

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”) reconsideration decision dated April 21, 2016 in which the ministry denied the appellant’s request for a two position lift chair as a health supplement under the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”). The ministry determined that the following eligibility criteria in Schedule C, and section 69 were not met:

- Subsection 2(3): no ongoing eligibility for a lift chair because this section applies to items that were approved under repealed legislation [Disability Benefits Program Regulation, section 2(3) of Schedule C]. The ministry noted that it previously approved a lift chair for the appellant in 2009 under section 3(1)(d) of Schedule C that was in effect at the time.
- Sections 3.1 to 3.12: not eligible as medical equipment because a lift chair is not an eligible item under these sections. In addition, the information provided does not establish that all other legislated requirements for each type of equipment have been met under these sections and section 3(1).
- Section 3.5(0.1) and 3.5(1)(l): a lift chair is specifically excluded as a *positioning chair* and also not included as a *transfer aid*. In addition, a *positioning chair* may only be provided for a person for whom a wheelchair is medically essential.
- Section 2(1): not eligible as a medical supply because a lift chair is not a disposable or reusable medical supply; is not required for one of the listed purposes; and is not listed in subsections 2(1)(a.1) or 2(1)(a.2) [specific disposable/ reusable and consumable items].
- A lift chair is not set out in any other sections of Schedule C including therapies under sections 2(1)(c), 2(2), and 2(2.1), and it does not meet the criteria for the remaining health supplements under sections 2.1, 2.2, 4, 4.1, and 5 to 9.
- Section 69: not eligible for a lift chair under life-threatening health need.

PART D – Relevant Legislation

EAPWDR - 2015: sections 62 and 69, and Schedule C, Health Supplements

EAPWDR - in force in 2009: section 3(1)(d) of Schedule C [Disability Benefits Program Regulation]

PART E – Summary of Facts

The evidence before the ministry at the reconsideration included the following:

- Documents from 2009 including a reconsideration decision confirming the ministry's approval of a two position lift chair in October 2009 at a cost of \$995 to replace the appellant's broken lift chair. At that time, the appellant noted the ministry's previous approval of a lift chair, approximately 10 years ago when the appellant's condition started to deteriorate. An occupational therapist ("OT") confirmed that the appellant's condition had progressively declined and recommended a lift chair to allow for independent living.
- An undated Telephone Log in which the ministry was seeking clarification from an OT in response to whether the appellant is unable to transfer without the lift chair; and were other devices considered such as a pole to assist with transferring in and out of a chair. The OT indicated a transfer pole would not be appropriate due to the appellant's medical condition and she requires a lift chair for chair transfers.
- A Request for Reconsideration signed by the appellant on April 6, 2016 in which she stated her argument in an attached letter and provided the following information:
 - The ministry approved two previous lift chairs. Her health condition is degenerative and continues to get worse.
 - She uses a walker around her apartment and transfers from it to a lift chair which helps the pressure on her back and keeps her feet from swelling. She uses the walker as a "wheelchair" to get to her mobility scooter which is also "like a wheelchair" to get her out in the community.
 - She cannot walk more than 30 feet before her legs give out. She therefore sits on the walker and needs someone to push her to her scooter.
 - Since her lift chair broke, she lies in bed for most of the day to keep the pressure off her back, spine, and legs. She has a lot of difficulty getting up from a regular chair as her arms are very weak and her legs are numb causing her to fall twice since her lift chair broke.
- A letter and decision summary from the ministry dated March 22, 2016 denying the appellant's request for a lift chair.
- A fax from an OT dated March 10, 2016 with the following attached information in support of a lift chair. The OT stated that the appellant is falling and her need for a lift chair is therefore urgent:
 - A Medical Equipment Request and Justification form signed by the appellant and completed by a physician on March 3, 2016. The physician indicated the appellant has multiple medical comorbidities including spinal spondylosis, osteoarthritis, asthma, coronary artery disease, and diabetes, all of which significantly and severely affect her mobility. The physician recommended a "lift/ recliner chair." Under *Specifications of medical equipment required to meet the applicant's needs*, an OT's endorsement dated March 10, 2016 indicated a two position lift/ recliner chair and attached a letter as follows:
 - The OT's letter dated March 16, 2016 indicating that the client is a senior who is living with several medical issues that significantly impact her ability to transfer and mobilize [in addition to the conditions cited by the physician, the OT listed lupus]. The appellant has difficulties maintaining both her static and dynamic balance, and she has difficulty getting up from chairs, the couch, the toilet, and her bed. She has various assistive devices that help her maintain safety and positioning support, including a four-wheeled walker for balance and a three-wheeled scooter for long distance mobility needs. She relies on a lift/ recliner chair throughout the day that was funded by the ministry in 2009 but broke in February 2016. A technician attended her home and determined that the lift chair could not be fixed and is no longer safe for the appellant to use. She has reported two falls with resultant contusions from attempting

