

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") Reconsideration Decision of April 10, 2024. In the Reconsideration Decision the Ministry determined that the Appellant was not eligible for a reclining chair.

While the Appellant is eligible for health supplements, the request is not for an authorized medical device, and the information provided does not establish that the other legislated criteria for each of the relevant health supplements have been met.

The Ministry also determined that the request could not be met as a crisis supplement. While they agreed that the Appellant did not have the resources to obtain the chair, it was for an on-going medical expense, not to meet an unexpected expense, or obtain an item unexpectedly needed. The Ministry also determined that the information submitted does not demonstrate that failure to receive a reclining chair will result in imminent danger to the Appellant's physical health.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (the "Regulation") sections 57, 62, 69, and Schedule C.

Relevant sections of the Regulation can be found in the Schedule of Legislation at the end of this document.

Part E – Summary of Facts

A hearing was held via teleconference on June 11, 2024. An interpreter was provided to assist in communication between the Appellant and the other participants of the hearing. A representative of the Ministry also joined the meeting via the teleconference. The Appellant had received the appeal record but did not have it available to her for the teleconference so, when discussing the Reconsideration Decision, the Ministry representative read each section discussed. Additionally, panel members quoted sections of the appeal record when questioning the Appellant or the Ministry representative.

Background

- The Appellant is receiving disability assistance.
- On February 5, 2024, the Appellant submitted a request for a reclining chair.

Information before the Ministry at the time of reconsideration

- A letter dated September 20, 2023, from the Appellant's doctor, stating:
 - "Please assist patient in providing her a recliner with leg elevation hardware such as 'Lazy boy chair' setup. This is required due to peripheral oedema and cellulitis that patient develops when she sits and is unable to elevate legs. She was admitted to hospital for 5 days and recently released and is advised to elevate legs to heart level when she sits down."
- The Appellant did not complete Section 3 Reasons for Request for Reconsideration.

Information submitted after the Reconsideration Decision

- In the Reasons for Appeal section of the Notice of Appeal, the Appellant stated, "Because I need it very badly. I have not enough money. I need very very badly. Doctor wants badly too. Still my foot is on the floor, and I am sitting in the bed. The doctor wrote the paper for me to get the lazy boy chair. My leg is very swollen, hard like wood."

Testimony at the hearing

- The Appellant
 - The Appellant reiterated her need for a chair to help her keep her legs in a straight elevated position.
 - In response to Panel questions, the Appellant stated she had been hospitalized for five days in September 2023, at which time the infection had been so bad there was concern that they would have to amputate her leg to stop the spread. However, that was avoided and, when she left the hospital, the doctor told her it was important to get this type of chair so it would not happen again.
 - When asked how she had controlled the problem without the chair since her hospitalization, she said the doctor said to keep one leg over the other and use pillows. While there have been some infections, it has not escalated to a more serious level.
 - When asked why the delay between the September 2023 hospitalization and the February 2024 request submission, the Appellant was not sure about the process or exactly why. However, the Ministry representative stated that, according to the Ministry file, the request was initially made on September 29, 2023, was denied in October, and was re-submitted in February. It is unclear what, if any, changes there were between the two submissions.
 - When asked if she had contacted an Occupational Therapist, as suggested by the Ministry, the Appellant responded that she had not.

- The Ministry
 - The Ministry representative reviewed the Reconsideration Decision process, listing each category of health supplement that the Ministry is authorized to provide.
 - The Ministry representative reiterated the Ministry's suggestion that the Appellant contact an Occupational Therapist who could, perhaps, suggest alternative equipment that could be provided.
 - In response to a Panel question, the Ministry representative stated that contact with an Occupational Therapist could be direct; no referral was required from a doctor.
 - The Ministry representative was asked to clarify the statement in the Reconsideration Decision, regarding the assessment of Schedule C, section 3, "In addition, the Ministry finds that the information provided does not establish that the other legislated criteria set out in these sections, for each of these health supplements, have been met." In review, the Ministry representative indicated that

the requirements of pre-authorization, no resources being available, and a prescription being required had been met but there would still be a question as to whether this was the least expensive alternative.

