

APPEAL NUMBER
2021-00007

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 Cubii peddle machine. 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 indicating that the appellant requires a Cubii machine due to knee osteoarthritis and brain injury.
2. A web-printout regarding information for a Cubii peddle machine with \$344.00 written on it.
3. Request for Reconsideration signed and dated November 26, 2020, which, in part, stated “I am requesting a reconsideration as the peddle machine will help in the rehabilitation of my knees. I have severe arthritis in my knees and back. It will help strengthen them as it is a low impact machine that will not further aggravate my injuries and improve my mobility and health”.

Evidence at Appeal

Notice of Appeal, sign and dated January 5, 2021, which, in part, stated “I require the Cubii peddle machine to make my legs, knees, and hips stronger. I was physically assaulted which left me with brain damage and a disability in which I have to use a walker to assist me to get places”.

Evidence at the Hearing

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

- He described the various ways in which he has been mistreated by the ministry.
- He described the daily challenges he faces with his mobility, which includes unexpected falls, inability to go to the washroom or get around in the community.
- When his physician examined his knees and legs, he noticed that they were swollen. The physician gave him a prescription for a peddle machine because his muscles and bones need to get stronger. This will also allow him to walk properly.
- Due to his brain injury, pain and swelling in the neck, back, legs and knees he cannot exercise.
- When he was in rehabilitation, the doctors, nurses, physiotherapist, and occupational therapist stated that he needs rehabilitation machine, but the ministry denied it.
- When in rehabilitation he used a 4-wheel walker, but the ministry did not provide one. The ministry has denied many devices that he needs for his medical conditions.
- The appellant will be going for x-rays, but he is not sure what the x-rays are for.
- The ministry should provide the Cubii peddle machine because he cannot work and therefore cannot afford to buy.
- He went to physiotherapy a few times, where he rode a bike and had heat applied to his back and neck, but the \$20.00 charge was unaffordable. It would be more economical to exercise at home. His physiotherapist advised that he should exercise at home.
- He has had injections from the specialist in his knees and now will have them in his back too.
- He uses a walker to get around his home and uses the bus to travel in the community, but he needs an escort in case he falls, and he also gets tired.

At the hearing, the ministry relied on its reconsideration decision and added that this is not a matter of if the ministry wants to provide the peddle machine but whether can it provide the peddle machine. The ministry also stated when questioned that MSP will pay for physiotherapy up to a specific dollar amount. Once exhausted, the ministry will provide up to 12 additional visit and up to a certain dollar amount per visit with the recipient paying the difference.

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 Cubii peddle machine 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 3.1 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 3.5 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: 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 floor-to-ceiling pole in a bathroom or bedroom, a portable commode chair, a standing frame or a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility, and a transfer aid for a person for whom the transfer aid is medically essential.

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 the back and knees and the swelling in his legs, he requires the peddle machine to strengthen his muscles and bones, not aggravate his injuries, and to improve his mobility and overall health.

The Ministry's Position

The ministry argued that the request for a Cubii peddle machine does not meet the legislated

requirements for a health supplement, as set out in Schedule C of the EAPWDR. Specifically, a Cubii peddle machine is not otherwise specified as an item which may be provided pursuant to Schedule C section 3 of the EAPWDR.

The ministry argued that the request for a Cubii peddle machine does not meet the legislated requirements for a health supplement, as set out in Schedule C of the EAPWDR, as a Cubii peddle machine is not otherwise specified as an item which may be provide pursuant to Schedule C section 2 of the EAPWDR. Specifically, the information provided by the appellant and the physician does not confirm that the Cubii peddle machine is required for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care or limb circulation pursuant to Schedule C section 2(1)(a)(i). Similarly, the information provided by the appellant and the physician does not confirm that a Cubii peddle machine is required to avoid imminent and substantial danger to the appellant's health pursuant to Schedule C section 2(1)(a)(ii)(c) of the EAPWDR. Furthermore, the Cubii peddle machine is not a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy, or optical services, medical transportation supplements, optical supplements, eye supplements, dental supplements, diet supplements, monthly nutritional supplements, natal supplements, and infant formula.

The ministry argued that the request for a Cubii peddle machine 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 Cubii peddle machine is an unexpected expense, or an item unexpectedly need and that the failure to obtain a Cubii peddle machine will result in imminent danger to the appellant's physical health. Furthermore, the ministry determined that the Cubii peddle machine is a health care good and therefore, pursuant to section 57(3) it is not an item that is eligible for a crisis supplement.

The Panel's Decision

In this case, the ministry has found that the requirement of Section 62 has been met in that the appellant has been approved as a recipient of disability assistance.

Schedule C, Section 3 – Medical Equipment and Devices

Schedule C section 3 of the EAPWDR sets out that the ministry may provide various medical equipment and devices. The panel reviewed section 3 and sections 3.1 to 3.12. The evidence provided demonstrates that a peddle machine is not an item listed in section 3 of Schedule C. Specifically, the panel finds that a peddle machine can not reasonably be considered: a cane, crutch or walker; a wheelchair; a wheelchair seating system; a scooter; a toileting, transfer or position aid; a hospital bed; a pressure relief mattress; a floor or ceiling lift device; a breathing device; an orthoses; a hearing instrument; or a non-conventional glucose meter.

The panel finds that the ministry was reasonable in its determination that the appellant's request for a Cubii peddle machine does not meet the requirements of Schedule C section 3 of the EAPWDR.

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 care if the supplies are prescribed by a medical practitioner or nurse practitioner, are the least expensive medical supply appropriate for the purpose, and the supplies are required to avoid imminent and substantial danger to the appellant's health. The evidence does not demonstrate that a

failure to obtain the peddle machine will result in 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 Cubii peddle machine does not meet the requirements of Schedule C section 2(1)(a) 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, medical transportation supplements, optical supplements, eye supplements, dental supplements, diet supplements, monthly nutritional supplements, natal supplements, and infant formula. The panel finds that the evidence provided demonstrates that a peddle machine is not a service listed above. The panel finds that the ministry was reasonable in its determination that the appellant's request for a Cubii peddle machine 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 Cubii peddle machine and has therefore the appellant met this criterion.

The evidence at reconsideration, which consisted of a prescription from the physician and web-based information on the Cubii peddle machine, 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 a peddle machine is an unexpected expense or need.

Similarly, the evidence on file other than the appellant's testimony, which consisted of the prescription from the physician and web-based information on the Cubii peddle machine, 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 was insufficient evidence to support the position that the failure to obtain a peddle machine 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 Cubii peddle machine does not meet the requirements of Section 57(1) of the EAPWDR.

Section 57 (3) 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 Cubii peddle machine would help with his medical conditions and mobility. The panel finds that the Cubii peddle machine according to the appellant's intended use is a health care good. The panel finds that the ministry was reasonable in its determination that the Cubii peddle machine 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 Cubii peddle machine 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)

2021/02/02

PRINT NAME

Shirley Heafey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/02/02

PRINT NAME

Joe Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/02/02