

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 2, 2016, which denied the appellant's request for a health supplement to cover the cost of a portable lift (Hoyer Advance Patient Lift). The ministry found that the following requirements of Schedule C of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) were not met:

- the ministry was not satisfied that there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device, as required by Section 3(1)(b)(ii);
- the medical equipment or device is the least expensive appropriate medical equipment or device, as required by Section 3(1)(b)(iii); and,
- the ministry was not satisfied that the floor or ceiling lift device is medically essential to facilitate transfers of a person in a bedroom or a bathroom, as required by Section 3.8(2)(a).

The ministry also found that the appellant is not eligible for a supplement for a life threatening health need as set out in Section 69 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 62 and 69 and Schedule C, Sections 3 and 3.8

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Quote dated August 5, 2015 from a medical equipment supplier for a number of items, including one Hoyer Advance Patient Lift at a cost of \$3,417.30 and one Universal Quilted Mesh Sling with Head Support at a cost of \$350.10, for a total cost of \$3,767.40;
- 2) Letter dated November 13, 2015 in which a physician confirmed the appellant's diagnoses and wrote that he requires a portable lift (access home environment, vehicle and rehabilitation therapy sessions).
- 3) Medical Equipment Request and Justification (MERJ) dated December 24, 2015 with enclosed Funding Request from an Occupational Therapist (OT);
- 4) Funding Request for a portable lifting device (Hoyer Advance Patient Lift) dated December 24, 2015 in which the OT wrote that:
 - The appellant is diagnosed with cerebral palsy and a seizure disorder, making him fully dependent for all his care needs.
 - The appellant lives in his parents' home and they are his primary caregivers, in addition to private caregivers.
 - His parents have a passenger van equipped with a power seat that rotates, extends and lowers. To date, they have been lifting the appellant from his manual wheelchair onto the car seat, which is not viable from a musculo-skeletal injury perspective.
 - In the living room of the home is a 'chaise lounge' that the appellant enjoys sitting on as a break from his manual wheelchair, which supports him in a semi-recline position while accommodating the flexion contractures in his knees.
 - His caregivers also lower the appellant on to the floor for stretching of his extremities.
 - For more than a year, a floor lift has been rented for the appellant by the Health Authority at a cost of \$200 per month for use in the living room of his home, but it is not suitable to be pushed outdoors for car transfers.
 - The appellant also travels with his parents and needs to have a portable lift for when he is away from home.
 - Summary and Analysis: The appellant's caregivers must be able to transfer him between his wheelchair and the vehicle, wheelchair and floor, wheelchair and chaise lounge and the recently approved overhead lifts do not accommodate this. While an additional track could be added for the transfers in the living room, this would not solve the need for a transfer device in/out of the vehicle. The appellant requires several trips per year solely for medical purposes and there are no public transportation options available that could accommodate these visits. In order to accommodate all of the appellant's transfer needs, a portable lift is required in his home.
- 5) Letter dated January 18, 2016 in which the ministry denied the appellant's request for a lift device- Hoyer Advance Patient Lift and Sling; and,
- 6) Request for Reconsideration dated February 16, 2016 with attached typed pages (summarized below).

In the Request for Reconsideration, the appellant's parents, acting as his advocates, wrote that:

- The appellant is a disabled adult that requires full-time 24-hour assistance.
- The appellant's ongoing therapies, which are medically necessary to ensure health and limit physical deterioration, cannot be performed in the bedroom or bathroom.
- The portable floor lift will allow the appellant to access physical therapies in the home, which

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include floor mats, standing frame and recumbent bike, to address lifelong disability and the negative physical health effects (injuries) that arise as a result of remaining stationary for long periods of time in a wheelchair.

- The functionality of the portable floor lift is essential to the health, well-being and quality of life of the appellant.
- The total cost of the device is less expensive, in the long term, than if the family would have to hire additional care aid workers to assist the appellant, and they have a “no lift” policy in keeping with Work Safe guidelines.
- The care of the appellant, without the device, is causing a substantial hardship for the family. The care needs of the appellant deny the family a quality of life they would otherwise enjoy, and the device would reduce this hardship.
- The appellant’s father was hospitalized in July 2014 for a heart attack.
- Without the device, the appellant and the family will incur an unacceptable health and safety risk, which can result in muscular skeletal injury.