Admissibility of New Evidence

Both parties did not object to the oral testimony provided at the hearing.

The Panel finds that the oral testimony of both the Appellant and the Ministry at the hearing clarifies issues related to this appeal. The Panel admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's Reconsideration Decision that the Appellant was not eligible for a reclining chair was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

Three sections of the Regulation are relevant in assessing whether the Appellant's request is eligible for a supplement. In the order in which they will be assessed, they are:

- Section 62 – General Health Supplements enables the Ministry to provide specific supplies or devices.
- Section 69 – Health Supplements for persons facing direct and imminent life-threatening health need enables the Ministry to provide assistance for which the person is not otherwise eligible.
- Section 57 – Crisis Supplement enables the Ministry to provide a supplement if the need is unexpected, no resources are available to meet the need, and failure to meet the need will result in an imminent danger to health of member of the family unit.

Section 62 Analysis

Section 62 says, "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,..."

- The Appellant is in receipt of disability assistance and, therefore, meets the basic eligibility defined in Section 62. This is not in dispute.

Section 2 of Schedule C contains the following additional criteria:

- The supplies are:
 - Prescribed by a medical practitioner or nurse practitioner.
 - The least expensive supplies appropriate for the purpose.
 - Necessary to avoid an imminent and substantial danger to health.
- There are no resources available to the family unit to pay the cost of or obtain the supplies.

Section 3 of Schedule C contains the following additional criteria:

- The family unit has received the pre-authorization of the minister for the medical equipment or device requested.
- There are no resources available to the family unit to pay the cost of or obtain the medical equipment or device.
- The medical equipment or device is the least expensive appropriate medical equipment or device.
- The family unit must provide to the minister one or both of the following, as requested by the minister:
 - a prescription of a medical practitioner or nurse practitioner for the medical equipment or device.
 - an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

Ministry Position

Sections 2 and 3 of Schedule C are the relevant sections. They specifically list what can be provided. If it is not on the list, the Ministry is not authorized to provide a supplement to obtain it. A reclining chair is not on the list. The closest item is a "positioning chair", but a reclining chair is not a "positioning chair". Therefore, the Ministry is not authorized to provide a health supplement for the device requested. In addition, the information provided does not establish the other criteria set out has been met.

Appellant's Position

She needs the chair very badly and does not have enough money to buy one herself. Her doctor wants her to have it as well. The doctor wrote the letter for her to get a reclining chair. Her leg is very swollen, "hard like wood". Without the chair her infections could increase and get worse.

Panel's Findings

Section 62 of the Regulation says, "The minister may provide any health supplement set out in section 2 [general health supplements] or 3 [medical equipment and devices] of Schedule C..."

- Section 2(1) of Schedule C deals with
 - medical or surgical supplies required for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care, and limb circulation care.

- the following medical or surgical supplies: lancets, needles and syringes, ventilator supplies, and tracheostomy supplies.
- consumable medical supplies required to thicken food.
- services, specifically acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, and physical therapy.

The Panel finds the Ministry was reasonable in determining the request did not fit any of these categories.

- Sections 2(2) and 2(3) deal with optical supplements and eye examination supplements and are not relevant to this appeal.
- The Panel found sections 3(1), 3(2), 3(3), 3(4), 3(6), 3(7), 3(8), 3(9), 3(10), 3(11), and 3(12) not relevant to this appeal and they deal respectively with: canes, crutches, and walkers; wheelchairs; wheelchair seating systems; scooters; hospital beds; pressure relief mattresses; floor or ceiling lifting devices; breathing devices; orthoses; hearing instruments; and non-conventional glucose meters.
- This left section 3(5), which deals with toileting, transfers and positioning aids and lists the items which can be provided.
 - Items (a) through (j) deal with toileting challenges and are not considered relevant to this appeal.
 - Item (k) and (l), a standing frame and a positioning chair, specifically state they are “for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility.” The evidence has not indicated the need for a wheelchair for the Appellant. Therefore, the Panel finds that these two items do not apply in the circumstances of this appeal.
 - Item (m), a transfer aid is not considered relevant to this appeal.

