

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated June 4, 2018, which held that the appellant is not eligible for funding for a “sheep skin” in addition to a wheelchair cushion because the request did not meet the requirements for the provision of a health supplement under Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). Specifically, the ministry determined that the sheep skin:

- based on the information provided it cannot be established that “sheep skin” (for a manual wheelchair) is the least expensive appropriate medical equipment or device and EAPWDR Schedule C, s.3(1)(b)(iii) is not met.
- does not meet the eligibility requirement set out in EAPWDR Schedule C, s.3.3(1), which sets out that a wheelchair seating system is a health supplement of the purposes of section 3 of Schedule C if the minister is satisfied that the item is medically essential to achieve or maintain a person’s positioning in a wheelchair. The ministry notes that the appellant’s physiotherapist does not state that the appellant requires “sheep skin” in order to achieve or maintain positioning in her manual wheelchair.
- Does not meet the eligibility requirement set out in EAPWDR Schedule C, s.3.7(1) wherein a pressure relief mattress is health supplement for the purposes of section 3 of Schedule C if the minister is satisfied that the pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity.

APPEAL NUMBER

PART D – RELEVANT LEGISLATION

EAPWDR, Schedule C, sections 3(1)(b)(iii), 3.3(1), 3.7(1)

PART E – SUMMARY OF FACTS**Information before the ministry at reconsideration:**

In support for her original request for funding from the ministry, the appellant submitted:

- February 27, 2018 – a quote from a medical equipment supplier listing the cost of a sheep skin at \$76.44.
- March 27, 2018 - a March 15, 2018 letter from the appellant's physiotherapist stating the appellant is in need of a sheepskin for pressure relief and the prevention of skin breakdown.
- May 1, 2018 – a letter from the appellant's physiotherapist stating, in part, the appellant is an incomplete quadriplegia as a result of spinal cord injury sustained many years ago in a MVA. She had decreased mobility as a result of weakness and impaired balance due to her spinal cord injury and as such she uses a wheelchair for mobility much of the time. The physiotherapist refers to a non-drug prescription letter from the appellant's medical practitioner for a sheep skin for wheel chair to prevent skin from breaking down causing pressure sores.
- May 7, 2018 – the ministry denied the appellant's request for funding of "sheep Skin" (for a manual wheel chair) stating, in part, "the requested sheepskin is not listed as an eligible health supplement funded under EAPWDR Schedule C, Section 3."
- The Adjudicator's overview (undated) states, in part:
 - a) Four months after the appellant was issued her Vicair cushion, she was in hospital and a nurse took her wheelchair, not knowing it belonged to the appellant. Her wheelchair was found on a different floor in the hospital and the vicair cushion was never found. For the past 10 months the appellant has been without a cushion.
 - b) A quote from a supplier lists the cost of a Vicair cushion at \$710.50.
 - c) May 3, 2018 – the adjudicator consults with health official regarding replacement of cushion on compassionate grounds – most basic cushion that provides proper positioning and maintains skin integrity.
 - d) May 7, 2018 – adjudicator advised that the appellant has been given a seat cushion by a friend so no longer requires a cushion.
 - e) May 7, 2018 – adjudicator advised that if seat cushion that the appellant has been given by her friend does not work out then contact HA as decision was to provide replacement of most basic cushion that provides proper positioning and maintains skin integrity.
- May 18, 2018 – the ministry reviewed the appellant's Request for Reconsideration which included a self-report where the appellant states, in part, "the appellant describes her need for "sheep skin" and a "decubitis pad" to prevent skin ulcers and skin breakdown. The ministry notes that a ministry decision regarding funding for a "decubitis pad has not yet been rendered and this reconsideration decision does not assess the appellant's eligibility for a "decubitis pad." The ministry notes that there is no new medical information included with the appellant's Request for Reconsideration,

Notice of Appeal

In the Notice of Appeal dated June 10, 2018, the appellant writes – "Desperately need these items. Sitting in a wheelchair all day is hot and causes burning on my buttocks. In bed my skin breaks down from pressure. At present I am dealing with a pressure sore."

The appellant's submission to the written hearing:

The appellant did not provide additional information to the written hearing.

The ministry's submission to the written hearing:

July 8, 2018 the ministry submission in this matter will be the reconsideration summary provided in the Record of Ministry Decision.

The panel admitted the appellant's written testimony contained in the Notice of Appeal, which either substantiated or further explained information already before the ministry, as being in support of the information and records before the ministry at reconsideration in accordance with section 22(4) of the Employment and Assistance Act.

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PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry decision which held that the appellant is not eligible for funding for a “sheep skin” in addition to a wheelchair cushion because the request did not meet the requirements for the provision of a health supplement under Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). Specifically, the ministry determined that the sheep skin:

- based on the information provided it cannot be established that “sheep skin” (for a manual wheelchair) is the least expensive appropriate medical equipment or device and EAPWDR Schedule C, s.3(1)(b)(iii) is not met.
- does not meet the eligibility requirement set out in EAPWDR Schedule C, s.3.3(1), which sets out that a wheelchair seating system is a health supplement of the purposes of section 3 of Schedule C if the minister is satisfied that the item is medically essential to achieve or maintain a person’s positioning in a wheelchair. The ministry notes that the appellant’s physiotherapist does not state that the appellant requires “sheep skin” in order to achieve or maintain positioning in her manual wheelchair.
- Does not meet the eligibility requirement set out in EAPWDR Schedule C, s.3.7(1) wherein a pressure relief mattress is health supplement for the purposes of section 3 of Schedule C if the minister is satisfied that the pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity.

