

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of January 6, 2016, which denied the appellant’s request for a replacement Manatee bath chair and replacement mattress bath chair on the basis that it was not an eligible item under Schedule C of the *Employment and Assistance for Persons With Disabilities Regulation* (“EAPWDR”) as it had not been 5 years since his last replacement chair as required by EAPWDR Schedule C sections (3)(3)(b) and 3.5(2). In addition, the ministry found that the requested bath chair was not the least expensive appropriate medical equipment as required by EAPWDR Schedule C section 3(1)(b)(iii).

PART D – Relevant Legislation

EAPWDR, section 62 and Schedule C, sections 3 and 3.5

PART E – Summary of Facts

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

- Letter from the appellant's physician dated May 22, 2013 indicating that the appellant has been diagnosed with cerebral palsy and is mentally handicapped, is dependent for all care and a total lift, with increased tone and spasms in all his limbs. The physician states that the appellant's bath chair is falling apart and the caregiver is using duct tape to keep it together for now but it needs to be replaced. It was purchased in 2005. The physician also attached a quotation from a medical equipment provider dated May 16, 2013 for a Manatee Bath Chair in the amount of \$760.75.
- Medical Equipment Request and Justification form completed by the appellant's occupational therapist ("OT") dated June 15, 2013 requesting a replacement Manatee bath chair;
- Purchase Authorization from an equipment provider dated July 6, 2013 for a Bath Transfer Bench in the amount of \$760.75.
- Medical Equipment Request and Justification form dated August 14, 2015 and completed by the OT on August 17, 2015 requesting funding for a commode.
- Letter from the OT dated August 25, 2015 requesting funding for a commode/shower chair with quotation dated August 17, 2015 from a medical equipment provider for the cost of a shower commode and support pieces.
- Ministry notes including an Adjudicator Overview dated October 26, 2015 indicating that *"...it appears reasonable to fund a RAZ AT Commode with seating within the 5 year replacement period as equipment is medically essential to facilitate toileting and maintain the clt's positioning when transferring"* (the "Adjudicator Overview").
- Purchase Authorization dated October 27, 2015 for a commode.
- Quotation from a medical equipment provider for a LTC 4000 and mattress base protector in the amount of \$1,328.10 and Manatee Bath chair in the amount of \$782.
- Medical Equipment Request and Justification form signed by the appellant and OT on April 24, 2015. The OT states that the appellant needs a replacement Manatee bath chair and replacement mattress.
- Request for Physician's Prescription dated April 24, 2015 completed by the physician indicating that the appellant has cerebral palsy and requires a replacement Manatee bath chair and replacement mattress.
- Letter from the OT dated April 29, 2015 requesting funding for a replacement Manatee Bath Chair and replacement mattress as the appellant's chair broke at the point where the legs meet, is plastic and unfixable. The OT indicates that the appellant's mattress is old, getting uncomfortable and the cover is being held together by safety pins.
- Letter from one of the appellant's caregivers dated December 2, 2015 with attached picture showing where the appellant's bath chair broke while he was giving the appellant a shower. The caregiver states that the bath chair was not repairable and that the appellant definitely needs the bath seat to have a shower. The caregiver states that he understands that the ministry's policy is to only provide a replacement every five years but cleanliness is very important.
- Quotation from a medical equipment provider dated December 11, 2015 for a Manatee Bath Chair in the amount of \$782.
- The appellant's Request for Reconsideration (RFR) form dated December 18, 2015 with

attached letter from the OT dated December 9, 2015 indicating that the appellant's Manatee bath chair received in 2012 broke in April 2015 and was not repairable. The OT asks that the ministry reconsider funding the bath chair as the appellant has cerebral palsy and severe tone, it is very difficult and painful for him to bathe without support.

Additional information provided

In his Notice of Appeal the appellant states that the ministry's decision indicates that the shower/commode chair can be used for showering but that he lives in a regular apartment and there is no wheel in shower. The appellant states that he only has a bathtub, which he cannot access.

