

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated September 27, 2017, which held that the appellant is not eligible for funding for repairs to her porch lift because her request failed to meet the required legislative criteria set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The ministry found that the appellant is eligible to receive health supplements under section 62 of the EAPWDR as she is in receipt of disability assistance. However, the ministry determined that the porch lift is not a health supplement set out in Schedule C of the EAPWDR and that the ministry cannot fund repairs to medical equipment that it did not previously provide. The ministry also found that the appellant does not qualify under section 69 of the EAPWDR because the porch lift was not previously provided by the ministry.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – Sections 69 and Schedule C, sections 2, 3, 3.1 to 3.12.

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration consists of:

- 1) Various documents from 2010 which accompanied the appellant's request for a scooter at that time. This included a report from a medical doctor, 2 reports from an occupational therapist, a quote for a scooter, a completed medical equipment request and justification form and a letter approving the request of a scooter.
- 2) Request for Reconsideration signed and dated September 14, 2017 which stated "I need and use my lift".

Evidence on Appeal

Notice of Appeal (NOA), signed and undated, which stated "I use my lift regularly (seriously need it)".

Evidence at the Hearing

At the hearing the appellant stated the following:

- On May 12, 2017 she injured her right shoulder.
- During the wildfires, she was held-up in her home on her own for 1 week and could not get out until helped arrived.
- The porch lift she currently has was provided by BC Housing and cost \$15, 000.00. BC Housing will not repair the porch lift and the company that carried the 1 year warrantee for the porch lift has gone out of business. The porch lift broke in April 2017.
- Another company was supposed to look at it but its representatives did not come.
- She needs her independence and was using her crutches.
- Her shoulder that is injured is on the same side of her amputation therefore using crutches is difficult.
- The ministry did not consider her unique circumstance when making the reconsideration decision. She is an amputee.
- She is prone to falling.
- It is cheaper to repair the porch lift than to provide a new one.

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

Admissibility of Additional Information

The panel found that the appellant's reference to her hurt right shoulder which occurred on May 12, 2017 and her difficulties during the wild fires of the summer of 2017 provided additional detail or disclosed information that was not in support of the information addressed in the reconsideration. Accordingly, the panel did not admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision which held that the appellant is not eligible for funding for repairs to a porch lift because her request failed to meet the legislative criteria set out in the EAPWDR 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 porch lift is not a health supplement set out in Schedule C of the EAPWDR, and the ministry cannot repair items it did not previously provide?

The relevant legislation is as follows: **Schedule C of the EAPWDR**

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

Section 2(1)(c) provides that the following items are health supplements if the other criteria of the section are met: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy.

Section 2(1)(f) of Schedule C provides that the following items are health supplements if the other criteria of the section are met: the least expensive appropriate mode of transportation.

Section 2.1 of Schedule C provides that the following are the optical supplements that may be provided under Section 62.1 of the EAPWDR: basic eyewear and repairs, pre-authorized eyewear and repairs.

Section 2.2 of Schedule C provides that the minister may pay a health supplement under Section 62.2 of the EAPWDR for an eye examination if the other criteria of the section are met.

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.

Section 3.1 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a cane, a crutch, a walker, an accessory to a cane, a crutch or a walker.

Section 3.2 provides that the following items are health supplements for the purposes of section 3 if the other criteria of the section are met: a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair.

Section 3.3 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a wheelchair seating system, an accessory to a wheelchair seating system.

Section 3.4 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a scooter, an upgraded component of a scooter, an accessory attached to a scooter.

Section 3.5 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: grab bar in a bathroom, a bath or shower seat, a bath transfer bench with hand held shower, a tub slide, a bath lift, a bed pan or urinal, a raised toilet seat, a toilet safety frame, a floor-to-ceiling pole in a bathroom or bedroom, a portable commode chair, a standing frame for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility, a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility, a transfer aid for a person for whom the transfer aid is medically essential to transfer from one position to another, and (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.

Section 3.6 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed, and a positioning item on a hospital bed.

Section 3.7 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a pressure relief mattress.

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.

(3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years from the date on which the minister provided the item being replaced..

Section 3.9 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: breathing devices.

Section 3.10 provides that the following items are an orthosis which is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a custom-made or off-the-shelf foot orthotic, custom-made footwear, a permanent modification to footwear, off-the-shelf footwear for a specific purpose, off-the-shelf orthopaedic footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, a hip brace, an upper extremity brace, a cranial helmet, a torso or spine brace, a foot abduction orthosis, or a toe orthosis.

Section 3.10 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a prosthetic and related supplies, a plaster or fiberglass cast, a hernia support, an abdominal support, a walking boot for a fracture.

Section 3.11 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hearing instrument.

Section 3.12 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a non-conventional glucose meter.

Section 69 of the EAPWDR provides as follows:

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 3.12, other than paragraph (a) of section 3 (1).

The Appellant's Position

The appellant argued that she needs the porch lift for her independence and that it is cheaper for the ministry to repair it rather than purchase a new one.

The Ministry's Position

The ministry argued that the appellant's request for repairs to her porch lift does not meet the legislative requirements because: the porch lift is not a device that was previously provided by the ministry and therefore it cannot provide funds to repair it; the appellant's request does not meet the criteria as set in policy because she does not have a prescription and an assessment indicating the medical need for the porch lift; since the ministry cannot repair the porch lift, the appellant's request is deemed to be a request for a new porch lift however a porch lift is not a device/item the ministry is able to provide as it is not listed in Schedule C of the EAPWDR.

