

Part C – Decision Under Appeal

The Decision under appeal is the reconsideration decision, dated April 25, 2023 (the “Reconsideration”), of the Ministry of Social Development and Poverty Reduction (the “Ministry”) denying funding for a power lift recliner and ROHO cushion.

The Ministry denied the request per section 3 of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (the “Regulation”), because the power lift recliner did not meet the definition of eligible medical equipment. The Ministry denied the ROHO cushion because it was not required to achieve or maintain position in a wheelchair.

The Ministry also said that the Appellant was not able to receive the funding for the power lift recliner and ROHO cushion per Schedule C, section 2(1)—Medical Supplies, nor through any other sections of Schedule C—Health Supplements. The Ministry found that the power lift recliner and ROHO cushion are not medical supplies or health supplements captured by the legislation.

The Ministry said that funding could not be provided for the power lift recliner and ROHO cushion per section 69—direct and imminent life-threatening need, because they cannot be provided under Schedule C of the Regulation and the Appellant did not have a life-threatening need. Finally, because the Appellant is eligible for medical services only and the items are health care goods, the Ministry said the Appellant is not eligible for a crisis supplement per section 57.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation—sections 57, 62, 69; Schedule C, sections 2 (1), 3.3, 3.5, 3.6, 3.7, and 3.8, 4-9

The full wording of this legislation is set out in the Schedule of Legislation at the end of this decision.

Part E – Summary of Facts

The information before the Ministry at the time of the Reconsideration included:

- The Appellant is a Person with Disabilities (“PWD”) and is eligible for medical services only as a continued person
- A written statement from the Appellant dated March 30, 2023 indicating that she does “not fit into the regular ‘box’”, she requires equipment that is not usually a benefit but is what assists her, and it is within the same cost as other equipment
- The Ministry’s decision summary dated Feb. 7, 2023 denying the Appellant’s application for Health Supplements
- A functional assessment dated Feb. 1, 2023 and completed by the Occupational Therapist. Information included:
 - Medical history: notes multiple medical diagnoses and issues including a 15-year history of chronic shoulder and hip pain, and “The single most overwhelming problem for this patient is her chronic pain...[that is] quite overwhelming for this patient right now”.
 - Social history: lives alone and limited/no support
 - Current Physical functioning
 - Sleep: indicates that the Appellant is unable to sleep in bed and “does better sitting up to sleep...[and] with the setup of sleeping in a chair with the ROHO cushion, her sleep has improved from 2-3 hours up to 4-5 hours”
 - Pain: noted as chronic and “has attended multiple pain clinics but nothing has helped”
 - Safety/Performance issues: highlights that extensive trials were conducted with other devices but failed, and the Appellant “cannot lay on her back for long and the pain is increased to intolerable levels when laying on her side”
 - Recommendations: The Appellant “would benefit from an electric lift out chair with ROHO cushion to allow her a tolerable position to be able to sleep”

A quote totalling \$3352.20 for a Liftout Power Recliner (\$2447.04) and ROHO cushion (\$611.52) dated January 25, 2023

Additional Information submitted after Reconsideration

The Appellant also submitted a letter dated May 3, 2023 to the Tribunal prior to the hearing of the appeal where the Appellant stated in part that:

- She suffers from debilitating chronic pain which has made her life challenging and has been unable to be helped by multiple specialists;
- She has only been able to sleep 2-3 hours per night. Lying in bed is not possible for her—she is unable to sleep in a lying position due to pressure and pain, she is unable to roll from side to side due to pain in her side and hips, and she cannot tolerate staying in one position;
- Using the recliner and ROHO cushion has increased her sleep to 4-5 hours per night and the powerlift chair would allow for position changes without putting weight on her shoulders;
- She does not have the resources to purchase the recliner and cushion;
- The recliner and cushion cost the same as a hospital bed and mattress; and
- She understands the recliner and cushion are not listed eligible items.

The panel considered the letter to be argument.

Evidence presented at the hearing

At the hearing, the Appellant shared a Nov. 14, 2022 quote for the ROHO cushion in the amount of \$910.00 The Ministry made no objections to the admissibility of the document at the hearing.

The panel admitted this information as new evidence; it was determined to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal, pursuant to section 22(4) of the Employment and Assistance Act.

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 and ROHO cushion pursuant to the Regulation 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 are set out after the reasons of the panel.

