

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (the "**Ministry**"), dated March 8, 2024, in which the Ministry denied the Appellant's request for additional funding beyond the legislated maximum of \$4,200.00 for a lift system. More specifically, the Ministry found that the Appellant did not meet the eligibility requirement as set out in Schedule C, section 3.8(2)(b) of the Employment and Assistance for Persons with Disabilities Regulation, as it was not satisfied that requested excess funding for a lift system is required due to an unusual installation expense.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (the "**Regulation**"), section 62, and Schedule C sections 3 and 3.8.

Full text of the legislation is provided in the Schedule of Legislation at the end of the decision.

Part E – Summary of Facts

The Appellant's appeal was heard on July 3, 2024.

(a) The Reconsideration Decision

The evidence before the Ministry at the Reconsideration Decision consisted of:

The Appellant has been designated as a person with disabilities ("**PWD**") and is in receipt of disability assistance.

On January 31, 2023, the Ministry received the Appellant's request for a lift kit, mesh sling, and quilted universal sling (the "**First Application**"). The First Application was accompanied by:

- an assessment written by the Appellant's occupation therapist (the "**OT**") dated January 31, 2023 (the "**Assessment**") which provided:

" Past Medical History:

- *[The Appellant] was involved in an... accident... which resulted in a severe closed head injury, subdural hematoma requiring cranioplasty as well as fractures of the skull, clavicles and ribs. [The Appellant's] injuries were severe, resulting in:*
 - *His nutritional needs solely being met by PEG tube feeds.*
 - *Limited active movement and limited ability to communicate.*
 - *Increased tone and spasticity- right side more severe than left side.*
 - *Dependent for all care needs*
- *[The Appellant] remained in hospital until... he was discharged home to live with his parents.*

Social History:

- *Upon discharge from hospital in May 2022, [the Appellant] moved back to his family home... Prior to his return home, [the Appellant's] parents performed numerous home renovations – increasing the width of doorways, changing the flooring, installing a porch lift- In order to facilitate accessibility for [the Appellant] and to meet his care needs. [The Appellant] now resides on the upper floor of his family home with his parents, who are also his CSIL funded caregivers, [the Appellant's] brother lives in the basement of the home. The... community has supported [the Appellant] and his family – assisting with the installation of an air conditioner in the home and construction of a concrete pad leading to the outdoor porch lift. [The Appellant's] care needs are significant resulting in the need for many home modifications and extensive adaptive equipment.*

Current Physical Functioning

- *[The Appellant] is currently dependent on assistance from others for all mobility, transfers, ADLs and IADLs. He also requires set up and cueing, in order to engage in therapeutic activities and communication tasks. [The Appellant] requires a manual, tilt wheelchair with rehab seating for mobility and positioning throughout the day. [The Appellant] is dependent on his caregivers to push his wheelchair for primary mobility. All of [the Appellant's] transfers are performed using a 2-post mechanical lift system and a sling. [The Appellant] requires two slings for positioning and ADLs as well as to utilize the community century bathtub. The large majority of [the Appellant's] personal care is performed in bed; therefore, he requires a fully electric hospital bed which is increased in length due to [the Appellant's] tone, spasticity and size. [The Appellant's] parents were able to purchase a NOA Elite Hospital Bed prior to his return home. [The Appellant] has been using this bed since his return home with good success. [The Appellant] has limited active movement and is therefore unable to independently reposition in bed. For this reason he requires a pressure redistribution mattress to prevent skin breakdown.*

Recommendations:

- *For transfers:*
 - *2 post mechanical lift*
 - *1x hygiene sling for toileting and dressing*
 - *1x universal mesh sling for bathing*
- *For Mobility:*
 - *Quickie Iris Tilt manual wheelchair + attachments*
 - *Wheelchair cushion...*
- *For ADLs/skin integrity/transfers*
 - *Promat Plus mattress with pump*
 - *Replacement control for hospital bed'*
- a quote for a 2-post lift system and toileting sling for \$5,935.22 (the "**First Quote**");
- a quote for a quilt fit sling for \$316.90; and
- a quote for a wheelchair, wheelchair cushion, pressure mattress, and hospital bed repairs.