to get out of a “borrowed regular chair.” She reported that the lift chair provided the assist and support she needs to move herself from sitting to standing and the weakness in her legs makes it very challenging to transition from sitting to standing without a lift chair.

- A technician’s report dated February 9, 2016 indicating the scissor frame has dropped from the appellant’s lift chair due to a sheared-off bolt, and advising the appellant to look for a similar chair and provide a quote to the ministry for a replacement.
- A quotation for a two position lift chair dated February 9, 2016, at a cost of \$1,008.

Additional submissions

Appellant

- A Notice of Appeal dated April 29, 2016 in which she stated her argument and indicated that she has a permanent disability (lupus) and has been supplied with lift chairs over the years but has not been able to use her current (broken) chair since February 2016. The panel will address both parties’ arguments in *Part F - Reasons for Panel Decision*.

- A letter from the appellant’s doctor dated May 2, 2016. He states that the appellant has been his patient through numerous visits since 2009. She has spinal stenosis of her low back which causes severe low back symptoms, including severe difficulty rising from a chair resulting in falls when she attempts to do so unaided. She has been successfully using a lift chair for a number of years, avoiding serious injury. She has a number of co-morbidities including asthma, diabetes, heart disease, arthritis, and lupus that contribute to her overall frailty and increase the likelihood of a fall resulting in injury and a poor outcome. Her health and general well-being will be adversely affected without a new lift chair.

Ministry

- An e-mail exchange of May 19, 2016 between the ministry representative and adjudicator who made the reconsideration decision, confirming the ministry’s argument that a lift chair is not an authorized item under the EAPWDR, and explaining the difference between a positioning chair and a lift chair; i.e., “a positioning chair is for the use of someone who is dependent on a wheelchair for basic mobility.”

It (positioning chair) does not have the capability of lifting a person from a sitting to a standing position. It is used for positioning a person who is wheelchair dependent and relies on their wheelchair seating for positioning in their wheelchair. A positioning chair is used during those times when they are out of their wheelchair.

- Two ministry policy documents: *Medical Equipment and Devices Overview*, pages 1-6 and *Medical Equipment and Devices Overview*, pages 1-8, *Medical Equipment Chart*.

Oral testimony

Both parties presented their arguments on appeal, and the appellant described how the lift chair looks like a Lazy Boy chair with an electric button that she pushes to move up and forward into a complete standing position so that she can then grab her walker to get to the bathroom or other rooms, or to her scooter that is parked in the lobby of her building. She has a bar on her bed to get to her walker but it is very difficult to get her legs up. She reported that a pole, grab bars in the bathroom (which

she uses as much as she can), or a sling device all require arm strength which she does not have and she cannot grasp very well. In response to questions, the appellant confirmed that she does not use a wheelchair at present but she is at the stage where her doctor has told her a wheelchair will be necessary in the near future. She stated that she will need a wheelchair to get to her scooter as she is having trouble maneuvering her walker without someone pushing it. She explained that a family member assists her but they are facing surgery and cannot provide the extensive help that she needs.

