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PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision (the decision) dated September 28, 2021 which held that the appellant was not eligible for funding for a replacement power wheelchair. The ministry found that the requirements set out in the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWD Regulation), Sections 3, 3.2 and 3.3 had not been met.

The ministry also found that the appellant is not eligible for reconsideration of repair to existing cushions as this repair had not been previously requested and therefore as it had not been denied, discontinued, or reduced it does not meet the requirements set out in the *Employment and Assistance for Persons with Disabilities Act* (EAPWD Act), subsection 16(1).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWD Act), section 16.
Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, section 62 and 71.
Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, Schedule C, sections 3, and 3.2 and 3.3.

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PART E – SUMMARY OF FACTS

The evidence before the minister at reconsideration included the following:

The appellant has been designated as a person with disabilities (PWD) and is in receipt of disability assistance.

• On December 27, 2019 the ministry provided funding for a Permobil M1 (M1) power wheelchair.

• On February 28, 2020 the ministry provided funding for custom seating for the power wheelchair.

• On July 19, 2021 the ministry received a request for a replacement power wheelchair, upgraded to a Permobil M3 (M3). The following documents were submitted with the appellant's request:

- o A Medical Equipment Justification from the appellant's Occupational Therapist (OT). The OT stated that the appellant was approved for a M1 power wheelchair on November 8, 2019 in the amount of $10,639.80. Further, the appellant was approved for $5,600 for custom seating.
- o An assessment from the appellant's OT explaining the appellant no longer wished to pursue the previously approved M1 power wheelchair with custom seating because of the appearance, restrictions to the appellant's trunk movement, and that lighting is not available. The OT recommended the M3 power wheelchair base with Corpus Ergo backrest, pressure redistributing cushion, power tilt, and light package to replace the appellant's current M1 power wheelchair with custom seating.
- o The total cost of the recommended M3 power wheelchair and items listed above is $23,550.87. However, the supplier would offer a full credit for the M1 power wheelchair in the amount of $10,639.80, and a partial credit for the custom seating process started but not yet completed in the amount of $3,400.
- o A quote from a ministry contracted supplier (supplier) for $9,511.07 which represents the cost of the M3 power wheelchair and other items less the credits listed above.

• On September 14, 2021 the appellant submitted a signed Request for Reconsideration. This included a letter from the appellant, explaining the appellant did not realize the custom seating would restrict movement and that the appellant requires a backrest that will allow the appellant to reposition freely; the M3 allows for a backrest that gives the freedom of trunk movement required; it is more cost effective to return the current wheelchair and custom seating now than seek a replacement in 2 to 5 years; and that the appellant requires lighting on a power wheelchair, which is only available on the M3 otherwise it is an add-on by another company.

• An invoice from the supplier for repairs to two Roho cushions for $189.03, dated September 21, 2021.

Additional information

With the consent of the parties, the hearing was held by written submission.

The appellant submitted the following handwritten information with the notice of appeal (NOA);

1. Want to be considered for refunding the M1 and custom seating request. Vendor willing to payout the M1 and refund the ministry the amount.
2. Want to have the Permobil Captain's seat which is only available on the M3 model and vendor willing to refund the amount to the ministry less the cost they have invested in starting the custom seating.
3. Want to treat the process like we are starting over like we did not get the M1 approved.
4. We do not want to keep the M1.

Admissibility of new information

Section 22(4) of the *Employment and Assistance Act* (EAA) says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

The ministry did not raise any objections to the panel admitting the appellant's testimony on the appeal documents into evidence.

The panel finds that this new information is relevant because it supports the testimony provided in the request for reconsideration, the testimony regarding the appellant's own residence and the OT report.

The panel admits the new information under section 22(4) of the EAA as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The ministry did not submit any new documentary evidence.

PART F – REASONS FOR PANEL DECISION

There are two issues on this appeal.

The first issue on appeal is whether the ministry's decision which held that the appellant was not eligible for funding for a replacement power wheelchair, because the legislated eligibility criteria as set out in the EAPWD Regulation, Sections 3, 3.2 and 3.3 were not met was reasonable or a reasonable application of the applicable legislation in the circumstances of the appellant.

