Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction
(ministry) reconsideration decision dated March 1, 2023. The ministry determined that th
appellant was not eligible for a power lift recliner as per the Employment and Assistance
for Persons with Disabilities Regulation, sections 57, 62 - 70.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 57, 62-70, and Schedule C

Part E - Summary of Facts

Relevant Evidence Before the Minister at Reconsideration

Ministry records show the appellant is a recipient of disability assistance.

Request for Reconsideration (February 13, 2023)

The appellant gave information on his employment in another country, his family status and when he arrived in British Columbia.

The appellant states he has health and psychological problems, which developed over time. The pain is severe in his lower and middle left shoulder area but his neck is the worst. He also has sciatica and Cauda Equina symptoms, pain in the testicular area and depression.

The appellant also states he studies online courses and sits in front of a computer screen for more than eight hours, which stresses and tires him. He is trying to adopt a healthy psychological state by taking painkillers and medication and is trying to complete his course to give him a stable life.

He is hoping his request for this device, or something similar can be considered to help him in daily life. He feels this is his right as a citizen of Canada and he has been approved as a Person with Disabilities (PWD).

The appellant provided the following documents.

Prescription from Appellant's Doctor (June 20, 2022)

- powerlift recliner (one unit)

Radiology Consultation Report - from a hospital (June 30, 2022)

"Cauda Equina Syndrome" is written on the report.

Exam Type - MR spine/lumbar

"Ultrasound for better characterization of a small right renal lesion is advised."

Ultrasound Report – from a medical imaging laboratory (August 22, 2022)

"Findings: The testicles are normal in size, echotexture and vascularity."

Mental Health and Substance Abuse Report (October 22, 2022)

Psychiatry Consultation Assessment – October 17, 2022

The report states the appellant has a history of depression and presents with a year and a half of depressive symptoms, meeting the criteria for a recurrent major depressive episode. This is in the context of various biopsychosocial stressors including ongoing back pain, opioid medication use, as well as financial stress, unemployment and recent immigration from another country. All of these factors are likely contributing to the appellant's depressive symptoms.

Treatment Recommendations:

There are no acute safety concerns and the appellant remains appropriate for outpatient care. Psychoeducation was provided. The appellant may benefit from some workup to rule out any organic contributors and may benefit from treatment with an antidepressant medication. As well, consideration could be given to a sleep aid, if the appellant struggles with insomnia.

Medical Equipment Justification form – signed by appellant's doctor (January 4, 2023)

When asked to describe the medial condition of their patient, the doctor responded, "Severe back pain & mobility issues. Approved for Persons with Disability designation Needing help with getting up and walking as well."

When asked what type of medical equipment is recommended, the doctor responded, "Power lift recliner..."

Medical Supply Quote (January 4, 2023)

- lift chair relaxer with auto-drive, and heat and massage - \$3825

Letter from the Ministry to Appellant (January 9, 2023)

The ministry wrote that the appellant's request for a power lift recliner was denied as this item is not described in the EAPWDR, schedule C Health Supplements and as such, there is no authority to provide funding for this item.

Additional Information

<u>Appellant</u>

Notice of Appeal (March 09, 2023)

The appellant stated that he does not agree with the decision and has an evaluation and prescription from his family doctor and orthotics.

At the hearing, the appellant stated his back is getting worse and he needs surgery. He needs the recliner now but also will need it after his surgery. He has been referred to a therapist. Both his doctor and his therapist have stated he needs the recliner. The appellant also stated he is a dental assistant student but is not allowed to apply for WorkSafe BC.

Ministry

At the hearing, the ministry relied on its record and stated that it first determines whether an item is considered medically essential by a medical specialist. The ministry acknowledges that the appellant's doctor has confirmed this. However, the ministry stated it must then determine what can be provided and reiterated that a power-lift recliner is not an eligible item under the legislation.

The ministry also confirmed that even though the power lift recliner can be considered a health care good, it still would be excluded from eligibility under the legislation.

The panel considered the additional information to be argument.

Part F - Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which determined that the appellant was not eligible for a power lift recliner as per the EAPWDR sections 57, 62 - 70, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Relevant sections of the legislation can be found in the Schedule of Legislation.

