

PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision of 14 February 2012 which denied the appellant's request for a scooter because the ministry determined that not all of the criteria set out in sections 3 and 3.4 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation had been met.

Specifically, the ministry found that the following criteria had not been met:

1. the minister's request under section 3(2)(b) for an assessment by an occupational therapist [OT] or physical therapist [PT] confirming the medical need for the scooter;
2. the requirement under section 3.4(3)(a) that an assessment by an OT confirming that it is unlikely that the appellant will have a medical need for a wheelchair during the next 5 years; and
3. the minister is satisfied that the scooter is medically essential to achieve or maintain basic mobility, as required under section 3.4(3)(c).

The ministry did find that the application had met the criteria under section 3(2) (a) – a prescription submitted by a medical practitioner for the scooter, and under section 3.4(3) (b) – the total cost of the requested scooter does not exceed \$3500.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, sections 3 and 3.4

PART E – Summary of Facts

The ministry failed to appear at the hearing at the scheduled time and date. After verifying that the ministry had received notification of the hearing at least 2 business days before the hearing date by examining the Notice of Hearing fax transmit confirmation report, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration included the following:

- A prescription from a medical practitioner dated 02 September 2011 for the appellant for a mechanized scooter, “due to osteoarthritis of lumbar spine.”
- A letter from a registered OT dated 07 October 2011. The letter reads:
 “I am an occupational therapist that has been involved in the care for [the appellant]. This client has osteoarthritis, degenerated disc disease and chronic obstructive pulmonary disease.
 Currently, this resident ambulates short distances with the aid of a cane. Due to her lower back pain issues and shortness of breath issues, the client only has walking tolerance of 5 minutes before she needs to take a break. Her husband performs all household tasks and productivity tasks.
 The writer performed a trial of a manual wheelchair on October 4th, 2011; this trial was unsuccessful. The client has poor extension in her shoulders and complained of pain during propulsion of the wheelchair. Due to her shortness of breath issues, this resident would not be able to propel a wheelchair independently and would require assistance from her husband and or/a caregiver.
 The writer recommends this client receive a scooter to allow her independent long-distance ambulation without aggravating pain symptoms due to osteoarthritis as well as her shortness of breath issues.
 The writer performed a trial of a Scooter on October 6th 2011; this trial was successful. The client was able to perform all controls independently, the client had appropriate head control, visual-spatial abilities and was able to follow the rules of the road.
 A scooter is the best long-term solution for this client to allow independent long-distance ambulation without aggravating pain symptoms and shortness of breath issues.”
- A quote from a health care product provider for a 4-wheel scooter w/charger for \$3499.86
- The appellant’s Request for Reconsideration dated 29 January 2012. The appellant writes:
 “I am writing this appeal to your denial letter concerning my motorized wheelchair application. Your “august committee” has received documentation from my specialists and general practitioner concerning my myriad medical disabilities. You have also received the supporting letter from the occupational therapist who attended my place. He strongly supported my application. I need the chair in order to function. I feel that I have met all the criteria that is required.”
- The appellant has PWD designation and is in receipt of disability assistance.

In her Notice of Appeal dated 22 February 2012, the appellant writes:

“People where I live have seen me use a cane to walk with to go to get the mail; shower

and laundry are on the unlit road that has potholes in that I walk on everyday, and I've even fallen in these potholes. I have to stop every few steps because of my breathing & my legs really hurt."

At the hearing, the appellant testified she is in her early sixties. She stated she has osteoarthritis, degenerated disc disease and chronic obstructive pulmonary disease. She lives with her husband in a trailer in a gated trailer park. The gate and the park's shower and laundry facilities are 500 feet from her trailer along an unlit gravel road with many potholes. She showed the panel images of this situation on her digital camera display. To access the HandyDART service to go shopping for groceries or to go to medical appointments, she needs to walk the 500 feet to the gate and open it before getting on the bus. She stated that it is hard for her walking around the grocery store, finding it difficult to reach for items and needs to use the shopping cart for support. She stated that she has experienced several falls during these outings. She described how she has fallen several times both in the store and on the 500 foot road between her home and the gate. She said she also has mobility problems inside the home, having to grab onto furniture to get around, She stated she takes oxycontin for her pain, as well as a lot of other medication. She said that her condition is deteriorating and does not think she will be very mobile in 5 years.

The appellant's husband testified that he has PWD designation. He suffers from sciatica and, contrary to the impression in the OT's letter, he cannot be much help around the house. He said that after helping out for 10 minutes, his back pain is so bad he has to lie down. He stated his condition is worsening too and he doubts he will be walking in 5 years. He indicated that while there is a shower in the home, the hot water runs out quickly, so it's better for them to use the community shower facilities by the gate.

