

Part C - Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated October 18, 2022, which denied the appellant's request for a reclining chair. The ministry found that the item requested is not an eligible item:

- in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR);
- as a crisis supplement pursuant to section 57 of the EAPWDR; or
- as a life-threatening health need pursuant to section 69 of the EAPWDR.

Part D - Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation, section 57, 62, 69 and Schedule C

(Relevant Legislation included in Appendix A)

Part E – Summary of Facts

The appellant is in receipt of federal pensions and has a Medical Services Only (MSO) file, with Persons with Disabilities (PWD) designation.

The evidence before the ministry at reconsideration included:

- A handwritten note dated June 15, 2022, from the appellant to the ministry's health branch requesting a height-specific reclining chair. The reasons listed by the appellant are (in summary):
 - She has numerous health conditions and because she is vertically challenged she cannot get in or out of regular recliners on her own.
 - Her feet must be elevated above the level of her heart, as requested by a specialist.
 - She requires a recliner with a power adjustment button because her arms are not long enough or strong enough to manually push to recline or pull to sit up.
 - She requires a compact-sized reclining chair due to the size of her apartment and her stature.
 - Having a reclining chair will allow her to live independently, after many years of providing service to others.
- The appellant listed the various items the ministry has assisted her with over the past few years to demonstrate her need for the reclining chair: CPAP machine; knee braces; orthoses – shoes and orthotics; and custom-made wrist braces.
- A doctor's letter dated May 4, 2022, supporting the appellant's application for a reclining chair, noting the appellant struggles with: musculoskeletal complaints; fibromyalgia (with associated back and shoulder pain); foot pain (requiring orthotics); wrist and hand pain (requiring splints); obesity; and the use of two walking sticks to assist her balance.
- An Orthosis Request and Justification Form signed by a medical practitioner on June 27, 2022, recommending bilateral wrist and hand splints.
- A doctor's letter dated September 3, 2021 stated the appellant would benefit from a reclining chair owing to her dependent oedema with recurrent lower limb cellulitis as well as her chronic pain due to fibromyalgia.
- A doctor's letter dated September 3, 2021 stated the appellant has a diagnosis for Type 2 diabetes.
- Six pages of the appellant's medication history from June 2021 to February 2022.
- A letter from Health Assistance Branch dated July 20, 2022, denying the appellant's request for a reclining chair as the item is not a listed item in Schedule C Health Supplements.
- A Request for Reconsideration form (RFR) dated August 19, 2022, and September 15,

2022. The appellant requested an extension to allow time to fully address the points raised in the denial. The reasons for requesting a reconsideration included the same points raised in her June 15, 2022, letter as well as the following (summarized):

- She has numerous health conditions coupled with mobility/limitation issues and family issues over the past two years that have all hampered and hindered her such that she is now requesting a special recliner.
- She requires a recliner with these features: height-specific (5'4" or less); compact size dimensions; electric power adjustment button; and electric seat lift.
- She has been trying to "make do" with a hospital bed, however she cannot stay in bed all day, every day, and, to better her health, she needs to be up and moving around.
- An electric lift on the recliner is also necessary due to flare ups from her back, shoulders, hands and wrists, knees, feet, and fibromyalgia. Because she must have her feet raised it means she is laying too far back in the chair, and she does not have the strength to lift herself back up.

Additional Information Submitted After Reconsideration

On the Notice of Appeal (NOA) form dated November 1, 2022, the appellant wrote (in summary):

- The recliner should be considered medical equipment because:
 - It's a petite size that fits her.
 - It has electric controls which are within easy reach.
 - The compact size will improve navigation around her small apartment.
 - The lift will help aid her mobility due to her chronic back pain.
- She did not go through the process for the recliner in 2014 because her need for a hospital bed was of greater urgency and she had several family losses. She was "timed out" with her specialist and could not return to them to obtain a supporting letter.

On November 3, 2022, the appellant submitted a letter from a physician. The physician wrote (in summary):

- They saw the appellant on several occasions between October 3, 2022, and October 11, 2022, and directed her care for a recent acute episode of cellulitis.
- There is evidence that limb elevation may improve microcirculatory flow, reduce edema and may be helpful in reducing the number and severity of recurrent episodes.
- They recommend elevation at or above the level of the heart for a minimum of 30 minutes, 3-4 times per day.
- A medical recliner may assist the appellant in adhering to this recommendation.

On November 14, 2022, the appellant submitted an additional statement to clarify why

this particular specialized recliner has become a necessity. The points raised are (in summary):

- The ministry should consider that when a person is dealing with a myriad of complex health issues, a requested item should not just be checked to see if it is on the “list”, but the documents should be thoroughly read and additional insight sought when maladies can “piggy-back” on each other to worsen, reduce and/or alleviate a malady.
- The ministry should clarify what types of personal health situations may have extenuating circumstances and should be viewed collectively and/or worked on collaboratively because it provides deeper context and insight.
- Vigilance is necessary to ensure clients can get what they need, in a timely manner, to allow them to stay in their home and maintain their independence.
- She has had another cellulitis infection and each infection increases the risk of contracting it again. Each episode is far greater than the last and, the longer the duration, the longer the recovery, which negatively impacts her overall health.
- The appellant notes the ministry had not included all the pertinent information regarding the recliner in the package, so she submits that along with this submission.
- The appellant lists what features the recliner requires (as in previous notes) with the addition of the type of fabric, which must be soft due to her sensitive skin.
- The appellant lists twelve different medical conditions that she has.

