

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated November 25, 2020, which held that the appellant was not eligible for funding for a TempurPedic pillow (the “TempurPedic Pillow”).

The ministry found that the appellant was eligible to receive health supplements under section 62 and Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) but that the request did not meet the legislated requirements for a health supplement. In particular, the ministry determined that the TempurPedic Pillow is not a medical equipment/device included under EAPWDR Schedule C, section 3 as it is not included in the list of medical equipment which may be provided under section 3.

The ministry was satisfied that the appellant does not have the resources available to pay the cost of or to obtain the requested TempurPedic Pillow. However, the ministry determined that the TempurPedic Pillow was not required for one of the legislated purposes for medical supplies as set out in EAPWDR Schedule C, section 2(1)(a). The ministry also found that the TempurPedic Pillow is not an item set out in any other sections of the EAPWDR Schedule C such as a therapy or other health supplements.

The ministry also found that the appellant was not eligible for the TempurPedic Pillow under EAPWDR section 69, as a health supplement for a person facing a direct and imminent life threatening health need.

APPEAL NUMBER
2020-00285

PART D – RELEVANT LEGISLATION

EAPWDR, section 69 and Schedule C

PART E – SUMMARY OF FACTS

The information before the ministry at the time of reconsideration included the following:

- Prescription from a physician dated July 31, 2020 for a “foam pillow for neck pain and arthritis”
- Quote for the TempurPedic Pillow in the amount of \$229
- Letter to the appellant dated September 24, 2020 denying the appellant’s request for the TempurPedic Pillow on the basis that the requested TempurPedic pillow is not described in the EAPWDR Schedule C Health Supplements so there is no authority for the ministry to provide funding for the requested item.
- Request for Reconsideration form submitted on November 12, 2020

Additional information provided

In the Notice of Appeal (“NOA”) dated December 24, 2020, the appellant states that the TempurPedic Pillow is a necessary medical assistance device, or product the doctor recommended for cervical spine injuries and debilitating neck pain.

The appellant provided a submission dated February 19, 2021 (the “Submission”) stating that the appellant has debilitating neck pain in addition to debilitating lumbar spine pain and diabetic foot wounds. The appellant states that the debilitating neck pain is due to multiple herniated disks, severe neural foraminal stenosis and central spinal stenosis at multiple locations in the cervical spine. The appellant states that the TempurPedic Pillow is reusable and intended to help reduce the appellant’s neck pain and to help increase limb circulation. The appellant states that the spine wounds are a danger to the appellant’s health and damage to the c-spine is very dangerous and is always a threat to the appellant’s life re-worsening. The Submission also indicates that the appellant has much numbness in hands and legs and considerable numbness in left arm especially when laying down with arms outstretched. The appellant states that the TempurPedic Pillow is required for limb circulation so it should be considered a medical supply under the legislation. The Submission contains argument based on then ministry policy for provision of health supplements under EAPWDR Schedule C, section 2(1) relating to medical supplies.

The ministry provided a submission dated March 3, 2021 (the “Ministry Submission”) indicating that the ministry is not satisfied that the TempurPedic Pillow is a reusable medical supply for wound care or limb circulation under EAPWDR Schedule C, section 2(1)(a). The Ministry Submission also indicates that it is not satisfied that the TempurPedic Pillow is the least expensive supply appropriate for the purpose as required under EAPWDR Schedule C section 2(1)(a)(ii)(B). The Ministry Submission also indicates that while it is recognized that a foam pillow may help alleviate the appellant’s neck pain and arthritis, the ministry is not satisfied that there is evidence that the TempurPedic Pillow is required to avoid imminent and substantial danger to the appellant’s health as required by EAPWDR Schedule C section 2(1)(a)(ii)(C).

The ministry also indicates that it considered the appellant’s request under section 57 of the EAPWDR as a crisis supplement. The ministry indicates that while it is satisfied that the

appellant does not have the resources for a foam pillow the ministry is not satisfied that the TempurPedic Pillow is an unexpected expense or an item unexpectedly needed. The ministry is also not satisfied that the TempurPedic Pillow is required to avoid imminent and substantial danger to the appellant's health as required under EAPWDR section 57. The ministry states that EAPWDR section 57(3) outlines that a crisis supplement may not be provided for the purpose of obtaining a supplement described in Schedule C or any other health care goods or services. The ministry states that the appellant's physician prescribed a foam pillow, and the ministry considers a foam pillow a "health care good" and therefore it cannot be provided as a crisis supplement.

