

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) Reconsideration Decision dated November 1, 2019 which denied the appellant's application for medical equipment – a custom raised transfer platform. The ministry found that the information provided did not establish that the eligibility criteria set out in sections 62 and 69 and Schedule C of the Employment and Assistance for Persons with Disabilities were met and denied the application.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 62, 69; Schedule C.

PART E – SUMMARY OF FACTS

Information before the minister at reconsideration included:

- A letter dated September 1, 2017 To Whom It May Concern from an occupational therapist (OT) at a health centre with a quote for recommended adaptive equipment for the appellant.
- A quote for medical equipment dated April 1, 2019.
- A quote for medical equipment dated April 17, 2019 and September 12, 2019
- A Medical Equipment Request and Justification form signed April 18, 2019.
- A letter from the ministry to the appellant dated October 2, 2019 denying funding for a custom transfer platform.
- A Medical Equipment Request and Justification form dated September 13, 2019, specifying a custom built transfer platform with a letter from an OT at a health centre dated September 18, 2019.
- The appellant's Request for Reconsideration signed October 17, 2019.
- A letter dated October 16, 2019 To Whom It May Concern from an OT at a health centre supporting the appellant's request for a custom raised transfer platform.

Prior to the hearing the appellant submitted a letter from an Occupational Therapist (OT) dated November 15, 2019, providing additional information, stating that the appellant requires access to his wheelchair, hospital bed and commode for positioning, pressure relief, mobility and toileting and that standard transfer aids do not meet his needs. The panel admitted this letter under section 22(4) of the Employment and Assistance Act as it is written evidence in support of information and records that were before the minister when the decision under appeal was made.

Prior to the hearing the ministry submitted a letter dated December 11, 2019 stating that the ministry reviewed the additional information submitted by the OT in the letter of November 15, 2019, and that had the ministry had this information at the time of reconsideration, the ministry may have found the request for a custom raised transfer platform to meet the criteria of EAPWDR Schedule C, section 3.2(2)(b) or (c). The panel accepted this letter as argument.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry decision which denied the appellant's application for medical equipment – a custom raised transfer platform. The ministry found that the information provided did not establish that the eligibility criteria set out in sections 62 and 69 and Schedule C of the Employment and Assistance for Persons with Disabilities were met and denied the application.

Legislation

EAPWDR

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 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) 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:
 - (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

Definitions

1 In this Schedule:

"occupational therapist" means an occupational therapist registered with the College of Occupational Therapists of British Columbia established under the *Health Professions Act*,

General health supplements

2 (1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation:

- (a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:
 - (i) the supplies are required for one of the following purposes:
 - (A) wound care;
 - (B) ongoing bowel care required due to loss of muscle function;
 - (C) catheterization;
 - (D) incontinence;
 - (E) skin parasite care;

- (F)limb circulation care;
- (ii)the supplies are
 - (A)prescribed by a medical practitioner or nurse practitioner,
 - (B)the least expensive supplies appropriate for the purpose, and
 - (C)necessary to avoid an imminent and substantial danger to health;
- (iii)there are no resources available to the family unit to pay the cost of or obtain the supplies;
- (a.1)the following medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies:
 - (i)lancets;
 - (ii)needles and syringes;
 - (iii)ventilator supplies required for the essential operation or sterilization of a ventilator;
 - (iv)tracheostomy supplies;
- (a.2)consumable medical supplies, if the minister is satisfied that all of the following requirements are met:
 - (i)the supplies are required to thicken food;
 - (ii)all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies;
- (b)Repealed. [B.C. Reg. 236/2003, Sch. 2, s. 2 (b).]
- (c)subject to subsection (2), a service provided by a person described opposite that service in the following table, delivered in not more than 12 visits per calendar year,
 - (i)for which a medical practitioner or nurse practitioner has confirmed an acute need,
 - (ii)if the visits available under the Medical and Health Care Services Regulation, B.C. Reg. 426/97, for that calendar year have been provided and for which payment is not available under the *Medicare Protection Act*, and
 - (iii)for which there are no resources available to the family unit to cover the cost:

Item	Service	Provided by	Registered with
1	acupuncture	acupuncturist	College of Traditional Chinese Medicine under the <i>Health Professions Act</i>
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the <i>Health Professions Act</i>
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia under the <i>Health Professions Act</i>
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia under the <i>Health Professions Act</i>
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia under the <i>Health Professions Act</i>
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia under the <i>Health Professions Act</i>

- (d) and (e)Repealed. [B.C. Reg. 75/2008, s. (a).]
- (f)the least expensive appropriate mode of transportation to or from
 - (i)an office, in the local area, of a medical practitioner or nurse practitioner,
 - (ii)the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,
 - (iii)the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or
 - (iv)the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in

section 1 of the *Hospital Insurance Act*,

provided that

(v)the transportation is to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, and

(vi)there are no resources available to the person's family unit to cover the cost.

(g)Repealed. [B.C. Reg. 75/2008, s. (a).]

(1.1)For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

(2)No more than 12 visits per calendar year are payable by the minister under this section for any combination of physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services.

(2.1)If eligible under subsection (1) (c) and subject to subsection (2), the amount of a general health supplement under section 62 of this regulation for physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services is \$23 for each visit.

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 — 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.

(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 after the minister provided the item being replaced.

(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 — 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.

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 or ceiling 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 or ceiling 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 appellant's position is that the requested item, a custom raised transfer platform, is medically essential to provide access to his power wheelchair, hospital bed and commode for positioning, mobility and toileting.

The ministry's position is that the requested equipment is not described in the EAPWDR, Schedule C Health Supplements, and as such, there is no authority to provide funding for this category of item.

In its analysis of the appellant's request for the custom built transfer platform the ministry compared the request with the requirements for all types of medical equipment and devices set out in the applicable legislation, and determined that it is not one of the items listed and it is not a medical supply. Additionally the ministry determined that the appellant is not eligible for provision of this item as a life-threatening health need or as a crisis supplement.

The panel notes the additional information provided by the appellant's OT, which details the necessity of a custom built transfer platform and the ministry's response. In their letter of December 11, 2019, the ministry stated that they may have found the appellant's request to meet the criteria of EAPWDR Schedule C, section 3.2(2)(b) or (c), which state that "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: (b) an upgraded component of a wheelchair; (c) an accessory attached to a wheelchair." In this instance the family unit appears to be eligible, the ministry In their letter of December 11, 2019 appears to accept that there are no resources available to meet this expense and it is the least expensive option. There is an assessment by an OT.

The additional information from the appellant's OT which was admitted by the panel states that the requested platform is required to make up the difference in height between the appellant's leg length and the wheelchair seat to floor length and restates that the platform is medically essential for mobility and positioning. The panel accepts the OT's evidence that the platform is required to allow the appellant to use his power wheelchair independently and that his access to the wheelchair is in effect basic mobility. As the requested platform is essential for this purpose, the panel finds that the requested custom raised transfer platform does fit the requirements of section 3.2(2) (b) an upgraded component of a wheelchair; or (c) an accessory attached to a wheelchair.

Therefore the panel finds that the ministry did not reasonably determine that the requirements of section 3.2(2)(b) or (c) of Schedule C, EAPWDR were not met.

The panel therefore rescinds the ministry decision.

The Appeal is 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

Reece Wrightman

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019 Dec 30

PRINT NAME

Sarah Bijl

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 Dec 30

PRINT NAME

Jan Lingford

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 Dec 30