Included with the second submission was an estimate from the chair company in the amount of \$2,357.58.

At the hearing, the appellant expressed concern that not all the information she had submitted to the ministry had made it to the reconsideration officer, and that if they had received her 11-page submission, which included a letter from a specialist, this hearing would not be necessary. The panel confirmed the additional submission was received and would be considered with this appeal.

The appellant summarized her health history noting that she has required a recliner since 2014. The specialist, at that time, prescribed a hospital bed, as well as a recliner, that would allow her to keep her feet elevated above the height of her heart. The appellant explained that she focused on getting the hospital bed, which took about ten months for her to receive. She did not follow up with the specialist’s recommendation of a recliner because she had several family issues arise over the years, and by then the time frame had passed for her to use the specialist letter. In the meantime, she continued to have infections, which means she must keep a close eye on her skin because every time she has an infection it lasts longer and is more severe than the last. During the past year she has been managing her infections but had a bad episode requiring hospitalization in September 2022.

The appellant explained she does not want to use the hospital bed, which allows her feet to be raised, during the day because she falls asleep and does not get things done that need to be done. She also finds it difficult to get in and out of bed easily because the bed is set up for night use with the head raised and bolster pillows. The doctor has recommended she have her feet up for thirty minutes, three to four times a day. Having a reclining chair with the lift function would make it easier for her to manage this, although she added that the lift function may not be necessary, provided the buttons for raising and lowering the chair are within easy reach. The appellant stated she uses a recliner when she is at her sister's home, however, she is not able to manage the manual controls, and they must assist her in and out of the chair. Her family is not able to help her financially and she has no credit available to buy a reclining chair.

When asked whether the appellant uses a wheelchair, she answered no, that she uses two canes to get around and she cannot use a walker as she cannot lean forward due to a back injury.

The appellant added that she would like to remain independent in her own home and not go into an assisted living facility. The appellant also stated the ministry should create a category for situations like hers, where something is medically required, but not covered.

At the hearing, the ministry reviewed the reconsideration decision and commented that all the sections of Schedule C were reviewed to see whether a recliner met any of categories identified in Schedule C, and it does not.

The ministry explained that a "positioning device" is specific for keeping a body position upright and does not include a lift chair. The appellant requires her feet to be elevated, so a hospital bed meets that need, and that is what the ministry provided to the appellant.

When asked about the wording in the reconsideration decision with regard to crisis supplements and medical supplies, the ministry explained that medical supplies are authorized through contracted medical supply businesses and a reclining chair is not a recognized medical supply through any of its authorized businesses.

Admissibility of Additional Information

The panel accepted the appellant's NOA statements, which included a doctor's letter supporting the use of a recliner as well as an estimate of the cost of a recliner, and oral testimony as evidence under section 22(4) of the Employment and Assistance Act, which allows for the admission of evidence reasonably required for a full and fair disclosure of all

matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision dated October 18, 2022, which denied the appellant's request for a reclining chair, was reasonably supported by the evidence or was a reasonable application of the legislation. In particular, the panel must decide whether the ministry found that the item requested is not an eligible item:

- in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)
- as a crisis supplement pursuant to section 57 of the EAPWDR or
- as a life-threatening health need pursuant to section 69 of the EAPWDR.

Appellant Position

The appellant's position is that she has a medical condition that requires her to keep her feet elevated to avoid serious infections, and a recliner that allows her to easily get in and out of the chair and elevate her feet during the day is a medical necessity.

Ministry Position

The ministry's position is that they may only provide medical supplies and equipment that are specified in Schedule C of the EAPWDR. The appellant requires her feet to be elevated so a hospital bed was provided for this reason. A recliner is not an item listed; therefore, they are not able to provide it for her as a medical supply or medical equipment. In addition, the ministry cannot provide a crisis supplement to pay for a recliner because the appellant is not in receipt of disability assistance, only medical services.

Panel Decision

Section 62 of the EAPWDR sets out who may be eligible for health supplements. The ministry may provide medical supplies or equipment set out in Schedule C to a person who is in receipt of income or disability assistance if they are a qualifying person. They may also provide the same to a continued person who is deemed to have access to medical services only or to transitional health services. The appellant is not a recipient of disability assistance, however, she is deemed to have access to medical services only, therefore, she is eligible for medical supplies or equipment listed in Schedule C of the EAPWDR.

