

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated June 3, 2016 which held that the appellant is not eligible for funding for a lift chair (with a gel sheet overlay) because the request did not meet the requirements for the provision of a health supplement under Schedule C or section 69 of the Employment for Persons with Disabilities Regulation (EAPWDR). Specifically, the ministry determined that the lift chair:

- is not a “positioning chair” or a “transfer aid” under section 3.5 of Schedule C;
- is not any of the other health supplements set out in sections 3.1 to 3.12 of Schedule C;
- is not a disposable or reusable medical supply under section 2(1)(a) of Schedule C required for any of the purposes set out in paragraph (a)(i) and is not necessary to avoid imminent and substantial danger as required by paragraph (a)(ii);
- is not any of the health supplements set out under sections 2(1)(a.1), (c) or (f) or 2.1 through 9 of Schedule C; and
- does not meet the requirements of section 69 of the EAPWDR.

PART D – Relevant Legislation

EAPWDR, Schedule C and section 69

PART E – Summary of Facts

Information before the ministry at reconsideration

In support of her original request for funding from the ministry, the appellant submitted a March 31, 2016 Medical Equipment Request and Justification (MERJ) completed by her physician, a February 16, 2016 letter from her occupational therapist (OT), and a January 6, 2016 price quote for a “Lift Chair – Comforter” and “Pillow Top Gel Sheet.” Following denial of her request, the appellant submitted a May 18, 2016 letter from the same OT.

In the MERJ, the physician describes the appellant’s medical condition as “Juvenile idiopathic arthritis/MVA, unable to walk” and recommends an “Alternate positioning device – recliner/lift chair.”

In the OT’s February letter, the appellant is reported to have been using a donated recliner/lift chair that is several years old, not working consistently, and is not cost efficient to repair. The appellant requires full assistance to transfer to/from her bed and wheelchair. She uses her recliner/lift chair for seating and positioning throughout most of the day so that she can transfer independently, use her 4-wheeled walker to walk very short distances inside her home, and independently manage toileting and personal hygiene tasks. The appellant also uses an electric bed and a manual wheelchair for support and pain relief but due to upper extremity joint contractures and pain, she is not able to self-propel in her current manual wheelchair. The OT recommends the recliner/lift chair to provide an alternate device that provides adequate seating and comfortable positioning. The gel sheet overlay will provide pressure reduction to minimize risk of skin breakdown.

In her subsequent letter, the OT confirms the information in her previous letter, adding that the appellant is not a candidate for power mobility.

Information provided on appeal and admissibility

At the hearing, the appellant read from a 2-page submission she prepared for the hearing. She stated that the requested chair is the only chair that she can get herself in and out of. It also allows her to change positions constantly, which helps decrease hip and back pain and to prevent pressure sores. In the event of an emergency, it is the only chair that allows some hope of transferring to her walker. Her current “alternate positioning chair” was used when she obtained it 10-14 years ago. It no longer fits her properly and must be used with pillow supports for her arms and back that must be placed by a caregiver/parent. The chair’s controller has stopped working several times, leaving her trapped until help arrives. A mobility technician advised that the controller is not worth fixing.

The appellant also submitted an April 12, 2016 prescription for a “lift chair with customized individual seating to help prevent pressure sores” from her rheumatologist.

The ministry did not object to the admission of these documents into evidence. As the information corroborated the information available at reconsideration, the panel admitted it under section 22(4) of the Employment and Assistance Act as it was in support of the information and records at reconsideration.

At the hearing, the ministry relied on its reconsideration decision, providing no additional evidence.

PART F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry decision which held that the appellant is not eligible for funding for a lift chair (with a gel sheet overlay) is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. That is, was the ministry reasonable in determining that the lift chair:

- is not a “positioning chair” or a “transfer aid” under section 3.5 of Schedule C of the EAPWDR;
- is not any of the other health supplements set out in sections 3.1 to 3.12 of Schedule C;
- is not a disposable or reusable medical supply under section 2(1)(a) of Schedule C required for any of the purposes set out in paragraph (a)(i) and is not necessary to avoid imminent and substantial danger as required by paragraph (a)(ii);
- is not any of the health supplements set out under sections 2(1)(a.1), (c) or (f) or 2.1 through 9 of Schedule C; and
- does not meet the requirements of section 69 of the EAPWDR?

Relevant Legislation – Schedule C and section 69 of the EAPWDR

Schedule C

General health supplements

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

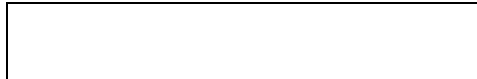
(a) medical or surgical supplies that are, at the minister’s discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:

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

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

(ii) the supplies are

- (A) prescribed by a medical practitioner or nurse practitioner,
- (B) the least expensive supplies appropriate for the purpose, and



(C) necessary to avoid an imminent and substantial danger to health;

(iii) there are no resources available to the family unit to pay the cost of or obtain the supplies.