The appellant provided a further submission being a letter from the physician dated March 8, 2021 indicating that the appellant will benefit from a foam (orthopedic) pillow for chronic neck pain and back pain. The physician indicates that the appellant has a history of multiple spinal injuries. The physician indicates that the appellant suffered neck pain, back pain, arm/hands/legs pain, and numbness, which may be related to nerve impingement and/or limb circulation.

Admissibility of New Information

The panel has admitted the information in the appellant's Submission and the letter from the physician dated March 8, 2021 as the information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information relates to the appellant's neck and back injuries and the physician's prescription for a foam pillow. The panel has also admitted the Submission in relation to the appellant's position regarding the applicable legislative sections and ministry policy as argument.

The panel has admitted the Ministry Submission as argument.

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant's request for the TempurPedic Pillow 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 the information provided did not meet the legislated requirements for the TempurPedic Pillow as a health supplement as it is not a medical equipment/device included under EAPWDR Schedule C, section 3?

Was the ministry reasonable in determining that the TempurPedic Pillow was not required for one of the legislated purposes for medical supplies as set out in EAPWDR Schedule C, section 2(1)(a) or that the TempurPedic Pillow is not an item set out in any other sections of the EAPWDR Schedule C such as a therapy or other health supplements?

Was the ministry reasonable in determining that the appellant was not eligible for the TempurPedic Pillow under EAPWDR section 69, as a health supplement for a person facing a direct and imminent life threatening health need?

Was the ministry reasonable in determining that the appellant was not eligible for the TempurPedic Pillow as a crisis supplement under EAPWDR section 57 as outlined in the Ministry Submission?

Relevant Legislation

Please see attached Schedule A for the relevant legislation.

Panel Decision

Eligibility for the TempurPedic Pillow as a medical equipment/device under EAPWDR Schedule C, section 3

EAPWDR Schedule C, sections 3 to 3.12 set out the requirements for eligibility for certain medical equipment and devices. Sections 3.1 to 3.12 set out specific medical equipment and devices with certain requirements for eligibility. Section 3 sets out general requirements applicable to all or some of the medical equipment or devices listed in sections 3.1 to 3.12.

As mentioned, the full text of the legislation is reproduced at the end of these Reasons. The Panel will only set out the requirements for the sections relevant to its decision in the Reasons.

The ministry's position is that the appellant is not eligible for the TempurPedic Pillow as a medical equipment/device under EAPWDR Schedule C, section 3 as it is not a listed device set out in sections 3.1 to 3.12 which lists the following: cane, crutch, walker, wheelchair, wheelchair seating, scooter, various assistive bathroom equipment/devices, hospital bed, pressure relief

mattress, floor or ceiling lift device, positive airway pressure device, orthotics, hearing instrument or a non-conventional glucose meter. In particular, the ministry states that there is no information to indicate that the appellant has a hospital bed or that the Tempurpedic Pillow is requested as an accessory or positioning item to use on a hospital bed such that it could be considered under Schedule C, section 3.6. The reconsideration decision also states that while the ministry has authority to provide a pressure relief mattress under EAPWDR Schedule C, section 3.7, the appellant is requesting a pillow, not a mattress, so the request cannot be considered under section 3.7.

The appellant's position is that the TempurPedic Pillow was prescribed for debilitating neck pain resulting from multiple herniated disks, severe neural foraminal stenosis and central spinal stenosis at multiple locations in the cervical spine. The appellant's position is that the TempurPedic Pillow is a medical supply-product and does not argue that the request for the TempurPedic Pillow is eligible under EAPWDR Schedule C, section 3.

The panel finds that the ministry reasonably determined that the TempurPedic Pillow is not one of the listed medical devices or equipment set out in EAPWDR Schedule C section 3.1 to 3.12 as it is not a cane, crutch, walker, wheelchair, wheelchair seating, scooter, various assistive bathroom equipment/devices, hospital bed, pressure relief mattress, floor or ceiling lift device, positive airway pressure device, orthotics, hearing instrument or a non-conventional glucose meter. In particular, EAPWDR Schedule C section 3.6 provides that the ministry may authorize funding for a hospital bed; an upgraded component of a hospital bed; an accessory attached to a hospital bed; or a positioning item on a hospital bed. However, the panel finds that the ministry reasonably determined that as the appellant had not requested the TempurPedic Pillow as an accessory or positioning item to use on a hospital bed, the pillow cannot be considered under section 3.6.