In particular, was the ministry reasonable in determining that the current wheelchair and seating were not irreparable or older than five years; that the appellant's medical condition had not changed; that the recommended Permobil M3 power wheelchair with seating and attachments were not medically essential to achieve or maintain basic mobility; or that the items requested were the least expensive appropriate medical equipment or devices for the appellant's needs.

The second issue is the reasonableness of the decision that the appellant was not eligible for reconsideration of repairs to existing cushions as the appellant's request did not meet the requirements set out in the EAPWD Act, subsection 16(1).

Further, was the ministry's determination that as a supplement for repairs to the appellant's Roho cushions was not previously requested and therefore not denied, discontinued, or reduced, the ministry is not permitted to provide a reconsideration decision reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The relevant legislation is provided in Appendix A.

The panel will consider each of the two issues separately.

Eligibility for a Replacement Power Wheelchair

Repairs and Replacement Requirements

Appellant Position

The appellant seeks pre-authorisation for a Permobil M3 (M3) replacement wheelchair to replace a Permobil M300 power wheelchair provided in 2013. The appellant recognises that a Permobil M1 (M1) had been pre-authorised in November 2019 but argues that it became apparent during trials that the M1 with custom seating was not suitable. The custom seating on this M1 would restrict body movement and the appellant requires a backrest that will allow the appellant to reposition freely; the M3 has for a backrest that gives the freedom of trunk movement required; and that the appellant requires lighting on a power wheelchair, which is only available on the M3 otherwise it is an add-on by another company.

The appellant wrote in the NOA of wanting to treat the process “like we are starting over like we did not get the M1 approved”.

The appellant submits the OT recommended the M3 power wheelchair base with Corpus Ergo backrest and pressure redistributing cushion, to replace the appellant’s current pre-authorized M1 power wheelchair with custom seating as the appellant is still using the M300 from 2013.

Ministry Position

The ministry argues that the appellant was provided with a M1 power wheelchair & custom wheelchair seating in February 2020, and no information was provided to confirm this power wheelchair or custom seating requires repairs, therefore the ministry is unable to confirm it is beyond repair. For this reason, the ministry is not satisfied it is more economical to replace the current power wheelchair rather than repair it.

The ministry also argues that the appellant has not had the M1 power wheelchair for over the legislated five-year replacement period. The ministry provided funding for the M1 power wheelchair base on December 27, 2019. Therefore, the appellant will not be eligible for a replacement until December 27, 2016, (sic) providing all other eligibility criteria are met.

Further, the ministry argues the appellant has not had the current wheelchair seating system for over the legislated two-year replacement period. The ministry provided funding for the custom seating system on February 28, 2020. Therefore, the appellant will not be eligible for replacement until February 28, 2022, providing all other eligibility criteria are met.

Panel Finding

Schedule C, section 3(3) provides that the minister may provide a replacement of medical equipment, previously provided by the minister that is damaged, worn out or not functioning if it is more economical to replace than to repair the medical equipment or device and the period set out in sections 3.2 (3), has passed. In this case, for a wheelchair, the period is 5 years.

The panel notes that, in argument, the ministry is using the dates of pre-authorisation of the M1 power base and accessories as evidence that the equipment has in fact been provided. The OT report indicates the appellant is still using the 2013 issued Permobil M300, as numerous delays and cancelled visits due to medical issues have precluded the appellant from trials for certain items such as pressure redistributing cushions. The OT notes this as “the current power chair from 2013 is needing more frequent repairs” in the report of July 2021.

The panel recognizes that some funds had been expended on the seating mold, but that construction of the custom seating was put on hold once the appellant observed the body movement restriction during the trials.

The question in this situation in the interpretation of the legislation as to whether the appellant was deemed to have been provided the M1 and/or the accessories at time of pre-authorisation. The panel recognizes situations where payment may have been made by the ministry and the equipment is in possession of a client. In this case the panel sees no confirmation that the

appellant has taken ownership of the power wheelchair from the ministry contractor, and notes the appellant has no possession or use of the M1 or accessories.

