

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of May 31, 2017 wherein the ministry determined the appellant was not eligible for a stair lift as a health supplement under Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR). The ministry found that as the appellant is a person with disabilities (PWD), she is eligible to apply to the ministry for health supplements. However, the ministry found that the stair lift was not an eligible item listed under Schedule C section 3 EAPWDR so the ministry does not have the legislative authority to provide funding for the stair lift.

PART D – Relevant Legislation

Employment and Assistance For Persons with Disabilities Regulation (EAPWDR), section 62, 69 and Schedule C, section 3

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Medical Equipment Request and Justification Form dated February 20, 2017;
 - Section 2 completed by family physician. Her medical condition is described as spinal stenosis/osteoarthritis and signed February 20, 2017;
 - Section 3 is completed by occupational therapist (OT) – signed April 5, 2017;
- Neurology consult dated February 22, 2017 – does not speak to appellant’s need for stair lift;
- Letter from OT dated April 4, 2017 providing assessment of appellant –
 - Patient currently has a walker, scooter, cane, electric bed and stair lift (broken);
 - Patient is unable to walk distances greater than 50 feet unaided;
 - Patient has cognitive abilities to operate a stair-lift device;
 - Patient has physical limitations in walking and difficulty completing stairs without assistance strongly justifies her need for the stairlift.
- Quote from service provider for a stair lift dated February 24, 2017;
- Quote from service provider for a stair lift dated February 22, 2017;
- Letter from her physician dated February 27, 2017
- Request for Reconsideration dated May 16, 2017 which included medical reports for CT Scans, Echocardiogram, Ultra-Sound on abdomen and Neurology consult. None of these reports speak to the need for a stair lift.

The appellant has a Persons with Disabilities (PWD) designation and her ministry file is “Medical Services Only” so she is eligible to receive health supplements provided under Section 62 and Schedule C of the EAPWDR. The appellant has a stair lift in her home which has broken down and cannot be repaired. The stair lift was donated to her and was in used condition at the time.

At the hearing, the appellant stated she tried to obtain more information to help her but was unable to do so. She reiterated that she desperately needs a stair lift to move her from the lower level of her home to the main living area so that she does not have to try and navigate the stairs. She stated that the stair lift was donated to her 20 years ago and now is in disrepair. The appellant stated she cannot afford the cost to replace the stair lift. The appellant stated she had no other way to access the main living area of her home other than by the stairs. At the present time, she navigates up and down the stairs with much pain and on her bottom. She stated she has no other need for the stair lift other than to get her from the garage or basement of her home to the main living area.

The panel finds the information from the appellant provided further clarification on her need for a stair lift. The panel finds the testimony supports the information and record that was before the ministry at the time of reconsideration and is admissible under Section 22(4) of the Employment and Assistance Act.

The ministry relied on the facts as stated in the Reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision of May 31, 2017 to deny the appellant a stair lift 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 a stair lift as a health supplement as it is not an eligible item listed under EAPWDR Schedule C section 3?

The legislation considered: EAPWDR

Section 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;

Section 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).

EAPWDR Schedule C - Health Supplements

Section 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 und

(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.
- (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.

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 mattress

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.

(2) A non-conventional glucose meter is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that

- (a) the glucose meter is medically essential to test blood glucose levels, and
- (b) the person for whom the non-conventional glucose meter has been prescribed is unable to use a conventional glucose meter.

(3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of a non-conventional glucose meter is 5 years from the date on which the minister provided the glucose meter being replaced.

Eligibility for a Stair Lift – Positioning Chair and Transfer Aids - Schedule C, section 3.5(0.1)

Ministry's position

The ministry's position is that a stair lift is not included in the definition of a positioning chair or transfer aid as set out in the definition section of EAPWDR, that a positioning chair does not include a lift chair and a transfer aid means a transfer board, transfer belt or slider sheet. The ministry notes that a positioning chair is intended for use by those who rely heavily on wheelchairs for indoor and outdoor mobility and positioning chairs provide support for those who cannot position themselves in regular seating during times when they are out of their wheelchairs.

