

APPEAL NUMBER  
2020-00200

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision dated July 29, 2020, wherein the ministry found that it does not have the authority to provide funding for a lifeline assist system as this request does not meet the legislated requirements for a health supplement set out in the EAPWD Regulation.

The ministry noted that it was sympathetic with the circumstances of the request and acknowledged that the appellant would benefit from this system.

**PART D – RELEVANT LEGISLATION**

EAPWDR sections 62 to 70.02 and Schedule C

Interpretation Act sections 8 and 12

**PART E – SUMMARY OF FACTS**

The appellant has been designated as a person with disabilities (PWD) and is eligible for Medical Services Only.

On June 12, 2020, the ministry received a letter from the appellant's family doctor prescribing "*Lifeline*" as the appellant "has been suffering from vertigo and is at risk of falls".

The appellant provided information about the Living Well Companion with Fall Detection and writes that the system "automatically calls 911 if I fall and don't move in 30 seconds and cannot push the button for help. i.e. unconscious. \$75/month, no contract, 1 time \$40 fee for equipment and set up."

At reconsideration the appellant wrote that the lifeline assist system is a life-saver in case of accident and injury. It was prescribed by the doctor to mitigate the risk of death by fall due to vertigo. The lifeline assist system is the lowest cost option available, but the appellant is still unable to afford it without assistance.

The appellant's request also includes a letter from an advocate who writes that the appellant's vertigo may strike during any daily living activity and cause the appellant to fall. Preparing meals, performing housework and moving about indoors and outdoors become highly risky. Under these circumstances the lifeline assist system would make a difference between life and death. The appellant is on a fixed income and does not have the resources to pay for this device.

In the Notice of Appeal dated August 18, 2020, the appellant writes: "Funding 'Lifeline' is consistent with the scheme of the EAPWD regulation Schedule C Section 3 as it is a Dr. prescribed medical service which would allow me to walk around without an assisting friend or family member and is the lowest cost option. Without "Lifeline", I am at a substantially higher risk of death or grievous bodily injury if my vertigo causes me to fall."

The appellant did not attend the hearing. Upon confirming that the appellant was notified the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation. The appellant's advocate attended.

At the hearing the advocate stated that the appellant's balance and vision issues are due to multiple concussions. It can take up to 5 hours to recover from a fall until normal vision is restored. The appellant had originally intended to provide a second medical opinion but was not able to get an appointment until November. The appellant had told the advocate that after looking at various quotes the LivingWell Companion system was the lowest cost option.

The advocate stated further that the ministry's application of the legislation was too narrow and should have been broader in accordance with the Interpretation Act. Section 3.9 of Schedule C includes an apnea monitor, and section 3.12 a non-conventional glucose meter - both are monitoring devices that are listed among the medical equipment/devices the ministry may fund.

The ministry relied on the reconsideration decision and added that there are different lifeline assist systems that provide the same kind of service. The ministry recognized that the lifeline assist system was prescribed by a doctor and the appellant may need it, but it is bound by legislation and not authorized to make an exception.

## **PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the ministry reasonably determined that it does not have the authority to provide funding for a lifeline assist system as this request does not meet the legislated requirements for a health supplement set out in the EAPWDR and Schedule C.

### **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.

#### **62.1 Optical supplements**

#### **62.2 Eye examination supplements**

#### **63 Dental supplement**

#### **63.1 Crown and bridgework supplement**

#### **64 Emergency dental and denture supplement**

#### **65 Orthodontic supplement**

#### **66 Diet supplement**

#### **67 Nutritional supplement**

#### **67.001 Nutritional supplement – short term**

#### **67.01 Tube feed nutritional supplement**

#### **67.1 Infant formula supplement**

#### **68 Natal supplement**

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

(1)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,...

#### **70 Supplement for alcohol or drug treatment**

#### **70.02 Alternative hearing assistance supplement**

### **SCHEDULE C of the EAPWDR**

#### **2 General health supplements**

(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;

...

(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>

## 2.1 Optical supplements

## 2.2 Eye examination supplements

### **3 Medical equipment and devices**

(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.

