

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated March 14, 2017, which denied the Appellant's request for a health supplement, a bath seat. The Ministry found that the Appellant met the requirements for provision of health supplements under the Employment and Assistance for Persons with Disabilities Regulation section 62 and Schedule C, section 3; however he did not meet the time period criterion for replacement of this item under section 3(3)(b) of Schedule C, section 3.5(1), which is five years.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 62; Schedule C, sections 3 and 3.5

PART E – Summary of Facts

Information before the minister at reconsideration included:

- A quotation for bathroom equipment dated June 19, 2015.
- A Justification Letter for Medical Equipment in the Appellant's name, dated June 22, 2015.
- A Medical Equipment Request and Justification form in the Appellant's name, dated June 22, 2015.
- A Purchase Authorization in the Appellant's name dated July 2, 2015.
- A copy of the Ministry's letter to the Appellant dated February 2, 2017, denying his request for a bath bench.
- A quotation from a health products supplier for a bath bench, dated November 22, 2016, in the amount of \$64.27.
- A copy of a fax cover sheet from an Occupational Therapist dated November 24, 2016, stating that the Appellant's bath board is cracked and cannot be used.
- The Appellant's Request for Reconsideration, signed February 27, 2017, in which he wrote that "the bath transfer bench in question funded by the Ministry in July of 2015 has supposedly a 5 year warranty." He wrote that the board slips and slides and bends inward when entering and exiting the bath. He also comments that the board may have had a manufacturing default.

At the hearing, the Appellant stated that his bath board has a clamp that is broken, making the bath board unsafe to use and he contacted the original supplier, but they no longer carry this product and cannot obtain the part. In response to questions from the Panel, the Appellant stated that he found that obtaining parts from another supplier would be more expensive than a new bath board, and he thought the cheaper option would be preferable. He stated that he was advised by a supplier that it would be cheaper to replace the board. The Appellant stated that he thought the warranty was provided by the Ministry.

The Ministry responded that the Appellant applied for a replacement bath board and it was denied because the legislative requirement for replacement of this item is five years. In response to questions from the Panel, the Ministry stated that if the Appellant had made a request for repairs, it would be considered, however the request was for a replacement.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision which denied the Appellant's request for a health supplement, a bath seat. The Ministry found that the Appellant met the requirements for provision of health supplements under the Employment and Assistance for Persons with Disabilities Regulation section 62 and Schedule C, section 3; however he did not meet the time period criterion for replacement of this item under section 3(3)(b) of Schedule C, section 3.5(1), which is five years.

Legislation

EAPWDR

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,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is a dependent child, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

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.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
- (b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
- (b) an assessment by a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

- (3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if
- (a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and
 - (b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.
- (4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.
- (5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if
- (a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and
 - (b) it is more economical to repair the medical equipment or device than to replace it.
- (6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

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.

The Appellant's position is that he cannot use the bath seat which was provided because a clamp is broken and it is unsafe to use. He argued that it would be cheaper for the Ministry to replace it than to repair it.

The Ministry's position is that the legislative time period for replacement of this medical equipment or device, five years, has not elapsed, and there is no provision to provide a replacement before that. The Ministry argued that the Appellant applied for a replacement, not a repair.

The Panel finds that the Ministry reasonably determined that less than five years has passed since the Appellant was provided with a bath seat, which is listed in section 3.5(1)(b) of Schedule C, EAPWDR. Section 3.5(2) of Schedule C specifies the period of time with respect to replacement of an item listed in subsection (1) as five years from the date on which the minister provided the item, and section 3(3) of Schedule C, EAPWDR states that an item listed may be replaced subject to the time limits specified in sections 3.1 to 3.12. However, the Appellant meets all other criteria for eligibility, and clearly stated in his Request for Reconsideration that the two of the parts of the board had failed and stated that it would be more economical to replace the board than to repair it. The Ministry did not consider the provision of section 3(4) of Schedule C, EAPWDR, which permits repairs of medical equipment or devices provided by the minister except for damage through misuse.

The Panel finds that the Ministry did not act reasonably in denying the Appellant's request by restricting their consideration of his request to EAPWDR, Schedule C, section 3(3) which deals with replacement, and not considering section 3(4), which deals with repairs.

The Panel therefore rescinds the Ministry decision as it was not a reasonable application of the applicable enactment. The Appellant is successful on appeal.