With his Notice of Appeal, the appellant submitted a letter from the OT dated February 29, 2016, which indicates that the appellant is unable to sit in a bathtub unsupported and a regular shower chair does not offer enough support. The OT indicates that the requested bath chair would allow the appellant to have a shower in the bathtub. The OT states that although the reconsideration decision states that the shower/commode chair could be used for showers as well as toileting that is not correct as the appellant does not have a wheelchair in shower stall, has only a bathtub, and the only way for him to get a shower is with this type of shower chair which he could access from the ceiling track lift.

At the hearing the appellant and his mother provided oral evidence that the appellant lives in an apartment with no shower and only a bath, that his bath chair broke and he does not currently have a chair. The appellant stated that his shower commode cannot be used as it is heavy and too wide and does not fit in the bath so it is a safety issue. The appellant's mother also stated that the shower commode cannot be placed permanently in the bath as it does not fit. The appellant's mother stated that the appellant cannot have a proper bath so they try to take him to group homes for a bath. Or on days where that is not possible, his caregivers only give him a sponge bath.

The ministry did not object to the information in the Notice of Appeal or the letter from the OT dated February 29, 2016.

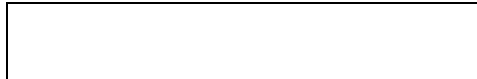
Admissibility of New Information

The panel has admitted the appellant's oral testimony, his mother's oral testimony, the information in the Notice of Appeal and the letter from the OT dated February 29, 2016 as it is evidence in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information relates to the appellant's physical diagnosis and condition, the need for a replacement bath chair, and the reasons why the shower commode cannot be used in place of the bath chair.

The ministry relied on the reconsideration decision.

Findings of Fact

The panel finds that the ministry approved the appellant for funding for a Manatee bath chair on July 6, 2013 and it was delivered on August 27, 2013. On October 27, 2015 the appellant was approved for funding for a RAZ AT Shower Commode. On November 17, 2015 the ministry received a request



for a replacement Manatee bath chair. Although the request was initially submitted on April 29, 2015 the ministry had no record of the request so it was resubmitted on November 17, 2015. On November 20, 2015 the ministry denied the appellant's request for a replacement bath chair.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's reconsideration decision denying the appellant funding for the replacement Manatee bath chair and mattress was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant was not eligible for funding for a replacement bath chair as it had not been 5 years since his last replacement chair as required by EAPWDR Schedule C sections (3)(3)(b) and 3.5(2) and that the requested bath chair was not the least expensive appropriate medical equipment as required by EAPWDR Schedule C section 3(1)(b)(iii)?

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.

EAPWDR Schedule C

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 (B.C. Reg. 197/2012)

(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: (B.C. Reg. 197/2012)

(a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;

(b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

(a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;

(b) an assessment by a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(B.C. Reg. 197/2012)

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if

(a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and

(b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed. (B.C. Reg. 197/2012)

(4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.

(5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if

(a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and (B.C. Reg. 197/2012)

(b) it is more economical to repair the medical equipment or device than to replace it.

(6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

(B.C. Reg. 61/2010)

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.

Eligibility criteria - Schedule C, section 3

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 62 and Schedule C, sections 2 and 3 of the EAPWDR.

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The ministry's position is that as set out in EAPWDR Schedule C, section 3(1)(b), the minister may provide the least expensive appropriate medical device described in sections 3.1 to 3.12 if

- 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.

As set out in the reconsideration decision, the ministry's position is that the information provided does not demonstrate that the medical equipment or device is the least expensive appropriate medical equipment or device as required by EAPWDR Schedule C, section 3(1)(b)(iii). The ministry's position is that there is no evidence that the shower commode provided in October 2015 cannot also be utilized for showers. The ministry representative explained that if the appellant can use the shower commode for showers then it is less expensive to use the commode rather than paying for a replacement bath chair, therefore the bath chair is not the least expensive appropriate medical equipment.

The ministry's position is that EAPWDR Schedule C, section 3(3) provides that the minister may provide as a health supplement a replacement of medical equipment that is damaged, worn out or not functioning if the period of time set out in section 3.1 to 3.12 of Schedule C has passed. However, EAPWDR Schedule C section 3.6(2) provides that the replacement period for a bath or shower seat is 5 years from the date on which the minister provided the item being replaced and as the appellant received a bath chair in 2013, the five years has not expired since the ministry provided the appellant with a bath chair. The ministry representative confirmed that the reference to the bath chair being provided on August 27, 2015 was a typographical error and that the earlier reference to the bath chair being provided in August 2013 was correct.