(a.1) the following medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies:

- (i) lancets;
- (ii) needles and syringes;
- (iii) ventilator supplies required for the essential operation or sterilization of a ventilator;
- (iv) tracheostomy supplies;

(a.2) consumable medical supplies, if the minister is satisfied that all of the following requirements are met:

- (i) the supplies are required to thicken food;
- (ii) all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies;.....

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

Subsection (1)(c) sets out the requirements for specified services from listed health care providers and subsection (1)(f) sets out the requirements for medical transportation.

Sections **2.1, 2.2, 3, 3.1-3.12,** and **4** through **9** of Schedule C set out the requirements for optical, medical equipment and devices (canes, wheelchairs and other specified equipment and devices), dental and natal health supplements.

Medical equipment and devices — toileting, transfers and positioning aids

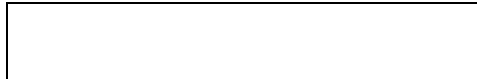
3.5 (0.1) In this section:

"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:

- (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.
- (2) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is 5 years from the date on which the minister provided the item being replaced.

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

69 The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
- (b) the health supplement is necessary to meet that need,
- (c) a person in the family unit is eligible to receive premium assistance under the *Medicare Protection Act*, and
- (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
 - (i) paragraph (a) or (f) of section (2) (1);
 - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

Appellant's position

The appellant's position is that the requested chair is an alternate positioning chair and the only means by which she can independently get herself from a sitting to standing position enabling her to use her walker, independently get food and manage toileting, and constantly reposition herself to relieve pain and prevent pressure sores. Consequently, it is critical to her mobility and basic needs and is therefore a positioning chair within the meaning of section 3.5 of Schedule C.

Ministry's position

The ministry's position is that the appellant is not eligible for the lift chair because it is not any of the health supplements the ministry may provide, all of which are set out in Schedule C. The ministry also found that the requirements set out in section 69 are not met.

The lift chair is not any of the health supplements set out in sections 3.1-3.12 of Schedule C. The ministry specifically notes that the lift chair is not a "positioning chair" under section 3.5(1)(l) because subsection (0.1) expressly states that positioning chair does not include a lift chair and the requested chair is a "Golden Comforter lift chair with a gel sheet overlay." The ministry adds that it sought clarification from its own OT who advised that the essential difference between a "lift chair" and a "positioning chair" is that a "positioning chair" does **not** (emphasis included) have a "lift to stand" capability whereas a lift chair does. A positioning chair is intended for the use of those who rely heavily on wheelchairs for both indoor and outdoor mobility and are not able to position themselves in a wheelchair or in regular seating when out of a wheelchair. Additionally, the lift chair is not a "transfer aid" under section 3.5(1)(m) because "transfer aid" is defined under subsection (0.1) as a transfer board, transfer belt or slider sheet.

The lift chair is not a disposable or reusable medical or surgical supply under section 2(1)(a) of Schedule C, is not required for any of the purposes set out in paragraph (a)(i), and is not necessary to avoid an imminent and substantial danger to the appellant's health which is a requirement of paragraph (a)(ii). Additionally, the lift chair is not an item set out in section 2(1)(a.1).

The lift chair is not any of the other health supplements set out in Schedule C as it is not any of the therapies set out in section 2(1)(c) or any of the supplements set out in sections 2.1 through 9.

Respecting section 69, the ministry argues that the appellant does not require a remedy under section 69, because she is eligible to apply for health supplements under Schedule C. Further, while the OT's letters state that the appellant relies on a lift chair for independent transfers to her walker in order to attend to self-care activities, the information submitted does not demonstrate that the appellant faces a direct and *imminent* life-threatening health need for the lift chair. Finally, as the lift chair is not a health supplement set out in sections 2(1)(a) and (f) or section 3 of Schedule C, the request has not met all the requirements specified in those sections.

Panel Decision

Under the EAPWDR, the only health supplements that may be provided by the ministry are those set

out in Schedule C. While the appellant, her OT, and her physician refer to the lift chair as an “alternate positioning device”, there is no such health supplement set out in Schedule C. Accordingly, the appellant’s request was assessed on the basis of the health supplements set out in Schedule C.

Eligibility under sections 3 and 3.1 to 3.12 of Schedule C

The lift chair is clearly not a cane, crutch, walker, wheelchair, wheelchair seating system, scooter, hospital bed, pressure relief mattress, floor or ceiling lift device, positive airway pressure device, orthosis, hearing instrument, or non-conventional glucose meter. As these are the health supplements set out in sections 3.1 – 3.4 and 3.6 – 3.12 of Schedule C, the panel finds that the ministry reasonably determined that the appellant is not eligible for the lift chair under these sections.