**3.1 Medical equipment and devices — canes, crutches and walkers**

**3.2 Medical equipment and devices — wheelchairs**

**3.3 Medical equipment and devices — wheelchair seating systems**

**3.4 Medical equipment and devices — scooters**

**3.5 Medical equipment and devices — toileting, transfers and positioning aids**

**3.6 Medical equipment and devices — hospital bed**

**3.7 Medical equipment and devices — pressure relief mattresses**

**3.8 Medical equipment and devices — floor or ceiling lift devices**

**3.9 Medical equipment and devices — breathing devices**

**3.10 Medical equipment and devices — orthoses**

**3.11 Medical equipment and devices — hearing instruments**

**3.12 Medical equipment and devices — non-conventional glucose meters**

**4 Dental supplements**

**4.1 Crown and bridgework supplement**

**4.2 Denture supplements**

**5 Emergency dental supplements**

**6 Diet supplements**

**7 Monthly nutritional supplement**

**8 Natal supplement**

**9 Infant formula**

## 11 Alternative hearing assistance supplement

### Appellant's Position

The appellant argues that funding should be provided by the ministry because the doctor prescribed the lifeline assist system which would make a difference between life and death. Due to the appellant's vertigo the risk of falling is high, and each fall carries a high risk of grievous injury or death. While the LivingWell Companion is lowest cost system available, the appellant, depending on a fixed income, does not have the resources available to pay for this device.

The appellant argues further that funding of a lifeline assist system is consistent with the intent of the EAPWDR Schedule C Section 3 as it is a medical service prescribed by a physician which would allow the appellant to walk around without an assisting friend or family member. The ministry's interpretation of the legislation was too narrow and should have been broader in accordance with the Interpretation Act sections 8 and 12. As other monitoring devices are funded by the ministry (section 3.9 of Schedule C includes an apnea monitor and section 3.12 a non-conventional glucose meter) there is no reason why the ministry should not fund a lifeline assist system.

### Ministry Position:

#### **Basic Eligibility:**

The appellant has been designated as a Person with Disabilities and is eligible for Medical Services Only under Section 61.1 of the EAPWD Regulation. Therefore, the appellant is considered a *continued person* and is eligible to receive health supplements under section 62 and Schedule C of the EAPWDR, provided all other eligibility requirements are met.

#### ***The ministry found that a lifeline assist system is not a medical equipment/device included under section 3:***

The EAPWD Regulation, Schedule C, section 3 sets out the general requirements for all equipment/devices.

Subsection 3(2) sets out that for medical equipment and 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 section 3, 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 occupations therapist or physical therapist confirming the medical need for the medical equipment or device.

Sections 3.1 to 3.12 set out the specific eligibility requirements for each category. The ministry is authorized to provide the following medical equipment/devices:

#### Section 3 Medical Equipment and Devices:

Section 3.1 a cane; a crutch; a walker; and accessories

Section 3.2 a wheelchair; an upgraded component of a wheelchair; an accessory to a wheelchair

Section 3.3 a wheelchair seating system; an accessory to a wheelchair seating system

Section 3.4 a scooter; an upgraded component of a scooter; an accessory to a scooter

Section 3.5 a 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 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

Section 3.6 a hospital bed; an upgraded component of a hospital bed; an accessory attached to a hospital bed; a positioning item on a hospital bed

Section 3.7 a pressure relief mattress

Section 3.8 a floor or ceiling lift device (means a device that stands on the floor or is attached to the ceiling and that uses a sling to transfer a person)

Section 3.9 a positive airway pressure device; an accessory that is required to operate a positive airway pressure device; a supply that is required to operate a positive airway pressure device; an apnea monitor with accessories and supplies; a suction unit with accessories and supplies; a percussor with accessories and supplies; a nebulizer with accessories and supplies; a medical humidifier with accessories and supplies; an inhaler accessory device with accessories and supplies

Section 3.10 a custom-made or off-the-shelf foot orthotic; custom-made footwear; a permanent modification to footwear; off-the-shelf footwear required to accommodate a foot orthotic; 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 used to prevent self-harm; a torso or spine brace; a foot abduction orthosis; a toe orthosis

Section 3.11 a hearing instrument

Section 3.12 a non-conventional glucose meter

The ministry found that:

- A lifeline assist system is not included in the list of medical equipment which may be provided.
- In addition, the ministry found that the information provided does not establish the other legislated criteria set out in these sections, for each of these health supplements, have been met.