Accordingly, the panel finds that the ministry reasonably determined that the TempurPedic Pillow was not eligible for funding pursuant to EAPWDR Schedule C, section 3.

Eligibility for the TempurPedic Pillow as a medical supply under EAPWDR Schedule C, section 2(1)(a)

EAPWDR Schedule C, section 2(1)(a) provides for medical or surgical supplies that are either disposable or reusable if the following requirements are met:

- (i) The supplies are for the purpose of
 - A. Wound care;
 - ...
 - F. Limb circulation care;
- (ii) The supplies are: (A) prescribed by a medical practitioner; (B) the least expensive supplies appropriate; and (C) necessary to avoid imminent and substantial danger to health;
- (iii) There are no resources available to the family unit to pay for the cost.

The reconsideration decision states that the ministry is satisfied that the appellant does not have the resources to pay the cost of or obtain the TempurPedic Pillow so section 2(1)(a)(iii) is met. However, the ministry's position is that the TempurPedic Pillow is not required for wound care

as the appellant's herniated disk and central spinal stenosis are not wounds requiring care or coverage by a medical or surgical supply as required by Schedule C, section 2(1)(a)(i)(A). The Ministry Submission indicates that while the physician writes that the foam pillow would be used for neck pain and arthritis, that does not meet the medical condition of being a wound, which typically involves laceration of the skin, and requires wound care by items such as bandages or dressings.

The reconsideration decision also indicates that while the appellant reports circulation problems, no information was provided by a health professional to confirm that the prescribed foam pillow is necessary for limb circulation. The Ministry submission indicates that the physician indicates that the foam pillow would be used for neck pain and arthritis, not limb circulation, and items that are typically used for limb circulation would be compression stockings. The ministry's position is that the TempurPedic Pillow does not meet the requirements for Schedule C, section 2(1)(a)(F).

The ministry also says that although the physician prescribed a foam pillow, the ministry was not satisfied that the physician prescribed the TempurPedic Pillow. The ministry's position is that the TempurPedic Pillow is not the least expensive supply appropriate for the purpose as the quote for the TempurPedic Pillow at \$229 is considerably higher than other foam pillows available on the internet ranging from \$14.99 to \$179. The ministry is not satisfied that the request for the TempurPedic Pillow meets EAPWDR Schedule C, section 2(1)(a)(ii)(B).

The ministry also says that the information provided does not establish that the TempurPedic Pillow is required to avoid imminent and substantial danger to health as required by Schedule C, section 2(1)(a)(ii)(C).

The appellant's position, as set out in the Submission, is that the TempurPedic Pillow is a reusable medical supply, prescribed by the physician, for debilitating neck pain resulting from multiple herniated disks, severe neural foraminal stenosis, and central spinal stenosis at multiple locations in the appellant's cervical spine. The appellant says that it is intended to help reduce neck pain and to help increase limb circulation. The appellant says that the spine wounds are a danger to the appellant's health and that "[d]amage to my c-spine is very dangerous is always a threat to my life re worsening".

The appellant refers to the ministry's policy manual which says that a reusable medical supply may be considered when its purpose and use is more suitable than a disposable supply. The appellant argues that as limb circulation is a purpose for which a medical supply can be considered, and that the TempurPedic Pillow is needed for limb circulation, the ministry should cover the cost of the TempurPedic Pillow. The appellant relies on the letter from the physician dated March 8, 2021 which states that the appellant "*will be benefited from a foam (orthopedic) pillow for chronic neck pain and back pain.*" The physician indicates that the appellant suffered neck pain, back pain, arms/hands/legs pain, and numbness, which may be related to nerve impingement and/or limb circulation.

The panel finds that the ministry reasonably determined that as the physician prescribed a foam pillow for neck pain and arthritis, the TempurPedic Pillow is not required for wound care as set out in EAPWDR Schedule C, section 2(1)(a)(i)(A). In the letter dated March 8, 2021 the

physician recommends a foam (orthopedic) pillow, but there is no information indicating that it is required for wound care.