The ministry explained that it used to fund lift chairs, until 2010 when the legislation changed. The ministry stated that if the appellant faces a new requirement for a wheelchair, she would need to put in new request for medical equipment.

Admissibility

The panel finds that the appellant's additional documents and oral testimony corroborate the information in the reconsideration record that outlined her medical diagnoses, mobility limitations, history with using lift chairs, and her need for a new lift chair. The panel therefore admits the submissions under section 22(4)(b) of the *Employment and Assistance Act* (EAA) as evidence in support of the information and records that were before the minister at the time the decision being appealed was made.

The panel accepts the ministry's documents as argument in support of the ministry's position as presented at the reconsideration and admits the e-mail information [regarding a positioning chair] under section 22(4)(b) of the EAA as evidence in support of the information and records that were before the minister at the time the decision being appealed was made. The panel finds that the information about the positioning chair provides clarification on the different types of equipment that may be provided under the EAPWDR.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision of April 21, 2016 which denied the appellant's request for a lift chair was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry determined that the following eligibility criteria in Schedule C, and section 69 were not met:

- Subsection 2(3): no ongoing eligibility for a lift chair because this section applies to items that were approved under repealed legislation [Disability Benefits Program Regulation, section 2(3) of Schedule C]. The ministry noted that it previously approved a lift chair for the appellant in 2009 under section 3(1)(d) of Schedule C that was in effect at the time.
- Sections 3.1 to 3.12: not eligible as medical equipment because a lift chair is not an eligible item under these sections. In addition, the information provided does not establish that all other legislated requirements for each type of equipment have been met under these sections and section 3(1).
- Section 3.5(0.1) and 3.5(1)(l) and (m): a lift chair is specifically excluded as a positioning chair and also not included as a transfer aid. In addition, a positioning chair may only be provided for a person for whom a wheelchair is medically essential.
- Section 2(1): not eligible as a medical supply because a lift chair is not a disposable or reusable medical supply; is not required for one of the listed purposes; and is not listed in subsections 2(1)(a.1) or 2(1)(a.2) [specific disposable/ reusable and consumable items].
- A lift chair is not set out in any other sections of Schedule C, including therapies under sections 2(1)(c), 2(2), and 2(2.1), and it does not meet the criteria for the remaining health supplements under sections 2.1, 2.2, 4, 4.1, and 5 to 9.
- Section 69: not eligible for a lift chair under life-threatening health need.

The following legislation applies to the appellant's request for a two position lift chair:

EAPWDR - 2015

General health supplements

62 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) a family unit in receipt of disability assistance,

(c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

The ministry acknowledged that the appellant is eligible to receive health supplements pursuant to EAPWDR section 62 because she is designated as a Person with Disabilities and has been transitioned to Medical Services Only. The ministry found that the appellant was not eligible for the requested lift chair under the following sections of the EAPWDR:

69 Health supplement for persons facing direct and imminent life threatening health need

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 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).

SCHEDULE C Health Supplements

General health supplements

2 (1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation:

(a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:

(i) the supplies are required for one of the following purposes:

- (A) wound care;
- (B) ongoing bowel care required due to loss of muscle function;
- (C) catheterization;
- (D) incontinence;
- (E) skin parasite care;
- (F) limb circulation care;

(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;

Therapies

(c) subject to subsection (2), a service provided by a person described opposite that service in the following table, delivered in not more than 12 visits per calendar year,

- (i) for which a medical practitioner or nurse practitioner has confirmed an acute need,
- (ii) if the visits available under the Medical and Health Care Services Regulation, B.C. Reg. 426/97, for that calendar year have been provided and for which payment is not available under the *Medicare Protection Act*, and
- (iii) for which there are no resources available to the family unit to cover the cost:

(2) No more than 12 visits per calendar year are payable by the minister under this section for any combination of physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services.

