

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated September 17, 2019, which denied the Appellant's request for a health supplement to cover the cost of a floor lift device.

The Ministry determined that the requested lift device did not meet the requirements set out in Schedule C, Section 3.8(1)(a), of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), which states that the Ministry must be satisfied that a floor or ceiling lift device is medically essential to facilitate transfers of a person in a bedroom or a bathroom, which the Ministry determined meant that it did not have the discretion to consider funding a lift device for use in locations other than in a person's bedroom or bathroom.

**PART D – RELEVANT LEGISLATION**

EAPWDR, Sections 61.1, 62 and 69 and Schedule C, Sections 3 and 3.8

Employment and Assistance Regulation (EAR), Section 86(b)

**PART E – SUMMARY OF FACTS**

The Appellant is a sole recipient of disability assistance.

The evidence before the Ministry at reconsideration included:

- A Request for Reconsideration (RFR) dated August 31, 2019 and completed by another member of the Appellant’s family unit on behalf of the Appellant, which stated in part that:
  - The Appellant is eligible for the medical device as the information provided establishes that all of the regulatory requirements have been met. Specifically:
    - The Appellant requires the use of a portable lift in the family unit’s family room and therapy hall for cardio therapy; and,
    - The legislation does not say that the lift device can’t be used in any other room of the house, and if it is medically necessary to transfer someone in the bedroom or bathroom it is also essential to be able to use a lift in the other parts of the house;
  - The use of a portable lift by the Appellant is essential:
    - To give relief to the Appellant’s skin;
    - To prevent skin breakdown;
    - To give the Appellant’s pelvic area relief;
    - To give the Appellant the cardio support they require because their lungs are at risk due to the Appellant’s double scoliosis; and,
    - To limit the risk of serious and repetitive pneumonia;
  - The Appellant’s cardio therapy involves having the Appellant lowered and picked up from the floor at the end of a long hallway and doing a “commando crawl”;
  - The provincial ministries that were at the time responsible for income assistance and health care (the Previous Ministries) made a promise in 1994 to continue to provide the services that the Appellant was receiving prior to provincial government creating a new structure to deliver services to people with multiple disabilities (see below);
  - The Appellant must be periodically transferred during the day due to their anxiety disorder; and,
  - If the Appellant had to live in an institution rather than in the family unit’s home the Appellant would be able to leave their bedroom and bathroom and have a portable floor lift available whenever it was needed.
- A letter dated July 15, 1994 jointly signed by the ministers responsible for the two Previous Ministries (the Commitment Letter) stating, in part, that:
  - The provincial government had at that time “*begun the process of creating a new structure for services to people with major disabilities*”, and that the ministry responsible for income

assistance programs would “*provide all case management and residential care*”, and the ministry responsible for health services would “*provide all professional health care supports*”;

- “*A more complete amalgamation of services is necessary to ensure that (the provincial government) deliver(s) ongoing, quality service within each community and throughout B.C.*”;
  - “*There will be no disruption in services to people with disabilities*”; and,
  - “*There will be no change in services to people with multiple disabilities whose cases are already handled by (the ministry then responsible for income assistance programs)*”.
- An invoice dated May 29, 2015 for a replacement battery for a “Hoyer Lift”;
  - A Ministry Medical Equipment Request and Justification form dated July 4, 2019 and signed by an unnamed medical practitioner or a nurse practitioner on behalf of the Appellant for a lift device, describing the Appellant’s medical condition as “*severe cerebral palsy; non-ambulant*”;
  - A 2 page request for funding letter dated June 28, 2019 signed by an occupational therapist (OT) indicating that the Appellant’s existing floor lift, which the Appellant “*uses ... throughout ... (their) home where there is (no) ceiling track*” (i.e. other than in the Appellant’s bedroom and adjoining bathroom) has had numerous repairs over the years but now has to be replaced “*as it is showing signs of mechanical breakdown, the contacts for the batteries are corroding and replacement parts are no longer being made*”. The OT also states that the existing floor lift was funded by the previous ministry responsible for income assistance programs in 1997 and that the Appellant’s parents, who are the Appellant’s caregiver, “*are experiencing age related changes to their strength and endurance ... and would greatly benefit from a battery powered lift to enable safe transfers*”; and,
  - A price quotation dated June 26, 2019 from a wheelchair supplier for a battery powered floor lift in the amount of \$4,167.

