

Annex B – Clean version of Caring Society’s definitions (with essential services schedule)

Definitions¹

“Essential service” is a support, product or service that was:

- necessary to ensure substantive equality in the provision of services, products and/or supports to the child.

In considering what is essential for each child, the focus will remain on the principles of substantive equality (taking into account historical disadvantage, geographic circumstances, and the need for culturally appropriate services, products and/or supports) and the best interests of the child.

“Service gap” is a situation where a child needed a service that

- was necessary to ensure substantive equality in the provision of services, products and/or supports to the child;
- was recommended by a professional with expertise directly related to the service need;

but the child’s needs were not met due to the federal government’s discriminatory definition of and approach to Jordan’s Principle.

For greater certainty, the discriminatory definitions and approach employed by the federal government demanded satisfaction of all of the following criteria during the following time periods:

- a) Between December 12, 2007 and July 4, 2016
 - A child registered as an Indian per the *Indian Act* or eligible to be registered and resident on reserve;
 - Child with multiple disabilities requiring multiple service providers;
 - Limited to health and social services;
 - A jurisdictional dispute existed involving different levels of government (disputes between federal government departments and agencies were excluded);

¹ These definitions are intended to provide guidance for applying paragraphs 250 and 251 of the CHRT’s ruling on compensation, 2019 CHRT 39, which deal with compensating individuals under Jordan’s Principle.

- The case must be confirmed to be a Jordan’s Principle case by both the federal and provincial Deputy Ministers); and
 - The service had to be consistent with normative standards
- b) Between July 5, 2016 and November 2, 2017
- A child registered as an Indian per the *Indian Act* or eligible to be registered and resident on reserve (July 5, 2016 to September 14, 2016);
 - The child had a disability or critical short- term illness (July 5, 2016 to May 26, 2017);
 - The service was limited to health and social services (July 5, 2016 to May 26, 2017).

“Unreasonable delay” will be presumed where a request was not determined within 12 hours for an urgent case, or 48 hours for other cases. Canada may rebut the presumption of unreasonable delay in any given case with reference to the following list of contextual factors, none of which is exclusively determinative:

- the nature of the product, support and/or service sought;
- the reason for the delay;
- the potential for the delay to adversely impact the child’s needs;
- whether the child’s need was addressed by a different service, product and/or support of equal or greater quality, duration and quantity, otherwise provided in a reasonable time;
- the normative standards for providing the ~~category or mode of~~ support, product and/or services across Canada by provinces and territories, that were in force at the time of the child’s need; and
- the timelines established on November 2, 2017 by the CHRT² for Canada to determine requests under Jordan’s Principle: 12 hours for urgent cases, 48 hours for other cases.

As part of the Guide, the parties will agree on a process for Canada to provide the Central Administrator with information on the factors noted above in order to rebut the presumption.

General Principles

1. For greater certainty, where a child was in palliative care with a terminal illness, and a professional with relevant expertise recommended a service, support and/or product to safeguard

² See the decision of the CHRT in 2017 CHRT 35.

the child's best interests that was not provided through Jordan's Principle or another program, delay will be considered unreasonable.

2. Seeing as the principle of substantive equality involves consideration of a First Nations child's needs and circumstances in relation to cultural, linguistic, historical and geographic factors, Canada will provide the Central Administrator with access to the information its possession regarding the historical and socio-economic circumstances of First Nations communities. The Central Administrator will make use of the information to inform the determination of what was an "essential service", a "service gap" or "unreasonable delay".

3. Individual claims are required in all cases, even where more than one child in a community faced similar unmet needs due to the lack of access to the same or similar essential services.

4. **[Only if a specific request is required to meet the definition of a "service gap"]** Working together with Canada and the network of professionals with which ISC has relationships and relying on the evidence before the Tribunal (e.g. CHRC Tabs 78 and 302), the Central Administrator will compile a "service gap list" of communities for which specific requests for services, supports and/or products were made of Indian Northern Affairs Canada / Aboriginal Affairs and Northern Development Canada / Health Canada / Indigenous Services Canada

Schedule A to Caring Society Definitions -- List of Potential Essential Services

The list below is intended for guidance only. Other services may be essential where they meet the definition above. For those services on the list, whether they were “essential” depends on the circumstances of the child’s case.

1. ALLIED HEALTH
Assessments and screenings by allied health professionals
Services provided by allied health professionals including: (i) occupational therapy; (ii) speech language pathologists; (iii) physiotherapists; iv) audiologists; v) optometrists; vi) special needs education teachers; and vi) health and social infant and early childhood development registered professionals.
Therapy reviewed and monitored by a health care service professional or paraprofessional under the guidance and direction of an allied health professional (e.g. a physiotherapist assistant or nurse providing daily support to implement a program outlined by a physiotherapist or physician)
2. EDUCATION
Assistive educational technologies and electronics including hardware, software, apps and required protective cases as a component of a behavioural or cognitive assessment or individualized learning plan
Psycho-educational assessments
Tutoring Services, educative technologies and learning resources that are part of a cognitive assessment or individualized learning plan
First Nations language lessons if not available within the community and recommended by a professional as part of an individualized learning plan
3. INFRASTRUCTURE
Adaptive Furniture
Enhanced home or transportation-related security and safety equipment/systems, including car seats
4. MEDICAL EQUIPMENT AND SUPPLIES.
Environmental Aids, including lifts and transfer aids and professional installation thereof
Mobility aids, includes standing and positioning aids and wheelchairs
Hospital Beds
Assistive technologies based on individual assessed needs
Medical equipment related to diagnosed illnesses (e.g., percussion vests, oxygen, insulin pumps)
5. MEDICAL TRANSPORTATION
Travel costs (transportation, meals, accommodation) related to access to essential services, supports or products where the lack of transportation prevented access to the recommended service (i.e. remote/isolated, semi-isolated communities, or where travel is otherwise required to access the essential service)
Escort travel where needed to meet the best interests of the child
6. MEDICATIONS/NUTRITIONAL SUPPLEMENTS
Prescription medications
Infant Formula as part of an individualized health assessment and for the interim period while waiting for the individualized health assessment

Nutritional supplements or specialized dietary requirements as part of an individualized health assessment and for the interim period while waiting for the individualized health assessment
7. MENTAL WELLNESS
Assessments
Individual Therapy
Treatment for mental health and/or substance abuse, including residential
8. ORAL HEALTH (EXCLUDING ORTHODONTICS)
Diagnostic services, including examinations and x-rays
Oral surgery services, including general
Restorative services, including caries and crowns
Endodontic services, including root canals
Dental treatment required to restore damage resulting from unmet dental needs
9. RESPITE
Respite care (if recommended by a social worker, a worker with a child and family services agency, or a medical professional)
10. VISION CARE
Examinations and corrective eyewear