Further, the Medical Equipment Justification provided by the OT states that the supplier will provide full credit for the amount of the M1. On these facts, the panel finds that the appellant has not been provided with the M1 power wheelchair and accessories within the meaning of the legislation.

Therefore, the ministry argument that the M1 and related accessories are subject to repair and/or replacement considerations fails in the circumstances of the appellant.

The panel finds the ministry's decision that the appellant is not eligible for a power wheelchair and accessories as the ministry is unable to confirm the M1 is beyond repair, that the appellant has not had the M1 power wheelchair for over the legislated five-year replacement period, or that the appellant has not had the custom wheelchair seating system for over the legislated two-year replacement period **was not** reasonably supported by the evidence or a reasonable interpretation of the legislation in the circumstances of the appellant.

Power Wheelchair as Medically Essential for Basic Mobility

Appellant Position

The appellant submits the OT report recommended the M3 power wheelchair base with Corpus Ergo backrest, pressure redistributing cushion, power tilt, and light package to replace the appellant's current pre-authorised M1 power wheelchair with custom seating as it became apparent during trials that the M1 with custom seating was not suitable. The OT report states that although the M1 and custom seating was pre-approved as a similar version to the appellant's existing model M300, issued in 2013, once the actual trialing began in Jan/Feb 2020 the appellant realized the M1 backrest was too restrictive. The M3 has a backrest (Corpus Ergo) which is like the appellant's 2013 existing model.

The appellant argues that the OT report shows the appellant spends a great deal of time outdoors usually in the afternoon and evening for community outings, returning late to home and the OT supports the light package as it would add to a safe community mobility perspective.

Ministry Position

The ministry argues it is not satisfied that the requested M3 power wheelchair with light kit is medically necessary for the appellant to achieve or maintain basic mobility, as the assessment from the OT does not confirm a medical need for the M3, Corpus Ergo backrest, or lighting kit.

Further, the ministry holds that the appellant has previously been approved funding for the M1 power wheelchair. No information has been submitted to confirm this wheelchair is unable to meet the appellant's needs for basic mobility.

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Panel Finding

The requirements in the EAPWD Regulation, Sched C, section 3.2(2) set out that a wheelchair, an upgraded component of a wheelchair, and an accessory attached to a wheelchair are health supplements for the purposes of section 3 of Schedule C *if the ministry is satisfied the item is medically essential to achieve or maintain basic mobility*.

Further, Schedule C, section 3(2) states that the medical need for the medical equipment or device must be confirmed by an assessment by an occupational therapist or physical therapist.

Information, in the form of a past OT request and letter of justification has been accepted by the ministry to authorize a replacement for an existing piece of medical equipment, the M300. Therefore, the panel finds that a power wheelchair is medically necessary to maintain basic mobility.

The ministry holds that as the M1 has been provided the appellant is not eligible for another model. However, the panel has found that the M1 has not been provided.

The ministry approved M1 chair base did not have a similar backrest to the current model or appropriate seating and required the creation of custom seating which restricts the appellant's movements. In order to maintain the current trunk flexibility, the OT has recommended a new power chair base, and only supported the need for a backrest, but one without aggressive lateral supports. The M3 model with the Corpus Ergo backrest being requested by the appellant.

The panel notes the claim that the M3 model power wheelchair has a similar backrest to the appellant's existing M300 model, and contains other features recommended by the OT such as a power tilt capability.

The panel finds a replacement power wheelchair to be medically essential to maintain basic mobility.

The appellant has argued that the OT supports the light package as it would add to a safe community mobility perspective. The panel accepts that a lighting package would contribute to safety when operating the power wheelchair outside at night but notes no detailed discussion by the OT on other options for contributing to this safety concern, and no medical need such as sight restrictions have been put forward to support basic mobility.

The panel finds the request for lighting was not shown by the OT as a medical need.

