

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated July 23, 2019 which denied the appellant's request for funding for a health supplement, namely a lift chair, on the basis that the request did not meet the legislative criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 62 and 69 and Schedule C Sections 3 and 3.5, specifically that:

- a lift chair is specifically excluded as a "positioning chair" in the medical equipment and devices listed in Section 3 of EAPWDR Schedule C;
- the occupational therapy ("OT") assessment provided by the appellant does not confirm the need for the requested medical equipment or device; and
- the appellant is not eligible for a lift chair under EAPWDR Section 69 because he is otherwise eligible to receive health supplements under Schedule C, Section 3 [*medical equipment and devices*].

PART D – RELEVANT LEGISLATION

EAPWDR:

- Sections 62, 69
- Schedule C, Sections 3, 3.5

PART E – SUMMARY OF FACTS**Information Received prior to Reconsideration**

The information before the ministry at the time of reconsideration included the following:

- ministry form “Medical Equipment Request and Justification” signed by the appellant on June 5, 2019 to which was attached:
 - lift chair price quote dated June 6, 2019 for a lift chair at a cost of \$2,114.10 and heat/massage option at a cost of \$337.50 for a total cost of \$2,451.60;
 - OT assessment dated June 5, 2019, summarized as follows:
 - Background and Findings:
 - appellant has full functional range of motion and strength in his right upper and lower extremities)
 - has congenital abnormalities to left upper and lower extremities;
 - has a functional grip in his left hand but no movement in his left wrist;
 - has limited range in his left elbow and shoulder;
 - has a congenital clubfoot, walks with uneven gait;
 - uses a scooter for mobility outside the home.
 - Recommendations:
 - due to high risk of falls rocker on appellant’s recliner should be immobilized and height of chair raised;
 - because appellant has demonstrated good right upper and lower extremity strength he would benefit from using a floor to ceiling pole for added support when moving in and out of his chair;
 - appellant declines but would benefit from other safety devices, including bathroom grab bars and a bed assist rail.
- Letter from the appellant’s advocate (“J”) dated June 27, 2019 noting that the appellant requires a lift chair to reduce the risk of falls and dependence upon his right upper and lower extremities.
- Letter from the appellant dated July 9, 2019 explaining that due to congenital left side deformities he has developed osteoarthritis, collapsed vertebra, glaucoma and blood pressure issues. He requires a lift chair to assist in “sit to stand” movements and to reduce risk of falling. A floor to ceiling pole results in too much pressure on his right side, leading to back spasms.
- Request for Reconsideration submitted to the ministry on July 10, 2019.

Information Received after ReconsiderationOral Evidence at the Hearing

The appellant’s testimony is summarized as follows:

- he has a fixed arm or table beside every chair to steady himself when he gets up from chairs, bed and bathroom fixtures;
- he has scoliosis, osteoarthritis and cracked vertebrae which result in back pain every day;
- he has jolting pain in his back every time he gets up from a chair;
- his pain is relieved a little by sessions with a massage therapist, who he sees when he can afford to pay the extra costs not covered by the ministry;
- due to the pain in his back he would benefit from the heat and massage feature of a lift chair;
- his need for a lift chair is primarily a safety issue.

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The panel considered the oral evidence of the appellant and admitted it under EAA Section 22 (4) as evidence in support of the information before the ministry at reconsideration because it provided additional details pertaining to the appellant's need for a lift chair and did not contain substantially new information that was not before the ministry at reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry's decision which denied the appellant's request for funding for a health supplement, namely a lift chair, on the basis that the request did not meet the legislative criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 62 and 69 and Schedule C Sections 3 and 3.5, specifically that:

- a lift chair is specifically excluded as a "positioning chair" as a "positioning chair" in the medical equipment and devices listed in Section 3 of EAPWDR Schedule C;
- the OT assessment provided by the appellant does not confirm the need for the requested medical equipment or device; and
- the appellant is not eligible for a lift chair under EAPWDR Section 69 because he is otherwise eligible to receive health supplements under Schedule C, Section 3 [*medical equipment and devices*]

Relevant legislation:

EAPWDR:

General health supplements

62 (1) Subject to subsections (1.1) and (1.2), 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 family unit if the health supplement is provided to or for a person in the family unit who is

- (a) a recipient of disability assistance

Health supplement for persons facing direct and imminent life threatening health need

69 The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
- (b) the health supplement is necessary to meet that need,
- (c) the person's family unit is receiving premium assistance under the *Medicare Protection Act*, and
- (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
- (i) paragraph (a) or (f) of section (2) (1);
- (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

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.

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:

- (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.

The appellant argues that he requires a lift chair to assist him in getting to a standing position safely, and to alleviate the pain in his back and hip with the massage and heat features that of the chair.

