) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision to deny the appellant's request for the Requested Items is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, the question is whether it was reasonable for the ministry to determine that the appellant was not eligible for the Requested Items as the following legislative criteria were not satisfied:

- That the Requested Items be the least expensive appropriate medical equipment or device as required by section 3(1)(b)(iii) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR");
- That the assessment of an occupational therapist or a physical therapist demonstrates the medical need for the Requested Items as required by Schedule C section 3(2)(b);
- That the manual wheelchair be medically essential to achieve or maintain basic mobility, as required by Schedule C section 3.2(2);
- That the Roho cushion and amputee board be medically essential to achieve or maintain a person's positioning in a wheelchair as required by Schedule C section 3.3(1); or
- That the Requested Items meet the criteria as a health supplement for a person facing a direct and imminent life threatening need under s. 69 of the EAPWDR.

The relevant legislation is as follows:

### **EAPWDR 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;

(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; ...

Section 2(1.1) of Schedule C, provides that for the purposes of subsection 2(1)(a), "medical or surgical supplies" do not include nutritional supplements, food, vitamins, minerals or prescription medications.

Section 2(1)(c) provides that the following items are health supplements if the other criteria of the section are met: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy.

Section 2(1)(f) of Schedule C provides that the following items are health supplements if the other criteria of the section are met: the least expensive appropriate mode of transportation.

Section 2(3) of Schedule C provides that "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.

### **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. ...

Section 3.1 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a cane, a crutch, a walker, an accessory to a cane, a crutch or a walker.

### **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.

Section 3.4 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a scooter, an upgraded component of a scooter, an accessory attached to a scooter.

Section 3.5 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a grab bar in a bathroom, a bath or shower seat, a bath transfer bench with hand held shower, a tub slide, a bath lift, a bed pan or urinal, a raised toilet seat, a toilet safety frame, a floor-to-ceiling pole in a bathroom, a portable commode chair, a standing frame, a positioning frame, a transfer aid.

Section 3.6 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: 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.

Section 3.7 provides that a pressure relief mattress is a health supplement for the purposes of section 3 of the Schedule if the other criteria of the section are met.

Section 3.8 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a floor or ceiling lift device.

Section 3.9 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: specified breathing devices.

Section 3.10 provides that each of the following items is an orthosis which is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a custom-made or off-the-shelf foot orthotic, custom-made footwear, a permanent modification to footwear, off-the-shelf footwear required for the prescribed purpose, off-the-shelf orthopaedic footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, a hip brace, an upper extremity brace, a cranial helmet, a torso or spine brace, a foot abduction orthosis, a toe orthosis.

Section 3.11 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hearing instrument.

Section 3.12 provides that a non-conventional glucose meter is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met.

Section 4 of the Schedule provides that the health supplement that may be paid under section 63 [*dental supplements*] are basic dental services, if the other criteria of the section are met.

Section 4.1 provides that the health supplement may be paid under section 63.1 for crown and bridgework, if the other criteria of the section are met.

Section 5 of Schedule C provides that the health supplement that may be paid for under Section 64 of the EAPWDR is emergency dental services.

Section 6 of the Schedule provides that the amount of a diet supplement that may be provided under section 66 [*diet supplements*] is set out for various conditions, if the other criteria of the section are met.

Section 7 of the Schedule provides as follows:

- 7 The amount of a nutritional supplement that may be provided under section 67 [*nutritional supplement*] of this regulation is the sum of the amounts for those of the following items specified as required in the request under section 67 (1) (c):
- (a) for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to \$165 each month;
  - (b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]
  - (c) for vitamins and minerals, up to \$40 each month.

Section 8 of the Schedule provides that the amount of a natal supplement that may be provided under section 68 [*natal supplements*] is set out, if the other criteria of the section are met.

Section 9 of the Schedule provides that the minister may provide infant formula under section 67.1 of the EAPWDR if the other criteria of the section are met.

## EAPWDR

### 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) a person in the family unit is eligible to receive premium assistance under the *Medicare Protection Act*, and
  - (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
    - (i) paragraph (a) or (f) of section (2) (1);
    - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

\* \* \*

The appellant's position is that she satisfies the statutory criteria for the manual wheelchair. She argued that the amputation of her left leg in June, 2015 constitutes a sudden and major change in her functioning such that the manual wheelchair is now medically essential to provide basic mobility. She argued that her power wheelchair does not have rehab seating, and does not fit in a regular vehicle so she can't attend medical and therapy appointments. She also argued that the power wheelchair isn't always available because of the need for recharging and repairs. The appellant stated that the Roho cushion is medically essential to provide mobility that is safe, and the amputation board is medically essential to prevent knee contracture and to maintain the health of the residual left leg.