Additional Information

In the Notice of Appeal dated March 13, 2016, the advocate expressed disagreement with the ministry's reconsideration decision and added that:

- During several hospital stays throughout 2015, the appellant was bedridden and received no physical therapy resulting in shortening of ligaments and other negative physical effects. He was most recently admitted to hospital with life threatening conditions from October 5 through October 28, 2015.
- Denial of the portable floor lift forces the family to continue physically lifting the appellant to access medically essential equipment.

At the hearing, the appellant's advocates, his parents, reviewed the information in their written submission and added that:

- A disabled person needs to access the entire home and not only the bathroom or the bedroom. To limit the lift to these rooms is not based on the reality of the life of the person.
- The appellant has had difficulties because his wheelchair was not sufficiently supporting him and he needed a new back for the chair and lateral supports. Using the same cushion all day long, he tends to get pressure points. His hip has gone out and this causes other issues.
- The appellant has been in and out of the hospital and came close to dying.
- Since he did not have his physical therapies while in hospital, his legs have become bent due to shortened ligaments.
- It is a hardship for the family to lift the appellant in and out of the wheelchair when the workers are not allowed to lift the appellant. The ministry asks the family to do things that workers are not expected to do. According to the Work Safe regulations, lifting could result in injury, and the workers are entitled to refuse to do the lifting.
- The appellant’s father suffered a heart attack and he is under his doctor’s orders not to be lifting.
- If the appellant is to be confined to his wheelchair all day long other than going to the toilet and going to bed, that is no quality of life for him.
- The appellant has a life outside the home and they cannot lift the appellant from his wheelchair into the car. His friends will not lift him because they do not want to injure themselves or risk injury to the appellant.
- The portable lift requested is very light whereas the one currently being rented by the Ministry

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of Health is very heavy and has a manual crank system which is cumbersome. The Ministry of Health has now rented this lift for 2 years at a cost of \$200 per month. They had requested a different type of portable lift through the Ministry of Health but it was denied. They are concerned that they could get a call at any time indicating that this portable lift would be taken away.

- There is a portable lift available, the requested Hoyer Advance Patient Lift, at a one-time cost of about \$3,700.
- The portable lift could likely be used in the bedroom because the base would fit under the appellant's hospital bed. It could not be used in the bathroom because the base would contact the side of the tub and there would be too much of a gap to get the appellant into the bathtub. They have seen a type of portable lift, used on some airlines, that swivels and could likely be used in the bathroom.
- They have become frustrated because there has been no overall planning for the needs of the family and, rather, each item must be requested by the OT and the parents are not given an opportunity to review the OT's report.
- The previously requested lift system for the bathroom, including the track and motor, and the ceiling track for the bedroom has now been installed. It would not be practical to run the track into the living room, especially since the ceiling in their home is vaulted. There were already complicating issues that arose with installing the systems in the bathroom and bedroom.
- The appellant could not do his physical therapies in the bedroom because there is not enough room to fit his equipment, including his recumbent bike, "Easy Stand" frame, and floor mats for him to have massage therapy. All of his therapeutic equipment is now set up in their living room. Also, it is not good for him psychologically to be in only one environment. There is not much he would be able to do in the bedroom.
- They are trying to get the appellant set up well for when they are not able to advocate for him any longer. They do not want the appellant to be "imprisoned" by being confined to his wheelchair other than in the bedroom or bathroom.

The ministry relied on its reconsideration decision. The reconsideration decision included information that:

- On June 15, 2015 the ministry approved the appellant's request for a BHM, XY ceiling lift system for the appellant's bathroom at a cost of \$7,030.95 and a BHM 3M Kit, Kwiktrak, 90MM ceiling track for the appellant's bedroom at a cost of \$1,825.95.