Therefore, the appellant's request cannot be provided under the legislation for medical equipment.

***The ministry found a lifeline assist system is not a medical or surgical supply under section 2(1)***

The EAPWD Regulation, Schedule C, section 2(1)(a) sets out that the ministry may provide either disposable or reusable medical or surgical supplies if:

(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.

- The ministry is not satisfied that a lifeline assist system is a medical or surgical supply, rather than a monitoring service. Therefore, the appellant's request does not meet the requirement of Schedule C section 2(1)(a).
- Further, the ministry found that a lifeline assist system is not required for the purposes listed in Schedule C section 2(1)(a)(i). The appellant does not require this system for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care, or limb circulation care. Therefore, the appellant's request cannot be provided under the legislation for Medical Supplies.

***The ministry found that a lifeline assist system is not an item set out in any other sections of the EAPWD Regulation, Schedule C***

A. A lifeline assist system does not meet the criteria as a “therapy.”

- EAPWD Regulation, Schedule C, sections 2(1)(c), 2(2) and 2(2.1) set out that the ministry may provide no more than 12 visits per calendar year in the amount of \$23 per visit for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physiotherapy treatments.

- A lifeline assist system is not one of these therapies.

- In addition, the ministry finds that the information provided does not establish the other legislated criteria set out in these sections for this health supplement, have been met.

B. A lifeline assist system does not meet the criteria as one of the remaining health supplements.

- EAPWD Regulation, Schedule C, sections 2(1)(f), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, and 9 set out that the ministry may provide: medical transportation, optical supplements, eye examination supplements, dental supplements; crown and bridgework supplements; emergency dental supplements; diet supplements; monthly nutritional supplements; natal supplements; and infant formula.

The EAPWD Regulation Section 67(3) sets out that the ministry may provide a nutritional supplement for an acute short-term need.

- A lifeline assist system is not one of these supplements.

- In addition, the ministry finds that the information provided does not establish the other legislated criteria set out in these sections, for each of these health supplements, have been met.

***The appellant is not eligible for a lifeline assist system under Life-Threatening Health Need***

The ministry has also determined that the appellant is not eligible for a lifeline assist system under the EAPWDR section 69, as a health supplement for a person facing a direct and imminent life threatening health need.

Section 69 sets out that the minister may provide to a family unit any health supplement set out in sections 2 (1) (a) [*medical supplies*] and (f) [*medical transportation*] 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 3.11, other than paragraph (a) of section 3 (1).

Section 69 applies to health supplements set out under Schedule C, sections 2(1)(a) and (f) [*general health supplements*] and section 3 [*medical equipment and devices*]. It is intended to provide a remedy for those persons who are facing a direct and imminent life-threatening health need for these supplements and who are not otherwise eligible to receive them.

The ministry found:

- A lifeline assist system is not an item provided under sections 2(1)(a) or (f), or section 3 of Schedule C, EAPWD Regulation. Therefore, this item cannot be provided under section 69.

- The appellant is eligible for general health supplements provided the eligibility requirements for each



health supplement is met. Therefore, the appellant does not require the remedy of section 69.

Therefore, the appellant is not eligible for a lifeline assist system under section 69 of the EAPWD Regulation.

### **Panel Decision**

#### **Medical Equipment and Devices - Schedule C section 3**

Sections 3.1 to 3.12 list all medical equipment/devices the ministry is authorized to provide. The panel finds that the ministry reasonably determined that a lifeline assist system is not included in this list as this item is neither a cane, crutch or walker; nor a wheelchair; nor a wheelchair seating system; nor a scooter; nor a toileting, transfers and positioning aid; nor a hospital bed; nor a pressure relief mattress; nor a floor or ceiling lift device; nor a breathing device; nor an orthosis; nor a hearing instrument; nor a non-conventional glucose meter. Consequently, the panel finds that the ministry reasonably determined that the appellant was not eligible for funding for a lifeline assist system under Schedule C section 3.