Relevant Legislation – EAPWDR, Schedule C, sections 3(1)(b)(iii), 3.3(1), 3.7(1)

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.*

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 — pressure relief mattresses

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.

Panel Decision

Under the EAPWDR, the general requirements that must be met for the provision of medical equipment and devices are set out in Schedule C, sections 3.1 to (6). The evidence before the panel is that the appellant is an incomplete quadriplegia as a result of spinal cord injury with decreased mobility and uses a wheelchair for mobility. The appellant is in possession of a “seat cushion” for her manual wheelchair and has requested a “sheep skin” in addition to the “seat cushion.” The appellant’s medical practitioner prescribed a sheep skin to prevent skin from breaking down. The panel notes that the appellant’s request for sheep skin was denied by the ministry on the basis that the requested sheepskin is not listed as an eligible health supplement funded under EAPWDR Schedule C, section 3. The panel further notes that a Vicair cushion is also not listed under EAPWDR Schedule C, section 3, however was provided to the appellant by the ministry.

Section 3(1)(b)(iii) provides that the medical equipment or device is the least expensive appropriate medical equipment or device. The appellant was previously provided a Vicair cushion that was lost while the appellant was in hospital. The replacement cost of a Vicair cushion is \$710.50. The appellant’s medical practitioner has prescribed a sheep skin which has a cost of \$76.44. The panel finds that the ministry was not reasonable to conclude that it cannot be established that a “sheep skin” (for a manual wheelchair) is the least expensive appropriate medical equipment or device pursuant to EAPWDR Schedule C, section 3(1)(b)(iii).

Section 3.3(1) sets out the health supplements if the minister is satisfied that the item is medically essential to achieve or maintain a person’s positioning in a wheelchair. The panel notes that the ministry’s adjudicator advised that if seat cushion that the appellant has been given by her friend does not work out then contact HA, as decision was to provide replacement of most basic cushion that provides proper positioning and maintains skin integrity. The panel notes that, based on the ministry’s adjudicator’s position that a seat cushion provides proper positioning and maintains skin integrity, that it is reasonable to conclude that a sheep skin for wheel chair would also provide proper positioning and maintain skin integrity which is supported by the appellant’s medical practitioner who prescribed a sheep skin to prevent skin from breaking down. The panel finds that the ministry was not reasonable to conclude that a seat cushion, or a “sheep skin” (for a manual wheelchair), is not medically essential to achieve or maintain the appellant’s positioning in a wheelchair pursuant to EAPWDR Schedule C, section 3.3(1).

Section 3.7(1) provides that a pressure relief mattress is a health supplement for the purposes of Schedule C if the minister is satisfied that the pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity. The panel notes that the ministry’s adjudicator states that a decision has been made to provide replacement of most basic cushion that provides proper positioning and maintains skin integrity. The appellant’s medical practitioner prescribes sheep skin for wheel chair to prevent skin from breaking down causing

pressure sores. Further, it has not been established that a seat cushion provides sufficient pressure relief. The panel finds that the ministry was not reasonable to conclude that based on the evidence provided, it cannot be established that "sheep skin" (for a manual wheelchair) is medically essential to prevent skin breakdown and maintain skin integrity pursuant to EAPWDR Schedule C, section 3.7(1).

Conclusion

Based on the above reasons, the panel finds that the ministry's reconsideration decision that determined that the appellant is not eligible for "sheep skin" (for a manual wheelchair) because the requirements set out in EAPWDR Schedule C is not a reasonable application of the applicable enactment in the circumstances of the appellant. Therefore, the panel rescinds the ministry's decision pursuant to section 24(2)(b) of the Employment and Assistance Act.

The appellant is successful on appeal.

PARTG-ORDER	
THE PANEL DECISION IS: (Check one)	X <input type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY
THE PANEL	<input type="checkbox"/> CONFIRM THE MINISTRY DECISION X <input type="checkbox"/> RESCIND THE MINISTRY DECISION
If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION: <i>Employment and Assistance Act</i> Section 24(1)(a) <input type="checkbox"/> or Section 24(1)(b) X <input type="checkbox"/> and Section 24(2)(a) <input type="checkbox"/> or Section 24(2)(b) X <input type="checkbox"/>	

PARTH-SIGNATURES	
PRINT NAME Ron Terlesky	DATE (YEAR/MONTH/DAY) 2018/07/20

PRINT NAME Sarah Bijl	DATE (YEAR/MONTH/DAY) 2018/07/20
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/07/20
PRINT NAME Jan Lingford	DATE (YEAR/MONTH/DAY) 2018/07/20
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/07/20