

APPEAL NUMBER
2020-00120

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated March 26, 2020, which held that the appellant is not eligible for funding for a stairlift because the request failed to meet the required legislative criteria as set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

In particular, the ministry found that as a recipient of disability assistance (DA), the appellant is eligible to receive health supplements pursuant to section 62 of the EAPWDR. The ministry also found that the appellant provided a prescription from his physician for the stairlift and an assessment from his occupational therapist confirming the need for the stairlift thus meeting the requirements of Schedule C subsection 3(2) of the EAPWDR. However, the ministry determined that the stairlift is not a health supplement item listed in Schedule C of the EAPWDR and therefore the ministry cannot provide funding for a stairlift.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – Sections 69 and Schedule C, sections 2, 3, 3.1 to 3.12.

PART E – SUMMARY OF FACTS

Evidence at Reconsideration

1. Prescription for a stairlift from the appellant's physician.
2. Medical Equipment Request and Justification Form – signed and dated January 2, 2020 by the appellant's Occupational Therapist (OT), which also included a summary of health information, an assessment and justification for a stairlift. The OT also suggested alternative measures such as a second handrail on the stairs, adding visual aids and physiotherapy treatment.
3. Quote for a stairlift at a cost of \$11, 500.00 dated November 25, 2019.
4. Request for Reconsideration, signed and dated February 27, 2020, which requested a 3-month extension on the ministry's decision. The extension was to allow time for the appellant's physician to return from holiday to obtain additional information.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated April 9, 2020. The NOA reiterated the need for a 3 month extension on the ministry's decision and indicated that the request was denied.

Evidence at the Hearing

At the hearing, the appellant, in part, indicated the following:

- His bedroom is on the first floor of his home and the kitchen is on the second floor. A stairlift is necessary for safe, independent movement between the floors.
- His legs are weak which makes the challenge of stairs difficult. At this point it is not safe for the appellant to manage the stairs independently.
- He does not want to ask for help, he wants to be independent and to enjoy life on his own.
- When asked, the appellant indicated that moving from the current home to a one-story home is not feasible or desirable as he is in a home that accommodates his language needs. Meeting this need in another home would be difficult. Additionally, the appellant does not want to move from his current home as he likes where he lives. Therefore, this option has not been explored.
- When asked, the appellant indicated that he refuses to consider the OT's alternative recommendations of a second handrail, visual aids and physiotherapy.
- The appellant also emphasized that relocation would be detrimental to his use of language. The use of language is his right.
- He stated that funding of \$10, 000.00 was available to refit his bathroom to accommodate his needs but the stairlift is more necessary.

At the hearing, the ministry relied on its reconsideration decision.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision which held that the appellant is not eligible for funding for a stairlift because the request failed to meet the legislative criteria set out in the EAPWDR was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that a stairlift is not a health supplement item set out in Schedule C of the EAPWDR, and therefore it cannot provide funding for such item?

The relevant legislation is as follows: **Schedule C of the EAPWDR**

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 requirements are met.

Section 2(1)(c) provides that the following items are health supplements if the other criteria of the section are met: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy.

Section 2(1)(f) of Schedule C provides that the following items are health supplements if the other criteria of the section are met: the least expensive appropriate mode of transportation.

Section 2.1 of Schedule C provides that the following are the optical supplements that may be provided under Section 62.1 of the EAPWDR: basic eyewear and repairs, pre-authorized eyewear and repairs.

Section 2.2 of Schedule C provides that the minister may pay a health supplement under Section 62.2 of the EAPWDR for an eye examination if the other criteria of the section are met.

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.

Section 3.1 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a cane, a crutch, a walker, an accessory to a cane, a crutch or a walker.

Section 3.2 provides that the following items are health supplements for the purposes of section 3 if the other criteria of the section are met: a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair.

Section 3.3 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a wheelchair seating system, an accessory to a wheelchair seating system.

Section 3.4 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a scooter, an upgraded component of a scooter, an accessory attached to a scooter.

Medical equipment and devices — toileting, transfers and positioning aids

3.5 (0.1) In this section: "**positioning chair**" does not include a lift chair; and "**transfer aid**" means a transfer board, transfer belt or slider sheet.