On December 5, 2023, the Ministry received another request from the Appellant for a lift kit, mesh sling, and quilted universal sling (the "**Second Application**"). The Second Application was accompanied by:

- an assessment written by the OT dated December 4, 2023 (the "**Second Assessment**") which provided:

" Past Medical History:

- *[The Appellant] was involved in an... accident... which resulted in a severe closed head injury, subdural hematoma requiring cranioplasty as well as fractures of the skull, clavicles and ribs. [The Appellant's] injuries were severe, resulting in:*
 - *His nutritional needs solely being met by PEG tube feeds.*
 - *Limited active movement and limited ability to communicate.*
 - *Increased tone and spasticity- right side more severe than left side.*
 - *Dependent for all care needs*
- *[The Appellant] remained in hospital until... he was discharged home to live with his parents.*

Social History:

- *Upon discharge from hospital in May 2022, [the Appellant] moved back to his family home... Prior to his return home, [the Appellant's] parents performed numerous home renovations – increasing the width of doorways, changing the flooring, installing a porch lift- In order to facilitate accessibility for [the Appellant] and to meet his care needs. [The Appellant] now resides on the upper floor of his family home with his parents, who are also his CSIL funded caregivers, [the Appellant's] brother lives in the basement of the home. The... community has supported [the Appellant] and his family – assisting with the installation of an air conditioner in the home and construction of a concrete pad leading to the outdoor porch lift. [The Appellant's] care needs are significant resulting in the need for many home modifications and extensive adaptive equipment.*

Current Physical Functioning

- *[The Appellant] is currently dependent on assistance from others for all mobility, transfers, ADLs and IADLs. He also requires set up and cueing in order to engage in therapeutic activities and communication tasks.*
- *Transfers: All of [the Appellant's] transfers are performed using a 2-post mechanical lift system and a sling. Since his return home, [the Appellant's]*

parents and caregivers have been using either a... 2-post lift system or a MEPP funded 2 post lift system. [The Appellant] requires his own permanent 2 post lift system, which will replace the loaner lift system. Without this mechanical lift in place, [the Appellant's] transfers would be unsafe – for him and his caregivers. This lift will be set up in [the Appellant's] bedroom, over the hospital bed.

- *Bathing: [the Appellant] is dependent on the assistance of others for all bathing transfers and bathing tasks. To date, [the Appellant] has been receiving bed baths or attending the local community CT tub (only once per week). It is the goal for [the Appellant] to be able to bath at home with the assistance of his caregivers. In order for this to occur, [the Appellant] requires a specialized bath seat which can be used in the bathtub. [The Appellant] has used the Maxi mesh bath chair at the community CT tub with good success. [The Appellant] requires a Maxi mesh bath chair as it is designed to be used with a sling lift and a bathtub. [The Appellant's] parents have purchased a lift system for their bathroom which will work in conjunction with this bath chair.*

Recommendations:

- *For transfers:*
 - *2 post mechanical lift*
 - *1 x mesh universal sling (bathing)*
 - *1 x quilted universal sling*
- *For Bathing:*
 - *Maxi mesh bath chair"*
- a quote, dated November 29, 2023, for a 2-post lift system for \$6,687.25 (the "**Second Quote**");
- a quote, dated November 29, 2023, for a replacement universal mesh and a replacement universal quilted mesh for \$835.36; and
- a quote, dated November 29, 2023, for a maxi mesh bath chair with blue sling for \$1,416.20.

On December 13, 2023, the Ministry approved the Appellant's request for a lift system for the maximum legislated amount of \$4,200.00.

On February 20, 2024, the Ministry received the Appellant's Request for Reconsideration wherein the following additional information was provided:

- an assessment written by the OT dated February 12, 2024 (the "**Third Assessment**")

which provided:

" Past Medical History:

- *[The Appellant] was involved in an... accident... which resulted in a severe closed head injury, subdural hematoma requiring cranioplasty as well as fractures of the skull, clavicles and ribs. [The Appellant's] injuries were severe, resulting in:*
 - *His nutritional needs solely being met by PEG tube feeds.*
 - *Limited active movement and limited ability to communicate.*
 - *Increased tone and spasticity- right side more severe than left side.*
 - *Dependent for all care needs*
- *[The Appellant] remained in hospital until... he was discharged home to live with his parents.*

Social History:

- *Upon discharge from hospital in May 2022, [the Appellant] moved back to his family home... Prior to his return home, [the Appellant's] parents performed numerous home renovations – increasing the width of doorways, changing the flooring, installing a porch lift- In order to facilitate accessibility for [the Appellant] and to meet his care needs. [The Appellant] now resides on the upper floor of his family home with his parents, who are also his CSIL funded caregivers, [the Appellant's] brother lives in the basement of the home. The... community has supported [the Appellant] and his family – assisting with the installation of an air conditioner in the home and construction of a concrete pad leading to the outdoor porch lift. [The Appellant's] care needs are significant resulting in the need for many home modifications and extensive adaptive equipment.*