(2.1) If eligible under subsection (1) (c) and subject to subsection (2), the amount of a general health supplement under section 62 of this regulation for physical therapy services, chiropractic services,

message therapy services, non-surgical podiatry services, naturopathy services and acupuncture services is \$23 for each visit.

Benefit provided under repealed legislation

(3) If the minister provided a benefit to or for a person under section 2 (3) of Schedule C of the Disability Benefits Program Regulation, B.C. Reg. 79/97, the Income Assistance Regulation, B.C. Reg. 75/97 or the Youth Works Regulation, B.C. Reg. 77/97, as applicable, for the month during which the regulation was repealed, the minister may continue to provide that benefit to or for that person as a supplement under this regulation on the same terms and conditions as previously until the earlier of the following dates:

- (a) the date the conditions on which the minister paid the benefit are no longer met;
- (b) the date the person ceases to receive disability assistance.

2.1 Optical supplements

2.2 Eye examination supplements

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.

3.1 Medical equipment and devices – canes, crutches and walkers

3.2 Medical equipment and devices – wheelchairs

3.3 Medical equipment and devices – wheelchair seating systems

3.4 Medical equipment and devices – scooters

3.5 Medical equipment and devices – bathing and toileting aids

(0.1) In this section:

"positioning chair" does not include a lift chair;

"transfer aid" means a transfer board, transfer belt or slider sheet.

(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 toileting or transfers of a person or to achieve or maintain a person's positioning:

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- (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 or bedroom;
 - (j) a portable commode chair;
 - (k) a standing frame for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;
 - (l)** a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;
 - (m)** a transfer aid for a person for whom the transfer aid is medically essential to transfer from one position to another.

3.6 Medical equipment and devices – hospital bed

3.7 Medical equipment and devices – pressure relief mattresses

3.8 Medical equipment and devices – floor or ceiling lift devices

3.9 Medical equipment and devices – positive airway pressure devices

3.10 Medical equipment and devices – orthoses

3.11 Medical equipment and devices - hearing instrument

3.12 Medical Equipment and devices – non-conventional glucose meters

4 Dental supplements

4.1 Crown and bridgework supplement

5 Emergency dental supplements

6 Diet supplements

7 Monthly nutritional supplement

8 Natal supplement

9 Infant Formula

EAPWDR - in force in 2009

Medical equipment and devices

3(1) The following medical equipment and devices are the health supplements that may be paid for by the minister if the supplements are provided to a family unit that is eligible under section 62 [general health supplements] of this regulation:

- (d)** positioning devices, if
 - (i) repealed, (BC Reg. 317/2008)
 - (ii) repealed, (BC Reg. 317/2008)
 - (iii) the person has received the pre-authorization of the minister for the positioning device requested, and
 - (iv) there are no resources available to the person's family unit to pay the cost of the health supplement;

Panel's decision

EAPWDR Schedule C

No ongoing eligibility under the current legislation: Section 2(3)

In her reconsideration and appeal submissions, the appellant argues that she should be allowed a replacement lift chair on the basis of a “grandfather principle for previously approved and pre-authorized clients.” She submits that new regulations on critical items should not be applied to existing recipients. She notes that the lift chair was previously provided as a “transfer aid” and she therefore argues that any repair or replacement should be honoured under “restored coverage changes.”

The ministry argues that its reconsideration decision of 2009, that approved the appellant’s current lift chair, does not confer an ongoing eligibility for a lift chair as a health supplement. The ministry notes that there is “no vested right” to assistance or benefits even if the provision of the benefit was the result of a reconsideration or tribunal decision. The ministry argues that ministry decisions do not apply for an unlimited time but are based upon the evidence at the time of the application and “the application of the law existing at that time.”

