

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 17 July 2017 that denied the appellant's request for a wideback back support and furniture risers. While the ministry found that the appellant, as a recipient of disability assistance, was eligible under section 62 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) for general health supplements set out in Schedule C of the Regulation, the ministry determined that the requested items are not eligible health supplements as set out in Schedule C. The ministry also held that the appellant is not eligible for the requested items under section 69 of the Regulation as she is otherwise eligible to receive health supplements set out in sections 2(1)(a) and (f) and section 3 of Schedule C and the requested items are not in one of those categories of eligible health supplements.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

1. From the ministry's files: the appellant is a recipient of disability assistance. She was provided a back brace on 26 February 2015 and became eligible for a replacement in March 2017.
2. The request for a wideback back support and furniture risers is part of a request received by the ministry on 18 May 2017 that also included a request for a commode chair and commode pad. The ministry approved the latter two items on 06 June 2017.
3. A Rehabilitation Assessment dated 18 May 2017, completed by an occupational therapist (OT), who indicated that the appellant is diagnosed with polyarthritis, fibromyalgia, colitis, asthma, migraines, and low back pain. For the requested equipment under appeal, the OT provides the following rationale:
 - "Furniture risers x 4: seating surface height is one aspect of her home environment that can be remedied by furniture (her couch) being raised to facilitate transfers: this would incur less pain.
 - Back support: supportive, contoured back support to promote comfort in sitting given her low back pain."
4. Quote from a medical equipment supplier dated 12 May 2017: 3-6" Furniture Riser x 4 – \$87.82; Wideback Back Support – \$83.59.
5. On 20 June 2017, the ministry received the following note from the appellant, written on the ministry's decision letter:

"I am appealing your decision to deny my application for the back belt. I need this belt for support to my back, due to the chronic pain of my back condition. I have osteoporosis and other severe back pain conditions. Also arthritis, migraines, fibromyalgia; conditions related to my back spine. The chronic pain keeps me awake all night long. I was immobilized in bed for an entire week due to the pain, and I live alone, so it is extremely tough on my body and capacity to care for self.

If you need further information you may contact my doctor specialist, [name]."
6. On 23 June 2017, the ministry received a letter from the appellant's physician, a specialist in pain management, who writes:

"I was asked to provide correspondence for support of the lower back brace for [the appellant]. She suffers from a combination of degenerative lumbar disc disease and facet spondyloarthropathy. She would greatly benefit from this device and hopefully funding can be provided to her. At this time, it is the best solution for her lower back pain as she is not a surgical candidate."
7. The appellant's Request for Reconsideration is dated the 30 June 2017. Under Reasons, she writes that she is appealing the minister's decision to deny her application for the back belt, which she needs for support for her back due to chronic pain in her back. The balance of her submission covers the same points as set out in her 20 June 2017 notes (see 5 above).

Notice of Appeal

The appellant's Notice of Appeal is dated 24 July 2017. Under Reasons, she writes:

“As my doctor [name] has stated in his letter that I need a device to support my back. I also wrote a letter describing my pain and illness. It is really chronic pain consistently; I can't sit during the day and up all night. Sharp pain in my spine. Please reconsider, thanks.”

The hearing

Neither the appellant nor her advocate attended the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The ministry stood by its position at reconsideration. The ministry representative advised the panel that the appellant had made regular application for a back brace outside the reconsideration/appeal process and the ministry had recently approved funding for this item.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision denying the appellant's request for a wideback back support and furniture risers is reasonable. More specifically, the issue is whether the following ministry determinations are reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant:

- The items requested are not listed as eligible health supplements in Schedule C of the EAPWDR and
- The appellant is not eligible for these items as supplements pursuant to Section 69 of the EAPWDR as she is otherwise eligible to receive health supplements set out in sections 2(1)(a) and (f) and section 3 of Schedule C and the requested items are not in one of those categories of eligible health supplements.

Relevant legislation

The relevant legislation is from the 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.