#### **Medical or Surgical supplies - Schedule C sections 2(1)(a) and 2(1)(a)(i)**

The panel finds that a lifeline assist system is not a disposable or reusable medical or surgical supply as set out in section 2(1)(a), and that the appellant does not require the item for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care, or limb circulation care as set out in section 2(1)(a)(i). Consequently, the panel finds that the ministry reasonably determined that the appellant has not met the requirements of Schedule C section 2(1)(a) and 2(1)(a)(i).

#### **Extended Therapies - Schedule C section 2(1)(c)**

The panel finds that the ministry reasonably denied funding for a lifeline assist system under section 2(1)(c) because the appellant's request for this system is not a request for one of the following extended therapies for which the ministry may provide funding: acupuncture, chiropractic, massage therapy, naturopathy, nonsurgical podiatry, and physical therapy.

#### **Remaining Sections of the EAPWDR and Schedule C**

The panel finds that the ministry reasonably denied funding for a lifeline assist system because this item is not set out in any of the remaining sections of the EAPWDR and Schedule C.

EAPWDR sections 62.1, 62.2, 63, 64, 65, 66, 67, 68, 70 and 70.02 set out that the ministry may provide optical supplements, eye examination supplements, dental supplements, an emergency dental and denturist supplement, an orthodontic supplement, a diet supplement, a nutritional supplement, a natal supplement, a supplement of alcohol and drug treatment, and an alternative hearing assistance supplement. Schedule C, sections 2.1, 2.2, 4, 4.1, 4.2, 5, 6, 7, 8, and 9 set out optical supplements, eye examination supplements, dental supplements, crown and bridgework supplements, denture supplements, emergency dental supplements, diet supplements, a monthly nutritional supplement, natal supplements, and infant formula. A lifeline assist system is not among these items.

#### **Direct and Imminent Life Threatening Need - section 69 of the EAPWDR**

Section 69 applies to health supplements set out under Schedule C sections 2(1)(a) to (f) [*general health supplements*] and section 3 [*medical equipment and devices*]. It is intended to provide a

remedy for those persons who are facing a direct and imminent life-threatening health need for these supplements and who are not otherwise eligible to receive them. The panel notes that as the appellant is designated as a person with disabilities (PWD) and is eligible to receive health supplements under the EAPWD Regulation, Schedule C, the appellant does not require the remedy under section 69.

As discussed earlier, a lifeline assist system is not an item provided under sections 2 or 3 of Schedule C of the EAPWD Regulation and can therefore not be provided to the appellant under section 69. As a result the panel finds the ministry reasonable determined that the appellant is not eligible for a lifeline assist system under section 69 of the EAPWDR.

While the appellant argues that without a lifeline assist system the appellant's life is threatened, the panel notes there is insufficient evidence that the appellant faces a direct and imminent life threatening need which a lifeline assist system would alleviate. The doctor did not specifically mention that the device was necessary to prevent an imminent and direct danger to the appellant's life; the panel would have expected this to be included if the doctor believed there was an imminent and direct danger to the appellant's life.

While the appellant argues that in accordance with the Interpretation Act the ministry's interpretation of the EAPWDR was too narrow because the lifeline assist system was prescribed by a doctor and funding for a lifeline assist system would be consistent with the scheme of section 3 of Schedule C which allows for funding of other monitoring devices, the panel finds that the ministry reasonably determined that appellant did not meet all of the required legislated criteria as previously discussed. Interpretation does not allow for the addition of a new device to a legislated list of devices and the ministry has no discretionary authority in the matter.

### **Conclusion**

The panel finds that the ministry's determination that the appellant is not eligible for a lifeline assist system is reasonably supported by the evidence and is a reasonable application of the legislation in the appellant's circumstances; the ministry's reconsideration decision is confirmed and the appellant is not successful on appeal.

APPEAL NUMBER  
2020-00200

**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)  and Section 24(1)(b)

and

Section 24(2)(a)  or Section 24(2)(b)

**PART H – SIGNATURES**

PRINT NAME

Inge Morrissey

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/09/08

PRINT NAME

Kevin Ash

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/09/08

PRINT NAME

Margarita Papenbrock

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/09/09