### **Additional Information**

In the Notice of Appeal (NOA) dated September 23, 2019, one of the Appellant’s parents on behalf of the Appellant states, in part, that:

- Although the Appellant is asking for funding for a floor lift, in the RD the Ministry denied the Appellant approval for funding for a ceiling lift;
- The previous ministry responsible for income assistance programs funded the purchase of the existing floor lift in 1996 (sic); and,
- The Commitment Letter should override any subsequent legislation when it comes to eligibility for medical devices for persons who were previously in the care of the provincial government and receiving services from the Previous Ministries.

Also submitted with the NOA is a copy of an email dated May 1, 2007 (the May 2007 email) from an employee of Community Living BC (CLBC) stating that “*(Person X, identified in the email by the first*

*name of a person other than the Appellant) was a participant in the de-institutional process that took place many years ago. The program was called “services for the handicapped” which was (a program affecting) a group of individuals (the “Group”, which included the Appellant) who initially came under the responsibility of services managed (through) the Ministry of Health. The Group had their medical equipment needs met through a special allocation of funds that were administered by (the Ministry of Health) and (which) were transferred to the old community living BC (program) through (the previous Ministry of Children and Family Development or MCFD). When (CLBC, the crown agency responsible for providing a range of supports and services to children with special needs and adults with developmental disabilities and their families) ... came to be in 2005 ... (it) began administering these funds for someone like (Person X). (Person X) is still receiving funds and ... our CLBC office has already begun the funding allocation and approval request for (Person X). As far as (the Group) [referred to in the document as ‘the 80 people’] goes, ... (the previous ministry responsible for income assistance programs has funded) and still currently fund(s) (supports and services to) all (of the Group) ... We have not received a complaint from (any member of the Group) regarding a lack of funds and they have not had their funds cut or their access to supports and services cut”.*

The Appellant did not attend the hearing but was represented at the hearing by one of the Appellant’s parents (the Appellant’s Parent) and a friend (the Appellant’s Friend). After confirming that the Appellant was notified of the hearing, and having received Release of Information forms signed by the Appellant and nominating both the Appellant’s Parent and the Appellant’s Friend to attend the hearing and make decisions on the Appellant’s behalf, the Panel proceeded with the hearing pursuant to Section 86(b) of the EAR, and permitted the Appellant’s Parent and the Appellant’s Friend to speak on the Appellant’s behalf.

At the hearing, the Appellant’s Parent stated that the Appellant was not requesting a ceiling lift, which is a mobility device with a sling that is attached to a ceiling track that typically runs from a bedroom to a bathroom and is designed to be used by a severely disabled individual for mobility in order to perform personal hygiene. The Appellant’s Parent explained that the Appellant already has a ceiling lift, which was provided by the Ministry and last repaired in 2016, and which has been replaced once or twice over the past few decades. The Appellant’s Parent stated that the Appellant was requesting a replacement for the Appellant’s floor lift, which is a portable device essential to the Appellant’s needs as it permits the Appellant to do exercises necessary to maintain the Appellant’s physical well-being and to ensure that the Appellant does not develop serious medical consequences such as pneumonia, and which can be transported with the Appellant for use when the Appellant is away from the home. The Appellant’s Parent stated that the Ministry’s decision displayed little insight into the varying purposes of the two types of lifts.

The Appellant’s Parent suggested that the Ministry should have consulted with the OT, who visits the Appellant three times a week to supervise and assist with their physiotherapy and can explain in more detail why the equipment is needed.

The Appellant’s Parent also explained that a portable floor lift device, which they also described as a “patient lifter”, had been prescribed by the Appellant’s doctor because the Appellant had a history of skin breakdown from being confined to a wheelchair all day, and that the Appellant’s doctor said that the Appellant should be transferred out of the wheelchair often so that the Appellant could be “off (their)

pelvis" and thereby avoid skin breakdown. The Appellant's Parent said that at 154 lbs. the Appellant is too heavy for the OT, who is a large person, to lift from the Appellant's wheelchair without an assistive device.

The Appellant's Parent also explained that the Appellant has never had to reside in an extended care facility as the Appellant's parents made the decision early in the Appellant's life that they were capable of looking after the Appellant at home, and they wanted to ensure that the Appellant's quality of life was maximized and that the Appellant was cared for by family. The Appellant's Parent also explained that plans had been made to ensure that the Appellant was able to remain in the family home beyond the point that the Appellant's parents, who are now seniors, were able to look after the Appellant, by making arrangements for a CLBC caregiver to provide the necessary supports.

The Appellant's Parent explained that the provincial government, initially through the Previous Ministries and later through CLBC, funded many of the necessary health costs, including the cost of purchasing and repairing a ceiling lift device and a floor lift device. In addition, the Appellant's Parent said they had built their home to include a long hallway, which enabled the Appellant to perform their necessary cardio and physiotherapy exercises.