The panel also finds that the ministry reasonably determined that the TempurPedic Pillow is not required for limb circulation. The prescription from the physician indicates that a foam pillow was recommended for neck pain and arthritis and there is no information indicating that it was required for limb circulation. In the letter from the physician dated March 8, 2021 the physician does indicate that the appellant's neck pain, back pain, arm/hands/legs pain and numbness, may be related to nerve impingement and/or limb circulation, but the physician does not provide any other information indicating how the TempurPedic Pillow will improve limb circulation. The physician only says that the appellant "*will be benefited from a foam (orthopedic) pillow for chronic neck and back pain.*"

The panel finds that the ministry reasonably determined that the TempurPedic Pillow is not a medical supply required for ongoing bowel care required due to loss of muscle function, catheterization, incontinence, or skin parasite care as set out in EAPWDR Schedule C, section 2(1)(a)(i)(B) – (E).

The panel finds that the ministry reasonably determined that the TempurPedic Pillow is not the least expensive supply appropriate for the purpose as required by Schedule C, section 2(1)(a)(ii)(B). In the prescription dated July 31, 2020, the physician prescribed a foam pillow and in the letter dated March 8, 2021 the physician indicates that the appellant will benefit from a foam (orthopedic) pillow. However, the physician does not indicate that it must be a TempurPedic pillow and the appellant has not provided any other quotes for the cost of a foam pillow or foam (orthopedic) pillow to indicate that the TempurPedic Pillow is the least expensive supply appropriate for the purpose. In addition, the reconsideration decision indicates that an internet search indicates that foam pillows are available ranging from \$14.99 to \$179 and the appellant has not provided any other information indicating that a foam (orthopedic) pillow is not available for less than the quote of \$229.

The panel also finds that the ministry reasonably determined that the TempurPedic Pillow is not necessary to avoid an imminent and substantial danger to health as required by EAPWDR Schedule C, section 2(1)(a)(ii)(C). In the Submission, the appellant says that the spine wounds are a danger to the appellant's health and that "*[d]amage to my c-spine is very dangerous is always a threat to my life re worsening*". While the appellant states that there is always a threat to his life re-worsening, the information provided is not sufficient to meet the legislative criteria that the TempurPedic Pillow is necessary to avoid an imminent and substantial danger to health. The use of the word "imminent" in the legislation requires a degree of immediacy. The use of the word "substantial" in the legislation indicates something of considerable size or importance, or something significant. The panel finds that the ministry reasonably determined that the information provided does not meet the level required to demonstrate that there is an imminent and substantial danger to health as required by EAPWDR Schedule C.

In addition, the physician has not provided any information indicating that failure to obtain a foam pillow or foam (orthopedic) pillow will result in imminent and substantial danger to the appellant's health, as required by the legislation.

While the panel finds that the TempurPedic Pillow is a reusable item and is likely more “suitable than a disposable item” as referred to in the ministry policy, the policy also states that all of the requirements must be met, referring to the legislative criteria set out in EAPWDR Schedule C, section 2(1). However, the panel determines the reasonableness of the ministry decision based on the legislation. As the panel finds that the ministry reasonably determined that the TempurPedic Pillow was not required for limb circulation, is not the least expensive supply appropriate for the purpose and is not necessary to avoid an imminent and substantial danger to the appellant’s health, the panel finds that the ministry reasonably determined that the legislative criteria of EAPWDR Schedule C, section 2(1)(a) was not met.

Eligibility for the Pillow as any other item under EAPWDR Schedule C

The ministry’s position is that the TempurPedic Pillow does not meet any of the other criteria for health supplements authorized under Schedule C. In particular, the reconsideration decision states that the TempurPedic Pillow does not meet the criteria as a “therapy” as it is not one of the therapies such as acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry or physiotherapy treatment as set out in EAPWDR Schedule C, sections 2(1)(c), 2(2) and 2(2.1).

The reconsideration decision indicates that the TempurPedic Pillow is not one of the other health supplements set out in EAPWDR Schedule C, section 2(1)(f), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 or 9 as it is not one of the following: medical transportation supplements, optical supplements, eye examination supplements, dental supplements, crown and bridgework supplements, emergency dental supplements, diet supplements, monthly nutritional supplements, natal supplements or infant formula.

