

PART C – Decision under Appeal

This is an appeal of a decision issued by the Ministry on January 5, 2012, in which the Ministry denied the Appellant funding for a larger battery for her motorized scooter. The Ministry relied on the Employment and Assistance for Persons with Disabilities Regulation, Schedule C, section 3(1) and (2), which sets out the general requirements for medical equipment and devices, and Schedule C, section 3.4, which applies to scooters specifically. The Ministry found that the OT assessment did not conclude that larger batteries were medically essential to achieve or maintain basic mobility, as required by 3.4(3)(c), or that they were the least expensive appropriate medical equipment or device pursuant to section 3(1)(b)(iii).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C, section 3(1) and (2)

EAPWDR Schedule C, section 3.4

PART E – Summary of Facts

The following information was before the Ministry at the time of reconsideration:

- The Appellant received a scooter from the Ministry in April 2006. The included batteries were assessed at being able to permit travel of 10-15 kms.
- The Appellant requested new batteries as hers were losing their charge when she used the scooter.
- The Ministry approved a replacement set of batteries in July 2011 which were of the same size as her original batteries.
- The Appellant did not purchase these batteries.
- In a letter dated October 24, 2011, BP, an Occupational Therapist (OT) recommended that the Appellant be provided with bigger batteries as her current set does not hold a charge anymore. The OT contended that the bigger batteries would last longer and extend the life of the scooter.
- In October, 2011, the Appellant submitted a request for larger of batteries, which cost \$383.71 more than those approved by the Ministry in July.
- Subsequent to the reconsideration, on February 6, 2012, the Tribunal received a set of photographs from the Appellant, showing the hills on the various routes she must take to church, her friend's house and community services.

At the hearing the Appellant stated that:

- She has gained weight since she originally received her scooter.
- She has a head injury which makes it difficult to communicate and also affects her mobility.
- If she doesn't 'trickle charge' her batteries for eight hours they are prone to losing power.
- She has difficulty walking up hills or using her car and walker.
- Taxis are too expensive and the HandyDart is unreliable.
- Her main need for larger batteries is to get up hills.

When asked whether she uses her scooter in conjunction with regular buses, the Appellant stated that she had not tried this as no one from Transit has returned her call requesting instructions on this procedure.

PART F – Reasons for Panel Decision

The issue before the Panel is whether the decision issued by the Ministry on January 5, 2012 is reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

In the decision, the Ministry denied the Appellant funding for a larger battery for her motorized scooter than it was prepared to authorize. The Ministry relied on the Employment and Assistance for Persons with Disabilities Regulation, Schedule C, section 3(1) and (2), which sets out the general requirements for medical equipment and devices, and Schedule C, section 3.4, which applies to scooters specifically. The Ministry found that the OT assessment did not conclude that larger batteries were medically essential to achieve or maintain basic mobility, as required by 3.4(3)(c), or that they were the least expensive appropriate medical equipment or device pursuant to section 3(1)(b)(iii).

Section 3(1) and (2) of Schedule C, EAPWDR state:

3 (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.11 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, 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.

Section 3.4 (1)-(3) of Schedule C, EAPWDR state:

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 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;
- (c) the minister is satisfied that the item is medically essential to achieve or maintain basic mobility.

The Appellant has not purchased the batteries authorized by the Ministry but requested larger ones. The Appellant argues that larger batteries are necessary for her to maneuver the hills she must transit to get to her regular destinations as they won't wear down as quickly. As well, she has gained weight.

The Ministry argues that a replacement set of batteries have been approved for the Appellant and should meet her needs as they are newer and will perform better than her three-year-old batteries. The evidence from the OT did not establish that larger batteries were medically essential to provide or maintain basic mobility. The replacement batteries provide basic mobility needs as required by the Regulations. As well, the Appellant has access to public transit to accomplish greater distances.

Section 3 (1) (b) (iii) of Schedule C of the EAPWDR requires that "the medical equipment or device is the least expensive appropriate medical equipment or device." Section 3.4 (3)(c), which deals with the provision of scooters, requires that "the minister is satisfied that the item is medically essential to achieve or maintain basic mobility."

While the Panel agrees that larger batteries would be of assistance to the Appellant, it does not find the Ministry unreasonable in approving only a replacement of the existing batteries. By their nature, batteries wear down over time. The Appellant has not installed the replacement batteries to determine whether they meet her basic mobility needs. As well, the Ministry is reasonable to expect that the Appellant utilize available public transit. In the hearing, the Appellant stated that she has not tried this yet as she is awaiting instructions from the transit authority in order to take her scooter on a bus.

In examining the phrase "least expensive appropriate" in section 3(1)(b)(iii), the Panel finds that the Ministry was reasonable in determining that the replacement of the existing batteries meets this definition. They are appropriate to her needs, given that she can access the transit system. Similarly, the Ministry was reasonable to find that the replacement batteries meet the requirement "to achieve or maintain basic mobility." No evidence was provided that the larger batteries were medically essential for mobility purposes.

Accordingly, the Panel finds that this decision was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. The decision is confirmed.