

**PART C – Decision under Appeal**

The decision under appeal is the ministry's reconsideration decision dated February 3, 2012, which confirmed the ministry's previous decision that denied the appellant's request for a Fortress 1700 Scooter. The ministry held that the information provided with the original request and with the request for reconsideration did not establish that the assessment performed by an occupational therapist or physical therapist confirms the medical need for the requested equipment and the ministry was not satisfied that the scooter is medically essential to achieve or maintain basic mobility, as prescribed in the EAPWD Regulation, Schedule C, sections 3(2)(b) and 3.4(3)(c).

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation – EAPWDR - Section 62  
Employment and Assistance for Persons with Disabilities Regulation – EAPWDR - Schedule C, Section 3 and Section 3.4

## PART E – Summary of Facts

Although notified in the prescribed manner on March 05, 2012 of the date and time of the hearing, the ministry was not present at the hearing. Therefore, as allowed by Section 86 (b) of the Employment and Assistance Regulation, the panel proceeded with the hearing in the absence of the ministry.

The evidence before the panel was provided in part in the appeal record and in part through oral evidence submitted at the hearing, which was admitted under Section 22 (4) of the Employment and Assistance Act as being in support of the information and record before the ministry on reconsideration. In the Appeal Record as part of the evidence were copies of the following documents:

- 1) Medical Equipment Request and Justification, dated November 14, 2011, submitted by the appellant's occupational therapist, with a prescription from the appellant's physician, dated October 13, 2011, detailing the appellant's health problems as being immobility from degenerative disc disease and diabetes.
- 2) The occupational therapist's assessment report dated November 16, 2011 indicating that the appellant lives independently in a ground floor apartment and is requesting a scooter for use outside her apartment. The occupational therapist submitted that the appellant suffers from degenerative disc disease, bilateral medial epicondylitis, arthritis of the left hand and diabetes; that the appellant walks with a cane very slowly and cautiously; that due to pain in her right leg, she can walk only approximately 50 feet before experiencing significant and debilitating pain; that during the assessment, the appellant was able to stand for approximately 7 minutes before she needed to quickly sit down; that she needs to sit down on firm, high seats with a straight back; that she walks very gingerly and with a wide base of support; that her transfers are independent, but difficult.

Concerning the Daily Living Activities (DLA), the occupational therapist stated that the appellant is independent, however, reaching and bending to dress her lower leg is very difficult; that she can prepare light meals by taking sitting breaks while cooking; that she has great difficulty getting her groceries and that a friend does this activity for her; that she has extremely limited walking endurance due to her lower back and right leg pain; that she only leaves her apartment to go to medical appointments; that the use of transport such as a taxi is difficult because of the costs; also, that it is difficult to take HandyDART for appointments less than a block away. The occupational therapist submitted that because of her bilateral epicondylitis, the appellant would have great difficulty self-propelling a manual wheelchair; that she is in extreme discomfort when performing any walking; that without transportation the appellant is stuck at home due to significant pain; that even without leaving her apartment the appellant is taking many pain medications including morphine. The occupational therapist submitted that the appellant would make use of the scooter for almost all trips outdoors; that she would be able to use the scooter inside grocery stores, which would help to minimize the aggravation to her right leg. Lastly, the prescribed professional recommended the purchase of a scooter for the appellant that is reliable, comfortable and small enough to park inside her apartment.

- 3) An additional letter from the same occupational therapist dated January 12, 2012, providing more information that was not clearly stated in the original application. The occupational therapist stated that there is no indication that the appellant's conditions will progress any further to the point that she will need a wheelchair within the next five years; that without the scooter the appellant is also mentally affected, since she does not get out of her home, which is depressing and leads to a reliance on anti-depressants; that the pain is too significant to push through and try to go shopping for herself; that a new quote for the scooter was provided under \$3,500.00.
- 4) Two quotations for a Fortress 1700DT 4 Wheel power scooter provided by the vendor, one in the amount of \$3,645.34 and another one in \$3,499.99.