The appellant's position is that he is totally dependent on the bath chair, and that he is unable to bathe properly without one. The appellant states that the shower commode cannot be used for showers because it does not fit in his bathtub and he does not have a shower in the apartment where he lives as indicated in the letter from the OT dated February 29, 2016. The appellant states that the shower commode was obtained for the purpose of toileting, not showers, as noted in the Adjudicator Overview. The appellant's position is that as he is unable to use the shower commode for showers, the requested replacement bath chair is the least expensive appropriate medical equipment. The appellant's position is that the bath chair is medically essential and is required for his safety and cleanliness and as it is broken and irreparable and he does not have the funds to purchase another one, the ministry ought to replace it even though the five years has not yet elapsed.

Panel Decision

As the appellant lives in an apartment where there is only a bath and he cannot utilize the shower commode for showers, as explained by the appellant and confirmed by the OT in her letter dated February 29, 2016, the panel finds that the ministry's decision that the requested replacement bath chair is not the least expensive appropriate medical equipment in the appellant's circumstances was not reasonable.

While EAPWDR Schedule C section 3(3) provides that the minister may provide as a health supplement a replacement of medical equipment including a bath or shower seat specified in section 3.5(1), the replacement period is 5 years from the date on which the appellant received the item being requested. As the appellant was approved for the previous bath chair on July 6, 2013 and received the bath chair August 27, 2013 the required 5 years has not elapsed.

Therefore, while the panel finds that the requested replacement bath chair is the least expensive appropriate medical equipment as required by EAPWDR section 3(1)(b)(iii), the ministry's decision that the appellant did not meet the requisite criteria of EAWPDR section 3.3 and 3.5(2) as it has not been five years since he received his previous bath chair was reasonable.

Exception in Policy

The reconsideration decision states that there is an exception in policy that allows the ministry to replace an item before the expiry of the stipulated time period when the item is required due to changes in a person's medical condition or growth. The ministry's position is that the information provided does not indicate that the appellant's medical condition has changed or that growth has precipitated the need for replacement.

The appellant confirmed that there has not been any change in his medical condition and that he has not grown but that the ministry should make an exception in his circumstances as the chair was irreparable and it is medically essential for him to have a replacement bath chair due to safety and cleanliness concerns. The appellant states that without the replacement bath chair he is forced to sponge bathe, access group homes to use their showers, or sit in a lawn chair while his caregivers bathe him, which is a significant safety issue. The appellant asks that the ministry make an exception and fund the replacement bath chair as there are no other suitable options available for him.

Panel Decision

The panel is troubled by the ministry's findings that it was able to make an exception for the shower commode on the basis that it was medically essential and there were no other suitable options available, but unable to make a similar exception with respect to the appellant's request for a replacement bath chair when it is clear that there are no other suitable options available. In particular, the Adjudicator Overview states that it "*[a]ppears reasonable to fund the RAZ AT Commode with seating within the 5 year replacement period as equipment is medically essential to facilitate toileting and maintain the clt's positioning when transferring. Even though client has 2 year old bath chair, and had ceiling track, it seems reasonable to fund a commode as there are no other suitable options available*".

It appears that with respect to the shower commode, the ministry found that the fact it was medically essential trumped the 5 year replacement criteria, even though there was no information to indicate that the appellant's medical condition had changed or that growth precipitated the need for a replacement, yet the ministry is not applying the same policy exception criteria with respect to the request for the replacement bath chair and has not provided any explanation as to why an exception can be made in one instance but not in another instance. The ministry representative was unable to explain this apparent contradiction in policy.

However, as the replacement bath chair is not required due to changes in the appellant's medical condition or growth, and as the panel is limited to a determination as to whether the ministry's decision was reasonable, taking all of the information into account, the panel can only find that while the ministry's decision is somewhat unclear it was not unreasonable.

Conclusion

The panel acknowledges that the appellant requires the replacement bath chair as recommended by the OT. 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 funding for the replacement bath chair and mattress is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.