The Appellant's Parent stated that the existing floor lift, which is now beyond repair, was originally purchased by the provincial government on behalf of the Appellant over 20 years ago, in 1997, and that the floor lift device that the Appellant used before that was purchased by one of the Previous Ministries.

The Appellant's Parent and the Appellant's Friend also explained that a private home is not an extended care facility, and that portable lifts are provided for severely physically handicapped individuals, like the Appellant, in all hospitals and extended care facilities in British Columbia, and wondered why the Appellant's family couldn't have one in their home. The Appellant's Parent also said that the Ministry has repaired the floor lift in the past, and wanted to know why it was no longer able to do so.

Regarding the Ministry's lost or missing records, including the Ministry's record of the purchase of the existing floor lift device in 1997, the Appellant's Parent stated that they were not surprised, but suggested that the Ministry's inability to maintain documents on file should not disadvantage the Appellant. The Appellant's Parent then provided three recent examples of circumstances under which the Ministry's records relating to services provided by the provincial government on behalf of the Appellant were incomplete and explained how the Appellant's Parent had had to retrieve the missing records, either from the Appellant's family's files or by getting copies from equipment suppliers, and provide them to the Ministry.

The Appellant's Parent also stated that "*the list used to base the decision is policy and not legislation*", arguing that the Ministry's Health Services Branch (HSB) has the discretion to make exceptions in order to provide something that is "*urgent and of profound need*". The Appellant's Parent explained that the floor lift device was of urgent and profound need, as to keep the Appellant alive they must have therapy 3 times a week. The Appellant's Friend stated that they used to work for CLBC but retired in June 2019, and that they know of one other person from the Group of individuals previously supported by the services for handicapped program who has a ceiling lift device provided by the provincial government

and who also recently received funding for a floor lift device because the provincial government determined that there was an urgent need.

At the hearing, the Ministry relied on the RD, and apologized for the fact that many of the documents that had been submitted had been lost. The Ministry stated that the floor lift device that the Appellant was requesting was “*more for daily living activities (DLA)*” The Ministry summarized the key legislation as set out in Schedule C, Section 3.8 of the EAPWDR and stated that the legislation was clear in saying that the Ministry only had discretion in funding a floor or ceiling lift device for “medically essential” use in a bedroom or bathroom. The Ministry stated that a floor lift device was not considered “medically essential” for DLA.

In response to a question from the Panel as to why the Ministry did not consider the applicability of EAPWDR Schedule C Section 69 (which states that if a person is determined ineligible for a health supplement, including a floor lift device, and if the Minister is satisfied that the person faces a direct and imminent life threatening need, and a few other conditions are met, the Ministry may provide it), the Ministry stated that it would have needed confirmation from a prescribed professional that the floor lift device would meet a direct and imminent life threatening need and that in this instance such a confirmation hadn't been received. The Ministry further explained that HSB would have applied the legislation and adjudicated on that basis.

### ***Admissibility of Additional Information***

Section 22(4) of the Employment and Assistance Act (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) 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. Because a panel can accept oral and written testimony in support of the information and records before the Ministry when the decision was made, there is limited discretion for a panel to admit new evidence. Accordingly, instead of asking whether the decision under appeal was reasonable at the time it was made, panels must determine whether the decision under appeal was reasonable based on all admissible evidence, including any new evidence admitted under EAPWDA Section 22(4).

The Panel admitted the written information in the NOA regarding the fact that the Ministry denied the Appellant approval for funding for a ceiling lift rather than the floor lift that had been requested, and that the previous ministry responsible for income assistance programs had funded the purchase of the existing floor lift in 1997, to be admissible as it was information that the Ministry had at reconsideration. The Panel considered the contention that the Commitment Letter should override any subsequent legislation when it comes to eligibility for medical devices for persons who were previously receiving services from the Previous Ministries to be argument which did not require an admissibility determination. The Panel admitted the information in the May 2007 email as it was in support of the information that the Ministry had at reconsideration.

Regarding the verbal information provided by the Appellant's Friend at the hearing concerning the other person who has received funding from the Ministry for both a ceiling lift device and a floor lift device, the Panel admitted the evidence as information that the Ministry had at reconsideration and assigned full

weight to the evidence as the Appellant's friend was employed by CLBC in a position that gave them knowledge of programs for persons with disabilities prior to their recent retirement, and because this is first-hand information.

The Ministry did not object to the admittance of any of the new information.