The ministry stated that a transfer aid is intended to move a person from one position to another and not to move a person up and down stairs as a stair lift would do. The ministry's position is that they do not have the authority to provide funding for a stair lift as a positioning chair or transfer aid because a stair lift does not fall within the legislated definition.

Appellant's Position

The appellant's evidence was that she did not need a lift to assist her with getting into bed or with transferring to a wheelchair.

Panel Decision

The panel finds that a stair lift is not one of the items listed in EAPWDR Schedule C section 3.5(1). The panel finds that the ministry may only provide items listed in schedule C, and is not legislatively authorized to provide an item not specifically listed.

The panel finds that the ministry was reasonable in determining that the appellant was not eligible for funding for a stair lift as a positioning chair or transfer aid.

Eligibility for a Stair Lift as another type of medical equipment/device - Schedule C, section 3

Ministry's Position

The ministry's position, as set out in the reconsideration decision, is that while the appellant would benefit from the need for a stair lift, a stair lift 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 stair lift. The ministry states that a stair lift 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, 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 they do not have any discretion on these matters and are not authorized to provide items or funding for items that are not scheduled in the legislation. The ministry also determined that the information provided does not establish the other legislated criteria set out in these sections, for each of these health supplements, have been met.

Appellant's Position

The appellant's position is that she requires the stair lift so that she can access the lower level in her home where her scooter or walker are stored so she can go outside. The appellant argues that without the stair lift she will have great difficulty descending and ascending the stairs. The appellant's position is that both her physician and the OT support her request so the ministry should fund the stair lift even if it does not fit within the legislated items or specifically meet the legislated criteria.

Panel Decision

The evidence is that the appellant has utilized a stair lift in her home for 20 years. The stair lift was a donation to her and was used when it was installed. The stair lift has now broken down and can no longer be repaired and she needs to replace it and doesn't have the funds. The appellant's physician and the OT both recommend the appellant have a stair lift to assist her. However, the ministry is not able under the legislation to approve the appellant's request because a stair lift is not an item listed as a Health Supplement in Schedule C that the ministry is authorized to provide.

The panel finds that even if the appellant had met all the legislated criteria set out in Schedule C, section 3, a stair lift is not one of the items listed in EAPWDR Schedule C section 3.1 to 3.12 and therefore, the panel finds that the ministry was reasonable in determining that the appellant is not eligible for the stair lift as medical equipment or device.

Eligibility for the Stair Lift as a medical supply – Schedule C, section 2(1)

The ministry found that the appellant is not eligible for the stair lift 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 stair lift 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's position is that the requested item (stair lift) does 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 stair lift is not a consumable medical supply set out in Schedule C section 2(1)(a.2) 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 panel finds the ministry's decision that the appellant is not eligible for a stair lift as a medical supply was reasonable.

Eligibility for the Stair Lift as a therapy – Schedule C, section 2

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 stair lift 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 stair lift 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 stair lift 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 a stair lift as a health supplement was reasonable.

Eligibility for Stair Lift under Life-Threatening Health Need, section 69 EAPWDR

The ministry's position is that section 69 EWAPDR is intended to provide a remedy to those persons who are facing a direct and imminent life-threatening health need for these supplements listed in Schedule C section 3 and are not otherwise eligible to receive them. The ministry's position is that the appellant is a recipient of disability assistance and eligible to receive health supplements listed in Schedule C section 3 and therefore does not require the remedy of section 69 EAPWDR. The ministry's position is the appellant's application did not demonstrate that she faces a direct and imminent life-threatening health need for the stair lift.

The appellant did not provide any information to the panel that she needs the stair lift to address a direct and imminent life-threatening need.

The panel finds the ministry's decision that the appellant does not have a direct and life-threatening need for a stair lift was reasonable.

Conclusion

The panel acknowledges that the stair lift has been recommended for the appellant and would be very beneficial in assisting her inside her home when moving from one level in her home to the other. However, having reviewed and considered all 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 a stair lift, 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.