Appeal Number 2022-0008

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 16 December 2021 where the ministry denied the request for funding for a lifeline medical alert device. The ministry determined the request did not meet the legislated requirements for a health supplement, as set out in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWD Regulation). The ministry also determined the request did not meet the requirements for a crisis supplement as set out in Section 57 of the EAPWD Regulation or a health supplement for persons facing a life-threatening need under section 69 of the EAPWD Regulation.

Part D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 86(a),
Employment and Assistance for Persons with Disabilities Act, sections 24-26.
Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, sections 57, 62-70, and Schedule C;
Interpretation Act sections 8 and 41

Part E – Summary of Facts

The evidence before the minister at reconsideration included the information below:

- The appellant is a recipient of disability assistance.
- On August 26, 2021, the ministry received a request for a Lifeline Medical Alert device, accompanied by a letter from the appellant's nurse practitioner (NP), dated August 26, 2021, prescribing a Lifeline Medical Alert device with a sensor to detect falls, as the appellant recently had a fall, was unable to get immediate assistance and this resulted in a month-long hospital stay.
- On September 21, 2021, the ministry denied the request. In the decision letter mailed to the appellant the Adjudicator wrote:

  The medical equipment or device is not described in the Employment and Assistance for Persons with Disabilities Regulation, Schedule C Health Supplements. As such, there is no authority to provide funding for this category of item.
- On December 2, 2021, the appellant submitted a signed request for reconsideration, containing a letter from the NP dated December 1, 2021, restating the need for a Lifeline Medical Alert device, and reporting the appellant had a second fall in which the appellant fractured her right lateral malleolus. The NP also explained that the denied 'health supplement' should be considered in the Medical Supplies, Equipment and Devices categories, and would assist in her physical recovery, preventing further physical disability, pain, and health care costs.
- The ministry completed its reconsideration decision on December 16, 2021,

Additional information

The appellant submitted further information with the notice of appeal. This included a release of information form, signed on 17 January 2022 by the appellant authorising attendance at the hearing and decisions to be made by her advocate, and a letter dated December 20, 2021, from the same advocate who also is the appellant's case manager (CM) from the local health unit.

The CM's letter provided an update on the appellant's medical condition since the reconsideration decision and included the following points:

- The CM strongly feels the requested medical device is essential for safety and recovery,
- The appellant's medical team feels she is at a very high risk for further falls,
- She is awaiting a convalescent bed,
- The appellant had two more falls on 15th and 17th December 2021, and used lifeline to call for an ambulance, without which she may have lain for days on the floor awaiting help,
- Lifeline will cease support of the equipment soon due to the appellant being unable to pay the cost,
- The appellant is now required to wear a leg brace for 1-2 hours per day, and if not removed at the correct time can result in further injury due to lack of circulation, and so

the lifeline seems essential for 'wound care",

- The lifeline is medical equipment required under Schedule C, section 2(1)(i)(A) wound care and (F) limb circulation care,
- The lifeline can speed recovery, prevent further hospital stays, is the least expensive service and is necessary to avoid an imminent and substantial danger to health, and
- The appellant is without family support and is unable to afford this expense on her own.

The appellant did not attend the hearing. The Tribunal staff had talked with both the appellant and the advocate by telephone. The appellant explained that they do not wish to attend the hearing and that her advocate will be attending on her behalf.

The appellant's advocate attended the hearing and confirmed the details of the above discussion, that the appellant will not be attending.

Oral submissions

The hearing was held by telephone, and the advocate had no opposition to the attendance of a ministry staff member for training purposes.

Appellant

The advocate stated that since the reconsideration decision the appellant's medical condition has changed. This had been communicated in a letter after the reconsideration decision and has now further changed. The appellant's physical strength and mobility is poor, and the leg brace is required to straighten her foot. However, the appellant was initially unable to either put on and take off the brace. This required the attendance of home help several times a day to assist.