The appellant’s position is that the TempurPedic Pillow is required for chronic neck pain and arthritis and for limb circulation. The appellant does not argue that the TempurPedic Pillow is required as one of the other health supplements that can be considered under EAPWDR Schedule C.

The panel finds that the ministry reasonably determined that the TempurPedic Pillow does not meet any of the other criteria for health supplements as a therapy as it is not one of the therapies such as acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry or physiotherapy treatment as set out in EAPWDR Schedule C, sections 2(1)(c), 2(2) and 2(2.1).

The panel also finds that the ministry reasonably determined that the TempurPedic Pillow is not a supplement that can be provided under any of the other sections as it is not one of the following specified in EAPWDR Schedule C, sections 2(1)(f), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 or 9 being : medical transportation supplements, optical supplements, eye examination supplements, dental supplements, crown and bridgework supplements, emergency dental supplements, diet supplements, monthly nutritional supplements, natal supplements or infant formula.

Eligibility for the TempurPedic Pillow as a life threatening health need under section EAPWDR section 69

Section 69 sets out that the ministry may provide to a family unit any health supplement set out in section 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;....

The ministry's position is that EAPWDR section 69 applies to health supplements set out under Schedule C, sections 2(1)(a) to (f) and section 3 and is intended as a remedy for those persons who are facing a direct and imminent life-threatening health need for a supplement and who are not otherwise eligible to receive them. The ministry's position is that as the appellant is eligible for health supplements under EAPWDR Schedule C provided all the legislative criteria are met, the appellant is not eligible for a remedy under EAPWDR section 69. The ministry's position is that as the TempurPedic Pillow is not an item provided under sections 2(1)(a) or (f) or 3 of Schedule C, EAPWDR, the Pillow cannot be considered under EAPWDR section 69.

The ministry's position is that the information provided does not establish that the appellant faces a direct and imminent life-threatening need for the TempurPedic Pillow.

The appellant's position is that the TempurPedic Pillow is required for debilitating neck pain due to multiple herniated disks, severe neural foraminal stenosis and central spinal stenosis. In the Submission, the appellant states that the spine wounds are a danger to the appellant's health and that "[d]amage to my c-spine is very dangerous is always a threat to my life re worsening".

Section 69 of the EAPWDR applies to health supplements set out under Schedule C, sections 2(1)(a) to (f) and section 3, and 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.

As the appellant is eligible to receive health supplements under Schedule C, sections 2 and 3, and as the panel found that the ministry reasonably determined that the TempurPedic Pillow is not an item provided under EAPWDR Schedule C sections 2(1)(a) or (f) or section 3, the panel finds that the ministry reasonably determined that the appellant is not eligible for a remedy under EAPWDR section 69.

In addition, the panel finds that the ministry reasonably determined that the information provided does not establish that the appellant faces a direct and imminent life-threatening health need. While the appellant states that the spine wounds are a danger to the appellant's health and that "[d]amage to my c-spine is very dangerous is always a threat to my life re worsening", the

physician has not provided any information confirming that the appellant's chronic neck pain and arthritis is causing the appellant a direct and imminent life threatening health need. While the information provided by the appellant and the physician certainly indicates that the appellant has a serious health condition, the panel finds that the ministry reasonably determined that the information is not sufficient to qualify as a direct and imminent life threatening health need for which the TempurPedic Pillow is required.

Accordingly, the panel finds that the ministry's decision that the appellant was not eligible for the TempurPedic Pillow pursuant to EAPWDR Section 69 was reasonable.

Eligibility for the TempurPedic Pillow as a crisis supplement under EAPWDR section 57

EAPWDR section 57 provides that the ministry may fund an item if the family unit requires the supplement to meet an unexpected expense or to obtain an item unexpectedly needed if there are no resources available to meet the need and if failure to obtain the item will result in imminent danger to the appellant's physical health.

The Ministry Submission indicates that the ministry also considered the appellant's request as a crisis supplement under EAPWDR section 57. While the ministry was satisfied that the appellant does not have the resources to cover the cost of a foam pillow, the ministry was not satisfied that the TempurPedic Pillow is an unexpected expense or is an item unexpectedly needed as required by section 57(1)(a). The ministry states that it is unclear whether the medical conditions that led to the prescription of the foam pillow are new ones or chronic conditions. The Ministry Submission states that while the ministry recognizes that a foam pillow may help alleviate the appellant's neck pain or arthritis, the ministry is not satisfied that the TempurPedic Pillow is required to avoid imminent and substantial danger to the appellant's health as required by section 57(1)(b)(ii).