Appellant Argument

The appellant argues he has health and psychological problems, which developed over time. The pain is severe in his lower and middle left shoulder area but his neck is the worst. He also has sciatica and Cauda Equina symptoms, pain in the testicular area and depression.

The appellant states he studies online courses and sits in front of a computer screen for more than eight hours, which stresses and tires him. He argues that he is trying to adopt a healthy psychological state by taking painkillers and medication and is trying to complete his course to give him a stable life.

At the hearing, the appellant argued that the ministry should look at these situations caseby-case and exceptions should be made based on different injuries, jobs etc. He also argued that he doesn't have the resources to pay for the recliner.

The appellant also argues that he feels this is his right as a citizen of Canada and he has been approved as a PWD.

Ministry Argument

The ministry states that as the appellant has been designated as a PWD and is in receipt of disability assistance he would be eligible to receive health supplements under section 62 and Schedule C of the EAPWDR provided all other eligibility requirements are met. However, the ministry agues not all other eligibility requirements have been met.

Medical Supplies, Schedule C, Section 2 (EAPWDR)

The ministry argues that a power lift recliner is not included in medical supplies under section 2(1) of Schedule C in the EAPWDR. Referencing this section, the ministry argues the appellant does not require this item for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care, or limb circulation care. Nor is the recliner a lancet, needles/syringes, ventilator or tracheostomy supplies as set out in subsection 2(1)(a.1). Further, medical and surgical supplies are either disposable or reusable but will eventually

need to be replaced. A power lift recliner is a long-term item of adaptive furniture which does not fit in the category of a disposable or reusable supply.

Medical Equipment/Device, Schedule C, Section 3 (EAPWDR)

The ministry argues that a power lift recliner is not a medical equipment/device included under section 3 of schedule C of the EAPWDR. Section 3 sets out the general requirements for all equipment/devices. The ministry argues further that section 3.5 of Schedule C includes transferring and position aids, yet a lift recliner is not one of the items listed. A "lift chair" is specifically excluded from the definition of a "positioning chair." Additionally, the ministry argues it does not have information to suggest the appellant relies on a wheelchair for basic mobility. A power lift recliner is also not a "floor or ceiling lift device" which is a device that stands on the floor or is attached to the ceiling and that uses a sling system to transfer a person. While the lift recliner sits on the floor, it does not use a sling system to transfer someone. Therefore, it cannot be met through section 3.8 of Schedule C.

In addition, the ministry argues that the information provided does not establish the other legislated criteria set out in these sections for each of these health supplements, have been met. Therefore, the appellant's request cannot be provided under the legislation for medical equipment.

The ministry also argues that a power lift recliner is not an item set out in any other section of the EAPWDR, Schedule C.

Life Threatening Health Need - Section 69 (EAPWDR)

The ministry also argues the appellant is not eligible for a power lift recliner under the EAPWDR Section 69 as information has not been provided to establish that the appellant has a "direct and imminent life threatening" need for this item. While the appellant reports he requires this item to remain seated for up to eight hours a day to attend virtual coursework, the ministry argues it is not established this is imminently life threatening.

Crisis Supplement - Section 57 (EAPWDR)

The ministry also argues that the appellant is not eligible for a power lift recliner as a crisis supplement.

The ministry states that as the quote for this item came from a health care supplier and was prescribed by a medical practitioner, the ministry finds it is reasonable to consider it a health care good, which is excluded from consideration under the legislation for a crisis supplement as set out in section 57(3). As well, the ministry argues the appellant has

not presented information to suggest his need for a lift recliner is unexpected. The ministry is satisfied that the appellant does not have resources to meet his need for a power lift recliner and that failure to provide a crisis supplement for a power lift recliner will result in imminent danger to his physical health as he is in exacerbated pain.

Analysis

Section 62 (EAPWDR) General Health Supplements

Section 62 of the EAPWDR states the minister may provide any health supplement set out in section 2 [general health supplements] or 3 [medical equipment and devices] of Schedule C for a family unit in receipt of disability assistance. The panel notes, ministry records show the appellant is a recipient of disability assistance.