The appellant is now being asked to extend the amount of time the brace is to stay on, until the point of pain, and is currently able to take off the brace. If this brace cannot be removed at the appropriate time it will constrict blood circulation and cause a life-threatening condition. The home help staff now put on the brace however the appellant is expected to remove it. The concern arises if the appellant falls and is unable to take off the brace, without an ability to phone for assistance her health would be at grave risk.

The advocate recounted the details of the falls the appellant has suffered, the details of the hospital stays and argued that the lifeline is medical equipment required under Schedule C, section 2(1)(i)(A) wound care and (F) limb circulation care, that the lifeline can speed recovery, prevent further hospital stays, is the least expensive service and is necessary to avoid an imminent and substantial danger to health, and that the appellant is unable to afford this expense on her own.

The advocate stated that the equipment is only required for a temporary period until a convalescent bed becomes available, at which point 24 hour per day care will be available. As the supplier has provided the equipment free of charge pending the request for ministry support it will discontinue the service at some point. To date a figure of $208.00 has accrued on the account and they will be unable to reinstate the service until the amount is paid. The advocate offered that the monthly fee of approximately $43 per month is far below what a stay in hospital would cost.

At questioning the advocate stated that the appellant has been informed the equipment will cease to be supported by the supplier as of 26 January 2022. Further, that the period between home help attendant visits can be as much as 18 hours and that sometimes there had been up to four visits per day.

In summary the advocate believes it is an oversight that a lifeline system is not included in Schedule C as it appears to be simple semantics as it makes so much sense that it be provided.

Ministry

The ministry relied upon the reconsideration decision and provided some statements of clarification on ministry policy. The ministry clarified that the appellant had not claimed any continuing costs for the lifeline as part of the request for reconsideration and the file currently carries no current claim from the appellant for the accrued costs of $208.

The ministry stated in response to questions that the benefits it provides cannot be viewed as all inclusive benefits. Only items provided in schedule C of the legislation can be provided and while some items may not be covered, they may be covered under alternate methods, for example aspirin is not covered by the ministry but it is covered by the provincial Pharmacare program. Further examples would include equipment such as wheelchairs can be provided by the ministry but a household support item such as a wheelchair ramp can not, and therefore items not covered under Schedule C cannot be provided by the ministry and ultimately must be paid by the appellant.

At questioning the ministry believed other monitoring opportunities included the local health units and cellphones. The appellant's advocate confirmed the appellant has a cell phone which she uses for several tasks including talking to her health care team, allowing people to enter her home and as such it is often out of minutes. The appellant has dropped the cell phone in the past and been unable to reach it. Due to high use the phone is often on a desk recharging, other wise the team would consider an apron with a pocket.

In response to questions from the advocate the ministry again provided an example of how medical equipment is not provided on an all-encompassing basis, that of the number of listed items that are in Schedule C but that items such as blood pressure monitors and TENS machines are not.

Admissibility of new information

Section 22(4) of the 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.

In this case the appellant had submitted a new letter from her case manager providing testimony to changes in the appellant's medical condition since the reconsideration decision. During oral testimony the advocate also provided clarification of the appellant's condition as outlined in the letter and an update to the appellant's present condition.

The ministry had no concerns with the submission of the additional material provided by the appellant.

The panel finds that this information is relevant because it relates directly to the appellant's medical condition(s) discussed in the reconsideration decision and to the request for funding support.

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

Appeal Number 2022-0008

Part F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's decision that it does not have the authority to provide funding for a lifeline medical alert assist system as the request does not meet the legislated requirements for a health supplement set out in the EAPWD Regulation and Schedule C or meet the requirements for a crisis supplement as set out in Section 57 of the EAPWD Regulation or a health supplement for persons facing a life threatening need under section 69 of the EAPWD Regulation.

In particular was the ministry reasonable in each of the decisions made about the relevant legislative requirements.

The relevant legislation is provided in Appendix A.