The ministry also states that as a foam pillow was prescribed by the physician, the ministry considers the foam pillow a "health care good" but as EAPWDR section 57(3) outlines that a crisis supplement may not be provided for the purposes of obtaining a supplement described in Schedule C or any other health care goods or services, the TempurPedic Pillow cannot be provided as a health care supplement.

The appellant's position is that the TempurPedic Pillow is required for debilitating neck pain due to multiple herniated disks, severe neural foraminal stenosis and central spinal stenosis. In the Submission, the appellant states that the spine wounds are a danger to the appellant's health and that "[d]amage to my c-spine is very dangerous is always a threat to my life re worsening".

The panel finds that the ministry reasonably determined that the appellant is not eligible for funding for the TempurPedic Pillow as a crisis supplement. While the ministry indicates that it is unclear whether the appellant's medical conditions that led to the prescription of the foam pillow are new ones or chronic conditions, the letter from the physician dated March 8, 2021 indicates that the foam (orthopedic) pillow would benefit the appellant for chronic neck pain and back pain, so there is information indicating that the appellant's conditions are chronic conditions. Although the appellant's conditions may be chronic, the panel finds that the prescription from

the physician in July 2020 may not have been expected so the cost of the foam pillow could very well be an unexpected expense or be needed to obtain an item unexpectedly needed.

However, the panel finds that the ministry reasonably determined that information was not provided to indicate that failure to obtain the TempurPedic Pillow will result in imminent danger to the appellant's health. While the appellant says that spine wounds are dangers to health and the damage to the c-spine is always a threat to the appellant's life re worsening, the physician has not provided any information indicating that failure to obtain the TempurPedic Pillow will result in imminent danger to the appellant's health. While the information provided by the appellant and the physician certainly indicates that the appellant has a serious health condition, the panel finds that the ministry reasonably determined that the information is not sufficient to demonstrate imminent danger to the physical health of the appellant.

The panel finds that the ministry reasonably determined that the legislative criteria of EAPWDR section 57(3) were not met.

Conclusion

The panel finds that the ministry's decision that the appellant was not eligible for the TempurPedic Pillow was a reasonable application of the legislation in the appellant's circumstances. In particular, the panel finds that the ministry reasonably determined that the request for the Pillow did not meet the legislative requirements for a crisis supplement under EAPWDR section 57 or as a life threatening health need under section 69.

The panel also found that the ministry reasonably determined that the request for the Pillow did not meet the legislative criteria under EAPWDR Schedule C for health supplements.

The panel therefore confirms the ministry's decision. The appellant is not successful on appeal.

Schedule A – Legislation

EAPWDR

Crisis supplement

57 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if

(a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and

(b) the minister considers that failure to meet the expense or obtain the item will result in

(i) imminent danger to the physical health of any person in the family unit, or

(ii) removal of a child under the *Child, Family and Community Service Act*.

(2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.

(3) A crisis supplement may not be provided for the purpose of obtaining

(a) a supplement described in Schedule C, or

(b) any other health care goods or services.

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

69 (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,
(c) the adjusted net income of any person in the family unit, other than a dependent child, does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation, 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).

(2) For the purposes of subsection (1) (c),

(a) "adjusted net income" has the same meaning as in section 7.6 of the Medical and Health Care Services Regulation, and

(b) a reference in section 7.6 of the Medical and Health Care Services Regulation to an "eligible person" is to be read as a reference to a person in the family unit, other than a dependent child.

[en. B.C. Reg. 61/2010, s. 4; am. B.C. Regs. 197/2012, Sch. 2, s. 8; 145/2015, Sch. 2, s. 12; 180/2019, App. 5, s. 2.]

EAPWDR Schedule C

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 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;

(iii)there are no resources available to the family unit to pay the cost of or obtain the supplies;

(a.1)the following medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies:

(i)lancets;

(ii)needles and syringes;

(iii)ventilator supplies required for the essential operation or sterilization of a ventilator;

(iv)tracheostomy supplies;

(a.2)consumable medical supplies, if the minister is satisfied that all of the following requirements are met:

(i)the supplies are required to thicken food;

(ii)all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies;

(b)Repealed. [B.C. Reg. 236/2003, Sch. 2, s. 2 (b).]