Position of the Appellant

The Appellant argues that after 15 years of only 2-3 hours sleep, her situation has become desperate. She is unable to sleep in her bed due to the extensive arthritis and debilitating chronic pain in her low back, buttocks, hips, shoulders, and right elbow. Her chronic pain has not been helped by specialists and has caused serious life challenges for her including the breakdown of her family. Sleeping in the upright position in a (power) recliner with the ROHO cushion allows her to change position and improves her sleep from 2-3 hours per night to 4-5 hours per night. This greatly improves her daily life.

The Appellant states that she does not have the resources to buy the (power) recliner and ROHO cushion herself. Although she recognizes that the power recliner and ROHO cushion are not listed eligible items and are not typical needs, the Appellant says they should be. She states that "people are not built to fit on lists" and that the Ministry should consider her request with that in mind. She adds that her quality of life and ability to be a functioning member of society would be greatly improved by these items.

At the hearing, the Appellant indicated that she felt the Ministry decision was unreasonable in denying her funding for the recliner and cushion. She noted that no two people have the same disability; she is not like every other person as she can't sleep in bed and the Ministry must consider this. The Ministry has provided more supports in the past and she does not understand why she is being penalized. She is also left wondering why the chair and cushion would not be funded but the more expensive hospital bed and mattress—that don't work for her—would be.

The Appellant further shared that her genetic conditions, including the recently diagnosed CYPD26 disease, mean that she is unable to process painkillers including opioids; there is no pain relief for her and there is nothing she can take to relieve her pain. She is able to use marijuana to help her to sleep. She has sought out other pain relief options such as surgery but was told that her (pain) problems can't be, or won't be, fixed. As far as other recommended treatments such as physio or massage, she is struggling financially and cannot afford them.

The Appellant clarified for the panel that she was seeking funding for the ROHO cushion and a second (recliner) chair for her bedroom; a regular recliner would be fine. It didn't have to be the Powerlift. She is required to sleep upright with an intricate set up of cushions and supports in place; the recliner with ROHO cushion is the only place she can sleep. The Appellant advises that she needs a recliner in her den but that her den is too bright for sleeping so she requires a second recliner for her bedroom.

Position of the Ministry

The Ministry stated that they did not have the authority under the legislation to grant the Appellant's request for the power lift recliner and ROHO cushion. In response to a question from the panel, the Ministry representative confirmed that they are not given any latitude with the legislation; the Ministry is only authorized to provide what is captured in the legislation. The Ministry also relied on its reasons provided in the April 25, 2023 Reconsideration.

The Ministry further stated that as the Appellant has been designated as a PWD and is a continued person eligible to receive medical services only, she would be eligible to receive health supplements under section 62 and Schedule C of the Regulation provided all other eligibility requirements are met. However, the Ministry argues not all other eligibility requirements have been met.

Medical Supplies, Schedule C, Section 2 (EAPWDR)

The Ministry submits that a power lift recliner is not included in medical supplies under section 2(1) of Schedule C in the Regulation. The Ministry argues that the Appellant does not require these items for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care, or limb circulation care. Further, medical and surgical supplies are either disposable or reusable but will eventually need to be replaced. A power lift recliner and the ROHO cushion are not disposable or reusable supplies; they are meant to last for several years.

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

The Ministry submits that a power lift recliner is not a medical equipment/device included under section 3 of schedule C of the Regulation. Section 3 sets out the general requirements for all equipment/devices. The Ministry argues 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 states that a wheelchair is not medically essential for the Appellant to achieve and maintain 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, the request cannot be met through section 3.8 of Schedule C.

The ROHO cushion is requested for use with the recliner, not to achieve or maintain positioning in a wheelchair so cannot be considered for wheelchair seating under section 3.3. Although the recliner and cushion will be used as a bed and mattress, as they are not a hospital bed or mattress per sections 3.6 and 3.7, the request cannot be met.

In addition, the Ministry says 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 Schedule C of the Regulation.

Life Threatening Health Need - Section 69 The Ministry submits that the Appellant is not eligible for a power lift recliner and ROHO cushion under Section 69 of the Regulation. The Ministry found this because the Appellant is eligible for general health supplements provided eligibility is met, and the items are not provided under sections 2 (1) (a) and (f) or 3 of Schedule C of the Regulation. As a result, the recliner and cushion cannot be provided under section 69.

Crisis Supplement - Section 57 The Ministry also submits that the Appellant is not eligible for a power lift recliner as a crisis supplement; the Appellant is not a recipient of disability or hardship assistance and is eligible for medical services only as a continued person.

The Ministry also states that as the items come from a health care supplier, the recliner and cushion are health care goods which are excluded from consideration under the legislation for a crisis supplement as set out in section 57(3).

Analysis

Section 62 (General Health Supplements)

Section 62 of the Regulation 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 if it is provided to or for a person who is a continued person.

