

APPEAL NUMBER
2021-00005

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated December 29, 2020 which denied the appellant's request for a supplement to cover the cost of a lift chair. The ministry found that the item requested is not listed as an eligible item in Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) or eligible as a crisis supplement pursuant to section 57 of the EAPWDR.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – Section 57, 62 and Schedule C

PART E – SUMMARY OF FACTS

Evidence at Reconsideration

1. A prescription from a physician, signed and dated September 11, 2020, indicating that the appellant requires a lift chair due to “significant knee arthritis – difficulty getting up from seat”
2. A quote dated November 5, 2020, for a lift chair, delivery and set up in the amount of \$2649.99.
3. Request for Reconsideration signed and dated November 25, 2020, which, in part, stated “I am requesting a reconsideration for the Golden Cloud Lift Chair due to the increase and ongoing swelling of my legs. My blood does not circulate properly making it painful and difficult when I walk due to swelling. It will also help with my back and knee pain due to arthritis”.

Evidence at Appeal

Notice of Appeal, sign and dated January 5, 2021, which, in part, stated “I have arthritis on my back and legs which cause me severe pain. I also require my legs to be in an upright position due to lack of blood circulating properly as I do not get enough blood to my brain due to a brain injury caused by an assault”.

Evidence at the Hearing

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

- The ministry has not provided various items he requires for his medical conditions and his doctor is tired of listening to him.
- The appellant also described the mistreatment he experienced from the ministry.
- He was assaulted in 2007 and as a result he suffered a brain injury.
- He suffers from arthritis in the back, knees and legs, and his legs swell due to poor circulation.
- He does not have a chair to sit on and currently sits and eats in his hospital bed. However, he frequently falls off the hospital bed and when eating, food falls onto the bed.
- The lift chair with arms will help to elevate his feet and the heat feature will keep his back warm thus allowing blood circulation. Increased blood circulation will prevent swelling and thus improve mobility.
- Currently, with his medical issues of arthritis, swelling in the legs and poor blood circulation mobility is limited and limited to the point that he cannot make it to washroom on time.
- His doctor has advised against using a wheelchair and compression socks. The appellant uses a walker.
- His advocate cannot help but the third-party administer helped with his request to the ministry.

At the hearing, the ministry relied on its reconsideration decision and added that medical and surgical supplies are either disposal or reusable but eventually they will need to be replaced. A lift chair is a permanent device which does not fit in the category of a supply.

PART F – REASONS FOR PANEL DECISION

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of a lift chair because the item requested is not listed as an eligible item in Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) or as a crisis supplement pursuant to section 57 of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

The legislation states:

Pursuant to Section 62 of the EAPWDR, the applicant must be a recipient of disability assistance, or be a dependant of a person in receipt of disability assistance in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met to qualify for a health supplement for various items.

Schedule C:

Section 2(1) provides for “medical or surgical supplies” that are disposable or reusable provided that:

- (i) the supplies are for one of the purposes listed including 2(1)(a)(F) limb circulation care;
- (ii) the supplies are
 - a. prescribed by a medical or nurse practitioner,
 - b. the least expensive supplies appropriate for the purpose and
 - c. necessary to avoid an imminent and substantial danger to health; and
- (iii) there are no resources available to the family unit to pay for the supplies.

The rest of section 2 concerns certain services (acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physical therapy) and transportation.

Medical equipment and devices

Section 3(1) provides that the “medical equipment and devices” listed in sections 3.1 to 3.12 may be provided where the requirements of the applicable section are met, and

- (i) the minister has pre-authorized the medical equipment or device;
- (ii) there are no resources available to pay for the medical equipment or device; and
- (iii) the medical equipment or device is the least expensive appropriate medical equipment or device.

Section 3.5 provides that the items listed are health supplements where the item is medically essential to achieve or maintain a person's positioning:

- (a) a grab bar in a bathroom
- ...
- (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.

The section states that a “positioning chair” does not include a lift chair and that a “transfer aid” means a transfer board, transfer belt or slider sheet.

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.

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.

Section 3.8 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 floor or ceiling lift device.

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 certain orthoses are a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met.

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.

Crisis supplement

Section 57 provides for a crisis supplement where:

- (a) the supplement is needed to obtain an item unexpectedly needed and the family unit has no resources available; and
- (b) failure to obtain the item will result in imminent danger to the physical health of the person.

The section states that a crisis supplement may not be provided for a supplement described in Schedule C or any other health care goods or services.

The Appellant's Position

The appellant argued that due to arthritis in the back and legs, poor blood circulation, knee pain and ongoing swelling, he cannot walk without pain and difficulty. The appellant argued that the lift chair will help keep his feet elevated and the heat feature in the lift chair will help with blood circulation.

The Ministry's Position

The ministry argued that the request for a lift chair does not meet the legislated requirements for a health supplement, as set out in Schedule C of the EAPWDR. Specifically, a lift chair is not otherwise specified as an item which the ministry may provide and the information provided by the appellant and the physician does not confirm that the lift chair is a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility pursuant to Schedule C section 3.5 of the EAPWDR.

The ministry argued that the request for a lift chair does not meet the legislated requirements for a health supplement, as set out in Schedule C of the EAPWDR. Specifically, the information provided by the appellant and the physician does not confirm that the lift chair is required for limb circulation, is the least expensive medial supply for limb circulation or that a lift chair is required to avoid imminent and substantial danger to the appellant's health pursuant to Schedule C section 2(1)(a)(i)(f) and 2(1)(a)(ii)(c) of the EAPWDR.