The panel considered the information in the appellant's Notice of Appeal and in his parents' oral testimony as argument on his behalf.

PART F – Reasons for Panel Decision

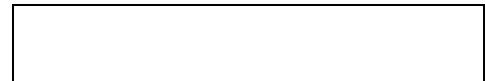
The issue on the appeal is whether the ministry's reconsideration decision, which denied the appellant's request for a health supplement to cover the cost of a portable lift (Hoyer Advance Patient Lift) because the requirements in Section 3 and 3.8 of Schedule C of the EAPWDR were not met and the appellant is not eligible for a supplement pursuant to Section 69 of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Under Section 62 of the EAPWDR, the applicant must be a recipient or previous recipient of disability assistance or be a dependent of a person in receipt of disability assistance in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has found that the requirement of Section 62 has been met in that the appellant was determined to be eligible for disability assistance.

Section 3 of Schedule C of the EAPWDR provides as follows:

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.
- (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.
- (3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a 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.
- (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) 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.

Section 3.8 of Schedule C of the EAPWDR provides as follows:

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.
- (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 from the date on which the minister provided the item being replaced.

Section 69 of the EAPWDR provides as follows:

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 3.12, other than paragraph (a) of section 3 (1).

Ministry's position

The ministry's position is that the appellant is eligible to receive health supplements under Section 62 of the EAPWDR but that the ministry was not satisfied that there are no resources available to the family unit to pay the cost of or obtain the requested medical equipment or device, as required by Section 3(1)(b)(ii) of Schedule C. The ministry argued that the appellant has access to a portable lift that has been rented for him by the Ministry of Health. The ministry's position is also that the requested medical equipment or device (Hoyer Advance Patient Lift) is not the least expensive

appropriate medical equipment or device, as required by Section 3(1)(b)(iii) of Schedule C, as the medical equipment or device must be medically essential to facilitate transfers of a person in a bedroom or bathroom according to Section 3.8(2)(a) of Schedule C, and the ministry had approved a ceiling lift system for the appellant's bathroom and bedroom. The ministry's was also not satisfied that the requested floor or ceiling lift device (Hoyer Advance Patient Lift) is medically essential to facilitate transfers of a person in a bedroom or a bathroom, as required by Section 3.8(2)(a) of Schedule C, since the portable lift device is not intended to facilitate transfers in a bedroom or a bathroom and there is no evidence demonstrating that it will be used to facilitate transfers in the appellant's bedroom or bathroom. The ministry argued that the appellant does not require a remedy under Section 69 of the EAPWDR as he is otherwise eligible to receive health supplements and information is not provided to establish that the portable lift (Hoyer Advance Patient Lift) is necessary to address a direct and imminent life threatening need which the appellant faces.

Appellant's position

The appellant's position, as argued by his advocates, is that the portable lift that has been rented for the appellant by the Ministry of Health is heavy and cumbersome to use and, unlike the requested portable lift (Hoyer Advance Patient Lift), cannot be used outdoors to transfer the appellant from his wheelchair into the vehicle. The advocates also argued at the hearing that the rented portable lift could be taken away by the Ministry of Health at any time as had happened with other equipment. The advocates argued that the total cost of the requested portable lift is less expensive, in the long term, than the cost of hiring additional care aid workers to assist the appellant and those workers have a 'no lift' policy in keeping with Work Safe guidelines. The advocates argued that the requested portable lift is medically essential as it will allow the appellant to access essential physical therapies in the home, which include floor mats, standing frame and recumbent bike, to address life-long disability and the negative physical effects that arise as a result of remaining stationary for long periods in a wheelchair.

The advocates argued that the stipulation in Section 3.8(2) of Schedule C is out of date and not in keeping with the realities of medically essential transfers that cannot be limited solely to the bathroom and bedroom. The advocates argued that Section 3.8(2) of Schedule C discriminates against the appellant as a disabled adult and violates his human rights as it results in unjustifiably restricting the disabled adult, (without financial means to purchase medically essential equipment) to a wheelchair at all times when not in the bathroom or bedroom.