Current Physical Functioning

- *[The Appellant] is currently dependent on assistance from others for all mobility, transfers, ADLs and IADLs. He also requires set up and cueing in order to engage in therapeutic activities and communication tasks. All of [the Appellant's] transfers are currently performed using a 2-post mechanical lift system and a sling. Since his return home, [the Appellant's] parents and caregivers have been using either a... 2-post lift system or a MEPP funded 2-post lift system. Transfers, repositioning, and care using this lift have been challenging at times due to the large footprint of the posts which take up a considerable amount of space. This makes care*

tasks such as maneuvering around the bed for personal care, positioning the wheelchair, and repositioning [the Appellant] in the bed- difficult.

Reconsideration:

- Writer (OT) submitted an initial request to [the Ministry] on December 4, 2023 for a permanent 2-post mechanical lift system. At that time, this lift system appeared to be the only option available – although it was not ideal. This was approved by [the Ministry] on December 13, 2023 for the amount of \$4200. The medical vendor... ordered the lift but did not inform writer or [the Appellant's] family that there would be an outstanding balance of approximately \$2487.25. Writer and [the Appellant's] family were informed of this by the installer on January 23, 2024. Prior to January 23, 2024, writer was not aware that the lift had arrived or that [vendor] had contacted the client's family for installation. Both writer and [the Appellant's] family informed [the vendor] that family was unable to pay for the outstanding balance; therefore, the lift was not installed. At this time, [the Appellant] still has a MEPP funded 2-post lift system in place.*
- Following this, [the Appellant's] family made the decision to consult with an alternative [the Ministry] approved medical vendor regarding lift options which would meet [the Appellant's] complex needs. [The Appellant's] parents visited the medical vendor... and were shown the benefits of an XY gantry lift system. Immediately the benefits of this system for [the Appellant's] care were obvious – in particular, the space saving features and the ability to transfer/reposition [the Appellant] vertically as well as horizontally. [The Appellant's] is a tall, over 6 feet, young man with increased tone and spastic movements which make transfers and repositioning as well as performing personal care difficult at times. These tasks require two caregivers and a significant amount of space around the bed for the caregivers and equipment. [The Appellant's] bedroom is very small, and the 2-post lift system takes up a large amount of space, making care tasks difficult. Caregivers are, therefore, at risk of using poor body mechanics and they struggle due to lack of a clear working area/equipment in the way. [The Appellant's] positioning and transfers can be challenging due to the increased tone and spasticity. The XY gantry is also beneficial for [the Appellant] as the horizontal movement allows his caregivers to lift (with a sling) various areas of his body, such as his lower body for personal care. Due to [the Appellant's] spasticity, he has fallen out of bed in the past. Measures are being taken to prevent further falls; however, in the event that this happens again, the XY gantry can be used to position [the Appellant] back into bed.*

Recommendations:

- *For transfer and care needs*
- *XY Gantry Track System*
- *1 X quilted universal sling*
- a quote, dated February 9 2024, for the XY Gantry Lift System and sling for \$9,593.00 (the "**Third Quote**");
- a hand drawn image of the Appellant's room with dimensions;
- a scanned photo of the Appellant's room;
- A letter from the Appellant's parent providing:
 - a chronology of the events leading up to the Appellant's Request for Reconsideration;
 - the dimensions of the Appellant's room;
 - the issues faced by the Appellant's in their dealings with the vendor who provided the First Quote and Second Quote;
 - that the XY Gantry Lift System is an option that better meets the Appellant's needs for a variety of reasons; and
 - the amount needed to purchase the XY Gantry Lift System far exceeds the amount funded by the Ministry.

On April 3, 2024, the Ministry issued the Reconsideration Decision wherein it denied the Appellant's Request for Reconsideration. In doing so, the Ministry noted that the Appellant qualified for the legislated maximum of \$4,200.00 for medical equipment for the following reasons:

- the Appellant receives disability assistance;
- the Appellant does not have the resources available to pay the cost of or obtain the requested lift system;
- the Ministry was satisfied that the requested lift system was the least expensive equipment which was appropriate for the Appellant's needs; and
- the Appellant's request was accompanied by an assessment from the OT confirming the medical need for the requested lift system.

