

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated March 15, 2017, which denied the appellant's request for an electric assisted tricycle (the "Tricycle"). The ministry found that as the appellant is a person with disabilities (PWD), he is eligible to apply to the ministry for health supplements under the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR). However, the ministry found that the Tricycle was not an eligible item, as it is not listed under EAPWDR Schedule C, so the ministry does not have the legal authority to provide funding for the Tricycle.

## PART D – Relevant Legislation

EAPWDR section 62, 69 and Schedule C, section 3

## PART E – Summary of Facts

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

- Medical Equipment Request and Justification form completed by a physician dated November 14, 2016 recommending the Tricycle to be able to increase exercise to lower extremities. The physician indicates that the appellant has decreased mobility secondary to a motor vehicle accident with injury to his right leg.
- Letter from the appellant dated November 11, 2016 indicating that the Tricycle costs \$2,500 and providing the address of the medical equipment provider.
- Letter from the appellant dated February 10, 2017 stating that he is seeking the Tricycle for his continued health and life. He states that he was a very healthy man who enjoyed bicycle riding, hiking and walking and although he had diabetes it was controlled with dieting and exercise for 20 years. The appellant states that since being in an accident 4 years ago he has gone downhill, is having difficulty controlling his diabetes and has experienced chest pain and weight gain. The appellant states that he suffers from hallucinations, nightmares, constipation, balance problems, and depression, as well as extreme pain in his right shoulder and upper arm when he walks with a cane. He states that he had one operation that caused dementia and a second operation that caused rheumatism. The appellant states that he needs to exercise to regain his health, particularly his crippled leg and arthritis and as a Tricycle is much cheaper than a scooter, he is appealing the ministry's reconsideration decision denying his request for the Tricycle.
- Letter from the appellant's physician dated February 15, 2017 stating that the appellant has significant mobility impairment and that although he would be a candidate for a scooter, the appellant has requested the Tricycle, which would allow him to have daily physical activity. The physician states that he supports the appellant's request for the Tricycle and notes that it is a cheaper option than a scooter. The physician encourages the ministry to reconsider its decision denying the appellant the Tricycle.
- Request for Reconsideration dated March 2, 2017.

### **Additional Information**

In his Notice of Appeal dated March 13, 2017, the appellant states that the physician has provided a letter supporting his request. The appellant states that he has crippling arthritis, dementia, that he cannot walk far and that he needs transportation for shopping and traveling.

At the hearing the appellant stated that he has reviewed the legislation and cannot see anything that would help him because they would not assist him with exercise. In particular, he stated that a scooter is not any good. The appellant stated that he is slowly dying and that he needs to exercise. He stated that he has good and bad days but that his condition is worsening. The appellant did not provide another medical report, but stated that he had previously seen another doctor at the request of an insurance corporation, who said that his condition would get worse. The appellant stated that as the doctor said, his condition has gotten worse over time. The appellant stated that when he had an operation it was delayed and his blood sugar levels were not checked so he went into a diabetic coma resulting in dementia. The appellant also stated that he has previously tried a stationary bicycle but it didn't work very well as he did not have the necessary strength in one leg and he had some balance issues using the stationary bicycle. The appellant stated that the Tricycle will make movement and exercise much easier and exercise would delay his death.

At the hearing, the ministry relied on the reconsideration decision.

### **Admissibility of New Information**

The ministry did not object to the information in the Notice of Appeal or the appellant's oral evidence.

The panel has admitted the information contained in the appellant's Notice of Appeal and oral testimony into evidence as it is in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the information in the Notice of Appeal refers to the letter from the physician dated February 15, 2017 supporting his request for the Tricycle and relates to the appellant's position with respect to his physical condition and the appellant's belief as to why the Tricycle is necessary.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant funding for the Tricycle was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant was not eligible for the Tricycle as it is not an eligible item as it is not listed under EAPWDR Schedule C?

### EAPWDR

#### General health supplements

**62** (1) Subject to subsections (1.1) and (1.2), the minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who is a recipient of disability assistance.