Appellant Position

The appellant provided updated information on her medical condition and argument that a lifeline medical alert system is medical equipment required. The appellant identified Schedule C, section 2(1)(i)(A) wound care and (F) limb circulation care as reasons for the medical supply, that the lifeline can speed recovery, prevent further hospital stays, is the least expensive service and is necessary to avoid an imminent and substantial danger to health, and that the appellant is unable to afford this expense on her own.

The appellant argues that it is an oversight and semantics that a lifeline system is not included in Schedule C as it appears to make so much sense that it be included.

Ministry Position

The ministry states the appellant has been designated as a Person with Disabilities and is in receipt of disability assistance. As such, the appellant is eligible to receive health supplements under section 62 and Schedule C of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation provided all other eligibility requirements are met.

The ministry argues at reconsideration that a Lifeline Medical Alert device is not included in the list of medical equipment that may be provided under the legislation and is not a medical equipment/device included under section 3 of the EAPWD Regulation. In addition, the ministry argues that the information provided does not establish that other legislated criteria set out in these sections, for each of these health supplements, have been met.

The ministry also argues a Lifeline Medical Alert device is not a medical supply under section 2(1) of the EAPWD Regulation. The ministry states it is not satisfied that a Lifeline Medical Alert device is a disposable or reusable medical *supply*, therefore, the request does not meet the legislated requirements of Schedule C. Further, a Lifeline Medical Alert device is not required for the purposes of wound care, ongoing bowel care, catheterization, incontinence, skin parasite care, or limb circulation care.

The ministry argues that a Lifeline Medical Alert device is not an item set out in any other sections of the EAPWD Regulation, Schedule C, as a Lifeline Medical Alert device does not meet the criteria as one of the legislated “therapies”.

Further, a Lifeline Medical Alert device is not one of the remaining health supplements, which are: medical transportation supplements, optical supplements, eye examination supplements, dental supplements; crown and bridgework supplements; denture supplements; emergency dental supplements; diet supplements; monthly nutritional supplements; natal supplements; and infant formula, nor is a Lifeline Medical Alert device a nutritional supplement for an acute short-term need under section 67.001 of the EAPWD Regulation.

The ministry has also argued in the reconsideration decision that the appellant is not eligible for a Lifeline Medical Alert device as a health supplement for a person facing a direct and imminent life-threatening health need under section 69 of the EAPWD Regulation as this is intended to provide a remedy for those persons who are not otherwise eligible to receive the health supplements discussed above, and they have already confirmed the appellant is eligible to receive health supplements.

The ministry also argues that the appellant is not eligible for a Lifeline Medical Alert device as a crisis supplement. The ministry cannot establish the appellant has an unexpected need for this item as required under the regulation. The ministry argues that a Lifeline Medical Alert device is not described in the health supplements provided under legislation, and that it is reasonable to consider a Lifeline Medical Alert device to be a heath care good. As the legislation stipulates 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 is not satisfied that the request meets the legislation for a crisis supplement.

In the reconsideration decision and at hearing in testimony the ministry states that only items listed in the legislation can be provided and therefore the ministry does not have the authority to provide funding for a Lifeline Medical Alert.

The ministry noted it is sympathetic with the circumstances of the request and acknowledges that the appellant would no doubt benefit from this system.

Panel Decision

Legislation in the EAPWD Regulation, section 62, states that 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 family unit in receipt of disability assistance.

The panel notes that a prescription for the Lifeline Medical Alert device has been issued by the appellant’s NP.

The panel also notes that several other individual and specific criteria have been accepted by the ministry in several of the individual decisions. These criteria will not be further commented on by the panel.

The panel will address each of the ministry decisions.

The panel notes the ministry statement that it is sympathetic with the circumstances of the request and acknowledges that the appellant would no doubt benefit from this system.

Medical Equipment/Device, Schedule C, Section 3

EAPWD Regulation, schedule C, section 3 sets out the general requirements for all medical equipment/devices. Sections 3.1 to 3.12 set out specific eligibility requirements for each category.