The ministry notes that the legislation governing the provision of medical equipment was substantially changed, effective April 1, 2010 and submits that with each change in the legislation, the applicant is required to meet the eligibility requirements for requested benefits. The ministry submits that the minister can only legally provide benefits for which the recipient is eligible under the legislation that is in place at the time. The ministry submits that subsection 2(3) of EAPWDR Schedule C confers an ongoing benefit only in certain circumstances and that the provision does not apply to the appellant because the 2009 approval of the lift chair was made under the regulation that was in force at the time [section 3(1)(d) of EAPWDR Schedule C – Disability Benefits Program Regulation]. While the minister is sympathetic to the appellant’s circumstances, the ministry submits there is no provision in the EAPWDR or ministry policy to look at individual circumstances and change the decision on the basis of previous approvals.

The panel finds that the ministry reasonably determined that there is no legislative authority conferring ongoing eligibility for a lift chair under the EAPWDR currently in force and no grandfather provision to replace a lift chair that was approved under the 2009 legislation. Both the ministry and the panel are bound by the legislation that is currently in force and as noted by the ministry, there is no discretion to bypass current eligibility requirements. While section 2(3) of EAPWDR Schedule C allows the ministry to “continue to provide a benefit” that was provided under repealed legislation [specifically, section 2 (3) of Schedule C of the Disability Benefits Program Regulation, B.C. Reg. 79/97], there is no evidence that the ministry approved a lift chair under that provision.

Rather, the ministry’s evidence is that the lift chair it funded in 2009 was provided as a “positioning device” under section 3(1)(d) of Schedule C of the Disability Benefits Program Regulation that was in force at that time. Further, the panel notes that even if the ministry had approved the lift chair under section 2(3) of Schedule C of the former regulation, the appellant would not be eligible for a replacement lift chair under the grandfather provision in the current EAPWDR as that provision

applies “until the date the person ceases to receive disability assistance”. As noted by the ministry, the appellant has already been transitioned to Medical Services Only. The panel therefore finds that the ministry reasonably determined that section 2(3) of EAPWDR Schedule C is not applicable in the circumstances of the appellant.

Medical equipment: Sections 3.1 to 3.12 and section 3(1)

Aside from section 3.5 which the panel will address under a separate heading (below), the appellant does not dispute that a lift chair is an ineligible item under these provisions. The ministry submits that a lift chair is not an eligible item under these sections and the information provided does not establish that all other legislated requirements for each type of equipment have been met under these sections and section 3(1).

The panel finds that the ministry reasonably determined that a lift chair is not set out in sections 3.1 to 3.12 of EAPWDR Schedule C, and therefore the legislative requirements for the items listed under these sections and section 3(1) [which applies to the medical equipment and devices listed in 3.1 to 3.12] have not been met. The panel finds that the ministry reasonably applied the legislation because Sections 3.1 to 3.12 of Schedule C set out eligibility criteria for canes, crutches, walkers, wheelchairs, scooters and accessories; bathroom items including grab bars, a hospital bed, pressure relief mattress, floor or ceiling lift device, positive airway pressure device and accessories; orthoses and braces; and hearing instruments and glucose meters. The appellant did not request any of those items and the panel finds that the ministry reasonably determined that the lift chair does not fall within the definition of any of the items in these sections.

Positioning chair and transfer aid: Section 3.5(0.1) and 3.5(1)(l) and (m)

The appellant argues that a lift chair is a medical necessity to sustain her quality of life and should be considered as a “transfer aid”. She depends on the lift chair to transfer to her walker and scooter as well as to the couch and other places. Without her lift chair, she spends most of her days in bed. The lift chair also helps her to position herself and offset the pain and stress in her back and weakness in her arms and hands. She argues that a lot more money will be spent to get a wheelchair and then a transfer chair.