Section 3.5 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: grab bar in a bathroom, a bath or shower seat, a bath transfer bench with hand held shower, a tub slide, a bath lift, a bed pan or urinal, a raised toilet seat, a toilet safety frame, a floor-to-

ceiling pole in a bathroom or bedroom, a portable commode chair, a standing frame for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility, **a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility, a transfer aid for a person for whom the transfer aid is medically essential to transfer from one position to another**, and (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.

Section 3.6 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed, and a positioning item on a hospital bed.

Section 3.7 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a pressure relief mattress.

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..

Section 3.9 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: breathing devices.

Section 3.10 provides that the following items are an orthosis which is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a custom-made or off-the-shelf foot orthotic, custom-made footwear, a permanent modification to footwear, off-the-shelf footwear for a specific purpose, off-the-shelf orthopaedic footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, a hip brace, an upper extremity brace, a cranial helmet, a torso or spine brace, a foot abduction orthosis, or a toe orthosis.

Section 3.10 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a prosthetic and related supplies, a plaster or fiberglass cast, a hernia support, an abdominal support, a walking boot for a fracture.

Section 3.11 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hearing instrument.

Section 3.12 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a non-conventional glucose meter.

Section 69 of the EAPWDR provides as follows:

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).

The Appellant's Position

The appellant argued that he needs the stairlift for independent movement between the first and second floors of his home.

The Ministry's Position

The ministry argued that the appellant's request for funds for a stairlift does not meet the legislative requirements because the stairlift is not a device that the ministry is able to provide as it is not listed in Schedule C of the EAPWDR.

The Panel's Decision

Section 3 of Schedule C of the EAPWDR stipulates that the medical equipment and devices described in Sections 3.1 to 3.12 of Schedule C are the health supplements that may be provided by the ministry if the recipient is eligible under section 62 of the EAPWDR. The ministry determined that the appellant is eligible under section 62. However, sections 3.1 to 3.12 of Schedule C list specific medical equipment or devices that do not match the description of a stairlift and therefore the stairlift is not medical equipment or a device that can be provided under these sections. Section 3.8 does describe a floor to ceiling lift; however, it specifically states that the floor to ceiling lift must stand on the floor and be attached to the ceiling, use a sling system to transfer a person and that the device is medically essential to facilitate transfers of a person in a bedroom or a bathroom. The stairlift does not meet this description. As a result, the panel finds that the ministry reasonably determined that the evidence establishes that the appellant is not eligible for funding for a stairlift pursuant to section 3 or Sections 3.1 through 3.12 of Schedule C of the EAPWDR.

Section 2 (1)(a) of Schedule C of the EAPWDR sets out that the ministry may provide specific health supplements that are medical or surgical supplies, if the recipient is eligible under section 62 of the EAPWDR. However, the specific health supplements listed in this section are for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care, or limb circulation care. The stairlift that the appellant has requested is not a medical or surgical supply as listed under the section. As a result, the panel finds that the ministry reasonably determined that the evidence establishes that the appellant is not eligible for a health supplement for a stairlift pursuant to section 2 (1)(a) of Schedule C of the EAPWDR.

Section 69 of the EAPWDR sets out that the ministry may provide a medical device if there is a direct and imminent life-threatening need if the medical device requested is listed in Schedule C of the EAPWDR. The panel finds that the ministry reasonably determined that the requirements of Section 69(d) are not met as a stairlift is not set out under Schedule C, Section 2(1)(a) as medical or surgical supplies or under Section 2(1)(f) as a mode of medical transportation, or under Sections 3 to 3.12, as detailed above.

Conclusion:

The panel finds that the ministry reasonably concluded that the evidence establishes that the appellant's request for a stairlift did not meet the legislative criteria set out in the EAPWDR. Specifically, the stairlift is not a device that is listed in sections 2, and 3.1 to 3.12, of Schedule C of the EAPWDR. Therefore, the ministry cannot provide funds to purchase it pursuant to section 3(2) to (5) of Schedule C of the EAPWDR. The panel therefore finds that the ministry's decision to deny the appellant funding for a stairlift was a reasonable application of the legislation in the circumstances of the appellant and therefore confirms the ministry's reconsideration decision. The appellant is not successful at appeal.

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2020-00120

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

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/05/25

PRINT NAME

Linda Pierre

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/05/25

PRINT NAME

Dawn Martin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/05/25