The Panel's Decision

Section 3 of Schedule C of the EAPWDR:

Section 3 of Schedule C of the EAPWDR stipulates that the medical equipment and devices described in Sections 3.1 to 3.12 of Schedule C are the health supplements that may be provided by the ministry if the recipient is eligible under section 62 of the EAPWDR. The ministry determined that the appellant is eligible under section 62. However, sections 3.1 to 3.7 and 3.9 to 3.12 of Schedule C list specific medical equipment or devices that do not match the description of a porch lift and therefore the porch lift is not medical equipment or a device that can be provided under these sections. Section 3.8 does describe a floor to ceiling lift; however, it specifically states that the floor to ceiling lift must stand on the floor and attached to the ceiling, use a sling system to transfer a person and that the device is medically essential to facilitate transfers of a person in a bedroom or a bathroom. The porch lift does not meet this description. As a result the panel finds that the ministry reasonably determined that the evidence establishes that the appellant is not eligible for funding to repair a porch lift pursuant to section 3 or Sections 3.1 through 3.12 of Schedule C of the EAPWDR.

Section 3(4) of Schedule C of the EAPWDR:

Section 3(4) of Schedule C of the EAPWDR sets out that the ministry may provide as a health supplement for 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. The appellant stated that her porch lift was provided by BC Housing and not the ministry. As a result the panel finds that the ministry reasonably determined that the evidence establishes that the appellant is not eligible for funding to repair her porch lift, pursuant to section 3(4) of Schedule C of the EAPWDR.

Policy:

The ministry argued that the legislation does not speak to the provision of repairs to medical equipment that has not been previously provided by the ministry. It argued that there is a provision in policy that allows the ministry to fund repairs to equipment it has not previously provided if specific criteria are met: namely, it is more economical to repair rather than replace the device, the device has not been damaged by misuse and all other eligibility requirements are met (e.g. a prescription is provided by a medical practitioner, there is an assessment by an occupational therapist or physical therapist indicating that the device is medically essential and it is a device listed in Schedule C of the EAPWDR).

Policy is established to ensure consistency and a means of interpreting the legislation, and ultimately decision-making. In the evidence before the panel, the ministry failed to provide a copy of such policy, and therefore the panel is uncertain if ministry policy is consistent with the legislation and does not offer less than what is provided by the legislation. Furthermore, the panel finds that the legislation, section 3(5) of Schedule C of the EAPWDR, clearly sets out that the ministry may provide a health supplement for repairs of medical equipment that it did not previously provide 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. It is this legislation that the ministry should rely on and it erred in its determination that the legislation does not speak to the provision of repairs to medical equipment that has not been previously provided by the ministry. The panel finds that though section 3(5) of Schedule C of the EAPWDR sets out provisions that allow the ministry to provide repairs to a device that it did not previously provide, in this case the ministry is unable to provide repairs to the appellant's porch lift as it is not an item listed in sections 3.1 to 3.12 of this Schedule as is required.

Section 3(2)(a) and (b) of Schedule C of the EAPWDR:

Schedule C of the EAPWDR, section 3(2)(a) and (b) sets out that a prescription of a medical practitioner or nurse practitioner for the medical equipment or device is required; as is an assessment by a respiratory therapist, occupational therapist (OT) or physical therapist confirming the medical need for the medical equipment or device. The evidence before the ministry at the time of reconsideration included a prescription from a medical practitioner for a scooter and not a porch lift. The evidence before the ministry at the time of reconsideration also included an assessment from an OT, however that was for a scooter and not a porch lift. As a result the panel finds that the ministry reasonably determined that even if the request for a porch lift was a new request and not repairs, the evidence establishes that the appellant is not eligible for funding for a porch lift, pursuant to section 3(2) of Schedule C of the EAPWDR.

Section 2 (1)(a) of Schedule C of the EAPWDR:

Section 2 (1)(a) of Schedule C of the EAPWDR sets out that the ministry may provide specific health supplements that are medical or surgical supplies, if the recipient is eligible under section 62 of the EAPWDR. The ministry determined that the appellant is eligible under section 62. However, the specific health supplements listed in this section are for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care, or limb circulation care. The porch lift that the appellant has requested is not a medical or surgical supply as listed under the section. As a result the panel finds that the ministry reasonably determined that the evidence establishes that the appellant is not eligible for a health supplement for a porch lift pursuant to section 2 (1)(a) of

Schedule C of the EAPWDR.

Section 69 of the EAPWDR:

Section 69 of the EAPWDR sets out that the ministry may provide a medical device if there is a direct and imminent lift threatening need if the medical device requested is listed in Schedule C of the EAPWDR. The panel finds that the ministry reasonably determined that the requirements of Section 69(d) are not met as a porch lift is not set out under Schedule C, Section 2(1)(a) as medical or surgical supplies or under Section 2(1)(f) as a mode of medical transportation, or under Sections 3 to 3.12, as detailed above.

Conclusion:

The panel finds that the ministry reasonably concluded that the evidence establishes that the appellant's request did not fully meet the legislative criteria set out in the EAPWDR to be eligible for repairs to her porch lift. Specifically, the porch lift was not a device previously provided by the ministry and a device that is listed in sections 2, and 3.1 to 3.12, of Schedule C or Section 69(d) of the EAPWDR. Therefore the ministry cannot provide funds to repair it pursuant to section 3(2) to (5) of Schedule C of the EAPWDR. The panel therefore finds that the ministry's decision to deny the appellant repairs to her porch lift was a reasonable application of the legislation in the circumstances of the appellant and therefore confirms the ministry's reconsideration decision. The appellant is not successful in her appeal.