

### **Part C – Decision Under Appeal**

Under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated March 15, 2022, that found that the appellant was not eligible for more than \$4200 in funding for a lift device. The ministry stated that it is not satisfied that the requested lift is the least expensive device appropriate for the appellant's needs or that the cost of the lift was more than \$4200 as a result of unusual installation costs.

The ministry was satisfied that all other requirements were met: the appellant is eligible to receive health supplements; pre-authorization was sought; no resources are available to pay for or obtain the lift; the requested lift is a device that stands on the floor or is attached to the ceiling and uses a sling system for transfers; and a lift device is medically essential to facilitate transfers in a bedroom or bathroom.

### **Part D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation (the Regulation)

- Sections 3(1)(b)(iii) and 3.8(2)(b) of Schedule C

**Part E – Summary of Facts****Information before the ministry at reconsideration**

The appellant is designated as a Person with Disabilities (PWD) and receives disability assistance.

The appellant submitted a Medical Equipment and Justification form requesting a “free standing ceiling lift, track and sling.” Attached were an Occupational Therapy Assessment dated January 25, 2022, in which an occupational therapist (OT) recommended a “free-standing Easy Track ceiling lift with Voyager portable lift” and a supplier’s price quote of \$6,520.49 for an “Easytrack FS & Voyager” and sling. Additional information provided by the OT included that the appellant:

- has severe rheumatoid arthritis, recent fractured hip/femur, and pressure ulcers
- is no longer able to walk and requires an overhead lift for all transfers, ongoing
- lives alone in a level one-bedroom mobile home with sloped ceiling
- receives home support four times daily for assistance with personal care, medications, meal preparation, and laundry
- needs the ceiling lift to facilitate timely hospital discharges (the appellant is currently borrowing the equipment which needs to be returned)

The OT also stated that:

- a ceiling track cannot be installed in the appellant’s home because of the sloped ceiling
- the cost of the ceiling lift exceeds \$4200 but there is no alternative due to the structure of the appellant’s ceiling and because a wheeled floor-based lift will not fit in the room

The ministry approved funding for a “lift device” and issued a Purchase Authorization dated February 3, 2022, in the amount of \$4200.

The appellant requested reconsideration of the ministry’s decision to limit funding to \$4200 and provided a February 28, 2022, letter from the OT in support of that request. In the letter, the OT described the requested lift as “a lift that stands on the floor (free-standing lift system) and uses a sling system to achieve transfers.” The OT also stated:

- “...as installation of a ceiling lift is not actually possible due to structural limitations of her residence and a wheeled floor-based lift is also not appropriate given the environment and care needs, [the appellant] should be accommodated and have a free-standing lift funded by the Ministry.”
- A freestanding floor lift device was requested because it is not physically possible to install a ceiling lift in the appellant’s residence as it is a mobile home with a sloped ceiling.
- Installation expenses are not realistic and would far exceed the cost of the requested freestanding lift device and the entire structure including ceiling joists would need to be renovated and constructed, if at all even possible.

- A wheeled floor lift exceeds the minimal effort allowances of Home Support workers and the flooring is carpeted which prevents ease of positioning a wheeled floor lift.
- A freestanding floor-based lift is the only lift that will facilitate bed, commode, wheelchair transfers, repositioning, and personal care for the appellant

**Information provided on appeal and admissibility**

The appellant's Notice of Appeal dated March 31, 2022, in which the appellant stated that she requires a lift to move from bed to her wheelchair, and to the commode to function effectively and for her mental, emotional, and physical health.

At the hearing, the appellant's OT stated that the appellant relies on a mechanical lift and home support services for basic mobility – get in and out of bed, basic transfers, repositioning, and toileting. The appellant's home was assessed, and it was determined that a ceiling lift cannot be installed. The appellant's mobile home doesn't have the structural integrity required for the installation of a ceiling track, plus the home's sloped ceiling does not allow for installation of a ceiling track. A wheeled floor-based lift won't work because the 54.9 inch turning radius in the appellant's room is not sufficient for moving the lift to enable the appellant to get into her wheelchair. Also, there are strict WorkSafeBC requirements respecting the effort support staff can exert – the requested lift is required to comply with these safety standards. The recommended lift is required for the appellant to stay in her home, otherwise she would be in hospital or a facility. The OT has email confirmation, which the OT is happy to provide, from the medical supplier that the recommended lift is the least expensive available free-standing device. The OT stated that there was no other lift that was suitable and therefore the requested lift is the most cost-effective lift available.

At the hearing, the appellant stated that she is very dependent on a lift for all aspects of her life, and so she is not stuck at home.

At the hearing, the ministry reviewed the reconsideration decision. In response to questioning, the ministry stated that it does not help with enquiries respecting the best options for installation costs. The ministry stated that no information had been provided to show that no other free-standing lifts were available and that other quotes, a letter or other confirmation from the supplier is required. When asked if the ministry would accept verbal confirmation from an OT as sufficient to establish that no other lift is suitable, the ministry agreed that the OT's information would be sufficient. The ministry also stated that unusual installation expenses include a variety of expenses, not just ceiling installation, and that installation costs must be incurred for the ministry to consider exceeding the \$4200 maximum.

