

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated 3 April, 2018, which determined that the appellant was not eligible for a bath bench as the eligibility requirements set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C section 3.5(2) were not met.

Specifically, the ministry determined that five years had not passed for replacement of this item, which is a requirement under section 3.5(2) of the EAPWDR.

**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**

### Relevant Evidence Before the Minister at Reconsideration

Reason for request for reconsideration:

- The appellant states he is currently borrowing a tub transfer bench. It is a short-term loan and must be returned. The ministry-funded bench (being requested to be replaced) is in poor condition and is not safe. There is no misuse of the bench on behalf of the appellant.

Ministry records show:

- The appellant has Persons with Disabilities designation and therefore is eligible to receive health supplements.
- On December 16, 2015 the ministry received a request for a bariatric transfer bench from Occupational Therapist (OT1).
- On January 11, 2016 the request was approved.
- On November 29, 2017 Occupational Therapist 2 (OT2) submitted another request for a bath transfer bench and noted that the one funded by the ministry in 2016 is cracked and warped and is no longer safe to use.
- Sales quotation dated November 30, 2015, which includes a ProBasics Bariatric Transfer Bench 500 lb. Capacity - \$152.64.
- Purchase Authorization dated January 11, 2016, which includes a bath transfer bench - \$152.64.
- Sales quotation dated 28 November, 2017 for a ProBasics Bariatric Transfer Bench 500 lb. Capacity - \$152.64.
- Medical Equipment Request, dated November 29, 2017, from OT (2) stating:
  - The appellant uses a tub transfer bench (funded by the ministry, late 2015/early 2016).
  - “The middle plastic seat panel on this bench has recently cracked and warped.”
  - This raises concern with regards to the appellant’s safety “(he would not be able to catch himself if this seat panel fully snapped)” and hygiene is an issue as water etc. can now get into the cavity of the seat panel and grow bacteria.
  - “The tub transfer bench is not safe to use in its present condition.” The company that supplies the bath transfer tub states that it is not repairable and needs to be replaced.
  - The appellant will use a loaner bench in the mean time.
- Letter dated January 31, 2018, from the ministry to the appellant, denying the requested health supplement for a bath transfer bench as “...the previously approved item “Bath Transfer Bench” was supplied on 2016-May-30, which is less than the 5 year time period set out for replacement.”

### Additional Evidence

#### **Appellant**

With the Notice of Appeal dated April 12, 2018, the appellant included the following under Reasons For Appeal:

“My tub transfer bench broke by no fault of my own. Due to my physical disability, I am unable to safely shower without a tub bench. I am not eligible for any other funding to purchase a bench.”

The panel determined the information, concerning not being eligible for any other funding to purchase a bench, is in support of the information before the ministry at reconsideration, and therefore admitted it under section 22 of the *Employment and Assistance Act*. The panel considered the rest of the information in the Reasons for Appeal as argument.

At the hearing the appellant reiterated the information, in the evidence before the ministry at reconsideration, but added that the vendor confirmed the bath transfer bench was beyond the warranty period.

**Ministry**

At the hearing, the ministry stated that it understands the five-year timeframe is long. The ministry also stated that it is satisfied that the item is medically essential and that there are no other resources, but all legislative criteria has to be met, and the Reconsideration Officer applied the legislation correctly.

## PART F – REASONS FOR PANEL DECISION

The issue is whether the ministry's decision, dated April 3, 2018, which determined that the appellant was not eligible for a bath bench, and that the legislative criteria thus did not support the request pursuant to the EAPWDR, Schedule C section 3.5(2), was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances.

Specifically, did the ministry reasonably determine that five years had not passed for replacement of this item?

The legislation provides:

### Employment and Assistance for Persons With Disabilities Regulation

#### 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 under 19 years of age, 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 Health Supplements

##### 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.

### **Ministry Position**

The ministry argues that it reasonably determined that the tub transfer bench could not be replaced until five years has passed, as is required under Schedule C, section 3.5(2) of the EAPWDR.

### **Appellant Position**

The appellant argues that the tub transfer bench broke by no fault of his own – there was no misuse. The appellant is very tall, and due to his physical disability, he is unable to safely shower without a tub bench.

### Panel Decision

Section 62 of the EAPWDR states, "The minister may provide any health supplement set out in section ...3 [*medical equipment and devices*] of Schedule C to or for (a) a family unit in receipt of disability assistance..."

Ministry records show that the appellant has Persons with Disabilities designation and therefore is eligible to receive health supplements.

The EAPWDR, Schedule C, subsection 3(3) states, "...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," ..."(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."

The EAPWDR, Schedule C, subsection 3.5(2) defines the period of time referred to in subsection 3(3)(b) as, "5 years from the date on which the minister provided the item being replaced."

A letter dated January 31, 2018, from the ministry to the appellant states that a previously approved bath transfer bench was supplied on May 30, 2016.

The panel acknowledges that the appellant is disabled and requires a tub transfer bench. As well, the panel does not dispute that the tub transfer bench broke through no fault or misuse, is unsafe to use and that there are no funds to purchase another bench. However, the panel finds that the appellant has not provided evidence to satisfy the five-year requirement for a replacement, as is required under the legislation.

As the five-year period defined in the EAPWDR, Schedule C, section 3.5(2) was not met; the ministry was reasonable to determine that the appellant is not eligible to receive funding for a replacement bath transfer bench at this time.

### Conclusion:

The panel finds that the ministry reasonably concluded that the appellant's request for a tub transfer bench has not met all of the criteria set out in the EAPWDR, Schedule C, sections 3 and 3.5(2). The panel therefore finds that the ministry's decision to deny the appellant's request for a tub transfer bench, was reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not successful with the appeal.