The ministry's position, as set out in its reconsideration decision, is that the appellant has a power wheelchair with seating to meet her needs so the Requested Items are not the least expensive appropriate medical devices, and are not medically essential to achieve or maintain basic mobility. The ministry argued that operating a manual wheelchair is not the only option for the appellant to increase her upper body strength and so the Assessment did not confirm the medical need for the manual wheelchair. The ministry also argued that the website for the community support agency states that with notice it will supply an appropriate vehicle capable of handling, for example, a power wheelchair. The appellant has also moved from a residence where operation of the power wheelchair was difficult to a residence that is suitable for the power wheelchair, so the manual wheelchair is not medically essential to provide basic mobility. Finally the ministry argued that the evidence has not established that the appellant faced a direct and imminent life-threatening health need for the Requested Items or that all other legislated criteria for section 69 were satisfied.

#### Panel Decision:

The ministry is only authorized to provide health supplements as provided by the legislation. This means that a requested health supplement, such as the Requested Items, must fall into one of the



categories set out in legislation and must satisfy any relevant statutory criteria. In this case the ministry determined that five criteria were not satisfied. The appellant bears the onus of proving on the balance of probabilities that she satisfies the criteria.

The three professionals in this case (two occupational therapists and the physiatrist) have expressed the opinion that the manual wheelchair is necessary so that the appellant can:

- maintain her upper body strength,
- reduce the risk of falls and knee contracture from overuse of her prosthetic,
- be able to use regular vehicles to get to therapy sessions,
- mobilize more safely in the constricted spaces in her residence, and
- have an alternative for times when the power wheelchair is not available.

In their letter of December 9, 2015, the second occupational therapist and the physiatrist indicate that the appellant's "change in status" was precipitated by an acute medical incident which caused her to become heavily reliant on her power wheelchair. The power wheelchair then reportedly broke down causing the appellant to use her prosthesis for an extended period of time, which in turn caused skin breakdown and swelling so she could no longer safely walk with the prosthesis. There is no indication from the professionals that the power wheelchair was not effective in providing "basic mobility" prior to the acute incident, or that the power wheelchair would not provide "basic mobility" after being repaired. Additionally in their evidence the two professionals indicated that the power wheelchair does support the appellant's "community independence and function." The professionals have not provided any evidence that the current acute situation with the appellant's residual left leg is a permanent condition that would not resolve with the prescribed therapy regime.

There is no evidence as to why other, less expensive, forms of exercise are inappropriate for maintaining the appellant's upper body strength. The appellant has moved since she first applied for the manual wheelchair and has said that constricted spaces in her residence are "no longer an issue." There is conflicting evidence from the ministry and the appellant as to whether the community support agency can provide transportation for a power wheelchair. The appellant bears the onus of proving that there is no other transportation option, so that panel would expect that she would have provided a letter or other documentation from the community support agency as confirmation. In the appellant's circumstances, the panel cannot find legislative support for the notion that the ministry is authorized to supply her with a manual wheelchair as a backup for periods when the power wheelchair may be unavailable.

Based on the foregoing evidence and analysis, the panel finds that the ministry was reasonable to conclude that the evidence does not demonstrate on the balance of probabilities that there is a medical need for the manual wheelchair (as per Schedule C section 3(2)(b)), that it is medically essential to achieve or maintain basic mobility (as per section 3.2(2), or that it is the least expensive appropriate equipment or device (as per section 3(1)(b)(iii)).

Regarding the Roho cushion and amputee board, there is no evidence as to whether these items can be used with the appellant's power wheelchair, or whether equivalent items can be acquired for the power wheelchair. There was also no medical evidence as to why the current captain seating is inadequate. Accordingly, the panel finds that the ministry was reasonable to determine that the evidence falls short of demonstrating that these items are medically essential to achieve or maintain

the appellant's positioning in a wheelchair, as per section 3.3 of Schedule C.

In the panel's view, the Requested Items do not reasonably meet the definition or criteria for any of the other health supplements prescribed in Schedule C.

With respect to the coverage under section 69 of the EAPWDR, it applies to "a person in the family unit who is otherwise not eligible for the health supplement under this regulation." As the appellant is a recipient of disability assistance, she is eligible for general health supplements under section 62. Accordingly, section 69 does not apply to her. Furthermore, there is no evidence that the appellant faced a direct and imminent life threatening need for the Requested Items. Finally, section 69 expressly applies only to medical supplies and medical transportation as set out in sections 2(1)(a) and (f) respectively of Schedule C of the EAPWDR, and to medical equipment and devices as identified in section 3 of Schedule C. Section 69(d) specifies that the requirements prescribed in those provisions must be satisfied. As found by the panel above, not all the prescribed requirements have been satisfied for the Requested Items and so they are not covered by section 69. Accordingly, the panel finds the ministry reasonably concluded that the appellant was not eligible for the Requested Items under section 69 of the EAPWDR.

### **Conclusion**

The panel acknowledges that having a manual wheelchair in addition to the power wheelchair may provide some convenience in some circumstances. However, the panel is bound to apply the legislation as it stands. Based on the foregoing reasons and analysis, the panel concludes that the ministry's reconsideration decision is a reasonable application of the legislation in the circumstances of the appellant. Accordingly, the ministry's reconsideration decision is confirmed.