The Panel finds the Ministry was reasonable in determining that a reclining chair is not included in the list of devices they are authorized to provide under Section 62.

The Panel also finds that, had the requested item been found in the list of authorized items, the Appellant had satisfied the additional requirements under 3(1) and 3(2) of prior authorization, no resources available, and a prescription of a

medical practitioner. However, no cost estimates or alternatives were provided. Therefore, the Ministry was reasonable in determining that insufficient evidence had been provided to determine that the requested item was the least expensive alternative.

Section 69 Analysis

Section 69 says, "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..."

However, rather than an imminent and substantial danger to health, the threshold is now a direct and imminent life-threatening need. This means that, instead of establishing that the applicant's health will deteriorate if the request is denied, the applicant must establish a direct and urgent connection between not having the requested device and a potential loss of life. Note that the supplement is still restricted to those items specifically listed in Schedule C.

Ministry Position

As the Appellant is a recipient of disability assistance, she is eligible to receive health supplements under Section 62. Therefore, she does not require the remedy under section 69.

Information submitted with the Appellant's application and Request for Reconsideration does not demonstrate that she faces a direct and imminent life-threatening health need for the item requested.

A reclining chair is not a health supplement set out in Schedule C, sections 2(1)(a) and (f) or section 3.

Appellant's Position

She needs it very badly and does not have enough money to buy one herself. Her doctor wants her to have it as well. The doctor wrote the letter for her to get a reclining chair. Her leg is very swollen, "hard like wood". Without the chair her infections could increase and get worse.

Panel's Findings

The Panel notes that this Section

- has the same constraint that existed under Section 62 – the item requested must be specified in Section 2 or 3 of Schedule C.
- adds the criterion of a direct and imminent life-threatening need.

The Panel has already found, in the analysis of Section 62, that the Ministry was reasonable in determining that the reclining chair was not an authorized item under Schedule C. In addition, the Appellant has continued without a reclining chair for the past eight months without any major episode. This would indicate there is no evidence of a direct and imminent threat to the Appellant's life.

Therefore, the Panel finds that the Ministry was reasonable in determining that the reclining chair could not be provided under Section 69 of the Regulation.

Section 57 Analysis

Section 57 of the Regulation says,

- "The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if:
 - 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.
 - 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..."
- 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.

The Appellant is in receipt of disability assistance and, therefore, meets the basic eligibility defined in Section 57. This is not in dispute.

Ministry Position

Because the reclining chair is required due to an ongoing medical condition, the related expense is not unexpected. The information submitted does not demonstrate that failure to receive a reclining chair will result in imminent danger to the Appellant's physical health. The

Ministry agrees that no resources are available for the Appellant to purchase the item on her own.

Appellant's Position

The Appellant went into the hospital for five days to treat infections. Upon release, her doctor told her she should get a reclining chair to prevent a reoccurrence of the problem for which she was hospitalized. This was an unexpected need that she cannot afford, and, without the chair, her health could be threatened.

Panel's Findings

The Ministry has agreed that the Appellant does not have resources available to address this need. This section raises two additional criteria:

- Is it an unexpected expense? While the expense was unexpected at the time the Appellant was released from hospital in late September 2023, the submission that is the subject of this appeal was submitted in February 2024, four months later. The Panel finds that after four months to adjust, the expense can no longer be considered unexpected.

Therefore, the Panel finds that the Ministry was reasonable in considering this an ongoing medical condition, not an unexpected expense.

- Will failure to meet the expense result in imminent danger to the physical health of the Appellant? What does "imminent" mean? It is not defined in the Act or Regulation. The Panel turned to the definition in the Webster dictionary: "ready to take place, happening soon – often used of something bad or dangerous seen as menacingly near." The Appellant stated, in response to questions from the Panel, that she had not obtained the chair and was managing the problem somewhat by placing one leg over the other and using pillows, although that was difficult to do sometimes. The Reconsideration Decision was completed in April. No medical evidence was presented to the Ministry, or subsequently on appeal, to indicate there has been any deterioration of health. The Panel finds that an imminent threat to health has not been established.