However, the Ministry determined that the Appellant did not meet the criteria set out in section 3.8(2)(b) of the Regulation which permits the Ministry to provide funding over the legislated maximum of \$4,200.00 because it was not satisfied that excess funding was required due to an unusual installation expense. According to the Ministry:

"... The information provided indicates that the additional funding requested is for the lift system itself and that there are no additional or unusual installation costs included on the quote from [the vendor of the Third Quote]. Therefore, the ministry is unable to provide any additional funding above the legislated maximum of \$4200 for the lift system requested..."

(b) The Appeal

On March 19, 2024, the Appellant filed a Notice of Appeal.

In support of his appeal, the Appellant submitted:

- Coloured pictures and the dimensions of his bedroom.
- A letter from the vendor of the Third Quote, dated April 26, 2024, which provides:

"... This letter is regarding our client [the Appellant] who requires a ceiling track in his bedroom in order to safely transfer from his bed to wheelchair and other equipment. The current Patient Lift Ceiling Track Installation cap of \$4200.00 set out by the MSD will not cover this the installation methodology nor the type of equipment required by [the Appellant] and his care givers.

Due to the recent Asbestos regulations and policy set out WSBC requires a vendor to take more precautions and thus increasing the cost of installation.

A ceiling track mounted to the ceiling requires access to the attic but due the homes age we are unable to safely access that area. We will be required to mount the tracks to the wall which is more added cost.

In addition, the inflated cost of materials and equipment in the last number of years this has significantly made a negative impact on the cost of installations.

In conclusion, the minimum amount required to install a single straight track, with lift motor and sling would be \$6500 which mean we require an additional \$2300 in addition to the \$4200.00 that has been approved..."

- A letter from the vendor of the First Quote and the Second Quote, dated April 28, 2024, which provides:

"... [The Appellant] requires a lifting device for him to transfer from bed to wheelchair and vice versa. As a result, this lifting device needs to be pressure mounted to fit into the bedroom.

The Ministry has a maximum funding of \$4200 for a 2-post lifting device. This funding amount isn't sufficient for the solution required for [the Appellant]...

... We are very sorry the funding allocated by the Ministry isn't sufficient for the solution required for [the Appellant]..."

(c) Oral Submissions

The Appellant's hearing was held on July 3, 2024. The Appellant was represented by the OT and one of his parents who, by Court Order, acts as one of the Committees of the Appellant's estate (the "Parent").

Briefly, the OT and the Parent restated much of what was written in the Appellant's Request for Reconsideration. Of note, the OT explained that the Appellant currently rents a lift system which is paid for by his local health authority. Further, she explained that no lift system could be obtained within the legislated maximum of \$4,200.00. The Parent explained that the house in which the Appellant resides was built in 1974 and may contain asbestos. Upon questioning, both the OT and the Parent attempted to describe how the installation of the requested lift system was unusual; however, their examples of unusual generally related to the height of the Appellant and the configuration of the room in which he resides.

In response, the Ministry referred to and relied upon the Appeal Record which largely consisted of the Reconsideration Decision. Effectively, the Ministry argued that the Appellant did not meet the eligibility requirements set out in the Regulation to exceed the legislated maximum of \$4,200.00 for the requested lift system as its installation was not considered unusual. Upon questioning from the Panel, when directly asked for examples of what constituted an unusual installation, the Ministry provided numerous examples including instances where the home in which a lift system is to be installed does not have an attic or where an attic cannot be accessed.

(d) Additional Evidence

The Ministry had no objection to the OT/Parent's oral submissions and letters from the Appellant's vendors. Neither the OT/Parent objected to the Ministry's examples of what constituted an unusual installation. The Panel determined that the submissions and additional evidence of both parties were admissible as additional evidence pursuant to section 22(4) of the *Employment and Assistance Act* as it was reasonably required for a full and fair disclosure of all matters related to the decision under Appeal. More specifically, the additional evidence contributed to the Panel's understanding of the circumstances surrounding the Appeal.

The Ministry did not submit any additional documentation on appeal.

Part F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry's Reconsideration Decision in which the Ministry found the Appellant not eligible for additional funding beyond the legislated maximum of \$4,200.00 for a lift system as provided for by Schedule C, section 3.8(2)(b) of the Regulation.

(a) Appellant's Position

The Appellant argues that he should be eligible for additional funding beyond the legislated maximum because the installation of the requested lift system is unusual. According to the Appellant, the installation of the requested lift system is unusual because, amongst other things:

- the Appellant's bedroom is unusually small;
- the Appellant is very tall; and
- asbestos remediation is required to install the lift system.

