

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated December 3, 2018 wherein the Ministry determined that the Appellant was not eligible for a stair lift as a health supplement under Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The Ministry found that, as the Appellant is a person with disabilities (PWD), he is eligible to apply to the Ministry for a health supplement. However, the Ministry determined that a stair lift is not an eligible item listed under EAPWDR Schedule C Section 3, and therefore the Ministry does not have the legislative authority to provide funding for a stair lift.

PART D – RELEVANT LEGISLATION

EAPWDR Sections 62 and Schedule C, Section 3

PART E – SUMMARY OF FACTS

The Appellant is receiving assistance in the form of Medical Services Only (MSO) with a Person with Disabilities (PWD) designation.

The evidence before the Ministry at the time the Reconsideration Decision was made included:

1. Request for Reconsideration, dated November 17, 2018, in which the Appellant lists his medical conditions, which include the fact that he *“became crippled in 2002”* and that he has had 7 surgeries on his right knee and 2 surgeries on his left knee. He states that he has tremendous difficulty walking because of pain, numbness and instability. He also states that *“the stairs are impossible”* and he has fallen many times, including an occasion where his spouse had to call emergency services to help him up and take him to hospital. He writes that his spouse has Chronic Obstructive Pulmonary Disease (COPD) and requires oxygen so she is unable to help him. He says that because using the stairs is very dangerous, he is a *“prisoner in (his) own home”*. He also notes that the preamble to the *Disability Benefits Program Act* states, in part *“And whereas people with disabilities will be treated with fairness, dignity and sensitivity to their diverse needs as individuals ...”*; and,
2. Medical Equipment Request and Justification Form dated September 13, 2018 in the name of the Appellant (Medical Equipment Form) stating that the Appellant is eligible to access medical equipment under the EAPWDR and that there are no other resources available to provide the requested medical equipment. The Medical Equipment Form is signed by the Appellant’s Medical Practitioner and a Therapist. Both the Medical Practitioner and the Therapist indicate that a stair lift is the medical equipment that is recommended (in the case of the Medical Practitioner) or required to meet the Appellant’s needs (in the case of the Therapist). The Medical Practitioner provides the following information in the section of the Medical Equipment Form asking for a description of the Appellant’s medical condition: *“Osteoarthritis, lower limbs affecting stair climbing, Obesity Class III, Diabetes, Coronary Artery Disease, all contributing to above”*.

Additional Information Submitted after Reconsideration

In his Notice of Appeal (NOA) dated December 10, 2018, the Appellant states that he would like to be able to live a proper life and not have to live like a prisoner in his own home.

Admissibility of Additional Information

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence the information and records that were before the Ministry when the decision being appealed was made and *“oral and written testimony in support of the information and records”* before the Ministry when the decision being appealed was made, i.e. information that substantiates or corroborates the information that was before the Ministry at reconsideration. These limitations reflect the jurisdiction of a panel established under section 24 of the EAA: to determine whether the Ministry’s reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances

of an appellant.

No new written information was submitted by either party at the hearing. The Appellant's spouse attended the hearing as his representative.

At the hearing, the Appellant described his living arrangements. He explained that the family unit's living quarters were on the upper floor of a split level home, reached by climbing 6 or 7 stairs from the front vestibule, which was at the top of external stairs leading to the front door of the home. He stated that there were also 6 or 7 stairs from the front door leading down to the basement, which was not used as living space but which had a side door providing access to the outside of the house without having to navigate stairs. He said that he is unable to climb up and down the stairs in his house without assistance, and because his spouse is disabled she cannot help him on the stairs. As a result he was "*stuck on the top floor*", and could only get out of the house to attend medical or other appointments with the assistance of a taxi driver. He stated that he has to rely on taxis, which the Ministry pays for, because he cannot get into or out of the van that his spouse drives.

The Appellant stated that he has fallen many times when trying to navigate the stairs, and on one occasion he could not get up and his spouse had to call an ambulance because she was unable to help him. The Appellant said that he usually relies on a cane for mobility and that, while he has the use of an old and rusty second-hand wheelchair that his family found "*on the corner*", he rarely uses it.