Therefore, the Panel finds the Ministry was reasonable in determining there was insufficient evidence of an imminent threat to the Appellant's health.

Summary

The Ministry addressed the Appellant's request under three sections of the Regulations. The Panel had reviewed the Ministry's determinations under all three sections and has found that:

- Sections 62 and 69 of the Regulations are both constrained by the items listed in Schedule C, sections 2 and 3. A reclining chair is not listed, making the request ineligible under either section.
- Even if the item was included in Schedule C, there is no evidence provided to demonstrate that the requested item is the least expensive medical alternative.
- Section 57 is for unexpected expenses. Given the time delay since the hospitalization and doctor's instructions to obtain a reclining chair, the Ministry was reasonable in considering this an ongoing medical condition, not an unexpected expense.
- There is insufficient medical evidence to demonstrate an imminent threat to health, as required under Section 57, or a direct and imminent threat to life, as required under Section 69.

Conclusion

The Ministry does not have the authority to go beyond what it defined in the Regulation. Therefore, the Panel finds that the Ministry decision that the Appellant was not eligible for a reclining chair is a reasonable interpretation of the existing legislation and is supported by the evidence. The Panel supports the Ministry's recommendation that she contact an Occupational Therapist to determine if there are items in Schedule C that would help and to ensure the lowest cost alternative is presented.

The Panel confirms the Reconsideration Decision and the Appellant's appeal is unsuccessful.

SCHEDULE OF LEGISLATION**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 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.

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;

(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;

(a.2) consumable medical supplies, if the minister is satisfied that all of the following requirements are met:

- (i) the supplies are required to thicken food;
- (ii) all the requirements described in paragraph (a) (ii) and (iii) are met in relation to 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.

(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)it is more economical to replace than to repair the medical equipment or device previously provided by the minister, 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.

(4)Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.

(5)Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if

(a)at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and

(b)it is more economical to repair the medical equipment or device than to replace it.

(6)The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

Medical equipment and devices — canes, crutches and walkers

3.1 (1)Subject to subsection (2) 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 cane;
- (b) a crutch;
- (c) a walker;
- (d) an accessory to a cane, a crutch or a walker.

(2) A walking pole is not a health supplement for the purposes of section 3 of this Schedule.

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 of this Schedule if all of the requirements set out in subsection (3) of this section are met:

- (a) a scooter;
- (b) an upgraded component of a scooter;
- (c) an accessory attached to a scooter.

(3) The following are the requirements in relation to an item referred to in subsection (2) of this section:

- (a) an assessment by an occupational therapist or a physical therapist has confirmed that it is unlikely that the person for whom the scooter has been prescribed will have a medical need for a wheelchair during the 5 years following the assessment;
- (b) the total cost of the scooter and any accessories attached to the scooter does not exceed \$3 500 or, if subsection (3.1) applies, \$4 500;
- (c) the minister is satisfied that the item is medically essential to achieve or maintain basic mobility.

(3.1) The maximum amount of \$4 500 under subsection (3) (b) applies if an assessment by an occupational therapist or a physical therapist has confirmed that the person for whom the scooter has been prescribed has a body weight that exceeds the weight capacity of a conventional scooter but can be accommodated by a bariatric scooter.

(4) 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.

(5) A scooter intended primarily for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

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.

(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.

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.

(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.

(3) The following items are not health supplements for the purposes of section 3 of this Schedule:

- (a) an automatic turning bed;
- (b) a containment type 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.

(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.

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.

(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 from the date on which the minister provided the item being replaced.