**PART F – REASONS FOR PANEL DECISION**

The issue under appeal is whether the Ministry's RD, which found that the Appellant is not eligible for a floor lift device, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. Was it reasonable for the Ministry to determine that the lift device was not medically essential to facilitate transfers of a person in a bedroom and bathroom? And if it was reasonable for the Ministry to determine that the lift device was not medically essential to facilitate transfers of a person in a bedroom or a bathroom, was it reasonable for the Ministry to determine that the Appellant does not face a direct and imminent life threatening need, the health supplement is necessary to meet that need, and that there are no resources available to the Appellant's family unit with which to meet that need?

The relevant sections of the EAPWDR are as follows:

**Access to medical services only**

**61.1** (1) Subject to subsection (4), a person is a main continued person if

- (a) the person was
  - (i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for disability assistance, and
  - (ii) a person with disabilities on that date,
- (b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance, and
- (c) in the case that the family unit referred to in paragraph (a) (i) was a family unit identified in subsection (3) (g), the agreement referred to in subsection (3) (g) is in force.

(2) ... a person is a dependent continued person if

- (a) the person was a dependant of a main continued person under subsection (1) on the main continued person's continuation date and is currently a dependant of the main continued person, or
- (b) the person is a dependant of a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (b), (c), (d), (e), (f) or (g).

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of disability assistance, ceases to be eligible for disability assistance

- (a) on a date the family unit includes a person aged 65 or older,
- (b) as a result of a person in the family unit receiving an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act*,



- (c) as a result of a person in the family unit receiving a payment under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,
- (d) as a result of a person in the family unit receiving employment income,
- (e) as a result of a person in the family unit receiving a pension or other payment under the *Canada Pension Plan (Canada)*,
- (f) as a result of a person in the family unit receiving money or value that is maintenance under a maintenance order or a maintenance agreement or other agreement, or
- (g) as a result of a person in the family unit receiving financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*.

### **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.

### **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 section ... 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) a person in the family unit is eligible to receive premium assistance under the *Medicare Protection Act*, and
- (d) the requirements specified in the following provisions of Schedule C, as applicable, are met: ...
  - (ii) sections 3 to 3.12 ...

## 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.

(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 ...

(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 ...

(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) ... if the minister considers that the medical equipment or device was damaged through misuse.

### **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.

(2) A floor ... lift device is a health supplement for the purposes of section 3 of this Schedule if the following requirements are met:

(a) the minister is satisfied that the floor ... lift device is medically essential to facilitate transfers of a person in a bedroom or a bathroom;

(b) the cost of the floor or ceiling lift device does not exceed \$4 200 or, if the cost of the floor or ceiling lift device does exceed \$4 200, the minister is satisfied that the excess cost is a result of unusual installation expenses.

(3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years from the date on which the minister provided the item being replaced.

The EAR provides as follows:

#### **Procedures**

86 The practices and procedures of a panel include the following: ...

(b) the panel may hear an appeal in the absence of a party if the party was notified of the hearing ...

\* \* \* \*

#### **Appellant's Position**

The Appellant's position is that the Ministry should fund the cost of the requested replacement device because both the purchase cost and the maintenance and servicing costs for floor lift devices were previously covered by the Ministry, because the device previously provided is old and beyond repair, because the device is medically essential to facilitate transfers within the home, and because the Appellant faces a direct and imminent life threatening need for the device. In addition, the Appellant notes that the provincial government had previously made a commitment, in writing, that there would be no disruption or change in services to people with multiple disabilities whose cases are already handled by the provincial government (i.e. the Group). Furthermore, the Appellant's Friend confirms that there is at least one other person with multiple disabilities known to the Appellant's Friend whose case is handled by the provincial government and who continues to be provided with both a floor lift device and a ceiling lift device by the Ministry.

#### **Ministry's Position**

The Ministry's position is that the Ministry cannot provide a floor lift device to the Appellant because the device is not for facilitating transfers in the Appellant's bedroom or bathroom as required under

EAPWDR Schedule C Section 3.8(2)(a) and the Ministry is only able to fund items outlined in the legislation. In addition, the Ministry was unable to confirm after searching the Appellant's file that a floor lift device was funded by the Ministry in 1997. The Ministry did not consider the implications of Section 69 of the EAPWDR in its RD.

### **Panel Decision**

#### *Floor Lift Device vs. Ceiling Lift Device*

The Panel notes that the Ministry error in considering the Appellant's request to be for a ceiling lift device rather than a floor lift device was made in the Ministry's original decision and corrected in the RD. Therefore, the Panel finds that the Ministry did assess the Appellant's request for the correct type of device in the decision under review by the Panel, which is the RD.

