

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated 3 February 2016 determined the appellant was not eligible for a step stool and reacher as they are not:

- a medical supply under s. 2(1) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR);
- a medical device or medical equipment under sections 3, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11 or 3.12 of Schedule C of the EAPWDR;
- a therapy or health supplement set out in any other section of the EAPWDR;

and because there was no evidence she faced a direct and imminent life threatening need and, even if she did, it is not one of the items that she could obtain under s. 69 of the EAPWDR.

PART D – Relevant Legislation

EAPWDR section 62 and 69 and Schedule C.

## PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- The appellant is a recipient of disability assistance and is eligible to receive health supplements provided under s. 62 and Schedule C of the EAPWDR.
- A Medical Equipment Request and Justification completed by the appellant and her physician, a general practitioner (the GP), indicating that the appellant's condition is osteoarthritis and poor balance. The GP recommended the following medical equipment: bath stool, bath mat, hand held shower, stool with handrail and item picker.
- A quotation from a medical equipment provider dated 26 November 2015 listed a bath stool with back, hand held shower, step tool with handrail and reacher plus installation fee of \$75 for a total of \$403.
- On 14 December 2015, the ministry approved the appellant's request for the bath stool and handheld shower but denied the request for step stool and reacher.
- A Request for Reconsideration dated 20 January 2016 and signed by the appellant indicated she requested the step stool with handrail because she lives alone and has poor balance. She mentioned she also used a walker for distances and that she waived the \$75 installation fee because she could install the handheld shower herself. She added: "I'm hoping that will reconsider my request and instead of paying \$184 for stepstool with handrail, that you subtract \$75 already paid for labour I do not need."

In her Notice of Appeal dated 17 February 2016, the appellant indicated that her only way to reach the second shelf in her kitchen is with a stool and that because of poor balance, she needs a stool with handrail.

At the hearing the appellant reiterated her position that the stool was necessary because of poor balance and indicated that the stool proposed in the quote was designed for a right-handed person, which suited her well. The panel determined that this additional oral evidence was admissible under s. 22(4) of the Employment and Assistance Act (EAA) as it was in support of the records before the minister at reconsideration, provided more information on the equipment requested and corroborated that evidence.

The ministry relied on the reconsideration decision for the appeal.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant was not eligible for a step stool and reacher was either a reasonable application of the legislation or reasonably supported by the evidence. The ministry determined they were not: a medical supply under s. 2(1) of Schedule C of the EAPWDR; a medical device or medical equipment under sections 3, 3.1, to 3.12 of Schedule C of the EAPWDR; a therapy or health supplement set out in any other section of the EAPWDR; and, because there was no evidence she faced a direct and imminent life threatening need and, even if she did, it is not one of the items that she could obtain under s. 69 of the EAPWDR.

S. 62 of the EAPWDR provides the authority to the minister to provide health supplements or medical equipment and devices:

**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 (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(a) a recipient of disability assistance,...

Schedule C provides for what specific items the minister may approve. S. 2(1) deals with medical supplies:

**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;

Subsection (c) deals with acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physical therapy and subsection (f) deals with transportation. S. 2.1 and 2.2 deal with optical and eye examination supplements...

(1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

Medical equipment and devices are dealt with in s. 3(1) of Schedule C of the EAPWDR:

**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...

Eligible medical equipment and health supplements are listed at s. 3.1 to 3.12 of Schedule C of the EAPWDR:

3.1: Cane, crutch, walker and accessory to a walker.

3.2: Wheelchair or its upgraded components or accessories;

3.3: Wheelchair seating system & accessories;

3.4: Scooter or its upgraded components or accessories;

3.5: Grab bar in bathroom; bath or shower seat; bath transfer bench with hand held shower; tub slide; bath lift; bed pan or urinal; raised toilet seat; toilet safety frame; floor-to-ceiling pole in bathroom; portable commode chair;

3.6: Hospital bed or its upgraded components or accessories;

3.7: Pressure relief mattress;

3.8: Floor or ceiling lift device;

3.9: Positive airway pressure device, its accessories or supplies;

3.10: Orthoses;

3.11: Hearing aids;

3.12: Non-conventional glucose meter.

S. 4 to 9 set out other health supplements including dental, diet, nutritional and natal.

Finally, health supplements may be provided in exceptional circumstances, for persons facing direct and imminent life threatening health needs:

**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

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- (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).