The legislative authority for the ministry to assist with a health supplement for any kind of medical supply or equipment rests within EAPWDR Schedule C.

Section 2 (1)(a) of Schedule C sets out that the ministry may provide either disposable or reusable medical or surgical supplies if certain conditions are met. Section 2(1)(a.1) lists these supplies as being: lancets; needles and syringes; ventilator supplies; and consumable medical supplies used to thicken food. A reclining chair is not a listed medical or surgical supply. Therefore, the panel finds the ministry was reasonable to determine this section is not applicable in the appellant's circumstance.

Section 3 of Schedule C sets out the general requirements for all medical equipment and devices. The panel reviewed all categories of section 3 to see whether a reclining chair may be considered, and finds a recliner is not: a crane, crutch, or walker; a wheelchair or wheelchair seating system; a scooter; a hospital bed; a pressure relief mattress; a floor or ceiling lift device or any of the breathing categories listed. The closest category, because it references a chair, is section 3.5 – toileting, transfers and positioning aids.

Section 3.5(l) states that a positioning chair may be provided for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility. Further, section 3.5 defines that a positioning chair does not include a lift chair. The appellant initially requested a chair that has a lift function, which would allow her to more easily get in and out of the chair. However, at the hearing, she amended that, saying if it would cost less, she may not require that feature if the electric buttons were within easy reach. The appellant does not use a wheelchair, which is a requirement of this section. Therefore, the panel finds the ministry was reasonable to determine a reclining chair is not an eligible item under section 3 of Schedule C.

The ministry determined the appellant's request for a reclining chair could not be considered as a life-threatening health need under EAPWDR section 69. The purpose of this legislation is to provide eligible items identified in sections 2(1)(a) and 3 of Schedule C, for persons not otherwise eligible, and who have a direct and imminent life-threatening health need. The appellant is a person eligible to receive health goods, so any requests for a health good would need to meet Schedule C requirements. The panel found that the appellant provided no evidence that a medical practitioner has confirmed there is a direct and imminent life-threatening need for the reclining chair, only that the appellant must keep her feet elevated to avoid infection. The appellant did receive a hospital bed to meet this need. The panel finds the ministry was reasonable to determine the appellant is not eligible for a reclining chair pursuant to EAPWDR section 69.

The ministry determined the appellant's request for a reclining chair could not be considered as a crisis supplement under EAPWDR section 57. The ministry may provide a crisis supplement to or for a family that is eligible for assistance or disability assistance.

The appellant is not a recipient of disability assistance; therefore, the panel finds the ministry was reasonable to determine the appellant is not eligible for a reclining chair pursuant to EAPWDR section 57.

Conclusion

The panel finds the ministry's reconsideration decision, that the appellant was not eligible for a reclining chair, was a reasonable application of the legislation and, therefore, confirms the decision. The appellant is not successful in the appeal.

Appendix A Relevant Legislation

EAPWDR

Crisis supplement

- 57** (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if
- (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and
 - (b) the minister considers that failure to meet the expense or obtain the item will result in
 - (i) imminent danger to the physical health of any person in the family unit, or
 - (ii) removal of a child under the *Child, Family and Community Service Act*.
- (2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.
- (3) A crisis supplement may not be provided for the purpose of obtaining
- (a) a supplement described in Schedule C, or
 - (b) any other health care goods or services.

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,
 - (b) a family unit in receipt of hardship assistance, if the health supplement is provided or for a person in the family unit who is under 19 years of age, or

(c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

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

69 The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
- (b) the health supplement is necessary to meet that need,
- (c) a person in the family unit is eligible to receive premium assistance under the [Medicare Protection Act](#), and
- (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
 - (i) paragraph (a) or (f) of section (2) (1);
 - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

EAPWDR Schedule C

General health supplements

2 (1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation:

- (a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:
 - (i) the supplies are required for one of the following purposes:
 - (A) wound care;
 - (B) ongoing bowel care required due to loss of muscle function;
 - (C) catheterization;
 - (D) incontinence;
 - (E) skin parasite care;
 - (F) limb circulation care;
 - (ii) the supplies are

- (A) prescribed by a medical practitioner or nurse practitioner,
- (B) the least expensive supplies appropriate for the purpose, and
- (C) necessary to avoid an imminent and substantial danger to health;

Medical equipment and devices

Section 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 -

3.1 Canes, crutches and walkers

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3.2 Wheelchairs

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3.3 Wheelchair seating systems

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3.4 Scooters

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3.5 Toileting, transfers and positioning aids

(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.

3.6 Hospital bed

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3.7 Pressure relief mattresses

....

3.8 Floor or ceiling lift devices

(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.

APPEAL NUMBER 2022-0265

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

Janet Ward

Signature of Chair

Date (Year/Month/Day)

2022 November 22

Print Name

Robert McDowell

Signature of Member

Date (Year/Month/Day)

2022 November 22

Print Name

Edward Wong

Signature of Member

Date (Year/Month/Day)

2022 November 22