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:

- (a) if all of the requirements set out in subsection (2) of this section are met,
 - (i) a positive airway pressure device,
 - (ii) an accessory that is required to operate a positive airway pressure device, or
 - (iii) a supply that is required to operate a positive airway pressure device;
- (b) if the minister is satisfied that the item is medically essential to monitor breathing,
 - (i) an apnea monitor,
 - (ii) an accessory that is required to operate an apnea monitor, or
 - (iii) a supply that is required to operate an apnea monitor;

(c)if the minister is satisfied that the item is medically essential for clearing respiratory airways,

- (i)a suction unit,
- (ii)an accessory that is required to operate a suction unit, or
- (iii)a supply that is required to operate a suction unit;

(d)if the minister is satisfied that the item is medically essential for clearing respiratory airways,

- (i)a percussor,
- (ii)an accessory that is required to operate a percussor, or
- (iii)a supply that is required to operate a percussor;

(e)if the minister is satisfied that the item is medically essential to avoid an imminent and substantial danger to health,

- (i)a nebulizer,
- (ii)an accessory that is required to operate a nebulizer, or
- (iii)a supply that is required to operate a nebulizer;

(f)if the minister is satisfied that the item is medically essential to moisturize air in order to allow a tracheostomy patient to breathe,

- (i)a medical humidifier,
- (ii)an accessory that is required to operate a medical humidifier, or
- (iii)a supply that is required to operate a medical humidifier;

(g)if the minister is satisfied that the item is medically essential to deliver medication,

- (i)an inhaler accessory device,
- (ii)an accessory that is required to operate an inhaler accessory device,
or
- (iii)a supply that is required to operate an inhaler accessory device.

(2)The following are the requirements in relation to an item referred to in subsection (1)

(a) of this section:

- (a)the item is prescribed by a medical practitioner or nurse practitioner;
- (b)a respiratory therapist has performed an assessment that confirms the medical need for the item;
- (c)the minister is satisfied that the item is medically essential for the treatment of moderate to severe sleep apnea.

(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 (1) of this section is as follows:

- (a) in the case of an item referred to in subsection (1) (a) (i), 5 years from the date on which the minister provided the item being replaced;
- (b) in the case of an item referred to in subsection (1) (a) (ii) or (iii), one year from the date on which the minister provided the item being replaced;
- (c) in the case of an apnea monitor, suction unit, percussor, nebulizer or medical humidifier, 5 years from the date on which the minister provided the item being replaced;
- (d) in the case of an inhaler accessory device, one year from the date on which the minister provided the device being replaced;
- (e) in the case of an accessory or supply for an item referred to in paragraph (c) or (d), one year from the date on which the minister provided the device being replaced.

(4) A ventilator is not a health supplement 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

- (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.

(3) For an orthosis that is a custom-made foot orthotic, in addition to the requirements in subsection (2) of this section, all of the following requirements must be met:

(a) a medical practitioner or nurse practitioner confirms that a custom-made foot orthotic is medically required;

(b) the custom-made foot orthotic is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist;

(c) Repealed. [B.C. Reg. 144/2011, Sch. 2.]

(d) the custom-made foot orthotic must be made from a hand-cast mold;

(e) the cost of one pair of custom-made foot orthotics, including the assessment fee, must not exceed \$450.

(4) For an orthosis that is custom-made footwear, in addition to the requirements in subsection (2) of this section, the cost of the custom-made footwear, including the assessment fee, must not exceed \$1 650.

(4.1) For an orthosis that is off-the-shelf footwear, in addition to the requirements in subsection (2) of this section,

(a) the footwear is required to accommodate a custom-made orthosis, and

(b) the cost of the footwear must not exceed \$125.

(4.2) For an orthosis that is off-the-shelf orthopaedic footwear, in addition to the requirements in subsection (2) of this section, the cost of the footwear must not exceed \$250.

(5) For an orthosis that is a knee brace, in addition to the requirements in subsection (2) of this section, the medical practitioner or nurse practitioner who prescribed the knee brace must have recommended that the knee brace be worn at least 6 hours per day.

(6) For an orthosis that is an upper extremity brace, in addition to the requirements in subsection (2) of this section, the upper extremity brace must be intended to provide hand, finger, wrist, elbow or shoulder support.