(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 Physicians and 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>

(d) and (e) Repealed. [B.C. Reg. 75/2008, s. (a).]

(f) the least expensive appropriate mode of transportation to or from

- (i) an office, in the local area, of a medical practitioner or nurse practitioner,
- (ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,
- (iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or

(iv)the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*,

provided that

(v)the transportation is to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, and

(vi)there are no resources available to the person's family unit to cover the cost.

(g)Repealed. [B.C. Reg. 75/2008, s. (a).]

(1.1)For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

(2)No more than 12 visits per calendar year are payable by the minister under this section for any combination of physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services.

(2.1)If eligible under subsection (1) (c) and subject to subsection (2), the amount of a general health supplement under section 62 of this regulation for physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services is \$23 for each visit.

(3)If the minister provided a benefit to or for a person under section 2 (3) of Schedule C of the Disability Benefits Program Regulation, B.C. Reg. 79/97, the Income Assistance Regulation, B.C. Reg. 75/97 or the Youth Works Regulation, B.C. Reg. 77/97, as applicable, for the month during which the regulation was repealed, the minister may continue to provide that benefit to or for that person as a supplement under this regulation on the same terms and conditions as previously until the earlier of the following dates:

(a)the date the conditions on which the minister paid the benefit are no longer met;

(b)the date the person ceases to receive disability assistance.

Optical supplements

2.1 The following are the optical supplements that may be provided under section 62.1 [*optical supplements*] of this regulation:

- (a) basic eyewear and repairs;
- (b) pre-authorized eyewear and repairs.

Eye examination supplements

2.2 The minister may pay a health supplement under section 67.2 [*eye examination supplements*] of this regulation for an eye examination that,

- (a) if provided by an optometrist, is provided for a fee that does not exceed \$44.83, or
- (b) if provided by an ophthalmologist, is provided for a fee that does not exceed \$48.90.

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 — canes, crutches and walkers

3.1 (1) Subject to subsection (2) 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 achieve or maintain basic mobility:

- (a) a cane;
- (b) a crutch;
- (c) a walker;
- (d) an accessory to a cane, a crutch or a walker.

(2) A walking pole is not a health supplement for the purposes of section 3 of this Schedule.

Medical equipment and devices — wheelchairs

3.2 (1) In this section, "wheelchair" does not include a stroller.

(2) Subject to subsection (4) 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 achieve or maintain basic mobility:

- (a) a wheelchair;
- (b) an upgraded component of a wheelchair;
- (c) an accessory attached to a wheelchair.

(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 after the minister provided the item being replaced.

(4) A high-performance wheelchair for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

Medical equipment and devices — wheelchair seating systems

3.3 (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 achieve or maintain a person's positioning in a wheelchair:

- (a) a wheelchair seating system;
- (b) an accessory to a wheelchair seating system.

(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 2 years from the date on which the minister provided the item being replaced.

Medical equipment and devices — scooters

3.4 (1)In this section, "scooter" does not include a scooter with 2 wheels.

(2)Subject to subsection (5) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (3) of this section are met:

- (a)a scooter;
- (b)an upgraded component of a scooter;
- (c)an accessory attached to a scooter.

(3)The following are the requirements in relation to an item referred to in subsection (2) of this section:

- (a)an assessment by an occupational therapist or a physical therapist has confirmed that it is unlikely that the person for whom the scooter has been prescribed will have a medical need for a wheelchair during the 5 years following the assessment;
- (b)the total cost of the scooter and any accessories attached to the scooter does not exceed \$3 500 or, if subsection (3.1) applies, \$4 500;
- (c)the minister is satisfied that the item is medically essential to achieve or maintain basic mobility.

(3.1)The maximum amount of \$4 500 under subsection (3) (b) applies if an assessment by an occupational therapist or a physical therapist has confirmed that the person for whom the scooter has been prescribed has a body weight that exceeds the weight capacity of a conventional scooter but can be accommodated by a bariatric scooter.

(4)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 after the minister provided the item being replaced.

(5)A scooter intended primarily for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

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.