The panel finds that the ministry's decision that the appellant is not eligible for a M3 power wheelchair base due to lack of medical justification **was not** reasonably supported by the evidence or a reasonable interpretation of the legislation in the circumstances of the appellant, but that the decision not to fund a lighting system due to a lack of medical justification **is reasonably** supported by the evidence.

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Seating as Medically Essential

Appellant Position

The appellant wrote of not realizing that the custom seating would restrict movements so much and of needing a backrest that allows repositioning more freely.

The appellant submits the OT recommended the M3 power wheelchair base with Corpus Ergo backrest and pressure redistributing cushion.

The OT report states that although the M1 and custom seating was pre-approved as the similar version to the appellant's existing model issued in 2013, once the actual trials began with the rough mock-up in Jan/Feb 2020 the appellant realized the seating was too restrictive.

Ministry Position

The ministry states that the appellant was previously approved funding for a custom seating system for a M1 power wheelchair. No information has been submitted to confirm the appellant's current wheelchair seating system is unable to meet the needs for positioning. For this reason, the ministry is not satisfied that the requested seating for the M3 power wheelchair is medically necessary for the appellant to achieve or maintain body positioning.

Panel Finding

Section 3.3 sets out that a wheelchair seating system and an accessory to a wheelchair seating system are health supplements for the purposes of Schedule C, section 3 if the minister is satisfied that the item is *medically essential to achieve or maintain a person's positioning in a wheelchair*.

The panel recognises the appellant has had a wheelchair for a number of years and now requires a replacement. The panel finds that although the pre-approved M1 was supposedly an equivalent newer model that required a custom backrest with significant lateral trunk supports to optimize sitting posture on this power chair, this arrangement was found to restrict trunk movement.

The panel notes that $2200 of an authorized $5600 had been spent on the custom seating until the time the construction was suspended, and that no further trials or modification have been conducted since that date. The OT report does not indicate whether any further modifications can be undertaken within the budget to make the seating satisfactory, and the OT needs to provide a firm recommendation on this point.

The panel notes that while the appellant does not yet have the use of the seating it has been partially provided. On the facts the panel finds evidence to support the appellant's contention that the custom seating arrangement in the approved configuration is currently unable to meet the needs for positioning similar to the success achieved in the previous M300 power wheelchair, but no evidence that it could not be made so.

While the July 2021 OT recommendation only supports a backrest for the M3 model, the OT does recommend one *without* aggressive lateral supports. The ministry reported that the original OT report from 2019 stated the appellant required a custom backrest *with* significant lateral trunk supports to optimize sitting posture on the power chair as the M1 did not have suitable off the shelf components. The panel notes the apparent discrepancy with regards to the comments surrounding lateral supports and to only having the most recent OT report in front of it.

The panel notes the OT comments that the M3 model has a backrest, not available on the M1, which is closest to the existing backrest in use by the appellant.

The panel notes there is no evidence suggesting that custom seating is required on the M3, other than the discussion on the finalization of a pressure redistributing cushion.

The panel finds that a backrest and an appropriate seating system are medically essential components to maintaining the appellant's positioning in the wheelchair.

It is the finding of the panel that the ministry's decision that the appellant is not eligible for the requested seating as it is not medically necessary **was not** reasonably supported by the evidence or a reasonable interpretation of the legislation in the circumstances of the appellant.

Least Expensive Appropriate Equipment

Appellant Position

The appellant argues that the 2013 wheelchair requires replacement, the pre-authorised M1 is not suitable, and wanting to be considered for refunding the M1 and custom seating request. The appellant advised that the vendor is willing to payout the M1 and refund the ministry the amount of $10, 639.80.

The appellant argues it is more cost effective to return the currently approved wheelchair and custom seating now than seek a replacement in 2 to 5 years, and the appellant wants to have the Permobil Captain's seat which is only available on the M3 model and the vendor is willing to refund the amount to the ministry less the cost they have invested in starting the custom seating process.