<u>Section 2(1), Schedule C, EAPWDR – general health supplements</u>

Section 2(1) of Schedule C provides the following list of 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]:

Medical or surgical supplies required for one of the following:

- wound care
- ongoing bowel care required due to loss of muscle function
- catheterization
- incontinence
- skin parasite care or limb circulation care; and the supplies are prescribed by a medical practitioner.

The panel notes that although the appellant's doctor provided a prescription for a power lift recliner, the power lift recliner does not appear to be for one of the purposes listed above. The panel therefore finds the ministry reasonably determined this item could not be approved under this section of the legislation.

Section 3, Schedule C, EAPWDR – medical equipment and devices

Section 3 of Schedule C provides the following list of medical equipment and devices that may be paid for by the minister if provided to a family unit that is eligible under section 62 [general health supplements]:

- 3.1 canes, crutches and walkers
- 3.2 wheelchairs
- 3.3 wheelchair seating systems
- 3.4 scooters
- 3.5 toileting, transfers and positioning aids (positioning chair does not include a lift chair)
- 3.6 hospital bed

- 3.7 pressure relief mattresses
- 3.8 floor or ceiling lift device (a device that stands on the floor or is attached to the ceiling and that uses a sling system to transfer a person)
- 3.9 breathing devices
- 3.10 orthoses
- 3.11 hearing instruments
- 3.12 non-conventional glucose meters

The ministry agues that a power lift recliner is also not a "floor or ceiling lift device" which is a device that stands on the floor or is attached to the ceiling and that uses a sling system to transfer a person. The panel finds the ministry reasonably determined that a power lift recliner cannot be considered a floor or ceiling device. The panel notes a power lift recliner is not included in medical equipment and devices under Schedule C, section 3 of the EAPWDR and finds the ministry reasonably determined this item could not be approved under this section of the legislation.

Sections 4,5,6,7,8,9,11 Schedule C, EAPWDR

The panel notes a power lift recliner is not included in the remaining available health supplements under Schedule C, which include dental supplements, emergency dental supplements, diet supplements, monthly nutritional supplements, and alternative hearing assistance supplement. Therefore, the panel finds the ministry reasonably concluded that a power lift recliner could not be approved under these sections of the legislation.

<u>Section 69 (EAPWDR) health supplement for persons facing direct and imminent life</u> threatening health need

Section 69 of the EAPWD states the minister may provide 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 who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that the person faces a direct and imminent life threatening need, there are no resources available to the person's family unit and the health supplement is necessary to meet that need.

Although the panel acknowledges that sitting in front of a computer for more than eight hours can be tiring, and that the appellant doesn't have the resources to pay for a power lift recliner, the panel finds there is insufficient evidence to determine that this situation is causing a life threatening need. Therefore, the panel finds the ministry reasonably determined the appellant was not eligible for a power lift recliner under section 69 of the EAPWDR.

Section 57 (EAPWDR) Crisis Supplement

Section 57 states the minister may provide a crisis supplement for a family unit that is eligible for disability assistance if 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 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. A crisis supplement may not be provided for a supplement described in Schedule C or any other health care good or service.

Ministry records show that although the ministry finds a power lift recliner is not described in the health supplements provided under Schedule C, as the quote for this item came from a health care supplier and was prescribed by a medical practitioner, the ministry finds it is reasonable to consider this to be a health care good, which is excluded from consideration under the legislation for a crisis supplement as set out in section 57(3).

The panel finds that the ministry reasonably determined a power lift recliner to be considered a health care good.

The appellant also argues that he feels this is his right as a citizen of Canada and has been approved as a PWD. The panel acknowledges that the appellant has been approved as a PWD and is a citizen of Canada. However, the panel is bound to the legislation.

With the above analysis, the panel finds the ministry reasonably determined the appellant was not eligible to receive funding for a power lift recliner under sections 57, 62 – 70 and Schedule C of the EAPWDR.

Conclusion

In conclusion, the panel finds the ministry's reconsideration decision that determined the appellant was not eligible for a power lift recliner as per the EAPWDR sections 57, 62 - 70, and Schedule C was a reasonable application of the legislation in the circumstances of the appellant.

The appellant is not successful on appeal.

Schedule of Legislation

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

...

- (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...