The legislation states that the medical equipment and devices described are the health supplements that may be provided by the minister if the family unit has received the pre-authorization of the minister for the medical equipment or device requested; there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device; and the medical equipment or device is the least expensive appropriate medical equipment or device.

The described medical equipment and devices are summarised in the list below;

- canes, crutches, and walkers,
- wheelchairs,
- wheelchair seating systems,
- scooters,
- toileting, transfers, and positioning aids,
- hospital bed,
- pressure relief mattresses,
- floor or ceiling lift devices, that uses a sling system to transfer a person,
- breathing devices,
- orthoses,
- hearing instruments, prescribed by an audiologist, and
- non-conventional glucose meters, medically essential to test blood glucose levels.

The panel finds that the lifeline medical alert device is not included in this list of described medical equipment and devices that as health supplements may be provided by the minister. Consequently, the panel finds that the ministry reasonably determined that the appellant's request cannot be provided under the legislation for medical equipment.

Medical Supplies - Schedule C sections 2(1)(a) and 2(1)(a)(i)

Schedule C sections 2(1)(a) and 2(1)(a)(i) of the EAPWD Regulation list the health supplements that may be paid for by the minister for a person eligible for general health supplements. They can be either disposable or reusable medical or surgical supplies that 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;

and the supplies must also be;

(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;

The panel notes the ministry argument in the reconsideration decision denying the request as the lifeline is not required for any of these listed purposes and is also not the least expensive appropriate supply.

The panel notes that the NP in the letter at reconsideration addresses a fall that occurred since the original decision and discusses a fracture suffered by the appellant and reiterates the desirability of the lifeline device to assist in her physical recovery, preventing further physical disability, pain, and health care costs. The letter also asked for the reconsideration to include the device under medical supplies.

The panel also notes the new updated evidence provided by the CM regarding recent ongoing falls and finds it expands on the NP prescription and supporting testimony on the leg brace now required to straighten the foot. This evidence from the CM on behalf of the appellant's care team provides explanatory argument on how the lifeline device will and did aid in wound care and in supporting limb circulation care of the appellant's leg, being the need for the leg brace to be removed at specific times. The CM explains as the appellant is at high risk of falling and if she does so and is unable to remove the brace, the appellant could suffer a life-threatening condition due to the constriction of blood circulation in the limb.

The panel notes the appellant is now required to wear the brace for increasing periods of time and the panel would anticipate an inability to simply sit still for variable durations, expecting the appellant to require periods of mobility with the brace affixed. The panel also understands how the lifeline device is designed to simply alert others in the case of a fall and notes the high risk the appellant is at of repeated falls.

The panel finds the appellant has clearly demonstrated a unique circumstance where the lifeline device can result in immediate assistance after a fall, and this call will directly result in appropriate medical care and prevention of a situation where constriction of blood circulation in the appellant's leg could cause a life-threatening condition, thereby effectively maintaining limb circulation.

The panel places a high weight on the evidence provided by the appellant and notes the device has been prescribed by a nurse practitioner. In this unique circumstance of the appellant, the panel finds the device is required for the purpose of limb circulation care and is therefore a medical supply within the meaning of the legislation.

The panel notes the monthly pricing provided by the appellant of approximately $43 per month, and a figure of approximately $208 as an amount owing for accrued months service but does not see any comparison with other similar comparable devices in the market, or options such as cellular phone applications to monitor fall situations, or costs for increased home care help other than the claim that the cost would be less that another hospital stay. The appellant has a cell phone however no comparison has been provided regarding the capability of the phone regarding the NP requirement that the sensor send a message to EMR.

The panel therefore finds insufficient evidence that the lifeline device is the least expensive supply appropriate for the purpose and consequently, the panel finds that the ministry reasonably determined that the appellant has not met the 'least expensive' requirement of the legislation.