- 5) The appellant's Request for Reconsideration, dated January 18, 2012, with additional information provided by herself stating she has not been able to get around for a year; that the pain is too intense, even with the use of the cane or walker; that these devices "are OK for around the house a bit"; that she needs to rest every time she "walks a bit"; that she does the dishes in three stages or more; that her friends help her with housework; that she cannot go out "at all" and feels very depressed; that it hurts to be alone and not be able to get out and meet friends; that she cannot even "pick up her personal things or get a few groceries"; that even to go to medical appointments she needs someone else to take her. The appellant submitted that she would like to be a bit independent, be able to go out and get some fresh air and do her grocery shopping; that she feels like 'a nobody' and that she will go crazy if she is not able to go out. The appellant added that she has no other financial resource to pay for the scooter.
- 6) The appellant's Notice of Appeal in which she stated that she is not independent with transfers and DLA; that the walker is good for getting around in her small apartment or to go to the mailbox; that if she tries to go further she is in pain and has to sit down often. The appellant added that she cannot get onto a bus or into a car and take her walker with her; that her occupational therapist suggested the walker for inside use and to get the mail; that if she knew she would have to use the walker for going grocery shopping, etc. she would have said to her occupational therapist that she never "could totally get everywhere with a walker", since it would put her "in way too much pain".

Concerning public transportation, the appellant stated it was "crazy to suggest that it is only because of financial stress that she cannot use public transit, etc." since she is not able to get onto a bus up steps; that she doesn't have the strength or the balance even with a walker or a cane; and that she cannot use a walker going up or down stairs either; that she cannot ambulate a walker for any kind of longer distance like grocery shopping; that her doctor suggested a scooter because of the pain she feels when traveling around.

The appellant stated that she suffers from depression and being housebound is not making it better; that she needs a scooter since she cannot get anywhere without one.

At the hearing, the appellant presented an oral submission that covered the following points:

- She told her occupational therapist that she was having difficulties walking with the cane – she was limping and hanging on – even for short distances since the cane is too unstable; that her occupational therapist suggested a walker because of the balance – she would be able to hang on to the sides and go short distances; she also could sit down if she had to wait for anything.
- She was told by her doctor that she needed a scooter to go outside, to be able to do her grocery shopping, to go to her medical appointments.
- She has been unable to go outside for almost two years, only to her mail box.
- It is extremely difficult take a bus for her errands; buses don't have a ramp, but two steps to get on to the vehicle and it is impossible for her to lift the walker since she has no strength; that she also has a problem with balance inside the bus and with the cane she is too unstable.
- If she takes a taxi, at the end of the ride she needs help to get out and she also needs the walker with her because she cannot walk by herself.
- She uses the walker at home and to get the mail; the walker helps her to move around inside the house mainly when she is in pain, even to get to her bed.
- Her arms are not strong and with the walker she can walk leaning her arms over the walker; she cannot lift the walker because she loses her balance.

- She wants a scooter for outside mobility, to go grocery shopping, to her doctor appointments; otherwise, she will need her friends to drive her everywhere she needs to go.
- She goes to her doctor only once a month; that she should go more often, but she doesn't want to call others for help; that she would like to be able to go to the physiotherapist again and also to try to get a part-time job.
- She does some of her banking activities online; she has a friend that takes money from her bank account and pays for her needs; she gave her bank card to this friend for him to be able to do the banking for her.
- Her friends help her with housecleaning, including the laundry and garbage.
- She takes 13 different medications daily (the appellant presented to the panel a list of the medications she takes).

The appellant concluded her submission by reaffirming that she has basic mobility inside the house with the use of the cane and the walker, and that the scooter would be for basic mobility outside her house; that she knows she will never be free of the pain, and that her back problem will never get better; that her isolation inside the house makes her depressed; that she wants to be independent again, not having to rely on her friends to help her with her basic mobility, and she believes a power scooter, as prescribed by her physician and in the occupational therapist's assessment, will provide this independence to her.

The witness, who is the appellant's occupational therapist, stated that she was the one who suggested the appellant request a walker because she was having great difficulties with her mobility inside the house; that the walker helps the appellant's mobility for short distances and also enables the appellant to walk inside the house more comfortably, get her mail and even visit some friends inside the building; the walker allows her to sit and rest while performing these short trips.

The witness informed the panel that it was the appellant's physician who suggested that she request a scooter for her basic mobility for long distances; that the appellant is unable to walk for more than 30/50 feet; that it would be too painful for her to walk longer, even with the help of the walker; that the appellant cannot even go dentist who is in the same block where she lives. The witness submitted that she has helped other people to apply for a scooter before, but that she never provided evidence before the EAAT panel like she is doing for the appellant and that it is because she thinks the appellant is in real need of a scooter; that the appellant has severe back problems, which affect her right leg, and she also suffers from problems with both elbows, circumstances that seriously interfere with her mobility and balance.

