

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated April 15, 2019 which denied the appellant's request for a pediatric change table under the medical equipment and devices provisions of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)* Section 62 and Schedule C, Sections 3 and 3.5.

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

The evidence before the ministry at the time of the reconsideration decision included a request dated February 5, 2019 for funding of a pediatric change table supported by a letter from an occupational therapist (OT) and an estimate for the change table which included an amount for installation and taxes totalling \$2354.43

The OT noted in her letter that due to the medical diagnoses of the appellant, she is confined to a wheelchair and that she is dependant on others for all aspects of her daily living activities including feeding and toileting needs. The OT states that the appellant needs the change table because her bed is not stable for changing and it would be used for drying/dressing following shower and for pericare and that it would facilitate safe changing and could be easily wiped for hygienic purposes.

On March 8, 2019 the ministry denied this request stating that the pediatric change table was not an eligible item listed under Sections 3.1 to 3.11 of Schedule C of the *EAPWDR* and the ministry therefore does not have the legal authority to approve the request.

On April 10, 2019 the appellant submitted a Request for Reconsideration of the ministry's March 8, 2019 decision. The request also included a letter from the appellant's mother describing in detail that a firm surface was needed as well as access to water in order to facilitate the appellant's regular bowel routines which require fleet enemas followed by manual dis-impacting. She also described the requirement for frequent catheter changes which would be more practical to perform on a change table than on the appellant's bed. She also emphasized that a change table would be more practical to keep things clean, disinfected and sanitary.

At the hearing, the appellant's mother spoke on her behalf:

- Her mother stated that she has legally adopted 27 children most of who have various disabilities. She adopted the appellant when she was only 4 months old.
- The appellant managed with her disabilities fairly well, was intelligent, had a good sense of humour and even sang songs in French.
- This all changed when the appellant was four years old and suffered a stroke which meant she was only able to move 1 hand.
- She has needed special equipment at home ever since. Now that has daughter has grown her need for special equipment has changed also.
- Her catheter doesn't function and frequently gets blocked which leads to other medical complications and she has no bowel control. Her mother described how she has to administer enemas and perform dis-impacting which can be painful for her daughter.
- She explained that this cannot be done on her bed and can be messy and unsanitary.
- She also stated that the cost of holding a hearing such as this would go a long way to pay for the change table which was needed.
- The change table is not the small kind of change table one may see in a bathroom, it is bigger and sturdier and more suited for the purpose.

The ministry relied on the reconsideration decision as summarized at the hearing.

At the hearing, the ministry stated:

- It takes a special person to provide the type of care that the appellant's mother was providing to her children.
- That they agreed the appellant is eligible to receive health supplements and medical devices provided under the *EAPWDR* and the adjudicator who made the reconsideration decision is bound to follow the law which lists what the specific eligible items are. In the case at hand the item that is being requested is not listed as an eligible item and the legislation does not allow the adjudicator to vary the items in the list.
- The only way that the item could have been approved is if the regulations were amended to include the requested change table.

The panel considered that there was no additional information for which a determination of admissibility was required under Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision, which denied the appellant's request for a pediatric change table under the medical equipment and devices provisions of the *EAPWDR*, Section 62 and Schedule C, Sections 3 and 3.5, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The ministry found the appellant was eligible for health supplements under section 62 of the *EAPWDR* however, the item being requested was not included in the list of eligible items for reimbursement.

The eligibility criteria for health supplements are defined in section 62 of the *EAPWDR* and the specific medical equipment and devices which are eligible for reimbursement are listed in Schedule C section 3 and 3.5. Section 3.5 is specific to equipment and devices related to toileting, transfers and positioning. The relevant sections of the legislation are:

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.]

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.

...

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.

...

Panel Analysis

The panel notes the significant issues that the appellant and her mother are dealing with regarding her daily care and notes that the ministry is not arguing that the appellant is ineligible for medical devices and equipment. The situation is unique to the circumstances of the appellant and the ministry noted the applicable legislation does not provide for any discretion to allow the appellant's request.

The ministry is bound to follow the regulations and does not have the power to change the laws that have been promulgated by the legislature even in situations where they empathize with the appellant's plight. Since as the ministry noted, the requested equipment is not included in the list of eligible "devices and equipment" specified in the *EAPWDR*, the panel finds the ministry's decision to deny the request was a reasonable application of the law. While the request seems reasonable to the appellant's mother, and the ministry empathizes with the appellant and her mother, even a broad interpretation of the equipment that is eligible for reimbursement would not reasonably include the equipment that is being requested.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for reimbursement of a pediatric change table pursuant to the provisions of the *EAPWDR*, was a reasonable application of the applicable enactment. The panel confirms the ministry's decision. The appellant's appeal, therefore, is not successful.

APPEAL NUMBER

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

Fazal Bhimji

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019-05-17

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-05-17

PRINT NAME

Susan Johnston

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-05-17