Optical supplements

62.1 The minister may provide ...

Eye examination supplements

62.2 (1)Subject to subsections (2) and (3), the minister may provide a health supplement ...

Dental supplements

63 The minister may provide any health supplement set out in section 4 [dental supplements] of Schedule C to or for...

11

Crown and bridgework supplement

63.1 The minister may provide a crown and bridgework supplement under section 4.1 of Schedule C to or for...

Denture supplement

63.2 (1)Subject to subsection (2), the minister may provide any health supplement set out in section 4.2 [denture supplements] of Schedule C to or for a family unit in receipt of hardship assistance.

Emergency dental and denture supplement

64 The minister may provide any health supplement set out in section 5 [emergency dental supplements] of Schedule C to or for...

Orthodontic supplement

65 (1)Subject to subsection (2), the minister may provide orthodontic supplements to or for...

Diet supplement

66 (1)Subject to subsection (2), the minister may pay for a diet supplement ...

Nutritional supplement

67 (1)The minister may provide a nutritional supplement in accordance with section 7 [monthly nutritional supplement] of Schedule C to or for ...

Nutritional supplement — short-term

67.001 The minister may provide a nutritional supplement for up to 3 months to or for a family unit in receipt of disability assistance...

Tube feed nutritional supplement

67.01...

(2)Subject to subsection (3), the minister may provide a tube feed nutritional supplement to or for...

Infant formula supplement

67.1 The minister may provide the type of health supplement referred to in section 9 [infant formula] of Schedule C, in accordance with that section, to or for...

Natal supplement

68 (1)Subject to subsection (2), the minister may provide a natal supplement in accordance with section 8 [natal supplement] of Schedule C to or ...

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

69 (1)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...

Supplement for alcohol or drug treatment

70 (1)The minister may provide a supplement for the cost of treatment, counselling or related services for an alcohol or drug problem ...

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...
- (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;

Optical supplements

2.1 The following are the optical supplements that may be provided under section 62.1 [optical supplements] of this regulation:....

Eye examination supplements

2.2 The minister may pay a health supplement under section 62.2 [eye examination supplements] of this regulation for an eye examination that,....

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;...

Medical equipment and devices — canes, crutches and walkers

3.1 (1) Subject to subsection (2) of this section,

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

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.....

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:...

Medical equipment and devices — pressure relief mattresses

3.7 (1)A pressure relief mattress is a health supplement ...

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....

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:...

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....

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....

Medical equipment and devices — non-conventional glucose meters

3.12 (1)In this section, "non-conventional glucose meter" includes...

Dental supplements

4 (1)In this section, "period" means....

Crown and bridgework supplement

4.1 (1)In this section, "crown and bridgework" means a dental service...

Denture supplements

4.2 The health supplements that may be provided under section 63.2 [denture supplement] of this regulation are denture services.

Emergency dental supplements

5 The health supplements that may be paid for under section 64 [emergency dental and denture supplements] of this regulation are emergency dental services.

Diet supplements

6 (1)The amount of a diet supplement that may be provided under section 66 [diet supplements] of this regulation is as follows:....

Monthly nutritional supplement

7 The amount of a nutritional supplement that may be provided under section 67 [nutritional supplement] of this regulation is

Natal supplement

8 The amount of a natal supplement that may be provided under section 68 [natal supplement] of this regulation is...

Infant formula

9 The minister may provide infant formula under section 67.1 of this regulation if...

Alternative hearing assistance supplement

11 (1)In this section, "profound hearing loss" means a hearing loss of 91 decibels or greater across all frequencies tested in an audiological assessment...

	APPEAL NUMBER 2023-0074	
Part G - Order		
The panel decision is: (Check one) ⊠Unanimous □By Majority		
The Panel		
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) \square or Section 24(1)(b) \boxtimes		
Section 24(2)(a) \boxtimes or Section 24(2)(b) \square		
Part H – Signatures		
Print Name		
Connie Simonsen		
Signature of Chair	Date (Year/Month/Day)	
	2023/03/30	
Print Name		
Bill Haire		
Signature of Member	Date (Year/Month/Day)	
	2023/03/30	

EAAT (26/10/22) Signature Page