

APPEAL NUMBER
2020-00004

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development (ministry's) reconsideration decision dated December 30, 2019 finding the appellant is not eligible for the replacement of medical equipment (bath transfer bench, raised toilet seat, grab bars and bed rail) as the appellant had not meet the requirement of Employment and Assistance for Persons with Disabilities (EAPWD) Regulation Section 3.5 (2) and 3.6 (2) which both specify the time period for the replacement of the denied items as 5 years from the date on which the ministry provided the items being replaced.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 62

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C Sections 3 (1), 3.5 and 3.6

PART E – SUMMARY OF FACTS

The Appeal, 2020-00004, was adjourned January 24, 2020 and March 3, 2020 at the appellant's request. The appellant requested a third adjournment April 20, 2020 as the appellant had hoped to have a letter from the new Occupational Therapist (OT) (in terms of needing the medical equipment) and an advocate to assist in the hearing process. Tribunal Practices and Procedures 4.4(c), "Adjournments" states that if a party requests an adjournment within (1) business day prior to the hearing, the request must be made to the panel at the hearing and may be made notwithstanding that a prior request was not consented to. The decision on adjournment must then be made by the panel.

Panel members considered the overall principles of fairness and determined that the hearing should continue and not be adjourned. As the appellant had two previous adjournments with plans to obtain a letter from the new OT and plan for an advocate to assist during the hearing, the panel decided to uphold the objective of the legislation to provide a speedy appeal hearing. Further, as noted in the panel's view below, the evidence in terms of a letter from the appellant's OT submitted verbally by the appellant would not have had a major impact on the appeal.

The appellant is a recipient of disability assistance and is eligible to receive health supplements set out under the EAPWDR, Schedule C, section 3.

Summary of key dates:

- February 20, 2018: The ministry received a request for a mobility scooter, 3 grab bars, bed assist rail, raised toilet seat, bath transfer bench, and 4-wheeled walker.
- May 10, 2018: The appellant received the bath transfer bench, raised toilet seat, grab bars and bed rail.
- September 23, 2019: The appellant submitted a request for a walker, handheld shower, cane, bath transfer bench, raised toilet seat, grab bars and bed rail.
- October 23, 2019: The minister approved the appellant's request for a walker, handheld shower and cane; the minister denied the appellant's request for a bath transfer bench, raised toilet seat, grab bars and bed rail.
- November 28, 2019: The appellant submitted a signed reconsideration requesting an extension.
- December 19, 2019: The ministry received information from the appellant's advocate.
- December 30, 2019: The ministry completed its review of the request for reconsideration.

Evidence before the ministry at the time of reconsideration:

- On December 19, 2019 the ministry received information from the appellant's advocate noting the items denied by the ministry with an explanation that with the eviction from the rental property and the house being demolished the appellant was not able to retrieve the

appellant's grab bars. As well, while homeless, the appellant lost the majority of the appellant's belongings including the medical equipment supplied by the ministry.

- A copy of an assessment from the appellant's occupational therapist sent to the ministry September 23, 2019 requesting a walker/wheelchair combo, handheld shower, cane, bath transfer bench, raised toilet seat, grab bar and bed rail.
- A quotation dated August 21, 2019 depicting cost of medical equipment requested by the appellant.
- A Medical Equipment Request and Justification form completed by the appellant dated September 6, 2019.

Additional Information

- In the Notice of Appeal dated January 6, 2020 under "Reasons for Appeal", the appellant states: For my medical equip; grab bars, toilet seat, bath seat.
- At the hearing the appellant clearly stated her position. Statements included:
 - It was not the appellant's fault the medical equipment items were lost but rather the son of the appellant.
 - The grab bars were lost as the appellant's rental was demolished and the other remaining items were lost when stored by the sheriff.
 - The appellant really needs this equipment to be independent and safe.
 - The appellant requires the help of the appellant's partner to shower safely.
 - When asked what evidence a letter from the new OT may contain, the appellant stated the OT would confirm the appellant requires the medical equipment for stability and independence.
- At the hearing the ministry rep stated:
 - The appellant was not denied the medical equipment based on the need but rather the appellant did not meet the eligibility of the time line for replacement as is outlined in sections 3.5.2 and 3.6.2 of the EAPWDR.
 - When asked by the panel if exceptions to the timeline of replacement were made the ministry representative stated that exceptions are rare and, in the representative's experience, only occur when major medical conditions have changed for the client.

Admissibility of additional information

The panel finds that the additional information provided by the appellant in reference to what she felt the letter from the OT would contain (that the appellant required the medical equipment) is relevant to the decision under appeal because it tends to substantiate part of the appellant's position in relation to the appellant's request. The panel therefore admits this evidence under section 22(4) of the Employment and Assistance Act. Although the panel accepts the evidence as relevant, the impact to the decision is minimal as the appellant was not denied the medical equipment based on need.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's determination that the appellant did not meet the eligibility requirements for replacement of medical equipment was reasonably supported by the evidence or a reasonable application of the legislation.

Appellant's Position

Having been evicted and the house being demolished the appellant was not able to remove the appellant's grab bars. As well, during the appellant's time of being homeless the appellant lost the majority of the appellant's belongings and medical equipment supplied by the ministry. The appellant requires these equipment items so that the appellant can care for daily hygiene safely and maintain independence.

Ministry's Position

The ministry upon review determined the appellant was not eligible for replacement of requested medical supplies, (bath transfer bench, raised toilet seat, grab bars and bed rail), as the appellant had not met the requirement of Employment and Assistance for Persons with Disabilities (EAPWD) Regulation Section 3.5 (2) and 3.6 (2) which specifies the time period for the replacement of the denied items as 5 years from the date on which the ministry provided the items.

Panel Decision

In the appellant's argument the appellant stated although the replacement timeline had not been met, the ministry was unreasonable in their decision as the appellant needs the lost/missing equipment. The ministry was clear in their statement that the appellant had not been denied equipment replacement based on the appellant's need but rather on the legislation under Schedule C, subsection 3.5(2) and 3.6(2) which set out specific eligibility criteria the appellant must meet to be approved for toileting and transfer aids, and hospital bed components. Both sections 3.5(2) and 3.6(2) specify that, from the date the ministry supplied the medical equipment a time period of 5 years is required before a recipient is eligible for replacement of the items. As the appellant had acquired the medical devices May 10, 2018, the appellant is not eligible for replacement until May 10, 2023. The panel finds the ministry's determination the appellant was not eligible for replacement of medical equipment was a reasonable application of the relevant legislation.

Conclusion

The panel finds the ministry's reconsideration decision was reasonably supported by the evidence and confirms the ministry's reconsideration decision. The appellant is not successful on appeal.

Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation

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.

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.

(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 — 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 — hospital bed

3.6 (1) Subject to subsection (3) 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 facilitate transfers of a person to and from bed or to adjust or maintain a person's positioning in bed:

- (a) a hospital bed;
- (b) an upgraded component of a hospital bed;
- (c) an accessory attached to a hospital bed;
- (d) a positioning item on a hospital bed.

(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.

(3) The following items are not health supplements for the purposes of section 3 of this Schedule:

- (a) an automatic turning bed;
- (b) a containment type bed.

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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

Charles Schellinck

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/04/21

PRINT NAME

Angie Blake

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/21

PRINT NAME

Glenn Prior

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/21