

**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 January 27, 2017, which denied the appellant's request for replacement of a raised toilet seat because 5 years from the date on which the minister provided the item being replaced has not passed, as required by sections 3(3) and 3.5(2) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

**PART D – Relevant Legislation**

EAPWDR - sections 3 and 3.5 of Schedule C

## PART E – Summary of Facts

### Information before the ministry at reconsideration

The appellant is eligible for Medical Services Only (MSO) and therefore may receive health supplements under Schedule C. Ministry records indicate that the appellant was previously approved for a raised toilet seat and a padded transfer bench on July 24, 2013. Included in the appeal record is a June 24, 2013 fax to the ministry from an occupational therapist (OT) requesting these items. The OT reports that the appellant is wheelchair bound and is experiencing difficulties with transferring on/off the toilet. The appellant “performs a side transfer and the height of the toilet has become an issue. She requires a raised toilet seat to facilitate her transfers.”

On August 26, 2016, the appellant submitted a Medical Equipment and Justification (MERJ) form requesting a pressure relief cushion and raised toilet seat. The MERJ was signed by a medical practitioner who identifies the appellant’s medical condition as severe osteoarthritis. Attached was an August 25, 2016 letter from the same OT and price quotes for both items.

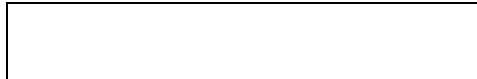
The OT writes that the appellant resides in an assisted living facility, is wheelchair bound, and is independent for her transfers. The appellant “performs a side transfer and has difficulty to clear the toilet seat. She moves along from her chair to the toilet performing small and low push up. She also has to use her upper arms to help with moving her legs.” She was provided a padded, secured raised toilet seat in March 2014, which has been working very well for her.” [as noted above, ministry records indicate the date of approval as July 24, 2013] The OT reports that the padding of the raised toilet seat has worn out and that the attachment has become loose and is not fixable according to a technician. The seat has to be very stable due to the appellant’s difficult side transfer. A lot of force is applied on the raised toilet seat for transfers. The OT also requests funding for the replacement of a cushion provided by the ministry in 2011.

The ministry approved the appellant’s request for the cushion, but the appellant’s request for the raised toilet seat was denied on December 20, 2016.

On January 16, 2017, the appellant requested reconsideration of the decision to deny her funding for the raised toilet seat and provided a letter of the same date from the OT. The OT writes that the appellant’s mobility has declined over the last few months and she is now awaiting residential care, for which she is low priority at this time but could rapidly change due to her frailty. Transfers have declined and more forces are applied on the raised toilet seat, which has significantly contributed to more wear and tear. The raised toilet seat is close to 3 years old and is being used frequently as due to need to frequently pass water. The appellant is on diuretic medication.

### Information provided on appeal

On February 8, 2017, the tribunal received the appellant’s Notice of Appeal (NOA) which reiterates the information provided at reconsideration. The appellant writes that her “condition and transfers are worse over the last few months, which has put extra wear and tear on the raised toilet. The raised toilet seat cannot be repaired and is essential.”



In her NOA, the appellant also argues that she is eligible for the raised toilet seat under ministry policy. On March 12, 2017, the tribunal received a March 8, 2017 letter from the ministry in response to the appellant's argument. The arguments of both parties are set out in Part F of this decision.

PART F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry decision, which held that the appellant's request for a raised toilet seat did not meet the legislated replacement period of 5 years set out under sections 3(3) and 3.5(2) of Schedule C of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

Relevant Legislation – sections 3 and 3.5 of 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

(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.....

**(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.**

**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.**

[ ]

Eligibility requirements of section 3(3) and 3.5(2) of Schedule C

At reconsideration and on appeal, the appellant's position is that her mobility and transfers on and off the toilet have declined over the last few months, resulting in more force being applied to the raised toilet seat and consequently, more wear and tear. In her NOA, the appellant argues that the worsening of her condition and transfers represents a change in her medical condition and therefore, the legislated replacement period of 5 years does not apply under ministry policy which provides that "The replacement period does not apply when an item is required due to changes in a person's medical condition or growth."

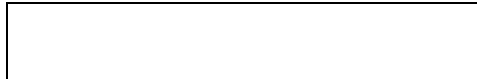
In its reconsideration decision, the ministry's position is that while the appellant's request meets the other legislative requirements set out in sections 3 and 3.5 of Schedule C of the EAPWDR, it does not meet the criterion set out under section 3.5(2). While the ministry understands that the padding has become worn and an attachment loose due to increased use and force being applied during transfers over the years, the ministry concludes that section 3.5(2) clearly provides that the minister is unable to replace the raised toilet seat until the 5 year period for replacement has been reached.

In its appeal submission, the ministry stands by the reasons at reconsideration. The ministry states that its policy relates to circumstances where the minister is satisfied that changes to a person's medical condition are confirmed. The ministry is not satisfied that the OT's explanation that the appellant's "mobility and transfers have declined" confirms a change in a *medical condition* [italics included]. The ministry notes that the appellant still uses the same methods in toileting as before - moving along from her wheelchair to the toilet seat performing a small and low push up. Additionally, the ministry notes that although the OT writes that the toilet seat is used frequently due to the appellant being on diuretic medication, the OT does not identify this as a *new* [italics included] medical condition. The OT also does not explain other factors that would contribute to increased wear and tear on this item, such as weight gain (increased pressure).

*Panel Decision*

Sections 3(3) and 3.5(2) of Schedule C require that 5 years must have passed from the date on which a raised toilet seat was provided by the ministry before it may be replaced by the ministry. Based on the initial request for the appellant's current raised toilet seat, which is the OT's fax dated June 24, 2013, the panel accepts the ministry's information that the appellant was approved for the toilet seat on July 24, 2013. As it has not been 5 years from that date, the panel finds that the ministry reasonably determined that the legislated requirements set out under sections 3(3) and 3.5(2) of Schedule C of the EAPWDR for replacement of the raised toilet seat have not been met.

The appellant argues that, in accordance with ministry policy, she is exempt from the legislated replacement period. However, the ministry cannot develop policy that is inconsistent with or otherwise contradicts the requirements set out the Act or regulation. In this case, the EAPWDR does not contemplate a discretion with respect to the time frame and the requirements under the EAPWDR prevail over ministry policy.



Conclusion

The panel finds that the ministry's decision that the appellant's request for replacement of her raised toilet seat did not meet the legislated timeframe requirements established under sections 3(3) and 3.5(2) of Schedule C of the EAPWDR, was reasonably supported by the evidence and is a reasonable application of the legislation. Accordingly, the panel confirms the ministry reconsideration decision and the appellant is not successful on appeal.