The advocates argued that the portable lift is essential to the health, well-being and quality of life of the appellant as during several hospital stays when the appellant was bedridden with no physical therapy, he suffered negative physical effects, including shortening of the ligaments in his legs. The advocates argued that the care of the appellant without the requested portable lift is causing a substantial hardship for the family. The advocates argued that forcing the family to continue to physically lift the appellant to access medically essential equipment contravenes recommendations of the provincial safe resident handling standards. In addition, the advocates argued that, without the requested portable lift, the appellant and his family will incur an unacceptable health and safety risk which can result in muscular skeletal injury.

Panel's decision

Section 3(1)(b)(ii) of Schedule C of the EAPWDR stipulates that the medical equipment and device described in Section 3.8 is a health supplement that may be provided by the ministry if there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device.

While the ministry acknowledged that the requested portable lift (Hoyer Advance Patient Lift) falls within the basic definition of the “floor or ceiling lift device” in Section 3.8, (a device that stands on the floor and that uses a sling system to transfer a person), the ministry also noted that the OT reported that a floor lift has been rented for the appellant by the Ministry of Health and that lift meets the legislated definition.

Although the advocates argued that the available floor lift is not satisfactory for the appellant’s needs because it is old, heavy, difficult to operate, and not portable outdoors to facilitate transfers to a vehicle and stated that they had tried to secure a newer portable lift from the Ministry of Health, without success to date, they acknowledged that the appellant is currently using this portable lift for transfers in the living room. The advocates also argued at the hearing that the rented portable lift could be taken away by the Ministry of Health at any time, but they acknowledged that the appellant has been using the lift for about 2 years and there was no evidence provided that the Ministry of Health was proposing to remove the lift from the appellant’s home. The panel finds that the ministry reasonably determined that the appellant has access to, and is currently using, the medical equipment or device referred to in Section 3.8. While it is not the model requested by the appellant, it is nevertheless a resource available to the family unit. The panel therefore finds that the ministry reasonably determined there are resources available to the family unit and the criterion in Section 3(1)(b)(ii) of Schedule C of the EAPWDR was not met.

Section 3(1)(b)(iii) of Schedule C of the EAPWDR stipulates that the medical equipment and device described in Section 3.8 is a health supplement that may be provided by the ministry if the medical equipment or device is the least expensive appropriate medical equipment or device. The advocates argued that the requested portable lift device (Hoyer Advance Patient Lift) is the most “appropriate” medical equipment or device as it will allow the appellant to access essential physical therapies located in the living room and to have a life outside the home to address the negative physical and psychological effects that arise as a result of remaining stationary for long periods in a wheelchair. They further argued that it is the least expensive device because the total cost is less expensive, in the long term, than if the family had to hire additional care aid workers to assist the appellant.

In the funding Request dated December 24, 2015, the OT wrote that the appellant’s caregivers must be able to transfer him between his wheelchair and the vehicle, wheelchair and floor, wheelchair and chaise lounge and that the recently approved overhead lifts do not accommodate this. The OT wrote that while an additional track could be added for the transfers in the living room, this would not solve the need for a transfer device in/out of the vehicle, and that, In order to accommodate all of the appellant’s transfer needs a portable lift is required in his home. The OT acknowledged that the ministry recently approved a ceiling lift system for the appellant’s bathroom and a ceiling track for his bedroom, as medical equipment and devices covered by Section 3.8 of Schedule C, to meet his basic transfer needs. The panel finds that the approved “floor or ceiling lift device” was already determined by the ministry to be the least expensive appropriate medical equipment and device for the purpose of effecting basic transfers and this lift has been provided to the appellant. Therefore, the panel finds that the ministry reasonably concluded that the requested medical equipment or device is not the least expensive appropriate medical equipment or device that is used specifically to facilitate transfers of a person in a bedroom or bathroom.

