

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision dated October 3, 2023, which denied the appellant's request for a packer device. 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 (Regulation)
- as a crisis supplement under section 57 of the Regulation
- as a life-threatening health need supplement under section 69 of the Regulation

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation sections 67, 62, 69 and Schedule C

(The relevant legislation is listed in Appendix A)

Part E – Summary of FactsEvidence Before the Ministry at Reconsideration:

The information the Ministry had at the time of the decision included:

- Medical Equipment and Justification form completed by the Appellant’s doctor on July 21, 2023, recommending a prosthetic penis/packer for better alignment with known gender.
- A quote for a silicone medical prosthetic \$862USD.
- A printed list from Trans Care BC which shows funding coverage for gender-affirming care. Highlighted on the list shows “binders, packers, breast forms” and the statement that “those on PWD can get coverage with prescription/letter from MD or NP”. Additional note indicates “some community organizations offer access to binders and packers, and to contact the Care Coordination Team at the phsa.ca website”.
- Health Assistance Branch of the Ministry denial letter dated August 1, 2023, denying a transgender packer device.
- Request for Reconsideration form submitted by the Appellant on September 1, 2023. The Appellant wrote as the reason for requesting a reconsideration (in summary):
 - Both he and his partner each have a prescription in the form of the Medical Equipment Request and Justification form from their family physician.
 - The prosthetic packer devices are custom built to an extremely high standard and are not available in Canada. They are meant to last until surgical intervention is proceeded with.
 - They are both on waitlists for various types of surgery, and the waitlists for transgender people are massive. The procedures carry a high risk of complication, and they are required to be in perfect health to pursue surgery.

Information Submitted After Reconsideration

A Notice of Appeal form was completed over the phone with the Appeal Coordinator on October 4, 2023. The Appellant indicated he had not yet received the reconsideration decision but learned of the decision over the phone. In response to whether any disabilities supports are required for the appeal, the Appellant informed the Appeal Coordinator:

- He has anxiety, and requests patience and potential breaks during the hearing.
- He has some processing difficulties due to a brain injury – mostly auditory where he misses out on words and can’t make sense of what he is trying to verbalize.

- If possible, could panel members be from within the LGBTQ community so they know this is actually a concern.

As the reason for requesting an Appeal, the Appellant indicates:

- The prosthetic is listed as an item that is covered for people who are on PWD. He and his partner are both transgender men looking for a prosthetic.
- The item is listed as being covered and is a life-saving device.
- He can barely have a hysterectomy.
- This item should be covered for people who are transgender and who are on disability.

At the hearing, the Appellant explained that he was in contact with Trans Care BC and their list of services indicates that a packer is available for transgender people on a case-by-case basis. The Appellant explained that a packer is a medical device which is required for people experiencing gender dysphoria because of not having genitalia that is compatible with how they feel about themselves.

The Appellant argues that, although a packer is expensive and they are not available in Canada, it was prescribed by his doctor and he provided the medical equipment request form to the Ministry, as required. The list of items provided by Trans Care BC has been around since at least 2021 and the Appellant was disheartened when his request was denied because it is medically necessary for him. The Appellant expressed that any time a person makes a request to the Ministry it is a frustrating process because the workers all give different answers.

At the hearing, the Ministry relied on the reconsideration decision and explained that they can provide medical equipment and supplies only for items that are listed in Schedule C of the Regulation. A packer is not a listed item and there is no discretion permitted to allow them to make an exemption.

When asked about Trans Care BC, the Ministry stated they had read the handout provided in the Appeal Record, which indicates that packers are available for persons with disabilities. The Ministry called Trans Care BC to explain that packers are not eligible items and the contact there indicated they would be changing their handout. The Ministry explained that Provincial Health Services Authority (PHSA) is an umbrella agency over the Regional Health Authorities and Trans Care BC.

The Ministry was asked if there was any other avenue available to the Appellant. The Ministry stated that all legislation would have been reviewed and all health care goods are

listed in Schedule C. A packer is not listed. The Ministry added that this is the first time, that they are aware of, that a request for a packer has come up for appeal.

Admissibility of Additional Information

The panel accepted the Appellant's statement provided with the Notice of Appeal and his 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. When asked, the Ministry had no objection to the admissibility of this evidence.

Part F – Reasons for Panel Decision

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

- in Schedule C of the Regulation
- as a crisis supplement under section 57 of the Regulation
- as a life-threatening health need supplement under section 69 of the Regulation.

Appellant's Position

The Appellant's position is that the packer is medically essential, prescribed by his doctor, and is listed with Trans Care BC as an item that should be covered for a person with gender dysphoria.

Ministry's Position

The Ministry's position is that only health care equipment and supplies listed in Schedule C of the Regulation are covered. Because a packer device is not listed, and there is no discretion, the Ministry cannot assist. The Ministry also argues that a packer device cannot be issued as a crisis supplement or as a life-threatening health need.

Panel DecisionEligibility under Schedule C of the Regulation

Section 62 of the Regulation allows the ministry to provide a recipient of disability assistance any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C. The appellant is a recipient of disability assistance.

The legislative requirements for any kind of medical supply or equipment are set out in Schedule C of the Regulation. 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 and section 3 sets out the general requirements for all medical equipment and devices.