At the hearing, the Ministry relied on its Reconsideration Decision, emphasizing that the legislation does not identify a stair lift as an eligible device. The Ministry explained that the legislation does change from time-to-time, and provided the example of an orthotic boot which had recently been added to the list of eligible orthoses, but that to date a stair lift had not been added to the list of eligible devices. The Ministry could not identify how decisions were made to modify the list of eligible devices or whether stair lifts were being assessed for eligibility.

In response to a question from the Appellant regarding other options he might have in obtaining a stair lift, the Ministry stated that the Appellant's Health Authority might have a program or resources that would assist him in acquiring a stair lift.

The Panel accepted the verbal evidence provided by the Appellant at the hearing as oral testimony in support of the information and records that were before the Ministry when the decision being appealed was made, and the Panel considered the information in the Summary of Facts submitted with the NOA to be argument.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the Ministry's Reconsideration Decision dated December 3, 2018 to deny the Appellant a stair lift was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. In particular, the Panel must decide whether the Ministry reasonably determined that the Appellant was not eligible for a stair lift as a health supplement because it is not an eligible item listed under EAPWDR Schedule C section 3.

The relevant legislation is as follows:

EAPWDR

General health supplements

62 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 ...

Schedule C

Medical equipment and devices – wheelchairs

3.2 (1) In this section, "**wheelchair**" does not include a stroller.

(2) Subject to subsection (4) of this section, 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 basic mobility:

- (a) a wheelchair;
- (b) an upgraded component of a wheelchair;
- (c) an accessory attached to a wheelchair ...

(4) A high-performance wheelchair for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

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 – toileting, transfers and positioning aids

3.5 (0.1) In this section:

"positioning chair" does not include a lift chair ...

(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: ...

(l) a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility ...

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 ...

* * *

The Appellant's position is that the Ministry should provide him with a stair lift because the stairs in his home are impossible for him to navigate, that he has fallen many times and that without a stair lift he is a prisoner in his own home. The Ministry's position is that, while the Appellant meets all of the eligibility criteria, the Ministry is unable to fund a stair lift because a stair lift is not listed as a type of eligible medical equipment set out in the EAPWDR.

The Panel Decision

EAPWDR Section 62 states that the Ministry may provide the medical equipment and devices set out in EAPWDR Schedule C Section 3 for a family unit in receipt of disability assistance. While both parties acknowledge that the Appellant is in receipt of disability assistance, the Ministry has determined that a stair lift is not one of the eligible types of medical equipment or devices identified in EAPWDR Schedule C Section 3.

EAPWDR Schedule C Sections 3.1 through 3.12 identify the types of medical equipment or devices that may be provided by the Ministry to a client provided the criteria set out in EAPWDR Schedule C Section 3 are met. "Stair lift" is not a defined device in the legislation. The Oxford English dictionary defines "stair lift" as *"a lift in the form of a chair that can be raised or lowered at the edge of a domestic staircase, used for carrying a person with walking difficulties"*.

The Panel reviewed all of the devices identified in EAPWDR Schedule C Sections 3.1 through 3.12 and concluded that a "stair lift" could not reasonably be considered any of the following devices because none of them are a type of a lift designed to allow a person to navigate stairs:

1. A cane, a crutch or a walker (EAPWDR Schedule C Section 3.1);

2. A scooter (EAPWDR Schedule C Section 3.4);
3. A hospital bed or a related device (EAPWDR Schedule C Section 3.6);
4. A pressure relief mattress (EAPWDR Schedule C Section 3.7);
5. A breathing device (EAPWDR Schedule C Section 3.9);
6. An orthosis (EAPWDR Schedule C Section 3.10);
7. A hearing instrument (EAPWDR Schedule C Section 3.11); or
8. A non-conventional glucose meter (EAPWDR Schedule C Section 3.12).