Section 3.8(2)(a) of Schedule C of the EAPWDR requires the ministry to be satisfied that the requested floor or ceiling lift device (Hoyer Advance Patient Lift) is medically essential to facilitate transfers of a person in a bedroom or a bathroom. The advocates argued that the requested portable

lift device, although possibly useable in the bedroom, is not ideal for this purpose, and cannot be used in the bathroom and is, rather, intended to be used to transfer the appellant to the equipment situated in the living room of their home and to transfer him to their vehicle. The advocates argued that the requested portable lift is medically essential as it will allow the appellant to access essential physical therapies in the home, including floor mats, standing frame and recumbent bike, to address life-long disability and the negative physical effects that arise as a result of remaining stationary for long periods in a wheelchair.

Although the OT wrote in the funding request dated December 24, 2015, that a portable lift is required in the appellant's home "in order to accommodate all of [the appellant's] transfer needs," the OT does not provide an opinion that the requested portable lift is medically essential to facilitate transfers of the appellant in his bedroom or in his bathroom. In the letter dated November 13, 2015, a physician confirmed the appellant's diagnoses and wrote that the appellant requires a portable lift to access his home environment, vehicle and rehabilitation therapy sessions; however, the physician has also not provided an opinion that the lift is medically essential to facilitate transfers in the bedroom or bathroom. The panel notes that there is no discretion in the legislation to bypass this requirement and, therefore, finds that the ministry reasonably concluded that the evidence does not establish that the requested portable lift device is medically essential to facilitate transfers of the appellant in a bedroom or a bathroom, as required by Section 3.8(2) of Schedule C of the EAPWDR.

Section 3.8 does not authorize funding for a device that is medically essential to meet all of a person's transfer needs, and only applies to devices that facilitate transfers in the bathroom or bedroom. The advocates argued that the stipulation in Section 3.8(2) of Schedule C is out of date and not in keeping with the realities of medically essential transfers that cannot be limited solely to the bathroom and bedroom and the result is unjustly restricting the disabled adult to a wheelchair at all times when not in the bathroom or bedroom. However, the jurisdiction of the panel is limited, pursuant to Section 24(1) of the *Employment and Assistance Act* (EAA) to determining whether the ministry's reconsideration decision is a reasonable application of the applicable enactment or is reasonably supported by the evidence and, under Section 46.3 of the *Administrative Tribunals Act* and Section 19.1 of the EAA, the panel does not have jurisdiction to apply the *Human rights Code*.

Section 69 of the EAPWDR allows the ministry to provide a health supplement to a person in the family unit who is otherwise not eligible for the health supplement under the EAPWDR. The panel finds that not only is the appellant eligible for health supplements under Section 62 of the EAPWDR, but the ministry approved a ceiling lift system for his bathroom and a ceiling track for his bedroom in June 2015, pursuant to Section 3.8 of Schedule C. The advocates argued that the portable lift is essential to the health, well-being and quality of life of the appellant, noting that when the appellant has gone without physical therapy he suffered negative physical effects, including shortening of the ligaments in his legs. They further argued that his family will incur an unacceptable health and safety risk in being forced to lift him, which can result in muscular skeletal injury. The OT wrote in the funding request dated December 24, 2015 that the appellant requires several trips per year solely for medical purposes, there are no public transportation options available that could accommodate these visits and, to date, the appellant's caregivers have been lifting the appellant from his manual wheelchair onto the car seat, which is not viable from a musculo-skeletal injury perspective. However, neither the OT nor the physician, in his letter dated November 13, 2015, provided information to show a direct and imminent life threatening need for the portable lift. The panel finds that the ministry reasonably determined that there was insufficient evidence to support a direct and imminent life threatening need for the portable lift device (Hoyer Advance Patient Lift). Therefore, the

panel finds that the ministry's decision, which concluded that the criteria in Section 69 of the EAPWDR are not met, was reasonable.

Conclusion

In conclusion, the panel finds that the ministry's decision to deny the request for a health supplement to cover the cost of the requested portable lift (Hoyer Advance Patient Lift) because the requirements in Section 3 and 3.8 of Schedule C and Section 69 of the EAPWDR were not met was reasonably supported by the evidence. Therefore, the panel confirms the reconsideration decision.