

Part C – Decision Under Appeal

The Appellant appealed a reconsideration decision of the Ministry of Social Development and Poverty Reduction (the “ministry”) in which it assessed that the Appellant was not eligible for replacement of an unrepairable raised toilet seat. The ministry accepted that the Applicant was eligible to apply for health supplements, but a replacement was refused because legislation does not permit replacement within 5 years.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (the “EAPWD Regulation”)
Schedule C- Sections 3(3), 3.5(1)(g), and 3.5(2)

Part E – Summary of Facts

On March 29, 2023, the ministry issued its Reconsideration Decision that reaffirmed a previous denial of funding to replace a raised toilet seat. It confirmed that the Appellant was a recipient of disability assistance who had previously received a raised toilet seat (funded as a health supplement) on November 20, 2020. The Appellant did not meet one of the eligibility requirements for a replacement, which is that replacement is not allowed until 5 years after the date of the original funding. That requirement is specified by legislation.

The key dates and information related to that reconsideration decision are as follows:

- On November 20, 2020, the ministry provided funding to the Appellant for a raised toilet seat.
- On October 19, 2022, (less than 2 years later) the Appellant requested ministry funding for a raised toilet seat.
- On February 23, 2023, the ministry denied the Appellant's request (having previously enquired and accepted that it was not repairable). It explained that regulations prevent funding of a replacement within 5 years of the original funding date, and it provided copies of the applicable regulations.
- On March 17, 2023, the ministry received the Appellant's completed Request for Reconsideration. The Appellant explained that the raised toilet seat never locked in place on one side, and the other side has now broken off. It is not safe, as it moves when used and the Appellant has fallen and been injured because of that.
- On March 29, 2023, the ministry completed its review of the Request for Reconsideration. The ministry noted that the Applicant was eligible to apply for health supplements but entitlement to a replacement raised toilet seat required satisfaction of other requirements; specifically, insufficient time has passed to allow for replacement.

Appellant Submissions

In oral submissions, at the hearing, the Appellant reiterated that, when she received the current raised toilet seat, she could not install it properly and it has since broken. She stated that originally only one of the two clamps held. That one clamp has now broken so the raised toilet seat is not held in place. Because of that she has fallen off and been injured.

Ministry Submissions

At the hearing the ministry reiterated the reconsideration decision.

Part F – Reasons for Panel Decision

This is a matter in which the ministry has no discretion. It must follow the EAPWD Regulation that prevents funding of replacement of toileting aids provided within 5 years.

The parties did not dispute that on November 20, 2020 the raised toilet seat was funded as a health supplement for a medical device or medical equipment under EAPWD Regulation Schedule C (“Schedule C”). There is also no dispute that the seat is broken and unrepairable.

Simply put, the ministry previously provided a raised toilet seat to the Appellant about 2 years and 5 months ago (as of the time of this decision). While that seat has become non-functional – perhaps even dangerous to use – funding of a replacement is governed by the Schedule C sections 3(3), 3.5(1)(g), and 3.5(2).

Section 3(3) governs replacement of health supplements, including raised toilet seats. Only one of the criteria for replacement is relevant here and that is that a certain period of time must pass before equipment may be replaced. The period of time is based upon the equipment type. These are set out in sections 3.1-3.12. In that group at section 3.5 are the “Toileting, transfers and positioning aids”, which include “raised toilet seats” listed at section 3.5(1)(g). The time that must pass before replacement for Section 3.5 is in section 3.5(2) which states:

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.

That wording does not give the ministry any discretion whether to apply that specific timeframe. In the current case the Appellant is well short of the 5-year limit.

The Appellant did not describe any improper application of the law. On our review we were unable to find any enactment or application of it that was unreasonable in denying the Appellant’s application for funding to replace the raised toilet seat.

We find that the decision of the ministry is reasonably supported by the evidence. The remaining question is whether it was a reasonable application of legislation in the circumstances. We also find that it was reasonable, as discussed above.

Conclusion:

The panel finds that the ministry’s reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances. The reconsideration decision of the ministry is confirmed.

Appendix – Relevant Legislation
Employment and Assistance for Persons with Disabilities Regulation
Schedule C – Health Supplements

Medical equipment and devices

3.

...

(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) ..., 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.

...

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:

...

(g) a raised toilet seat;

...

(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

Kent Ashby

Signature of Chair

Date (Year/Month/Day)

2023/04/29

Print Name

Wes Nelson

Signature of Member

Date (Year/Month/Day)

2023/04/29

Print Name

Jan Broocke

Signature of Member

Date (Year/Month/Day)

2023/04/30