#### 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 3.11, other than paragraph (a) of section 3 (1).
- (B.C. Reg. 61/2010) (B.C. Reg. 197/2012)

### EAPWDR Schedule C

#### General 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;
- (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;

(b) Repealed. [B.C. Reg. 236/2003, Sch. 2, s. 2 (b).]

(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:

Item	Service	Provided by	Registered with
1	acupuncture	acupuncturist	College of Traditional Chinese Medicine under the <i>Hea</i>
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia und
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia unde
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia unde

(d) and (e) Repealed. [B.C. Reg. 75/2008, s. (a).]

(f) the least expensive appropriate mode of transportation to or from

- (i) an office, in the local area, of a medical practitioner or nurse practitioner,
- (ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,
- (iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or
- (iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*,  
provided that
- (v) the transportation is to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, and
- (vi) there are no resources available to the person's family unit to cover the cost.

(g) Repealed. [B.C. Reg. 75/2008, s. (a).]

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

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

(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.

### **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 3.11 of this Schedule are the health supplements that may be provided by the minister if ...

### **Medical equipment and devices – canes, crutches and walkers**

**3.1** (1) Subject to subsection (2) of this section, 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 achieve or maintain basic mobility:

- (a) a cane;
- (b) a crutch;
- (c) a walker;
- (d) an accessory to a cane, a crutch or a walker.

(2) A walking pole is not a health supplement for the purposes of section 3 of this Schedule.

### **Medical equipment and devices – wheelchairs**

**3.2** (1) In this section, "**wheelchair**" does not include a stroller.

(2) Subject to subsection (4) of this section, 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 achieve or maintain basic mobility:

- (a) a wheelchair;
- (b) an upgraded component of a wheelchair;
- (c) an accessory attached to a wheelchair.

### **Medical equipment and devices – wheelchair seating systems**

**3.3** (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 achieve or maintain a person's positioning in a wheelchair:

- (a) a wheelchair seating system;
- (b) an accessory to a wheelchair seating system.

### **Medical equipment and devices – scooters**

**3.4** (1) In this section, "**scooter**" does not include a scooter with 2 wheels.

(2) Subject to subsection (5) of this section, the following items are health supplements for the purposes

of section 3 of this Schedule if all of the requirements set out in subsection (3) of this section are met:

- (a) a scooter;
- (b) an upgraded component of a scooter;
- (c) an accessory attached to a scooter.

#### **Medical equipment and devices – bathing and toileting aids**

**3.5 (1)** The following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to facilitate transfers of a person or to achieve or maintain a person's positioning:

- (a) a grab bar in a bathroom;
- (b) a bath or shower seat;
- (c) a bath transfer bench with hand held shower;
- (d) a tub slide;
- (e) a bath lift;
- (f) a bed pan or urinal;
- (g) a raised toilet seat;
- (h) a toilet safety frame;
- (i) a floor-to-ceiling pole in a bathroom;
- (j) a portable commode chair.

#### **Medical equipment and devices – hospital bed**

**3.6 (1)** Subject to subsection (3) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to facilitate transfers of a person to and from bed or to adjust a person's positioning in bed:

- (a) a hospital bed;
- (b) an upgraded component of a hospital bed;
- (c) an accessory attached to a hospital bed.

#### **Medical equipment and devices – pressure relief mattresses**

**3.7 (1)** A pressure relief mattress is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that the pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity.

#### **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.

### **Medical equipment and devices – positive airway pressure devices**

**3.9** (1) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (2) of this section are met:

- (a) a positive airway pressure device;
- (b) an accessory that is required to operate a positive airway pressure device;
- (c) a supply that is required to operate a positive airway pressure device.

### **Medical equipment and devices – orthoses**

**3.10** (1) In this section:

**"off-the-shelf"** , in relation to an orthosis, means a prefabricated, mass-produced orthosis that is not unique to a particular person;

**"orthosis"** means

- (a) a custom-made or off-the-shelf foot orthotic;
- (b) custom-made footwear;
- (c) a permanent modification to footwear;
- (d) off-the-shelf footwear required for the purpose set out in subsection (4.1) (a);
- (e) off-the-shelf orthopaedic footwear;
- (f) an ankle brace;
- (g) an ankle-foot orthosis;
- (h) a knee-ankle-foot orthosis;
- (i) a knee brace;
- (j) a hip brace;
- (k) an upper extremity brace;
- (l) a cranial helmet used for the purposes set out in subsection (7);
- (m) a torso or spine brace.