Ministry Position

The ministry argues it is unable to establish the requested M3 power wheelchair is the least expensive appropriate for the appellant's needs. When the appellant was previously approved funding for a power wheelchair it was determined the M1 power wheelchair with custom seating was necessary for trunk support, as off-the-shelf seating would not support the appellant's sitting posture and was therefore the least expensive for needs. In the reconsideration submission the ministry argued that the OT indicated the appellant no longer wished to pursue custom seating due to the appearance and restricted trunk movement; however, no information

was submitted to confirm that the appellant no longer required the custom seating.

Further, no information was submitted to confirm the M3 with lighting kit is medically required.

Panel Finding

Sched C, section 3(1) requires that the medical equipment or device is the least expensive appropriate medical equipment or device.

The panel notes the apparent lack of dialogue for an extended time between the appellant, the OT and the ministry once the M1 and custom seating was deemed to be unsuitable in its rough mold format, at least concerning any other appropriate options available to the appellant.

The panel notes a comment from the ministry to the appellant in the original decision and letter by the ministry adjudicator, referred to again in the reconsideration decision, that the quote for the M3 has multiple errors with duplications of items, lack of ministry discounts and charges for items which should be included as per the Master Standing Agreement between the ministry and the supplier. The ministry then comments that “It is not for these reasons that your request has been denied.”

The panel does feel that this observation may have confused the appellant as to whether a revised invoice was required to be submitted but the panel does also note the absence of any appellant response, updated invoice or clarification by the OT provided in the request for reconsideration.

The panel notes substantial differences in the approved amount of the M1 with custom seating and the requested M3 and accessories at a total cost for the M3 of $23,550.87. The supplier would offer a full credit for the M1 power wheelchair in the amount of $10,639.80, and a partial credit for the custom seating process started but not yet completed in the amount of $3,400. The supplier lists a difference in cost of $9,511.07.

The panel had found the requested light package is not medically necessary. Further with regards to seating, the OT report states that pressure redistributing cushions have not been trialed at this time and has made an allowance for costs for higher end gel cushions.

The panel finds the appellant has not demonstrated that the revised request for the M3 is the least expensive appropriate medical equipment for the appellant’s needs.

The panel finds that the ministry’s decision that the appellant is not eligible for a revised authorization as it has not been shown to be the least expensive that is appropriate for the needs **was** reasonably supported by the evidence.

With regard to the lengthy time delays that have occurred in defining the equipment the panel encourages continued discussions between the ministry, appellant and the OT to resolve the outstanding issues on suitable and appropriate medical equipment.

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Eligibility for Reconsideration of Repairs to Roho Cushions

Appellant Position
An invoice for repairs to the appellant's Roho seating cushions has been submitted to the ministry.

Ministry Position
The ministry states that the appellant submitted an invoice from a medical equipment repair company for repairs to two Roho cushions with the appellant's reconsideration submission. The ministry argues that as a supplement for repairs to the appellant's Roho cushions was not previously requested and therefore not denied, discontinued, or reduced, the ministry is not permitted to provide reconsideration for this request.

Panel Finding
Section 16 (1) of the EAPWDA states that a person may request the minister to reconsider a decision that results in a refusal to provide a supplement.

Section 71 of the EAPWDR, states that the person who wishes the minister to reconsider a decision referred to in section 16 (1) of the EAPWD Act must deliver a request for reconsideration in the form specified by the minister to the ministry office where the person is applying for or receiving assistance.

The panel notes the request for reconsideration is on a form provided by the ministry and is stamped received on the 14th of September 2021 and the stamp received on the faxed invoice from the supplier is nine days later, the 23rd September 2021. The panel also notes that there is no reference to the invoice made by the appellant in the handwritten additional information on the request for reconsideration form dated 14th September.

It is not clear to the panel whether the invoice was submitted by the appellant or by the supplier direct to the ministry. The panel notes no record of consideration of the invoice having been provided in the ministry testimony and is unaware of the present status.

The panel therefore finds the request for payment of the invoice for repairs to the Roho cushions was not part of the appellant's submitted request for reconsideration, and therefore the submission of the invoice should have been subject to normal ministry consideration under the existing equipment file for the appellant.