Medical equipment and devices — pressure relief mattresses

3.7 (1) A pressure relief mattress is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that the pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity.

(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 — 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.

Medical equipment and devices — breathing devices

3.9 (1) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule:

- (a) if all of the requirements set out in subsection (2) of this section are met,
 - (i) a positive airway pressure device,
 - (ii) an accessory that is required to operate a positive airway pressure device, or
 - (iii) a supply that is required to operate a positive airway pressure device;
- (b) if the minister is satisfied that the item is medically essential to monitor breathing,
 - (i) an apnea monitor,
 - (ii) an accessory that is required to operate an apnea monitor, or
 - (iii) a supply that is required to operate an apnea monitor;
- (c) if the minister is satisfied that the item is medically essential for clearing respiratory airways,
 - (i) a suction unit,
 - (ii) an accessory that is required to operate a suction unit, or
 - (iii) a supply that is required to operate a suction unit;
- (d) if the minister is satisfied that the item is medically essential for clearing respiratory airways,
 - (i) a percussor,
 - (ii) an accessory that is required to operate a percussor, or
 - (iii) a supply that is required to operate a percussor;
- (e) if the minister is satisfied that the item is medically essential to avoid an imminent and substantial danger to health,
 - (i) a nebulizer,

- (ii) an accessory that is required to operate a nebulizer,
or
 - (iii) a supply that is required to operate a nebulizer;
- (f) if the minister is satisfied that the item is medically essential to moisturize air in order to allow a tracheostomy patient to breathe,
- (i) a medical humidifier,
 - (ii) an accessory that is required to operate a medical humidifier, or
 - (iii) a supply that is required to operate a medical humidifier;
- (g) if the minister is satisfied that the item is medically essential to deliver medication,
- (i) an inhaler accessory device,
 - (ii) an accessory that is required to operate an inhaler accessory device, or
 - (iii) a supply that is required to operate an inhaler accessory device.

(2) The following are the requirements in relation to an item referred to in subsection (1) (a) of this section:

- (a) the item is prescribed by a medical practitioner or nurse practitioner;
- (b) a respiratory therapist has performed an assessment that confirms the medical need for the item;
- (c) the minister is satisfied that the item is medically essential for the treatment of moderate to severe sleep apnea.

Medical equipment and devices — orthoses

3.10 (1) In this section:

"off-the-shelf", in relation to an orthosis, means a prefabricated, mass-produced orthosis that is not unique to a particular person;

"orthosis" means

- (a) a custom-made or off-the-shelf foot orthotic;
- (b) custom-made footwear;

- (c) a permanent modification to footwear;
- (d) off-the-shelf footwear required for the purpose set out in subsection (4.1) (a);
- (e) off-the-shelf orthopaedic footwear;
- (f) an ankle brace;
- (g) an ankle-foot orthosis;
- (h) a knee-ankle-foot orthosis;
- (i) a knee brace;
- (j) a hip brace;
- (k) an upper extremity brace;
- (l) a cranial helmet used for the purposes set out in subsection (7);
- (m) a torso or spine brace;
- (n) a foot abduction orthosis;
- (o) a toe orthosis;
- (p) a walking boot.

Medical equipment and devices — hearing instruments

- 3.11** (1) A hearing instrument is a health supplement for the purposes of section 3 of this Schedule if
- (a) the hearing instrument is prescribed by an audiologist or hearing instrument practitioner, and
 - (b) an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument.

(2) The minister may provide a hearing instrument under this section only if the person is not receiving a hearing assistance supplement under section 70.02 of this regulation.

Medical equipment and devices — non-conventional glucose meters

- 3.12** (1) In this section, "non-conventional glucose meter" includes
- (a) a continuous glucose monitoring meter, and
 - (b) a talking glucose meter.

(2) A non-conventional glucose meter is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that

- (a) the glucose meter is medically essential to test blood glucose levels, and

(b)the person for whom the non-conventional glucose meter has been prescribed is unable to use a conventional glucose meter.

(3)The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of a non-conventional glucose meter is 5 years from the date on which the minister provided the glucose meter being replaced.

APPEAL NUMBER
2020-00285

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

Helene Walford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/04/12

PRINT NAME

Susan Ferguson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/04/18

PRINT NAME

John Pickford

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/04/13