#### *Whether the Lift Device is Medically Essential to Facilitate Transfers of a Person in a Bedroom or a Bathroom [EAPWDR Schedule C Section 3.8(2)(a)]*

The Panel notes that "floor lift device" as defined in EAPWDR Schedule C, Section 3.8(1) "*means a device that stands on the floor ... and that uses a sling system to transfer a person*". The Panel finds that, based on the description of the device as provided in the written and verbal evidence, the device that the Appellant has requested fits the definition of "floor lift device" as provided in the legislation.

The Panel notes that EAPWDR Schedule C, Section 3.8(2)(a) states that one of the requirements that must be met for it to be able to provide a floor or ceiling lift device is that it must be "*satisfied that the ... lift device is medically essential to facilitate transfers of a person in a bedroom or a bathroom*". The Appellant argues that the legislation does not state that the lift device provided cannot be used in any other room of the home, only that it has to be essential for bedroom or bathroom transfers. While the Panel notes that the legislation does not state that the lift device must be used to transfer a person in a bedroom or a bathroom, only that it must be medically essential for that purpose, the Panel finds that it is unlikely that the legislation would have made specific reference to transfers of a person in a bathroom or a bedroom had it not been intended that any lift device funded by the Ministry be used only in those locations of the home.

Having considered all of the evidence, the Panel finds that the Ministry reasonably determined that Section 3.8(2)(a) does not permit the Ministry to fund the cost of a lift that is not used to facilitate transfers in the Appellant's bedroom or bathroom.

#### *Whether the Health Supplement is for a Person Facing Direct and Imminent Life Threatening Health Need [EAPWDR Section 69]*

Regarding the Appellant's argument that the floor lift device should be provided partly because the Ministry has the discretion to make exceptions in order to provide something that is "*urgent and of profound need*", the Panel notes that EAPWDR Section 69 states that if a person is determined ineligible for certain specified health supplements, including a floor lift device, and if the Minister is satisfied that the person faces a direct and imminent life threatening need, there are no resources available to the person's family unit with which to meet that need, the health supplement is necessary to meet that need,

and the family unit is not receiving disability assistance, does not include a person under 19 receiving hardship assistance or who is not a “continued person”, the Ministry may provide it.

Section 61.1 of the EAPWDR defines “continued person” to be either a “main continued person” or a “dependent continued person”. A “main continued person” is a person who is a member of a family unit receiving disability assistance where any member of the family unit reaches the age of 65 *and* the person who reaches that age is receiving disability assistance. A “dependent continued person” is a person who was a dependant of a main continued person in a family unit receiving disability assistance on the main continued person's continuation date (i.e. the date that the main continued person reaches the age of 65), and who is currently a dependant of a main continued person. The family unit in this case comprises the Appellant and the Appellant's two parents. As it has not been established that, on the date that the elder of the two of the Appellant's parents turned 65, that parent was classified as a person with disabilities, neither of the Appellant's parents would appear to meet the definition of a “main continued person”. Also, because the Appellant is younger than both of their parents, the Appellant cannot be a main continued person. In addition, because one of the other members of the family unit has reached the age of 65 and is not considered a main continued person, the Appellant does not meet the definition of a dependent continued person.

As the Appellant's family unit *is* receiving disability assistance, and because the Appellant is not a continued person and is neither under the age of 19 nor receiving hardship assistance, the Panel finds that Section 69 of the EAPWDR does not apply in the circumstances of the Appellant, even if the Appellant were facing a direct and imminent life threatening need.

As Section 69 does not apply in this case, the Panel finds that the Ministry was reasonable in implicitly determining that it does not apply, though it would have been helpful had the Ministry explained its reasoning for not considering the implications of EAPWDR Section 69 in the RD.

### *Conclusion*

Having considered all of the evidence, the Panel is limited in its jurisdiction to determine if the Ministry acted in accordance with the legislation. Because Section 3.8 of Schedule C limits the use of floor or ceiling lifts to use in the bedroom or bathroom only, the Panel acknowledges that the Ministry does not have the option to provide a lift outside of these circumstances, which the Panel finds unfair and illogical in these circumstances. However, despite the Panel's determination that the decision results in an unjust outcome in the circumstances of the Appellant, the Panel is bound to confirm the Ministry's decision.

While the Panel does not have any jurisdiction over decisions made by the provincial government outside of the legislation as set out in the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) and the EAPWDR, , given the Appellant's need for the device, and the history summarized above, the Panel supports any decision that might be made by the Ministry that would allow it to continue to fund the costs relating to the acquisition and maintenance of a floor lift device for use by the Appellant in performing their necessary exercises.

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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/11/28

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Jennifer Armstrong

DATE (YEAR/MONTH/DAY)

19/11/28