

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of November 30, 2018 which denied the appellant’s request for a hand-held shower. The ministry found that the appellant meets the legislative requirements to warrant a hand-held shower as she was approved for one in April 2017. However, the ministry found that the request for replacement made by the appellant, which falls under Schedule C, Section 3.5(2) of the EAPWDR, requires that 5 years must pass before the minister can consider funding for a replacement. As the appellant was funded for this item in April 2017, the ministry does not have the legal authority to provide funds the appellant has requested.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 62 and Schedule C, Sections 3 and 3.5

PART E – SUMMARY OF FACTS

Summary of key dates

- October 10, 2018 the appellant requested funding for a hand-held shower.
- November 6, 2018 the above request was denied.
- November 16, 2018 the appellant submitted a Request for Reconsideration.
- November 30, 2018 the ministry completed its review of the Request for Reconsideration; the appellant was denied.

The evidence before the ministry at the time of reconsideration:

- **Request for Reconsideration** dated November 6, 2018 in which the appellant states she needs a long handle shower to wash her private parts; that she has developed sores in her crotch as she has not been able to clean properly since her hand-held shower broke three months ago. She also noted she requires a diverter valve to allow her to wash her hair more easily as trying to hold the hand-held shower while washing her hair could throw her off balance. The appellant concluded her statement noting a hand-held shower with a diverter valve is a necessity for her to maintain her hygiene.
- **A letter from the appellant's Occupational Therapist (OT)** dated November 16, 2018 which states the appellant received a hand-held shower from the ministry 1.5 years ago and that it fell apart and was not repairable. Since the loss of the hand-held shower, the appellant has not been able to adequately clean herself particularly between her folds and peri-area with the result of sores developing. The OT notes a diverter valve was also requested as it enables the appellant to more easily clean her head hair and back with a fixed shower head.
- **An Occupational Therapy Assessment** dated October 10, 2018 which states:
 - Equipment Requested
 - Hand-held shower with diverter valve.
 - Health Status
 - Morbid obesity, asthma, esophagitis, diverticulosis, hypertension, chronic back pain, abdominal pain, obstructive sleep apnea, edema, and depression.
 - Functional and Environmental Status
 - The appellant moved to a condo April 2017 where she had a hand-held shower installed with funding from the ministry. The hand-held shower enables her to wash her lower extremity, axilla, perianal area and between folds. The hand-held shower fell apart about a month ago and since then the appellant has been having difficulties cleaning resulting in signs of developing sores.
 - Equipment Recommended
 - The appellant would benefit from a hand-held shower with a diverter valve to clean the mentioned areas. A diverter valve would allow her to redirect water to better clean her hair and parts of her upper extremity.
- **A quote** dated October 10, 2018 for a hand-held shower, diverter valve and installation totaling \$145.21

Additional Information

In the **Notice of Appeal** dated December 13, 2018 the appellant stated:

- She needs a hand-held shower to maintain her hygiene
- The hand-held shower she received in April, 2017 broke and is unable to be repaired.
- She has been developing sores due to her poor hygiene.

Attached to the appellant's Notice of Appeal were:

- A letter from the appellant dated December 21, 2018 which states she needs a hand-held shower as the one she was issued exploded and the device is required to properly clean her lower area.
- A letter from the appellant's doctor dated December 11, 2018 which states the appellant requires a hand-held shower to maintain her personal hygiene on a daily basis and that it will be required indefinitely.
- A letter from the appellant's OT dated December 21, 2018 which states the appellant received a hand-held shower from the ministry 1.5 years ago and that it fell apart and was not repairable. Since the loss of the hand-held shower, the appellant has not been able to adequately clean herself particularly between her folds and peri-area with the result of sores developing. The OT states a hand-held shower with a diverter valve is required to allow the appellant to adequately maintain her hygiene.

Admissibility of New Information

The ministry did not provide a submission on the admissibility of the information attached to the appellant's Notice of Appeal.

The panel has admitted the information contained in the appellant's Notice of Appeal into evidence as the evidence is in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the information in the Notice of Appeal reaffirms the information from the appellant's OT and her physician supporting her request for the replacement of her hand-held shower device.

PART F – REASONS FOR PANEL DECISION

The issue on this appeal is whether the ministry's decision to deny the appellant funding for the replacement of a hand-held shower with a diverter 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 hand-held shower and diverter as the appellant had not met the required time stipulation noted in the EAPWDR Schedule C Section 3.5(2)?

The relevant legislation is as follows:

Employment and Assistance for Persons with Disabilities Regulation section 62

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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4; am. B.C. Reg. 161/2017, App. 2, s. 2.]

Schedule C

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.

Eligibility for a hand-held shower replacement- Schedule C, section 3.5(2)

The ministry's position in the reconsideration decision is that the appellant meets the legislative requirements to warrant a hand-held shower as she was approved for one April 2017. As well, the ministry states the appellant does not meet the legislative requirements for replacement set out in the EAPWDR, Schedule C Section 3.5(2) which requires that 5 years must pass before the minister can consider funding for a replacement. As the appellant was funded for the hand-held shower in April 2017, the minister does not have the legislative authority to fund the appellants request.

The appellant's position is that the hand-held shower she purchased and had installed is broken and is unrepairable. Without the hand-held shower, the appellant is unable to maintain her hygiene and as a result infection is occurring.

Panel Decision

The EAPWDR, Schedule C. Section 3.5(2) states that the period of time 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.

The panel finds that the ministry was reasonable in determining that the appellant was eligible to

receive a hand-held shower as she was given the funding to purchase the device in April, 2017. The panel also finds that the ministry was reasonable in determining that the appellant had not met the legislative requirement for replacement of her hand-held shower as set out in Section 3.5(2) of Schedule C as five years has not passed since the purchase of the device in April, 2017.

Conclusion

The panel acknowledges that a hand-held shower for the appellant would be very beneficial in assisting her with her personal hygiene. 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 the replacement of the hand-held shower, 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.

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister
for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Charles Schellinck

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/01/22

PRINT NAME

Robert Fenske

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/01/22

PRINT NAME

Melissa McLean

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/01/22