Other sections, EAPWD Regulation, Schedule C – Therapies, section 2(1)(c)

Section 2(1)(c) of the EAPWD Regulation lists "therapies", which are acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, and physiotherapy treatments. The panel finds that the Lifeline Medical Alert is not one of these therapies and consequently the ministry reasonably denied funding for a lifeline assist system under this section.

Other sections, EAPWD Regulation, Schedule C - Remaining Health Supplements.

EAPWDR sections 62.1, 62.2, 63, 64, 65, 66, 67, 68, 70 and 70.02 set out that the ministry may provide optical supplements, eye examination supplements, dental supplements, crown and bridgework supplements emergency dental and denturist supplements, orthodontic supplements, diet supplements, nutritional supplements, natal supplements, supplements for alcohol and drug treatment, and an alternative hearing assistance supplement.

Further, Schedule C, sections 2.1, 2.2, 4, 4.1, 4.2, 5, 6, 7, 8, and 9 provide detail on the above supplements.

The panel finds a lifeline medical alert system is not named or discussed among these items, and consequently the panel finds the ministry reasonably denied funding for a lifeline medical alert system under these sections.

Life-Threatening Health Need

EAPWD Regulation section 69 states the minister may provide 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 person who is otherwise not eligible for the health supplement under this regulation faces a direct and imminent life-threatening need, and the health supplement is necessary to meet that need.

The panel finds that as the appellant is designated as a person with disabilities (PWD) and is eligible to receive health supplements under the EAPWD Regulation, Schedule C, the appellant does not require the remedy under section 69.

Consequently, the panel finds the ministry reasonably determined that that the appellant is not eligible for a Lifeline Medical Alert device under a life-threatening health need.

Crisis Supplement

Section 57 of the EAPWD Regulation, states that the minister may provide a crisis supplement to a person who requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed, and the minister considers that failure to meet the expense or obtain the item will result in imminent danger to the physical health of any person in the family unit. The legislation also states that a crisis supplement may not be provided for the purpose of obtaining a supplement described in Schedule C, or for any other health care goods or services.

The panel notes that while the ministry argues it cannot establish the appellant has an unexpected need for this item, the need for the item was prescribed by a nurse practitioner on 26 august 2021 because of a fall and a period of one month in hospital by the appellant, who was then diagnosed as at a high risk of falling. The panel finds the appellant did not expect to fall and lay for two days on her floor, suffer the injuries described by her NP and spend a month in hospital, and consequently the panel finds the need for the lifeline alert device was an unexpected need.

The ministry argued that it is reasonable to consider a Lifeline Medical Alert device to be a heath care good, and as 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 is not satisfied that the request meets the legislation for a crisis supplement.

The terms ‘health care goods or services’ is not defined in the legislation. The panel notes a dictionary definition of ‘goods’ would be something manufactured or produced for sale, and a definition of ‘services’ as a set of articles for a particular use.

In this case the panel notes the item requested had been identified by the appellant’s nurse practitioner as a “Lifeline Medical Alert including the sensor that detect falls and sends a message to EMR”, and therefore the panel finds the Lifeline Medical Alert to also be assessed as a health care good or service for the purposes of the legislation.

Consequently, the panel finds the ministry reasonably determined that the appellant is not eligible for a Lifeline Medical Alert device as a crisis supplement as it may not be provided for the purpose of obtaining a supplement described in Schedule C, or for any other health care goods or services.

Lastly, relating to the authority of the minister, the panel finds that any discretion the minister may have is limited by the relevant legislation discussed above.

Conclusion

Based on all available evidence the panel finds that the ministry's reconsideration decision where the ministry denied the request for funding for a lifeline medical alert device to be a reasonable application of the legislation in the circumstances of the appellant.

The ministry's reconsideration decision is confirmed, and the appellant is not successful on appeal.