Of note, the vendor of the Third Quote has indicated that the installation of the requested lift system is complicated because they are unable to safely access the attic of the Appellant's home; as a result, "*... A ceiling track mounted to the ceiling requires access to the attic but due the homes age we are unable to safely access that area. We will be required to mount the tracks to the wall which is more added cost...*"

(b) Ministry's Position

The Ministry maintains that the Appellant does not qualify for additional funding beyond the legislated maximum of \$4,200.00 for a lift system as provided for by Schedule C, section 3.8(2)(b) of the Regulation for the same reasons as stated in the Reconsideration Decision.

In describing what constitutes an unusual installation expense, the Ministry provided various examples including instances where the home in which a lift system is to be installed does not have an attic or where an attic cannot be accessed.

(c) Panel Decision

Section 62 of the Regulation permits the Ministry to provide medical equipment and devices as set out in Schedule C to a family unit in receipt of disability or hardship assistance.

Schedule C, section 3(1)(b) of the Regulation permits the Ministry to provide medical equipment and devices if the following requirements are met:

- 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 requested; and
- the medical equipment or device is the least expensive appropriate medical equipment or

device.

Schedule C, section 3(2)(b) of the Regulation provides that a person requesting medical equipment and devices must provide the Ministry with an assessment from an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

Schedule C, section 3.8(2) of the Regulation provides that, if the Minister is satisfied that an item is medically essential to facilitate the transfer of a person in a bedroom or a bathroom, the Ministry may provide funding of up to the legislated maximum of \$4,200.00 for that item. However, the Minister may provide funding exceeding the legislation maximum if the Minister is satisfied that the excess cost is due to unusual installation expenses.

(i) Section 62 of the Regulation – Disability Assistance

As the Appellant is a recipient of disability assistance, the Panel finds that the Ministry reasonably determined that the Appellant was eligible to receive medical equipment and devices, in this case a lift system, as set out under Schedule C, section 3 of the Regulation, provided the other eligibility criteria are met.

(ii) Schedule C, section 3(1)(b) of the Regulation

The Ministry does not dispute that the Appellant is seeking pre-authorization for the requested lift system. Further, the Ministry does not dispute that the Appellant does not have the resources to pay for or obtain the requested lift system.

As for whether the Appellant has requested the least expensive lift system, the Panel notes that the Ministry was provided with three quotes: the First Quote, the Second Quote, and the Third Quote. The First Quote and the Second Quote provide for a 2-post list system, while the Third Quote provides for a ceiling lift system. On review, the Third Quote is the most expensive.

Per the Reconsideration Decision, the Panel finds that the Ministry did not take issue with the Third Quote as being the least expensive appropriate medical equipment; indeed, the Ministry wrote, "... *The information provided indicates that the additional funding requested is for the lift system itself and that there are no additional or unusual installation costs included on the quote from **[the vendor of the Third Quote]**. Therefore, the ministry is unable to provide any additional funding above the legislated maximum of \$4200 for the lift system requested...*"

The Panel finds that, as the Ministry assessed the Appellant's eligibility for additional funding beyond the legislated maximum based on the Third Quote, the only reasonable interpretation of the Reconsideration Decision is that the Ministry did not dispute that the lift system provided for by the Third Quote is the least expensive appropriate lift system in the circumstances. Had the Ministry taken issue with the Third Quote, it likely would have stated that in preference of the First Quote or Second Quote; however, this did not occur.

As a result, the Panel finds that the Ministry reasonably determined that:

- the Appellant was requesting pre-authorization from the Ministry for a lift system;

- the Appellant did not have the resources to pay the cost of or obtain the requested lift system; and
- the Third Quote provided for the least expensive appropriate lift system in the circumstances.

(iii) Schedule C, section 3(2) of the Regulation

On review of the Reconsideration Decision, the Ministry does not dispute that the OT's Third Assessment confirms the Appellant's need for a ceiling lift system. As a result, the Panel finds that the Ministry reasonably determined that the Appellant provided it with an assessment from an occupational therapist confirming his medical need for a lift system as required by Schedule C, section 3(2) of the Regulation.

(iv) Schedule C, section 3.8 of the Regulation

For the reasons that follow, the Panel finds that the Ministry's decision to denying the Appellant additional funding beyond the legislated maximum of \$4,200.00 for a lift system as provided for by Schedule C, section 3.8(2)(b) of the Regulation was an unreasonable application of the legislation in the circumstances of the Appellant.

Again, the Ministry can provide funding for a lift system above the legislated maximum of \$4,200.00 if it is satisfied that the excess cost is a result of unusual installation expenses.