The panel admitted the additional information provided by the appellant, the OT, and the ministry under section 22(4) of the *Employment and Assistance Act* as information reasonably required for full and fair disclosure of the matters at issue.

The positions of both parties are set out in Part F of this decision.

**Part F – Reasons for Panel Decision****Issue on Appeal**

The issue on appeal is whether the ministry's decision to deny the appellant more than \$4200 in funding for the lift was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable when determining that the requested lift was not the least expensive appropriate device and the cost above \$4200 was not the result of incurring unusual installation expenses.

**Panel Decision*****Positions of the Parties***

The appellant's position is that the limitations of her home, including the structural inadequacies, sloped ceiling and lack of space should be considered. Due to these limitations, installation of a ceiling lift is not feasible, and a wheeled floor lift is not suitable as it would be a barrier to receiving the care the appellant needs from support staff to remain at home. The recommended lift is the least expensive free-standing ceiling lift available and the only option that allows the appellant to remain in her home. The ministry's decision does not consider that installation is not possible or is prohibitively costly even if it were possible to rebuild structural elements of the appellant's mobile home.

The ministry's position is that the requirement of section 3(1)(b)(iii) of Schedule C, that the requested lift device is the least expensive appropriate device for the appellant's needs, has not been met. At reconsideration, the ministry stated that no additional information confirming that the requested lift is the least expensive option was submitted. At the hearing, the ministry accepted that the OT's statement that the recommended lift is the least expensive free-standing ceiling lift is sufficient to meet the legislated requirement.

The ministry also takes the position that more than \$4200 for a lift can only be provided if the extra costs are the result of unusual installation expenses and that it has not been established that the excess cost is a result of incurring unusual installation expenses.

***Panel Analysis***

Under the legislation, to be eligible to receive a health supplement for a medical device, the applicable requirements of section 3 of Schedule C must be met. Next, the requirements of Schedule C that apply to the type of device requested, in this case the requirements of section 3.8, which deals with floor or ceiling lift devices, must be met.

In the appellant's case, at reconsideration the ministry was satisfied that all but one of the requirements of section 3 were met. The ministry was not satisfied that the requested lift was the least expensive option which is required under section 3(1)(b)(iii). In the reconsideration decision, the ministry stated that this requirement was not met because no additional information confirming that the requested lift was the least expensive option was submitted. At the hearing, the ministry indicated that the OT's verbal confirmation that the recommended lift was the least expensive free-standing ceiling lift was sufficient. The panel accepts the OT's evidence that the recommended free-standing ceiling lift was the least expensive available lift of the type the OT determined to be suitable. The panel also accepts the OT's written and verbal explanation why wheeled floor-based lifts and ceiling track lifts could not be used in the appellant's home and therefore were not appropriate to meet the appellant's medical and living place needs. Based on the OT's information, including the new information provided at the hearing, the panel finds that the ministry's decision that the requested lift was not the least expensive appropriate medical device was not reasonable. As an aside, the panel notes that although the ministry found that not all requirements for eligibility of section 3 were met, the ministry in effect found the appellant eligible for a lift device when it issued a purchase authorization.

Regarding the requirement of section 3.8 – that the cost above \$4200 is a result of unusual installation expenses – the panel finds that the ministry's decision is not reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances. The ministry appears to argue that, because there are no installation costs incurred with the recommended lift, there are no installation costs to be considered. The panel finds that section 3.8 which allows the "cost of the floor or ceiling lift device" to exceed \$4200 only "due to unusual installation expenses" does not require that costs be directly incurred rather than avoided to provide the required lift at the lowest cost. The panel finds that the OT's evidence demonstrates that unusual, in fact extraordinary, installation costs would be incurred to enable the use of other less expensive lifts. As a result, the panel finds that the excess cost of the requested lift is a result of unusual installation expenses that if undertaken would include significant structural alterations to the appellant's mobile home. The panel notes that the ministry's narrower interpretation would result in the appellant being left without a useable lift or being required to install a lift with expenditures on extraordinary installation costs that are unrealistic, if even possible, to the appellant's mobile home. The panel also notes that the requested lift is the least expensive option for the ministry in the circumstances and thereby again meets the requirement of section 3(1)(b)(iii), that the requested lift be the least expensive appropriate device to meet the appellant's medical needs.

### **Conclusion**

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for the requested free-standing ceiling lift was not reasonably supported by the evidence or a reasonable application of the legislation. The panel rescinds the decision. The appellant is successful on appeal.

**Relevant Legislation**

**Schedule C**

**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 (B.C. Reg. 197/2012)

- (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: (B.C. Reg. 197/2012)

- (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.

**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.

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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

Jane Nielsen

Signature of Chair

Date (Year/Month/Day)

2022/04/22

Print Name

Kent Ashby

Signature of Member

Date (Year/Month/Day)

2022/04/22

Print Name

Joseph Rodgers

Signature of Member

Date (Year/Month/Day)

2022/04/22