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)

Schedule C

Section 1 of Schedule C contains relevant definitions.

The remaining sections deal with specific categories of health supplements, with category-specific criteria relating to such matters as exclusions, limits, purpose and replacement. These sections and the categories of supplement covered are listed below:

Section	Category
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2 (1)	General health supplements
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- (a) Medical or surgical supplies that are disposable or reusable and 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;
- (c) The following services: acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy.
- (f) Travel for the purposes of medical care.

2.1	Optical supplements
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2.2	Eye examination supplements
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3	Medical equipment and devices – general provisions
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3.1	Canes, crutches and walkers
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3.2	Wheelchairs
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3.3	Wheelchair seating systems
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3.4	Scooters
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3.5	Toileting, transfers and positioning aids: (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; (l) a positioning frame; (m) a transfer aid
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3.6	Hospital beds: (a) a hospital bed; (b) an upgraded component of a hospital bed; (c) an accessory attached to a hospital bed; (d) a positioning item on a hospital bed
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3.7	Pressure relief mattresses
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3.8	Floor or ceiling lift devices
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3.9	Breathing devices
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3.10	Orthoses: (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; (n) a foot abduction orthosis; (o) a toe orthosis
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3.11	Hearing instruments
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3.12	Non-conventional glucose meters
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4	Dental supplements
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4.1	Crown and bridgework supplement
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5	Emergency dental supplements
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6	Diet supplements
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7	Monthly nutritional supplement
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- 8 Natal supplement
- 9 Infant formula
- 10 Repealed
- 11 Alternative hearing assistance supplement

Analysis

In the reconsideration decision, the ministry determined that a wideback back support and furniture risers are not listed as eligible health supplements in Schedule C of the EAPWDR. In reaching this conclusion, the ministry canvassed in detail the range of health supplements listed in Schedule C. In summary, the ministry held that:

- A wideback back support is not an orthosis as listed in section 3.10 of Schedule C as it is not a brace or support worn on the body;
- A wideback back support is not one of the transfer aids listed in section 3.5 of Schedule C;
- The requested furniture risers for use on a couch are not a positioning item for a hospital bed as set out in section 3.6 of Schedule C;
- Neither item is an eligible health supplement as any other type of medical equipment under sections 3.1 to 3.12 of Schedule C, nor as an eligible medical supply under section 2(1) of Schedule C, nor do they meet the criteria of any of the remaining health supplements set out in Schedule C.

The panel has reviewed the *Employment and Assistance for Persons with Disabilities Act* and the EAPWDR, and finds that the legislation does not establish any discretionary authority for the minister to make exceptions and provide any health care products or services as a supplement other than those set out in Schedule C. On the basis of the ministry's thorough review of the range of health supplements set out in Schedule C, the panel finds the ministry was reasonable in determining that the requested items are not eligible health supplements under the legislation.

In the reconsideration decision, the ministry also found that the appellant was not eligible for the requested items under section 69 of the EAPWDR. This section provides that the minister may provide health supplements set out in Schedule C sections 2(1)(a) [medical supplies] and (f) [medical transportation] and 3 [medical equipment and devices] if the health supplement is provided to or for a person who is not otherwise eligible for it under the Regulation and if the minister is satisfied that 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. The ministry found the appellant not eligible under section 69 because, as she is a recipient of disability assistance, the appellant is "otherwise" eligible for health supplements under Schedule C and requested items are not health supplements under sections 2(1) or 3 of Schedule C.

The panel notes that section 69 refers to certain health supplements set out in Schedule C and applies only to the provision of those supplements if other criteria are met. As the panel has found that the ministry reasonably determined that the requested items are not an eligible supply, equipment or treatment under all of Schedule C, and therefore not one of the Schedule C supplements specified in section 69, the panel finds that the ministry reasonably determined that the appellant was not eligible for the requested items under section 69.

Conclusion

Based on the foregoing, the panel finds that the ministry's decision to deny the appellant's request for a wideback back support and furniture risers is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision. This appeal is thus not successful.