The ministry acknowledged that the appellant is a recipient of disability assistance and is eligible to receive health supplements under s. 62 of the EAPWDR. However, the ministry argued that the step stool and reacher could not be considered as a medical supply and is not part of the list of medical supplies that the ministry could provide under s. 2(1)(a.1) or (a.2) of Schedule C of the EAPWDR. The ministry also argued that the step stool and reacher did not qualify as eligible medical equipment since it is not in the list of equipment / devices that the ministry could provide under s. 3.1 to 3.12 of Schedule C of the EAPWDR. Additionally, the ministry indicated that the step stool and reacher were not items set out in any of the other sections of the EAPWDR for therapy or any remaining health supplements. Finally the ministry argued that s. 69 of the EAPWDR did not apply as the appellant was otherwise eligible for the health supplements of Schedule C, that there was no evidence based on the information submitted by the appellant that she faced direct and imminent danger to her life if she did not get the step stool and reacher and that even if this evidence was provided, they were not a health supplement or medical equipment and devices set out in s. 2(1)(a) and (f) and 3 of Schedule C of the EAPWDR.

The appellant argued that she needed at the very least the step stool because of poor balance and she is afraid that without the bar to hang on, she will lose her balance and fall, hurting herself badly. She stated that her GP recommended this equipment in order that she could be independent while living alone and that she would not hurt herself. She argued that with the step stool, she would not have to wait for help from another person to reach for the shelves and for cleaning etc. She finally argued that this was a safety measure to prevent an accident and that s. 69 of the EAPWDR should allow the ministry to provide at least the step stool as otherwise she argued that she would face a direct and imminent threat to her life if she fell and injured herself.

***Panel decision:***

*Medical supply:*

S. 2(1) of the EAPWDR allows the ministry to provide disposable or reusable medical or surgical supplies for the purposes listed. There are examples of medical supplies at subsections (a.1) and (a.2) that are clearly medical items (lancets, needles, syringes, ventilator and tracheostomy supplies) or consumable items to thicken food. None of the purposes allowing the ministry to provide these supplies (wound care, ongoing bowel care, catheterization, incontinence, skin parasite care and limb circulation care) apply to a step stool and reacher. Consequently, the panel concludes that the ministry reasonably determined that the step stool and reacher do not qualify as medical supply under s. 2 (1)(a) of the EAPWDR.

*Medical equipment and devices:*

The ministry may provide medical equipment and devices according to s. 3 Schedule C of the EAPWDR but it has to be one of the items described at s. 3.1 to 3.12, Schedule C of the EAPWDR and that are listed above in this decision. The panel finds that a step stool and reacher do not qualify as one of the items listed in those sections and finds that the ministry reasonably determined it was not authorized to provide these items as health supplements under s. 3, 3.1 to 3.12, Schedule C of the EAPWDR.

*Other items:*

The other items for which the ministry could provide a health supplement do not include a step stool and reacher; they deal with medical transportation, optical and eye examination supplements, dental supplements including crown, bridgework and emergency dental supplements, diet and monthly nutritional supplements, natal supplements and infant formulas. The panel finds that none of those supplements include a step stool and reacher and concludes that the ministry reasonably determined that they were not an eligible health supplement under any of those other items.

*Persons facing life threatening health need:*

The panel notes that the appellant's argument that she may fall and hurt herself is a valid argument and that the consequences for her might be significant. However, the legislation is clear that the threat to a persons' life must be direct and *imminent*, meaning that it must be about to happen, not an eventuality as is the case with the appellant's argument. But even if the appellant met the "direct and imminent life threatening need" requirement, s. 69 of the EAPWDR does not allow the ministry to provide any supplement, equipment or device other than those authorized under s. 2 or 3 of Schedule C of the EAPWDR which, as the panel found, did not include the step stool and reacher. In other words, if the device is not listed in the EAPWDR, the ministry does not have the authority to provide it to a recipient under s. 69 of the EAPWDR.

**Conclusion:**

While the panel understands the appellant's need for the requested items, the panel must refer to the legislation and how the ministry applied it. Thus, the panel finds the ministry reasonably determined the items requested by the appellant, the step stool and reacher, were not items that are included in s. 2 or 3 Schedule C of the EAPWDR and that consequently, the appellant was not eligible for them under s. 62 or 69 of the EAPWDR. For those reasons, the panel finds the ministry's decision was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.