In the Reconsideration Decision the ministry stated that it funded a 4-wheeled walker for the appellant in December/2011 to satisfy her basic mobility and that the occupational therapist did not indicate in her assessment that the option of this device was considered and it would not meet the appellant's basic mobility needs.

**PART F – Reasons for Panel Decision**

The issue to be decided in this case is the reasonableness of the ministry's reconsideration decision, which found that the Appellant is not eligible for a personal motorized mobility device (Fortress 1700 Scooter) because an occupational or physical therapist did not perform an assessment that confirmed the appellant's medical need for the equipment requested; also, the ministry is not satisfied that the equipment is medically essential for her to achieve or maintain basic mobility, as prescribed in the EAPWD Regulation, Schedule C, sections 3(2)(b) and 3.4(3)(c).

Employment and Assistance for Persons with Disabilities Regulation, Section 62, provides:

**General health supplements**

**62 (1)** *Subject to subsections (1.1) and (1.2), 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 family unit if the health supplement is provided to or for a person in the family unit who is*

*(a) a recipient of disability assistance*

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Employment and Assistance for Persons with Disabilities Regulation – Schedule C provides:

**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 3.11 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.*

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**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 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.*

*(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.*

The ministry's position is that the appellant did not meet the criteria described in Sections 3(2)(b) and 3.4(3)(c) of the above legislation. The ministry stated that the information provided with the original application and the request for reconsideration did not establish that an occupational or physical therapist had performed an assessment that confirmed the appellant's need for the equipment requested; also, the ministry is not satisfied that the scooter is medically essential to achieve or maintain basic mobility.

The ministry noted that the assessment report indicates that the appellant lives independently on her ground floor apartment; that she is able to walk with a cane and that she is independent with transfers and with her daily living activities. The ministry submitted that the reasons provided by the occupational therapist – financial constraints – to justify the appellant's difficulties in making use of public transit, taxi or HandyDART are not limitations resulting from medical conditions. The ministry pointed out that a 4-wheeled walker was funded for the appellant in December/2011 to satisfy her basic mobility needs, but that the occupational therapist did not indicate in her assessment that the option of the funded walker was considered and it would not meet her basic mobility needs.

The ministry submitted that the occupational therapist's statement that without the scooter the appellant would be mentally affected - she gets depressed as a result of not being able to go out of her house – does not establish the appellant's need for a scooter because the occupational therapist did not explain why the appellant cannot make use of the 4-wheeled walker for her basic mobility. Lastly, the ministry pointed out that the reasons the appellant provided for the use of the scooter – to be able to get fresh air, go to the park, store or library – do not constitute a medical need for the scooter.

The appellant submitted that her medical condition – degenerative disc disease, bilateral medial epicondylitis, arthritis of the left hand and diabetes, aggravated by excruciating pain and balance problems – makes her physical mobility very difficult and painful even with the use of the cane or the 4-wheeled walker; that she needs to rest every time she walks short distances; that she uses the cane and the walker for her mobility inside her apartment and for short distances such as getting the mail.

The appellant stated that she has not been able to get around for almost two years, since she is unable to walk more than 50 feet; that her friends help her with grocery shopping, getting prescriptions, housecleaning, cooking, banking and driving her to her medical appointments. The appellant added that she cannot get up the steps and onto a bus or into a car and take her walker with her; that she doesn't have the strength or the balance even with a walker or a cane to use public transportation; that she cannot make use of the HandyDART services for appointments less than a block away; and that she cannot use a walker going up or down stairs; that she cannot ambulate a walker for longer distances such as for grocery shopping; that her doctor suggested a scooter because of the pain she feels when traveling around. Finally, the appellant stated that she suffers from depression and being housebound is not making this situation any better; that she needs a scooter because she cannot get anywhere without one.

Regarding the requirement prescribed in Section 3(2)(b) of the EAPWD Regulation – an assessment by an occupational or physical therapist confirming the medical need for the medical equipment or device – the panel finds that the need for the device in question was clearly confirmed by the prescribed professional in the assessment submitted as part of the appellant's application. The occupational therapist affirmed in the assessment dated November 16, 2011 that the appellant is in extreme discomfort and pain when performing any walking; that she does not even attempt to go grocery shopping because of pain and needs the help of friends to do this activity for her; that she is unable to use public transportation; that she is stuck inside her house due to significant pain when walking; that she cannot walk more than 50 feet before she is experiencing significant and debilitating pain. The occupational therapist recommended that the appellant be supplied with a Fortress 1700 3 Wheeled Scooter, set up to meet her basic mobility needs in the community and to provide comfort and safety when ambulating outside her home.