The ministry argued that the request for a lift chair does not meet the legislated requirements for a health supplement, as set out in Schedule C of the EAPWDR. Specifically, a lift chair is not otherwise specified as an item which may be provided pursuant to Schedule C section 2 of the EAPWDR.

The ministry argued that the request for a lift chair does not meet the legislated requirements for a crisis supplement, as set out in section 57(1) of the EAPWDR. Specifically, the information provided by the appellant and the physician does not confirm that the lift chair is an unexpected expense, or an item unexpectedly needed and that the failure to obtain a lift chair will result in imminent danger to the appellant's physical health.

The ministry argued that a lift chair is a health care good. Therefore, pursuant to section 57(3)(b) of the EAPWDR, it does not qualify for a crisis supplement.

The Panel's Decision

The ministry noted that an item listed in the legislation that is most like a lift chair is a positioning chair which is listed in section 3.5 of schedule C.

Schedule C, Section 3 – Medical Equipment and Devices

The panel reviewed section 3 and the medical equipment and devices listed in sections 3.1 to 3.12. The panel agrees with the ministry's view that an item listed in the legislation that is most like a lift chair is a positioning chair which is listed in section 3.5 of schedule C.

Schedule C section 3.5 of the EAPWDR sets out that the ministry may provide medical equipment and devices including a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility. The evidence demonstrates that the appellant does not use a wheelchair. The panel also notes that the legislation clearly states that a positioning chair does not include a lift chair. The panel finds that the ministry was reasonable in its determination that the appellant's request for a lift chair does not meet the requirements of Schedule C section 3.5.

The panel also finds that the requested item clearly does not fall within any of the items listed in sections 3.1 to 3.4 and 3.6 to 3.12.

Schedule C, Section 2 – General Health Supplements

Schedule C section 2(1)(a) of the EAPWDR sets out that the ministry may provide medical or surgical supplies for limb circulation care if the supplies are prescribed by a medical practitioner or nurse practitioner, are the least expensive medical supply for limb circulation or that the supplies are required to avoid imminent and substantial danger to the appellant's health. In this case, the appellant argued that he suffers from poor limb circulation. However, the evidence provided by the physician does not demonstrate that the lift chair is required for limb circulation. In fact, the only evidence provided by the physician, that is the prescription, refers only to the appellant's arthritis. Also, the evidence does not indicate that the lift chair is the least expense medical supply for limb circulation. Finally, the evidence provided does not indicate that failure to obtain a lift chair will lead to the imminent danger to the appellant's physical health. The panel finds that the ministry was reasonable in its determination that the appellant's request for a lift chair does not meet the requirements of Schedule C sections 2(1)(a)(i)(f) and 2(1)(a)(ii)(a), (b) and (c) of the EAPWDR.

Schedule C section 2 of the EAPWDR sets out that the ministry may provide a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy, or optical services. The evidence provided demonstrates that a lift chair is not a service listed above. The panel finds that the requested item is not service listed in section 2 or a request for transportation. The panel finds that the ministry was reasonable in its determination that the appellant's request for a lift chair does not meet the requirements of Schedule C section 2 of the EAPWDR.

Section 57 – Crisis Supplement

Section 57(1) of the EAPWDR sets out that the ministry may provide a crisis supplement to meet an unexpected expense or obtain an item unexpectedly needed for which the recipient does not have the resources available to meet the need and a failure to obtain the need will result in imminent danger to the physical health to any member of the recipient's family unit. The ministry has conceded that the appellant does not have the resources to meet the need of a lift chair and has therefore agreed that the appellant met this criterion.

The evidence at reconsideration, which consisted of a prescription from the physician and a quote from the supplier, did not address the issue of unexpected need and no further evidence which addressed this issue was provided at the hearing. The panel finds that there is no evidence to support the position that the lift chair is an unexpected expense or need.

Similarly, the evidence on file, which consisted of the prescription from the physician and a quote for the supplier, did not address the issue of imminent danger to physical health, and no other evidence which addressed this issue was provided at the hearing. The panel finds that there is no evidence to support the position that the failure to obtain a lift chair will cause imminent danger to the appellant's physical health.

The panel finds that ministry was reasonable in its determination that the appellant's request for a lift chair does not meet the requirements of Section 57(1) of the EAPWDR.

Section 57(3)(b) of the EAPWDR sets out that the ministry cannot provide a crisis supplement for the purpose of obtaining a supplement described in Schedule C or, any other health care goods or services.

Throughout the hearing and in his written submission, the appellant argued that the lift chair would help with his medical conditions and mobility. The panel finds that a lift chair according to the appellant's intended use is a health care good. The panel finds that the ministry was reasonable in its determination that a lift chair is a health care good and pursuant to Schedule C sections 57(3)(b) of the EAPWDR, it is an item the ministry cannot provide.

Conclusion

In conclusion, the panel finds that the ministry's decision to deny the request for a supplement to cover the cost of lift chair as not meeting the legislated criteria of Schedule C or section 57 of the EAPWDR, was a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the ministry's decision. The appellant is not successful at appeal.

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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

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/02/01

PRINT NAME

Shirley Heafey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/02/01

PRINT NAME

Joe Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/02/01