Section 3.5 of Schedule C, allows for the provision of certain equipment and devices if medically essential to facilitate toileting or transfers of a person or to achieve or maintain a person’s positioning. Included in the listed aids under subsection (1) is a “positioning chair” for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility. However, as the ministry notes, subsection (0.1) expressly states that a “positioning chair” does not include a lift chair. Additionally, the panel accepts the ministry’s distinction between a “positioning chair” and a “lift chair” as reasonable – only a lift chair includes lift to stand capability and the primary feature of a positioning chair is to provide support. Consequently, the panel finds that the ministry reasonably determined that the lift chair is not a positioning chair.

Also included in the listed aids under subsection (1) is a “transfer aid” for a person for whom the transfer aid is medically essential to transfer from one position to another. While the appellant and her OT clearly describe the role of the requested lift chair for transfers inside the home, “transfer aid” is defined in subsection (0.1) as transfer board, transfer belt or slider sheet. This definition is exhaustive and cannot be reasonably interpreted as including a lift chair. Consequently, the panel finds that the ministry reasonably determined that the lift chair is not a transfer aid.

As the ministry reasonably determined that the requested lift chair is not any of the equipment or devices set out in section 3.5 of Schedule C, the panel finds that the ministry reasonably determined the appellant was not eligible under section 3.5.

Eligibility under section 2(1)(a) and (1)(a.1) of Schedule C

Section 2(1)(a) allows for the provision of unspecified reusable or disposable medical or surgical supplies if certain conditions are met, including that the supplies are required for one of the purposes listed in paragraph (a)(i). The lift chair is not reasonably characterized as a medical or surgical supply as it is properly characterized as equipment or a device. While the lift chair is used as a means to assist the appellant in mobilizing to attend to personal care, the ministry reasonably concluded that the information does not establish that it is directly required for any of the purposes listed in paragraph (a)(i) - wound care, ongoing bowel care due to loss of muscle function, catheterization, incontinence, skin parasite care, or limb circulation care. Paragraph (a)(ii) requires that the medical or surgical supply be required to avoid an imminent and substantial danger to health. While the information from the OT identifies that the lift chair provides an increased level of independent functioning and minimizes the risk of skin breakdown, and the rheumatologist confirms that the lift

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chair is required to help prevent pressure sores, the panel finds that the ministry has reasonably concluded that the information is not sufficient to establish that the lift chair is necessary to avoid an “*imminent*” and substantial danger to health.

Section 2(1)(a.1) allows for the provision of specified medical or surgical supplies. The panel finds that the lift chair is not any of these items - lancets, needles and syringes, ventilator and tracheostomy supplies.

Accordingly, the panel finds that the ministry reasonably determined that the appellant was not eligible for the lift chair under sections 2(1)(a) and (1)(a.1) of Schedule C.

Eligibility under the remaining sections of Schedule C

The requested lift chair is not any of the health supplements set out in section 2(1)(c) [therapies and other services], 2(1)(f) [medical transportation], or sections 2.1, 2.2, and 4 through 9 [optical, dental, diet, natal]. Therefore, the panel finds that the ministry reasonably determined that the appellant is not eligible for the requested items under the remaining sections of Schedule C.

Eligibility under section 69

Section 69 allows for the provision of health supplements set out under sections 2(1)(a) and (f) and 3 of Schedule C where a life-threatening health need exists, the requirements of sections 2 or 3 applicable to the specific health supplement are met, and the applicant is not otherwise eligible for a health supplement under the EAPWDR. The appellant’s circumstances are that she is eligible to receive health supplements under the EAPWDR. As the panel has already found the ministry reasonable in determining that the lift chair was not required to avoid an imminent and substantial danger to health, the panel finds that the ministry reasonably concluded that the information does not meet the higher test of establishing a direct and imminent life-threatening need for the lift chair. Finally, as previously discussed, the ministry reasonably determined that the lift chair is not a health supplement set out under sections 2(1)(a), (f), or 3, which are the only supplements which may be provided under section 69. Accordingly, the panel finds that the ministry reasonably determined that the appellant does not require a remedy under section 69 and that the requirements of section 69 of the EAPWDR were not met.

Conclusion

Based on the above analysis, the panel finds that the ministry’s reconsideration decision that determined that the appellant is not eligible for the lift chair because the requirements set out in Schedule C and section 69 of the EAPWDR were not met is a reasonable application of the legislation in the circumstances of the appellant. The ministry’s reconsideration decision is confirmed and the appellant is not successful on appeal.