The Ministry argues that a packer device is not a medical or surgical supply because it is not for any of the listed purposes for which a supply may be provided under section 2 (1)(a). The panel found no evidence in the Appeal Record to indicate it is required for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care, or limb circulation care. The panel finds that the Ministry has reasonably decided that a packer device is not a disposable or reusable medical or surgical supply.

The other sections of Schedule C set out other health supplements the Ministry may provide, if the specific requirements are met. The panel reviewed all the sections and found two that require closer review. All other sections are not relevant, in the Appellant's circumstance.

Section 3.5 refers to toileting, transfers and positioning aids. The appellant stated that the packer device would allow him to use a urinal in a stand to pee position. Section 3.5(1) lists the items the Ministry may assist with, providing they are satisfied that the item is medically essential to facilitate toileting, transfers of a person, or to achieve or maintain a person's positioning. The listed items are:

- (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 basic mobility,
- (l) a positioning chair for a person for whom a wheelchair is medically essential to achieve basic mobility,
- (m) a transfer aid for a person for whom the transfer aid is medically essential.

The panel finds that a packer device is not a listed item as a toileting aid.

Section 3.10 refers to orthoses, and prosthetics. The legislated definition of "orthosis" does not include a packer device.

Section 3.10(11) specifically identifies that prosthetics and related supplies are not health supplements for the purposes of section 3 of Schedule C. The Appellant refers to the packer device as being a prosthetic, as does the doctor on the Medical Equipment Justification Form. The panel finds that the ministry was reasonable to determine that a packer device is a prosthetic, and, therefore, not an eligible item in Schedule C.

Eligibility as a crisis supplement under section 57 of the Regulation

The Regulation section 57(3) states a crisis supplement may not be provided for the purpose of obtaining a supplement described in Schedule C, or any other health care goods or services. A packer device is not described in Schedule C; however, the panel finds it is a health care good or service. Therefore, the ministry was reasonable to determine it cannot be funded as a crisis supplement.

Eligibility as a life-threatening need health supplement under section 69 of the Regulation

The Regulation section 69 allows the ministry to provide a family unit a health supplement set out in section 3 of Schedule C and some of the health supplements set out in section 2 of Schedule C if it is provided to a person in the family unit who is otherwise not eligible for health supplements. The appellant is a person eligible for health supplements. In addition, a packer device is also not set out in Schedule C. Therefore, the panel finds the ministry was reasonable to determine it cannot be funded as a life-threatening health need supplement.

Additional Comments

The Provincial Health Services Authority's (PHSA) Trans Care BC handout provided in the Appeal Record, and referenced by the Appellant, does indicate that persons with disabilities designation can get coverage, with a prescription/letter from a doctor or nurse practitioner, for a packer. It refers a person to their website for additional information. The Appellant argues that other people have received assistance with a packer, so why not him. The Panel acknowledges how it can be confusing to have several different government agencies involved in one's care. The Appellant may wish to contact community and health organizations about what assistance may, or may not, provide the requested support.

Conclusion

The Panel finds that the ministry's reconsideration decision, which determined that the appellant is not eligible for a transgender packer device, was a reasonable application of the legislation in the appellant's circumstances and therefore confirms the decision. The appellant is not successful on 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) 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).

(2) For the purposes of subsection (1) (c),

- (a) "**adjusted net income**" has the same meaning as in section 7.6 of the Medical and Health Care Services Regulation, and
- (b) a reference in section 7.6 of the Medical and Health Care Services Regulation to an "eligible person" is to be read as a reference to a person in the family unit, other than a dependent child.

Schedule C

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.

{Sections 3.1-3.9 are not relevant in the appellant's situation}

3.10 - orthoses

(1) In this section:

"orthosis" means

(a) a custom-made or off-the-shelf foot orthotic;

(b) custom-made footwear;

(c) a permanent modification to footwear;

(d) off-the-shelf footwear required for the purpose set out in subsection (4.1) (a);

(e) off-the-shelf orthopaedic footwear;

(f) an ankle brace;

(g) an ankle-foot orthosis;

(h) a knee-ankle-foot orthosis;

(i) a knee brace;

(j) a hip brace;

(k) an upper extremity brace;

(l) a cranial helmet used for the purposes set out in subsection (7);

(m) a torso or spine brace;

(n) a foot abduction orthosis;

(o) a toe orthosis;

(p) a walking boot.

(2) Subject to subsections (3) to (11) of this section, an orthosis is a health supplement for the purposes of section 3 of this Schedule if

- (a) the orthosis is prescribed by a medical practitioner or a nurse practitioner,
- (b) the minister is satisfied that the orthosis is medically essential to achieve or maintain basic functionality,
- (c) the minister is satisfied that the orthosis is required for one or more of the following purposes:
 - (i) to prevent surgery;
 - (ii) for post-surgical care;
 - (iii) to assist in physical healing from surgery, injury or disease;
 - (iv) to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition, and
- (d) the orthosis is off-the-shelf unless
 - (i) a medical practitioner or nurse practitioner confirms that a custom-made orthosis is medically required, and
 - (ii) the custom-made orthosis is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist.

APPEAL NUMBER 2023-0308

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)

2023 December 12

Print Name

Rick Bizarro

Signature of Member

Date (Year/Month/Day)

2023 December 12

Print Name

Robert McDowell

Signature of Member

Date (Year/Month/Day)

2023 December 12