The ministry notes that section 3.5(0.1) of EAPWDR Schedule C specifies that a “positioning chair does not include a lift chair.” The ministry argues that because the requested item is described as a “two position lift chair”, it is therefore not a “positioning chair” under the regulation. The ministry notes that a positioning chair does not have a “lift to stand” capability and further argues that a lift chair is not covered under section 3.5(1)(l) which describes a “positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility”. The ministry notes that the appellant does not have a wheelchair, and does not require one to achieve or maintain her basic mobility. In addition, the ministry submits that a lift chair is not a “transfer aid” under section 3.5(1)(m) which defines a transfer aid as a “transfer board, transfer belt or slider sheet.”

The panel finds that the ministry reasonably determined that a lift chair is not covered under section 3.5 of EAPWDR Schedule C. It is specifically excluded as a “positioning chair” and is also not included as a “transfer aid” as there is no evidence that a lift chair contains a transfer board or belt or

a slider sheet. The appellant described her lift chair as similar to a Lazy Boy recliner, with a button that she pushes to move up and forward into a standing position. Further, a positioning chair may only be provided for a person for whom a wheelchair is medically essential for basic mobility. While the appellant has a walker and a scooter for her mobility (as confirmed by the OT), and testified that she will require a wheelchair in the near future and uses her walker “as a wheelchair”, there is no confirmation that a wheelchair is medically essential at this time. The panel therefore finds that the ministry reasonably applied the provisions in section 3.5 of EAPWDR Schedule C.

Medical and surgical supplies: Sections 2(1), 2(1)(a)(i), 2(1)(a.1) and 2(1)(a.2)

The appellant is not arguing that her lift chair qualifies as a medical supply. The ministry argues that the lift chair is not a medical or surgical supply under these sections, noting that it is not a disposable or reusable medical supply under section 2(1); is not required for one of the listed purposes under section 2(1)(a)(i); and is not listed in subsections 2(1)(a.1) or 2(1)(a.2) [specific disposable/ reusable and consumable items].

The panel finds that the ministry reasonably determined that a lift chair does not fall under “medical or surgical supplies” as specified in section 2(1) and is not a “disposable or reusable” item under sections 2(1)(a.1) and 2(1)(a.2); these sections list lancets, needles and syringes, ventilator and tracheostomy supplies, and “consumable supplies” used to thicken food. Furthermore, there is no evidence that a lift chair is required for one of the purposes specified in section 2(1)(a)(i) of Schedule C: wound care, bowel care, catheterization, incontinence, skin parasite care, and limb circulation care. The panel therefore finds that the ministry reasonably applied the EAPWDR in concluding that the lift chair is not eligible as a medical or surgical supply.

Remaining health supplements: sections 2(1)(c), 2(2), and 2(2.1), and 2.1, 2.2, 4, 4.1, and 5 to 9

The appellant is not arguing that her lift chair qualifies as a therapy or as any of the other remaining health supplements. The ministry argues that a lift chair does not meet the criteria as a therapy under sections 2(1)(c), 2(2), and 2(2.1) of Schedule C, or as one of the remaining health supplements set out in the EAPWDR. The ministry notes that the therapy provisions allow the ministry to provide no more than 12 visits per calendar year at a rate of \$23 per visit for acupuncture, chiropractic, massage, naturopathy, podiatry, and physical therapy. The ministry further argues that the other legislated criteria for the therapy supplement have not been met.

The ministry further notes that the remaining health supplements [sections 2.1, 2.2, 4, 4.1, and 5 to 9] cover eye, dental, and diet supplements as well as supplements related to infants. The ministry submits that a two position lift chair is not any of these supplements and the other legislated criteria set out in these sections are also not met.

The panel notes that these sections govern visits to various types of therapists, as well as specific supplements and there is no evidence that the appellant requested any type of therapy or any of the listed supplements. The recommendations from her doctor and OT do not specify the listed therapies or supplements. The panel therefore finds that the ministry reasonably determined the appellant is not eligible for a lift chair under the remaining health supplements in sections 2(1)(c), 2(2), 2(2.1), 2.1, 2.2, 4, 4.1, and 5 to 9 of EAPWDR Schedule C.