Appendix A

Employment and Assistance Regulation

Procedures

86 The practices and procedures of a panel include the following:

(a)a party to an appeal may be represented by an agent;

Employment and Assistance for Persons with Disabilities Act

Minister's powers

24 (3)The minister may

(a)prescribe forms for use under this Act, and

(b)specify forms for use under this Act.

Delegation of minister's powers and duties

25 (1)Subject to the regulations, the minister may delegate to any person or category of persons any or all of the minister's powers, duties or functions under this Act except

(a)the power to prescribe forms, and

(b)the power to enter into an agreement under section 21 (2) or (2.1), unless section 21 (2.2) applies in relation to the agreement.

(2)A delegation of the powers, duties or functions of the minister must be in writing and may include any limits or conditions the minister considers advisable.

Power to make regulations

26 (1)The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(4)In making regulations under this Act, the Lieutenant Governor in Council may do one or more of the following:

(a)delegate a matter to a person;

(b)confer a discretion on a person;

(c)make different regulations for different groups or categories of persons or family units.

Appeal Number 2022-0008

Employment and Assistance for Persons with Disabilities Regulation

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.

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,

Schedule C
Health Supplements

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;

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.

(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 (1) of this section is as follows:

(a)in the case of an item referred to in subsection (1) (a) (i), 5 years from the date on which the minister provided the item being replaced;

(b)in the case of an item referred to in subsection (1) (a) (ii) or (iii), one year from the date on which the minister provided the item being replaced;

(c)in the case of an apnea monitor, suction unit, percussor, nebulizer or medical

humidifier, 5 years from the date on which the minister provided the item being replaced;

(d)in the case of an inhaler accessory device, one year from the date on which the minister provided the device being replaced;

(e)in the case of an accessory or supply for an item referred to in paragraph (c) or (d), one year from the date on which the minister provided the device being replaced.

(4)A ventilator is not a health supplement for the purposes of section 3 of this Schedule.

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.

(2)Subject to subsections (3) to (11) of this section, an orthosis is a health supplement for the purposes of section 3 of this Schedule if

(a)the orthosis is prescribed by a medical practitioner or a nurse practitioner,

(b)the minister is satisfied that the orthosis is medically essential to achieve or maintain basic functionality,

(c)the minister is satisfied that the orthosis is required for one or more of the following

purposes:

(i)to prevent surgery;

(ii)for post-surgical care;

(iii)to assist in physical healing from surgery, injury or disease;

(iv)to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition, and

(d)the orthosis is off-the-shelf unless

(i)a medical practitioner or nurse practitioner confirms that a custom-made orthosis is medically required, and

(ii)the custom-made orthosis is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist.

(3)For an orthosis that is a custom-made foot orthotic, in addition to the requirements in subsection (2) of this section, all of the following requirements must be met:

(a)a medical practitioner or nurse practitioner confirms that a custom-made foot orthotic is medically required;

(b)the custom-made foot orthotic is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist;

(c)Repealed. [B.C. Reg. 144/2011, Sch. 2.]

(d)the custom-made foot orthotic must be made from a hand-cast mold;

(e)the cost of one pair of custom-made foot orthotics, including the assessment fee, must not exceed $450.

(4)For an orthosis that is custom-made footwear, in addition to the requirements in subsection (2) of this section, the cost of the custom-made footwear, including the assessment fee, must not exceed $1 650.

(4.1)For an orthosis that is off-the-shelf footwear, in addition to the requirements in subsection (2) of this section,

(a)the footwear is required to accommodate a custom-made orthosis, and

(b)the cost of the footwear must not exceed $125.

(4.2)For an orthosis that is off-the-shelf orthopaedic footwear, in addition to the requirements in subsection (2) of this section, the cost of the footwear must not exceed $250.

(5)For an orthosis that is a knee brace, in addition to the requirements in subsection (2) of this section, the medical practitioner or nurse practitioner who prescribed the knee brace must have recommended that the knee brace be worn at least 6 hours per day.