(7) For an orthosis that is a cranial helmet, in addition to the requirements in subsection (2) of this section, the cranial helmet must be a helmet prescribed by a medical practitioner or nurse practitioner and recommended for daily use in cases of self abusive behaviour, seizure disorder, or to protect or facilitate healing of chronic wounds or cranial defects.

(8) For an orthosis that is a torso or spine brace, in addition to the requirements in subsection (2) of this section, the brace must be intended to provide pelvic, lumbar, lumbar-sacral, thoracic-lumbar-sacral, cervical-thoracic-lumbar-sacral, or cervical spine support.

(9) Subject to section 3 of this Schedule, the limit on the number of orthoses that may be provided for the use of a person as a health supplement for the purposes of section 3 of this Schedule is the number set out in Column 2 of Table 1 opposite the description of the applicable orthosis in Column 1.

Table 1

Item	Column 1 Orthosis	Column 2 Limit
1	custom-made foot orthotic	1 or 1 pair
2	custom-made footwear	1 or 1 pair
3	modification to footwear	1 or 1 pair
4	ankle brace	1 per ankle
5	ankle-foot orthosis	1 per ankle
6	knee-ankle-foot orthosis	1 per leg
7	knee brace	1 per knee
8	hip brace	1

9	upper extremity brace	1 per hand, finger, wrist, elbow or shoulder
10	cranial helmet	1
11	torso or spine brace	1
12	off-the-shelf footwear	1 or 1 pair
13	off-the-shelf orthopaedic footwear	1 or 1 pair
14	foot abduction orthosis	1 or 1 pair
15	toe orthosis	1

(10)The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an orthosis is the number of years from the date on which the minister provided the orthosis being replaced that is set out in Column 2 of Table 2 opposite the description of the applicable orthosis in Column 1.

Table 2

Item	Column 1 Orthosis	Column 2 Time period
1	custom-made foot orthotic	3 years
2	custom-made footwear	1 year
3	modification to footwear	1 year
4	ankle brace	2 years
5	ankle-foot orthosis	2 years
6	knee-ankle-foot orthosis	2 years
7	knee brace	4 years
8	hip brace	2 years
9	upper extremity brace	2 years
10	cranial helmet	2 years
11	torso or spine brace	2 years
12	off-the-shelf footwear	1 year
13	off-the-shelf orthopaedic footwear	1 year
14	toe orthosis	1 year

(11)The following items are not health supplements for the purposes of section 3 of this Schedule:

(a)a prosthetic and related supplies;

- (b) a plaster or fiberglass cast;
- (c) a hernia support;
- (d) an abdominal support.
- (e) Repealed. [B.C. Reg. 94/2018, App. 2, s. 1 (b).]
- (f) Repealed. [B.C. Reg. 144/2011, Sch. 2.]

(12) An accessory or supply that is medically essential to use an orthosis that is a health supplement under subsection (2) is a health supplement for the purposes of section 3 of this Schedule.

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

- (a) the hearing instrument is prescribed by an audiologist or hearing instrument practitioner, and
- (b) an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument.

(2) The minister may provide a hearing instrument under this section only if the person is not receiving a hearing assistance supplement under section 70.02 of this regulation.

Medical equipment and devices — non-conventional glucose meters

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

- (a) a continuous glucose monitoring meter, and
- (b) a talking glucose meter.

(2) A non-conventional glucose meter is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that

- (a) the glucose meter is medically essential to test blood glucose levels, and
- (b) the person for whom the non-conventional glucose meter has been prescribed is unable to use a conventional glucose meter.

(3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of a non-conventional glucose meter is 5 years from the date on which the minister provided the glucose meter being replaced.

APPEAL NUMBER 2024-0192

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

Wes Nelson

Signature of Chair

Date (Year/Month/Day)

2024/06/18

Print Name

Linda Pierre

Signature of Member

Date (Year/Month/

Day) 2024/06/18

Print Name

John Pickford

Signature of Member

Date (Year/Month/

Day) 2024/06/18