The ministry's position is set out in the Reconsideration Decision namely:

1. the appellant is not eligible for a lift bed as a health supplement because it is specifically excluded under Section 3.5 (0.1) of Schedule C – Medical Equipment and Devices;
2. the OT assessment did not confirm the medical need for the lift bed, as required by Section 3 (2) of Schedule C;
3. the appellant is not eligible for a lift chair under EAPWDR Section 69 because he is otherwise eligible to receive health supplements under Schedule C, Section 3 [*medical equipment and devices*].

Panel Decision

1. Not an Eligible Health Supplement

The appellant suffers from a number of congenital deformities that seriously diminish his ability to use his left arm, left leg and back. As a result his ability to get in and out of chairs is compromised, and he risks falling and seriously injuring himself. He has attempted to reduce the risk of falls by positioning fixed tables and arms wherever possible. There is no doubt that he would benefit from the assistance provided by a lift chair.

However, the ministry is bound by the legislation that governs the provision of health supplements, in this case the list of eligible “medical equipment and devices” set out in EAPWDR Schedule C, Section 3. Subsection (0.1) of Section 3.5 states: “In this section “**positioning chair**” **does not include a lift chair**”. (*Emphasis added.*) The exclusion of a lift chair from the list of allowable aids under Section 3.5 is clear and unambiguous.

Alternatively the appellant argues that a lift chair should be considered a “positioning chair”, which is included as a health supplement in Section 3.5 (1). In the appellant's circumstances a lift chair could be considered a positioning chair in that it would assist the patient in positioning himself into a standing position. However, subsection 3.5 (1)(l) restricts the eligibility of a positioning chair to a person for whom a wheelchair is medically essential to achieve or maintain basic mobility. This subsection is therefore not applicable because appellant does not require a wheelchair at this time.

Subsection (1) (m) of Section 3.5 includes a “transfer aid” as a medical supplement for “a person for whom the transfer aid is medically essential to transfer from one position to another”. The appellant argues that a lift chair is a transfer aid because he requires a lift chair to transfer from sitting to standing. However a lift chair is defined in subsection (0.1) as “a transfer board, transfer belt or slider sheet”. It does not include an item as complex as a lift chair.

The panel therefore finds that the ministry reasonably concluded that the lift chair requested by the appellant is not an eligible health supplement under the applicable legislation.

2. OT Assessment Does Not Confirm Medical Need

Subsection 3 (2) of Schedule C states that “a family unit must provide one or both of: (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, as requested by the minister”.

In her June 5, 2019 assessment the OT recommended that the appellant's current chair should be

immobilized from rocking and its height should be raised. The OT also recommended that a floor to ceiling pole would benefit the appellant. She did not confirm the medical need for a lift chair.

In the last paragraph of Page 7 of the reconsideration decision the reconsideration officer wrote: "*It is noted you have not provided a prescription from a medical practitioner or nurse practitioner*". A reasonable inference to be taken from this statement is that a prescription was required as part of the eligibility criteria set out in legislation. Otherwise the reconsideration officer would not have mentioned it. Subsection 3 (2) of Schedule C states that *one or both* of a medical prescription or an OT/PT assessment is required, *as requested by the minister*. There is no evidence to indicate that the ministry requested a prescription from a medical practitioner or nurse practitioner.

For the reasons set out in the appeal decision in its entirety the reconsideration officer's statement does not affect the outcome of this appeal. However, the panel finds that the statement noting the absence of a medical prescription was an unreasonable application of the applicable legislation. Notwithstanding this finding, the panel finds that the ministry reasonably determined that the appellant's request did not meet the eligibility requirement for medical equipment or devices set out in subsection 3 (2) (b) of EAPWDR Schedule C because the assessment provided by the OT did not confirm the medical need for the lift chair.

3. Not an Imminent, Life-Threatening Health Need

EAPWDR Section 69 allows the ministry to provide a health supplement to a person facing a direct and imminent life threatening need if that person is not otherwise eligible for a health supplement under the EAPWDR. Because the appellant is eligible under Section C he does not meet the requirements of Section 69. In addition the information submitted to the ministry does not indicate that the appellant will experience a direct and imminent life-threatening health need if he fails to obtain a lift chair.

The panel therefore finds that the ministry reasonably determined that the appellant did not meet the criteria of an imminent life-threatening health need set out in Section 69.

Conclusion

The panel finds that the ministry's determination that the appellant is not eligible for a lift chair because his request failed to meet the eligibility criteria set out in the legislation is a reasonable application of the applicable legislation in the circumstances of the appellant, and confirms the decision. The appellant is not successful in his appeal.

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

Joan Bubbs

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/Aug/20

PRINT NAME

Jeanne Byron

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/Aug/20

PRINT NAME

Mel Donhauser

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/Aug/20