(6)For an orthosis that is an upper extremity brace, in addition to the requirements in subsection (2) of this section, the upper extremity brace must be intended to provide hand, finger, wrist, elbow or shoulder support.

(7)For an orthosis that is a cranial helmet, in addition to the requirements in subsection (2) of this section, the cranial helmet must be a helmet prescribed by a medical practitioner or nurse practitioner and recommended for daily use in cases of self abusive behaviour, seizure disorder, or to protect or facilitate healing of chronic wounds or cranial defects.

(8)For an orthosis that is a torso or spine brace, in addition to the requirements in subsection (2) of this section, the brace must be intended to provide pelvic, lumbar, lumbar-sacral, thoracic-lumbar-sacral, cervical-thoracic-lumbar-sacral, or cervical spine support.

(9)Subject to section 3 of this Schedule, the limit on the number of orthoses that may be provided for the use of a person as a health supplement for the purposes of section 3 of this Schedule is the number set out in Column 2 of Table 1 opposite the description of the applicable orthosis in Column 1.

Table 1

Item	Column 1 **Orthosis**	Column 2 **Limit**
1	custom-made foot orthotic	1 or 1 pair
2	custom-made footwear	1 or 1 pair
3	modification to footwear	1 or 1 pair
4	ankle brace	1 per ankle
5	ankle-foot orthosis	1 per ankle
6	knee-ankle-foot orthosis	1 per leg
7	knee brace	1 per knee
8	hip brace	1
9	upper extremity brace	1 per hand, finger, wrist, elbow or shoulder
10	cranial helmet	1
11	torso or spine brace	1
12	off-the-shelf footwear	1 or 1 pair
13	off-the-shelf orthopaedic footwear	1 or 1 pair
14	foot abduction orthosis	1 or 1 pair
15	toe orthosis	1

(10)The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an orthosis is the number of years from the date on which the minister provided the orthosis being replaced that is set out in Column 2 of Table 2 opposite the description of the applicable orthosis in

Column 1.

Table 2

Item	Column 1 **Orthosis**	Column 2 **Time period**
1	custom-made foot orthotic	3 years
2	custom-made footwear	1 year
3	modification to footwear	1 year
4	ankle brace	2 years
5	ankle-foot orthosis	2 years
6	knee-ankle-foot orthosis	2 years
7	knee brace	4 years
8	hip brace	2 years
9	upper extremity brace	2 years
10	cranial helmet	2 years
11	torso or spine brace	2 years
12	off-the-shelf footwear	1 year
13	off-the-shelf orthopaedic footwear	1 year
14	toe orthosis	1 year

(11)The following items are not health supplements for the purposes of section 3 of this Schedule:

(a)a prosthetic and related supplies;

(b)a plaster or fiberglass cast;

(c)a hernia support;

(d)an abdominal support.

(e)Repealed. [B.C. Reg. 94/2018, App. 2, s. 1 (b).]

(f)Repealed. [B.C. Reg. 144/2011, Sch. 2.]

(12)An accessory or supply that is medically essential to use an orthosis that is a health supplement under subsection (2) is a health supplement for the purposes of section 3 of this Schedule.

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.

Interpretation Act

Enactment remedial

8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

Powers to make regulations

41 (1)If an enactment provides that the Lieutenant Governor in Council or any other person may make regulations, the enactment must be construed as empowering the Lieutenant Governor in Council or that other person, for the purpose of carrying out the enactment according to its intent, to

(a)make regulations as are considered necessary and advisable, are ancillary to it, and are not inconsistent with it,

(b)provide for administrative and procedural matters for which no express, or only partial, provision has been made,

APPEAL NUMBER 2022-0008

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) 2022 / February / 5

Print Name Angie Blake	
Signature of Member	Date (Year/Month/Day) 2022 / February / 7
Print Name Charles Schellinck	
Signature of Member	Date (Year/Month/Day) 2022 / February / 8