

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated November 3, 2022, in which the ministry denied the appellant’s request for a health supplement for a floor-to-ceiling pole for his living room.

The ministry determined that the appellant was eligible to receive medical equipment and devices as health supplements under the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) Schedule C, section 3(1) and (2). However, the ministry determined that, as a floor-to-ceiling pole for a living room was not medical equipment or a device listed in EAPWDR section 3.5(1), the ministry was not authorized to provide the pole as a health supplement.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) section 62 and Schedule C, sections 3 and 3.5

Full text of the legislation is provided in the Schedule of Legislation at the end of the decision.

Part E – Summary of Facts

The hearing took place by videoconference on December 1, 2022. The appellant attended the hearing with an advocate.

Evidence before the Ministry at Reconsideration:

The appellant is in receipt of benefits under the Employment and Assistance for Persons with Disabilities Act.

The appellant uses a power wheelchair. An occupational therapist (“OT”) submitted a request on his behalf for funding for a floor-to-ceiling pole to assist him with transferring safely and independently from the wheelchair to his living room chair. The OT stated that the appellant suffers from diabetes, osteoarthritis, seizures, and traumatic brain injury. The appellant had been using a floor-to-ceiling pole on loan.

In a letter dated October 20, 2022, the appellant stated that he needs the pole beside the couch in his living room because the couch is low, and he has difficulty getting up and down. Without the pole, it is very painful for him to get on and off the couch. If he cannot transfer to the couch, he must stay in his wheelchair, which is very hard and uncomfortable.

The advocate provided a letter, also dated October 20, 2022, in support of the appellant’s request. She indicates that the appellant is restricted to his power wheelchair “for all activities that require the accomplishment of physical tasks.” She states that the appellant needs the floor-to-ceiling pole to transfer from standing to sitting on the couch so that he can visit with guests or watch television. She has observed the appellant’s struggles with pain getting on and off the couch, due to his severe arthritis. The advocate notes that the appellant’s couch is low to the ground, which contributes to his struggle and his level of pain.

Evidence at the Hearing:

At the hearing, the appellant stated that he does not have floor-to-ceiling poles in his bedroom or his bathroom. He needs help with transferring from his wheelchair in both rooms, but his bed has rails, and the toilet is raised, with handles, so he does not need a floor-to-ceiling pole in those rooms.

Admissibility of Additional Evidence:

The ministry did not object to the additional oral evidence of the appellant at the hearing. The panel determined that the additional evidence was admissible under section 22(4) of the Employment and Assistance Act. It provides further information about the appellant’s need for medical equipment or devices to facilitate transfer and therefore is reasonably required for the full and fair disclosure of all matters relating to the decision under appeal.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision to deny the appellant a health supplement for a floor-to-ceiling pole for his living room was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances.

Appellant's Position:

The appellant says that he must be in a wheelchair all the time unless he can sit on his couch. The wheelchair is very hard and uncomfortable. It is extremely painful for him to transfer from the wheelchair to the couch without a floor-to-ceiling pole. He does not think the ministry understands his level of pain, or how much he needs the pole in his living room.

The advocate points out that, in requesting the floor-to-ceiling pole, they have tried to find the least expensive option for the appellant. A higher couch or a lift chair would be more expensive, and in any event, the appellant does not have the resources to buy different furniture.

Ministry's Position:

The ministry does not dispute the appellant's need for the floor-to-ceiling pole to transfer from his wheelchair to his couch. However, the ministry maintains that it is only authorized to provide a health supplement for a floor-to-ceiling pole for a bedroom or bathroom, under EAPWDR, Schedule C, section 3.5. The ministry adds that, following standard practice at the ministry on reconsideration, they have determined that the request is not eligible for funding under any other section of the EAPWDA or the EAPWDR. In response to a question about the restriction in the legislation, to be able to provide floor-to-ceiling poles for a bedroom or bathroom and not in any other location in a home, the ministry explained that it interprets and applies the legislation not as "all inclusive", covering all needs, but rather it covers the "bare minimum" of needs. Hence, the regulation is restricted to providing a floor-to-ceiling pole in the bathroom or bedroom.

Panel Decision:

The ministry determined that the appellant met the following eligibility requirements for receiving a health supplement set out in EAPWDR Schedule C, section 3:

- the appellant is a recipient of disability assistance;
- the appellant is requesting pre-authorization from the ministry;
- there are no resources available to the appellant to obtain the medical equipment;
- the equipment requested is the least expensive medical equipment appropriate for his needs; and
- an assessment by an occupational therapist has confirmed the medical need for the equipment.

However, the ministry determined that the appellant did not meet the eligibility requirements in EAPWDR Schedule C, section 3.5(1) because, while the floor-to-ceiling pole is medically

essential to facilitate transfers of his person, a floor-to-ceiling pole for a living room is not one of the items listed in section 3.5(1) that are eligible for a health supplement.

Under EAPWDR Schedule C, section 3(1), the ministry is authorized to provide health supplements for medical equipment and devices described in Schedule C, sections 3.1 to 3.12. Medical equipment and devices for transfers are listed in section 3.5, which specifies, in sub-section (i), “a floor-to-ceiling pole in a bathroom or bedroom.” Sub-section (m) includes “a transfer aid for a person for whom the transfer aid is medically essential to transfer from one position to another”, but “transfer aid” is defined in section 3.5(0.1) as “a transfer board, transfer belt or slider sheet.” A floor-to-ceiling pole is not a “transfer aid.”

Therefore, the panel finds that, under the legislation, the ministry is only permitted to provide a health supplement for a floor-to-ceiling pole if it is to be installed in a bedroom or bathroom. The ministry does not have the choice to provide a floor-to-ceiling pole for another room, even though the ministry and the panel both see the appellant’s need for the equipment.

Conclusion:

The panel confirms the ministry’s reconsideration decision that the appellant was not eligible for a health supplement for a floor-to-ceiling pole for his living room. The panel finds that the ministry is only authorized to provide a floor-to-ceiling pole for a bathroom or bedroom. Therefore, the ministry has no legislative authority to provide a health supplement for the pole.

The appellant is not successful in the appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Regulation

General health supplements

Section 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 to 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.

Schedule C**Health Supplements****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.

Medical equipment and devices — toileting, transfers and positioning aids

Section 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.

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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
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)
2022/12/03

Print Name
Vivienne Chin

Signature of Member

Date (Year/Month/Day)
2022/12/03

Print Name
Bill Farr

Signature of Member

Date (Year/Month/Day)
2022/12/03