### **Medical equipment and devices – hearing instruments**

**3.11** A hearing instrument is a health supplement for the purposes of section 3 of this Schedule if

- (a) the hearing instrument is prescribed by an audiologist or hearing instrument practitioner, and
- (b) an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument.

### **Medical equipment and devices — non-conventional glucose meters**

**3.12** (1) In this section, **"non-conventional glucose meter"** includes

- (a) a continuous glucose monitoring meter, and
- (b) a talking glucose meter.

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### Eligibility for the Tricycle as medical equipment

The appellant's position is that he requires the Tricycle to help him exercise, travel to and from appointments and in the community, and to delay his deteriorating health. The appellant's position is that the Tricycle is much less expensive than a Scooter and would be more beneficial for him given that he has experienced increase pain, weight gain and difficulty controlling his diabetes since a motor vehicle accident. The appellant's position is that the physician supports his request so the



ministry should fund the Tricycle even if it does not fit within the legislated items.

The ministry's position, as set out in the reconsideration decision, is that while the appellant would benefit mentally and physically from the Tricycle, the Tricycle is not one of the items set out in EAPWDR Schedule C, section 3 so the ministry does not have the authority to consider approval for the Tricycle. In particular, the reconsideration decision states that the Tricycle is not an item listed in EAPWDR Schedule C, sections 3.1 to 3.12 as it is not one of the following: cane, crutch, walker, wheelchair, scooter, bath or shower seat, bath transfer bench, toilet safety frame, portable commode chair, transfer aid, hospital bed, pressure relief mattress, floor or ceiling lift device, positive airway pressure device, custom made or off the shelf foot orthotic, custom-made footwear, hearing instrument, or non-conventional glucose meter.

The ministry's position is that the appellant has not established that the Tricycle is the least expensive appropriate medical equipment. The reconsideration decision states that the appellant has not explained whether cheaper (under \$2,500) devices or activities to exercise would not be suitable (for example, a used stationary bike with varying levels of difficulty to suit the appellant's mobility capabilities).

### Panel Decision

The appellant's evidence is that while he qualifies for a scooter, it would not be suitable for him, as it would not permit him to exercise. The appellant stated that he had previously tried a stationary bicycle but that he was not able to use it. When asked whether he had tried other options such as taking a Handi-Dart to the pool and swimming for exercise, the appellant stated that he used to swim and hike but does not do so now. The appellant did not directly answer the question whether he would be able to exercise in the pool if he could access transportation to get to the pool. The appellant was adamant that the Tricycle is the only viable option for him. As the appellant has not provided information to explain why other cheaper devices or activities to exercise would not be suitable for him, the panel finds that the ministry was reasonable in determining that the appellant has not demonstrated that the Tricycle is the least expensive appropriate medical equipment.

However, even if the appellant had demonstrated that the Tricycle was the least appropriate medical equipment, it is not one of the items listed in EAPWDR Schedule C section 3.1 to 3.12, so the panel finds that the ministry was reasonable in determining that the appellant was not eligible for the Tricycle as a medical equipment or device.

### Eligibility for the Tricycle as a medical supply

The ministry found that the appellant is not eligible for the Tricycle as a medical supply pursuant to EAPWDR section 2(1)(a)(i)(A-F) as it is not a disposable or reusable medical or surgical supply required for one of the itemized purposes being wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care or limb circulation care.

The ministry's position is that information was not submitted to establish that the Tricycle is necessary to avoid an imminent and substantial danger to the appellant's health as required in EAPWDR section 2(1)(a)(ii)(c).

The ministry found that the requested item did not meet the requirements for a medical or surgical supply as set out in Schedule C section 2(1)(a.1) as it is not one of the specified items such as a lancet, needle or syringe, ventilator supplies, or tracheostomy supplies.