With respect to the 4-wheeled walker the ministry funded for the appellant in December/2011, at the hearing the occupational therapist explained that that device was requested to help the appellant with her mobility inside the house and for short distances like getting the mail. The occupational therapist affirmed that the scooter was necessary to provide the appellant with basic mobility for longer distances since it is too painful for the appellant to walk more than 30/50 feet even with the help of the walker.

Therefore, the panel finds that the ministry's determination that an assessment by an occupational therapist or physical therapist does not confirm the medical need for the requested Fortress 1700 scooter, as required by Section 3(2)(b) of the EAPWD Regulation, was unreasonable.

With respect to the requirement prescribed in Section 3.4(3)(c) of the EAPWD Regulation - the requested equipment has to be medically essential for basic mobility - the panel finds that the evidence in the appeal record and at the hearing strongly demonstrates that the appellant's medical condition affects significantly her ability to walk and move outside her house, even for short distances that would prove to be no problem for a normally fit individual, and that the ministry unreasonably determined that the criterion was not met.

The panel reached this conclusion because the evidence in the Medical Equipment Request and Justification, which includes the information provided by the appellant's physician and the assessments presented by the occupational therapist, as well as her statement as a witness for the appellant at the hearing, amply demonstrate that the appellant suffers from a combination of medical problems that significantly limits her basic mobility.

It is demonstrated in the assessment provided by an occupational therapist that the appellant's pace of walking is slow and painful and that she proceeds gingerly, and that she can walk only approximately 50 feet - "not even far enough to her mailbox" - before she is experiencing significant and debilitating leg pain; that she has extremely limited walking endurance due to her low back and right leg pain; that she needs to sit down frequently and that she needs to sit on firm, high seats with a straight back; that her transfers, although independent, are difficult.

As a witness, the occupational therapist explained to the panel that she suggested and helped the appellant to request a 4-wheeled walker; that this device helps the appellant with her mobility for short distances such as navigating inside her house, getting her mail or visiting friends inside her building; that the walker allows the appellant to sit and rest while performing these short trips. The occupational therapist informed the panel that a scooter would help the appellant with her basic mobility for longer distances, since it would be too painful for her to walk long distances, even with the help of the walker; that the appellant has severe back problems, which affect her right leg, and also suffers from a medical condition in both elbows, circumstances that seriously interfere with her mobility and balance.

For her own part, the appellant provided ample details of her mobility struggles and their consequences in terms of pain, discomfort and limitations to her ability to attend independently to her shopping, medical and social needs. She drew attention to the fact that she lives alone and that she has not been able to go out for almost two years, circumstances that are making her seriously depressed; that she can no longer do her own grocery shopping because of the pain involved in trying to walk, even using her walker; that she needs the help of her friends to drive her to any medical appointment she needs to go; that it is extremely difficult to take a bus to do her errands since buses don't have a ramp, but rather two steps that she needs to climb in order to board, and further, it is impossible for her to lift the walker since she has no strength; that she also has a problem with balance inside the bus and she is too unstable with the cane; that even if she takes a taxi, at the end of the ride she needs help to get out of the vehicle and she also needs the walker with her because she cannot walk by herself. The panel finds that her testimony was strongly supported by the therapist's report and testimony.

The panel finds that the evidence demonstrated that the appellant's medical impairment directly and significantly restricts her mobility both within her home and outdoors; that the appellant is able to navigate inside her house and for short distances with the aid of a cane and the 4-wheeled walker, but that the same cannot be said with respect to her mobility for distances longer than 50 feet.

Therefore, the panel finds that the evidence demonstrated that the provision of a power scooter, as requested by the appellant and as prescribed and endorsed by medical practitioners on her behalf, will provide assistance necessary for her basic mobility. Consequently, the panel finds that the ministry's conclusion that a scooter was not medically essential for the appellant to achieve or maintain basic mobility, as required by Section 3.4(3)(c), was unreasonable.

Given all the evidence and the above considerations, the panel finds that the ministry's decision to deny the appellant's request for medical equipment - a power scooter - was not a reasonable application of the applicable enactment in the circumstances of the appellant's case, and under section 24(1)(a) and (b) and 24(2)(b) of the Employment Assistance Act, the panel rescinds the decision.