While the Appellant suggests that his height and the dimensions of his room make the installation of the requested lift system unusual, the Panel finds that these issues do not directly relate to the installation of the lift system itself. Rather, they are factors which impact the type and appropriateness of the lift system ultimately selected and recommended by the OT. As a result, the Panel does not find the Appellant's height or the dimension of his room to be factors giving rise to an unusual installation.

As it relates to the Appellant's argument regarding inflationary increases, the Panel finds that inflation is a general phenomenon which does not make the installation of the requested lift unusual; rather, inflation makes the cost of obtaining the requested lift system more expensive. Regardless, there is no evidence before the Panel which suggests that inflation has unusually impacted the costs of installation.

As it relates to the Appellant's argument that recent changes to WorkSafe BC Regulations respecting asbestos make the installation of the requested lift system unusual, the Panel notes that the recent changes, which took effect January 1, 2024, require asbestos abatement contractors to be licensed, and anyone performing asbestos abatement to have complete mandatory safety training. The Panel finds that complying with legislative requirements cannot be characterized as unusual given that compliance with legislation is what the law requires. Further, and given the age of the Appellant's home which was built in the 1970's when asbestos was still in use, it can be said that asbestos remediation was expected if it were to be disturbed during the installation of the list system. Further, and perhaps more importantly, the recent

changes to the WorkSafe BC Regulations require asbestos abatement professionals to be licenced and certified which the Panel finds is not directly related to the lift system installation itself, but a general regulatory requirement that must be completed before abatement can be begin. In sum, the Panel finds that the Appellant's submissions with respect to asbestos do not make the installation of the requested lift system unusual.

However, during oral submission, the Ministry provided the Panel with undisputed examples of what constitutes an unusual installation expense. For example, the Ministry stated that the installation of a lift system in a home that does not have an attic or in which an attic cannot be accessed could constitute an unusual installation. The Panel notes that, during the Ministry's review of the Request for Reconsideration, it did not have the benefit of the April 26, 2024 letter which was drafted by the vendor of the Third Quote. On review of the April 26, 2024 letter, the vendor clearly writes that, "... *A ceiling track mounted to the ceiling requires access to the attic but due the homes age we are unable to safely access that area. We will be required to mount the tracks to the wall which is more added cost...*" The Panel finds that, based on the Ministry's oral submission provided at the hearing, the vendor's April 26, 2024 letter articulates an installation feature which the Ministry deems to be unusual, namely the installation of a lift system in a home where the attic cannot be accessed.

Given the above, the Panel finds that it cannot be said that installation of the requested lift system is not unusual; rather, some aspects of the requested lift system installation are unusual while others are not. As a result, the Ministry could fund select amounts of the Appellant's requested lift system above the legislated maximum of \$4,200.00, but only to the extent such expenses are unusual. For example, it would be reasonable for the Ministry to deny costs related to asbestos abatement (to the extent that such abatement is usual) but provide funding for costs above the legislated maximum arising from the vendor's inability to access the attic of the Appellant's home.

In summary, and in light of new information obtained at the hearing, the Panel finds that the Ministry's decision denying the Appellant additional funding beyond the legislated maximum of \$4,200.00 for a lift system as provided for by Schedule C, section 3.8(2)(b) of the Regulation is an unreasonable application of the legislation in the circumstance of the Appellant given that, based on the Ministry's own examples, some of the installation expenses can be considered unusual.

(e) Conclusion

The Panel finds that the Ministry's decision denying the Appellant additional funding beyond the legislated maximum of \$4,200.00 for a lift system as provided for by Schedule C, section 3.8(2)(b) of the Regulation is an unreasonable application of the legislation in the circumstance of the Appellant. As a result, the Appellant is successful on appeal and the Panel rescinds and remits the Reconsideration Decision back to the Ministry for calculation of the amount payable in excess of the \$4200.00 legislated maximum.

The Panel notes that, given the passage of time, the Appellant may need to obtain an updated quote from their vendor that better particularize aspects of the lift system's installation so that the Ministry is better situated to assess which aspects are unusual.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Regulation

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 Supplements 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.

(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 — 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.

2024-0100

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
Anil Aggarwal

Signature of Chair

Date (Year/Month/Day)
2024/07/21

Print Name
Diane O'Connor

Signature of Member

Date (Year/Month/Day)
2024/07/21

Print Name
Richard Franklin

Signature of Member

Date (Year/Month/Day)
2024/07/21