EAPWDR - section 69

Section 69: not eligible under direct and imminent life-threatening health need

In her reconsideration and appeal submissions, the appellant submits that her health deteriorates quickly without the lift chair and she requires a lift chair to mobilize within her apartment, take the pressure off of her back, and keep her feet from swelling. She submits that since her chair broke, the delay in replacing it is doing more harm now than before. The extra medication she is taking for pain is taking its toll on her and another fall could be a life or death situation. The OT and doctor's letters confirm that she is falling and support her need for a replacement chair in order to sustain her quality of life.

The ministry submits that the appellant is not eligible for a lift chair as a health supplement for a person facing a direct and imminent life-threatening health need. The ministry notes that EAPWDR section 69 applies to the health supplements set out under Schedule C, sections 2(1)(a) to (f) [general health supplements] and section 3 [medical equipment and devices] and argues that the provision is intended to provide a remedy for persons facing a direct and imminent life-threatening health need for these supplements and who are not otherwise eligible to receive them. The ministry argues that the appellant does not require a remedy under section 69 as she is a recipient of disability assistance and is therefore eligible to receive health supplements under EAPWDR Schedule C.

The ministry further argues that the information submitted with her application for the lift chair does not demonstrate that she faces "a direct and *imminent* life-threatening health need" for the requested item and even if such a need were found, a two position lift chair is not a health supplement set out in in Schedule C and does not meet all of the requirements under this Schedule. At the hearing, the ministry reiterated that it is sympathetic to the appellant's circumstances, but has no legislative authority to fund a replacement lift chair. The ministry further reiterated that there is no exception in policy and no discretion to reverse the decision.

The panel notes that in order to be eligible for a health supplement under section 69, the person must be facing a direct and imminent life-threatening health need and not be eligible for health supplements under other sections of the EAPWDR. The appellant is eligible to receive the health supplements set out under sections 2 and 3 of Schedule C because she meets the basic eligibility requirement for health supplements as a recipient of disability assistance under EAPWDR section 62(1)(a).

Regarding a direct and imminent life-threatening health need under EAPWDR section 69(a), the panel notes that the physician and OT describe the appellant's severe health problems and recommend the lift chair to prevent falls and promote the appellant's independence and quality of life. The OT marked the appellant's need for a replacement lift chair as urgent, indicating that the appellant has fallen more frequently since her lift chair broke. Nevertheless, the panel finds that the ministry reasonably determined that the criteria in section 69 are not met.

Even though the appellant is eligible for health supplements under sections 2 and 3 of EAPWDR Schedule C, her request must still meet the specific eligibility requirements for a particular item or supplement. If the item she requested is not listed in the legislation as an eligible item, as is the case with the lift chair (which is in fact specifically excluded under section 3.5(0.1) of EAPWDR Schedule C), then the ministry has no legal authority to provide a health supplement to cover the cost of the item regardless of the appellant's legitimate health need.

The panel finds that the ministry reasonably determined that a lift chair is not an eligible item under Schedule C, sections 2(1)(a) [medical supplies for a specific purpose as listed in the legislation] to 2(1)(f) [disposable or consumable medical supplies, therapies, and medical transportation], or section 3 which applies to the medical equipment and devices that are listed in sections 3.1 to 3.12 of the Schedule. Given that the lift chair is not eligible under any of the aforementioned sections, the panel finds that the ministry reasonably determined the appellant is not eligible for the lift chair to meet a direct and imminent life-threatening health need under EAPWDR section 69.

Conclusion

As the appellant's request for a lift chair does not meet the legislative requirements in the EAPWDR, the panel finds that the ministry reasonably denied the appellant's request for a replacement chair. The panel confirms the ministry's reconsideration decision as a reasonable application of the applicable enactment in the circumstances of the appellant pursuant to sections 24(1)(b) and 24(2)(a) of the *Employment and Assistance Act*.