The ministry's position is that the Tricycle is not a consumable medical supply that is required to thicken food and meet the other requirements in relation to medical supplies as required by EAPWDR, Schedule C, section 2(1)(a.2).

The ministry's position is that pursuant to EAPWDR, Schedule C, section 2(1.1) medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications so the requested items are not approved under that section of the legislation either.

### Panel Decision

The EAPWDR, Schedule C, section 2(1)(a)(i) sets out that the ministry may provide either disposable or reusable medical or surgical supplies for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care or limb circulation care if the supplies are prescribed by a medical practitioner, the least expensive supplies appropriate for the purpose and necessary to avoid an imminent and substantial danger to health, and there are no resources available to the family unit to pay the cost of or obtain the supplies.

The panel finds that the ministry was reasonable in determining that the Tricycle is not a supply required for one of the legislated purposes, being wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care or limb circulation care. The panel also finds that although the appellant's concerns about his deteriorating health are understandable, there is no information provided to indicate that the Tricycle is necessary to avoid an imminent and substantial danger to health as required by EAPWDR Schedule C, section 2(1)(a)(ii)(c).

The panel also finds that the ministry was reasonable in determining that the Tricycle is not a medical or surgical supply for any of the purposes prescribed by EAPWDR, Schedule C, section 2(1)(a.1), (a.2) or 2(1.1) as it is not lancets, needles and syringes, ventilator supplies, tracheostomy supplies, or required to thicken food.

The panel finds that the ministry's decision that the appellant was not eligible to receive the Tricycle as a medical supply was reasonable.

### Eligibility for the Tricycle as a therapy

EAPWDR, Schedule C, sections 2(1)(c), 2(2) and 2(2.1) set out that the ministry may provide no more than 12 visits per calendar year in the amount of \$23 for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physiotherapy treatments. However, as the Tricycle is not one of these therapies the panel finds that the ministry was reasonable in determining that the appellant is not eligible for funding for the Tricycle as a therapy.

### Eligibility for health supplements under EAPWDR Schedule C, sections 2.1 to 9

EAPWDR, Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, and 9 set out that the ministry may provide: optical supplements, eye examination supplements, dental supplements, crown and bridgework supplements; emergency dental supplements, diet supplements; monthly nutritional supplements; natal supplements; and infant formula. EAPWDR section 67(3) sets out that the ministry may provide a nutritional supplement for an acute short-term need.

The panel finds that as the Tricycle is not one of the other health supplements specified in EAPWDR Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 or 9, the ministry's decision that the appellant was not

eligible for funding for the Tricycle as a health supplement was reasonable.

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

Section 69 of the EAPWDR applies to health supplements set out under Schedule C, sections 2(1)(a) to (f) and section 3, and is intended to provide a remedy for those persons who are facing a direct and imminent life-threatening health need for these supplements and who are not otherwise eligible to receive them.

The panel notes that the ministry did not provide an analysis of whether the appellant would qualify for the Tricycle as a health supplement under EAPWDR section 69. However, as the appellant is eligible to receive health supplements under Schedule C, sections 2 and 3 he is not eligible for a remedy under EAPWDR section 69 even though his request for funding for the Tricycle does not meet the legislated requirements for a health supplement under Schedule C, sections 2 and 3.

While the information provided by the appellant certainly indicates that he has a serious health condition, and the appellant is concerned that if he does not exercise he will die more quickly than if he is able to exercise, and while the appellant's physician confirms that he supports the appellant's request for the Tricycle due to the appellant's decreased right leg mobility, the physician did not provide any information indicating that the appellant faces a direct and imminent life threatening health need for which the requested items are required. Accordingly, the panel finds that the ministry was reasonable in not considering the appellant eligible for funding for the Tricycle under EAPWDR section 69.

**Conclusion**

The panel acknowledges that the Tricycle has been recommended for the appellant and may be beneficial for his decreased mobility. However, having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's reconsideration decision, which found that the appellant is not eligible for funding for the Tricycle, was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.