Upon review of the legislation requirements in 16 (1) the panel finds a limitation is placed upon the minister to only reconsider a decision to deny, discontinue or reduce a supplement that has been made in the first instance.

In the circumstances of the appellant the submission of the invoice had not been considered or denied by the minister, and therefore the minister was precluded from conducting a reconsideration.

It is the finding of the panel that the ministry's decision that the appellant is not eligible for a reconsideration of repairs to Roho cushions **was** a reasonable interpretation of the legislation in the circumstances of the appellant.

The panel advises the appellant to resubmit the invoice for repairs to the Roho cushions to the ministry for consideration.

Summary

The panel finds that in the first instance the appellant has shown that a power wheelchair is medically necessary, that replacement is appropriate based on time and condition of the 2013 M300, that a wheelchair seating system is medically necessary; but that the appellant has not shown that the revised request for pre-authorisation of a M3 power wheelchair to be the least expensive appropriate for the appellant's needs.

The panel also finds the request for repairs to Roho cushions was not part of the request for reconsideration and should be submitted to the ministry for consideration. The panel finds the minister does not have the legislative authority to conduct a reconsideration, and therefore the ministry decision was a reasonable interpretation of the legislation in the circumstances of the appellant.

Conclusion

The panel has found that the ministry's decision on the first issue, that the appellant is not eligible for a M3 model power wheelchair, was reasonably supported by the evidence or a reasonable interpretation of the legislation in the circumstances of the appellant.

The panel has found that the ministry's decision on the second issue, that the appellant is not eligible for a reconsideration of repairs to Roho cushions was a reasonable interpretation of the legislation in the circumstances of the appellant.

The appellant is not successful upon appeal and the panel confirms the reconsideration decision.

Appendix A

Employment and Assistance with Persons with Disabilities Act

Part 3 — Appeals

Reconsideration and appeal rights

16 (1)Subject to section 17, a person may request the minister to reconsider any of the following decisions made under this Act:

(a)a decision that results in a refusal to provide disability assistance, hardship assistance or a supplement to or for someone in the person's family unit;

(b)a decision that results in a discontinuance of disability assistance or a supplement provided to or for someone in the person's family unit;

©a decision that results in a reduction of disability assistance or a supplement provided to or for someone in the person's family unit;

(d)a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of

(i)the maximum amount of the supplement under the regulations, and

(ii)the cost of the least expensive and appropriate manner of providing the supplement;

(2)A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation.

(3)Subject to a regulation under subsection (5) and to sections 9 (7) *[employment plan]*, 17 and 18 (2) *[overpayments]*, a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.

(4)A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in the *Employment and Assistance Act* and the regulations under that Act.

(5)The Lieutenant Governor in Council may designate by regulation

(a)categories of supplements that are not appealable to the tribunal, and

(b)circumstances in which a decision to refuse to provide disability assistance, hardship assistance or a supplement is not appealable to the tribunal.

Employment and Assistance with Persons with Disabilities Regulation

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,

Part 6 — Reconsiderations and Appeals

How a request to reconsider a decision is made

71 (1)A person who wishes the minister to reconsider a decision referred to in section 16 (1) *[reconsideration and appeal rights]* of the Act must deliver a request for reconsideration in the form specified by the minister to the ministry office where the person is applying for or receiving assistance.

(2)A request under subsection (1) must be delivered within 20 business days after the date the person is notified of the decision referred to in section 16 (1) of the Act and may be delivered by

(a)leaving it with an employee in the ministry office, or

(b)being received through the mail at that office.

Schedule C

Health Supplements

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;

(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:

(b)an assessment by an 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 — 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;

©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.

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

Part H – Signatures

Print Name Don Stedeford	
Signature of Chair	Date (Year/Month/Day) 2021/12/09

Print Name Glenn Prior	
Signature of Member	Date (Year/Month/Day) 2021/12/09
Print Name Joan Cote	
Signature of Member	Date (Year/Month/Day) 2021/12/09