A “stair lift” might reasonably be considered one of the remaining devices identified in EAPWDR Schedule C Sections 3.1 through 3.12 depending on the definition of the device provided in the legislation, or the accepted definition of the device in the absence of a definition provided in the legislation:

1. A wheelchair (EAPWDR Schedule C Section 3.2);
2. A wheelchair seating system (EAPWDR Schedule C Section 3.3);
3. A positioning chair (EAPWDR Schedule C Section 3.5(0.1) and 3.5(1)(l)); and/or
4. A floor or ceiling lift device (EAPWDR Schedule C Section 3.8).

A wheelchair

“Wheelchair” is not a defined term in the EAPWDR or the EAPWDA. The Oxford English dictionary defines a “wheelchair” as “*a chair fitted with wheels for use as a means of transport by a person who is unable to walk as a result of illness, injury, or disability*” (emphasis added). As a stair lift is not fitted with wheels, the Panel finds that the Ministry reasonably determined that a stair lift is not a wheelchair under EAPWDR Schedule C Section 3.2

A wheelchair seating system

While a “wheelchair seating system” is not a defined term in the EAPWDR or the EAPWDA, the Panel notes that such a device would reasonably refer to a type of wheelchair seat designed to address a disabled individual’s physical impairments, such as those which might result from sensory deficits, muscle weakness, or a lack of stability. As the Panel has found that a stair lift is not a wheelchair, the Panel further finds that the Ministry has reasonably determined that a stair lift cannot be a seating system for a wheelchair.

A positioning chair

A “positioning chair” is not a defined term in the EAPWDR or the EAPWDA, nor could the Panel find a standard dictionary definition of the device, but the following description appears on a positioning chair vendor’s website: “*Positioning chairs are used (in) many different applications for ... (individuals) who have special needs or disabilities. They are most commonly used to make daily activities like eating, resting, and similar functions (possible) for those who need assistance. Disability seats are designed to provide support and positioning functions that ... meet the needs of those who need help performing essential tasks*”. While “positioning chair” is not a defined term in the EAPWDR or the EAPWDA, EAPWDR Section 3.5(0.1) says that a positioning chair is not a lift chair. The Panel notes that this

section of the EAPWDR does not specify any other related devices that are not considered a positioning chair.

While the Panel could not find a standard dictionary definition of “lift chair”, Wikipedia describes a lift chair as a chair *“that feature(s) a powered lifting mechanism that pushes the entire chair up from its base and so assists the user to a standing position”*. Based on this description, the Panel finds that the definition of “lift chair” does not reasonably include a “stair lift” and that therefore a stair lift cannot reasonably be considered excluded from eligibility for funding as a positioning chair by the Ministry on the basis that it is a type of lift chair.

The Panel notes that a stair lift is designed to make the daily activity of navigating the stairs in a person’s home possible for one who needs assistance, and therefore fits the generally accepted description of a positioning chair. In addition, as noted above, the Panel notes that the EAPWDR only specifies a lift chair as being excluded from the definition of positioning chair, and that no other related devices, such as a stair lift, are specifically excluded. However, even if a stair lift might be reasonably considered to be a type of positioning chair, the Panel notes that EAPWDR Section 3.5(1)(l) states that a positioning chair may only be provided by the Ministry *“if it is a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility”*. As the Appellant has confirmed that he usually relies on a cane for mobility, the Panel finds that the Appellant can maintain basic mobility without the use of a wheelchair, and therefore that the Ministry reasonably determined that it could not provide the Appellant with a stair lift under EAPWDR Section 3.5.

A floor or ceiling lift device

EAPWDR Section 3.8(1) defines a floor or ceiling lift device as *“a device that stands on the floor or is attached to the ceiling and that uses a sling system to transfer a person”*. As a stair lift does not use a sling system to transfer a person, the Panel finds that the Ministry reasonably determined that that it could not provide the Appellant with a stair lift under EAPWDR Section 3.8.

Conclusion

The Panel finds that the Ministry’s Reconsideration Decision, which determined that the Appellant was not eligible for a stair lift because it is not an eligible item listed under EAPWDR Schedule C Section 3, was a reasonable application of the applicable enactment in the circumstances of the Appellant, and therefore confirms the Ministry’s decision. The Appellant is not successful in his appeal.

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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/01/13

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)