Section 2(1), Schedule C – general health supplements

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 the power lift recliner and ROHO cushion are not for one of the purposes listed above. Therefore, the panel finds the Ministry reasonably determined these items could not be approved under this section 2 of the Regulation.

Section 3, Schedule C, – 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 (notably, a 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 argues that a ROHO cushion is not a wheelchair seating system. The cushion is seating for use with the recliner. The panel agrees with this assessment and finds the Ministry reasonably determined the cushion cannot be considered under 3.3.

The Ministry also argues that the power lift recliner is specifically excluded as a positioning aid. The panel finds the Ministry was reasonable in determining the recliner is not eligible as a positioning aid under 3.5 given that a power lift recliner is specifically excluded by the wording in the legislation.

The Ministry further argues that the recliner and ROHO cushion are not eligible under 3.6 and 3.7. They state that the recliner is not a hospital bed and the ROHO cushion is not a pressure relief mattress. As the recliner is a chair for sitting and not a hospital bed, and the ROHO cushion is a chair cushion and is not a pressure relief mattress, the panel finds that the Ministry's determination was reasonable.

Finally, the Ministry argues that the powerlift recliner is 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 items sought are not attached to the floor or ceiling and are not captured by this part of the regulation. The panel finds the Ministry's determination that the powerlift recliner is not a "floor to ceiling lift device" was reasonable because it is not attached to the floor or ceiling.

As set out above, the panel concludes that a power lift recliner and ROHO cushion are not included in medical equipment and devices under Schedule C, section 3 of the Regulation and finds the Ministry reasonably determined these items could not be approved under these sections of the legislation.

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

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

Section 69 health supplement for persons facing direct and imminent life threatening health need

Section 69 of the Regulation 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.

As a continued person with PWD designation, the Appellant would otherwise be eligible for items under sections 2(1)(a) and (f) and section 3, provided the eligibility requirements under those sections were met. The panel finds the Ministry's determination that the Appellant did not require relief under section 69 and was not eligible for a power lift recliner and ROHO cushion under section 69 of the Regulation, to be reasonable.

Section 57 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.

At reconsideration and at the appeal hearing, the Appellant provided quotes from a health care supplier for the Powerlift recliner and ROHO cushion. The panel finds that the Ministry was reasonable in determining that the requested items are health care goods and are not eligible for the Crisis Supplement under the legislation.

With the above analysis, the panel finds the Ministry reasonably determined that the Appellant was not eligible to receive funding for a power lift recliner under sections 57, 62, 69 and Schedule C of the Regulation.

Conclusion

Although the panel has sincere sympathy for the Appellant's pain and suffering and appreciates her request for an individualized approach to her circumstances, the panel is bound by the legislation and lacks discretion to vary from the prescribed items that may be funded. The power lift recliner and ROHO cushion are not eligible items listed in the legislation.

As such, the panel finds the Ministry's reconsideration decision that determined the Appellant was not eligible for a power lift recliner and ROHO cushion as per the EAPWDR sections 57, 62, 69, and Schedule C was a reasonable application of the legislation in the circumstances of the Appellant.

The Panel confirms the Ministry's decision. This means the Appellant is not successful with her appeal.

Relevant 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, 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
- ...
- (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** (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,
- (c) the adjusted net income of any person in the family unit, other than a dependent child, does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation, 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).

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;

(iii) there are no resources available to the family unit to pay the cost of or obtain the supplies;

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;

(b) an assessment by a respiratory therapist, occupational therapist or physical therapist confirming the medical need 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.

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.

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, ...

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:

- ...
- (i) a floor-to-ceiling pole in a bathroom or bedroom;
- ...
- (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:

- (a) a hospital bed;
- (b) an upgraded component of a hospital bed;
- (c) an accessory attached to a hospital bed;
- (d) a positioning item on a hospital bed.

Medical equipment and devices — pressure relief mattresses

3.7 (1) A pressure relief mattress is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that the pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity.

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, ...

Medical equipment and devices — orthoses

3.10 (1) In this section:...

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...

Emergency dental supplements

5 The health supplements...

Diet supplements

6 (1) The amount of a diet supplement...

Monthly nutritional supplement

7 The amount of a nutritional supplement...

Natal supplement

8 The amount of a natal supplement...

Infant formula

9 The minister may provide infant formula...

APPEAL NUMBER 2023-0129

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

Carmen Pickering

Signature of Chair

Date (Year/Month/Day)
2023/05/29

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)
2023/05/28

Print Name

Erin Rennison

Signature of Member

Date (Year
2023/05/29