The appellant's advocate testified as a neighbour of the appellant. He stated that he had noticed significant deterioration in the condition of both the appellant and her husband over the past 5 years that he had known them. He said that she cannot even get up for a glass of water without severe pain. He stated that he thought that they may need some form of home care soon. Now they are both essentially housebound. He said that her neighbours had become so concerned for them that that the community had gotten together to install a ramp in anticipation of her obtaining a scooter. He said it had been a drain on their finances to have to pay for an OT to come and do his assessment. He acknowledged that the OT could have clarified a lot more. He stated that she was applying for a scooter because of the \$3500 limit he understood to apply, and that a motorized wheelchair would cost much more; he also had doubts about the stability of a motorized wheelchair.

The panel finds that the new information provided by the appellant, her husband, and her advocate/ neighbour is in support of the information and records that were before the ministry at the time of reconsideration. The information about the appellant's residential situation, her husband's condition, and her own deteriorating condition and her experience with it, clarifies the appellant's statement in her Request for Reconsideration that she needs the scooter in order to function. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

PART F – Reasons for Panel Decision

The issue under appeal is whether the decision to deny the appellant's request for a scooter, because the ministry determined that not all of the criteria set out in sections 3 and 3.4 of Schedule C of the EAPWDR had been met, was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

More specifically, the issues are whether the ministry reasonably determined that the following had not been met:

1. the minister's request under section 3(2)(b) for an assessment by an occupational therapist [OT] or physical therapist [PT] confirming the medical need for the scooter;
2. the requirement under section 3.4(3)(a) that an assessment by an OT confirming that it unlikely that the appellant will have a medical need for a wheelchair during the next 5 years; and
3. the minister is satisfied that the scooter is medically essential to achieve or maintain basic mobility, as required under section 3.4(3)(c).

The ministry did find that the application had met the criteria under section 3(2) (a) – a prescription submitted by a medical practitioner for the scooter, and under section 3.4(3) (b) – the total cost of the requested scooter does not exceed \$3500.

The relevant legislation is set out in the EAPWDR, Schedule C: The parts at issue are highlighted in **bold**.

Medical equipment and devices

3

(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.**

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.

OT confirmation of medical need.

As to whether an OT has confirmed the medical need for a scooter, the ministry noted that the OT reported her medical conditions - osteoarthritis, degenerated disc disease and chronic obstructive pulmonary disease – and that she can ambulate short distances with the use of a cane, with a walking tolerance of 5 minutes before a break. The ministry also noted that no information is provided regarding her residential situation and that the OT reported that her husband performs all household and productivity tasks. The ministry also noted that the OT recommends the scooter to allow the appellant independent long distance ambulation. The position of the ministry is that there is no indication that she needs to travel long distances to perform daily living activities such as attending medical appointments or daily shopping, or that once she uses public transit she does not have sufficient mobility to ambulate upon arrival with the use of her cane. Also the use of a wheeled walker was not considered by the OT. For these reasons, the ministry was not satisfied that the OT's assessment confirmed the medical need for a scooter.

The position of the appellant is that the scooter was not only prescribed by her physician but also recommended by an OT, and that should be sufficient to satisfy the ministry of her need for a scooter.

The panel has carefully reviewed the OT's assessment. It does list her medical conditions and recommends a scooter to allow her independent long-distance ambulation without aggravating pain symptoms due to osteoarthritis as well as her shortness of breath issues. However the panel notes that this recommendation is not supported by a detailed analysis of the medical benefits of a scooter, particularly in the context of her residential situation, which is not described: the severity of the pain and shortness of breath issues are that would be alleviated, and how they are currently being treated; how frequently the scooter would be used for what types of trips; safety concerns with and without a scooter; her mobility not only outside the home but inside as well; and consideration of a wider range of options from a 4 wheel walker to a motorized wheelchair. The panel considers it is not unreasonable for the ministry to request such an analysis to support a confirmation of medical need, and without such an analysis the panel finds that the ministry was reasonable in determining that the OT's assessment did not meet this criterion.

OT confirmation that wheelchair need unlikely.

With respect to the criterion that an OT has confirmed that it is unlikely that the appellant will have a medical need for a wheelchair during the next five years, the position of the ministry is that an OT has not provided such confirmation.

The position of the appellant is that her condition is deteriorating, but she and her advocate indicated that they did not realize that the regulatory provision relating to a future need for a wheelchair refers to wheelchairs generally, including the need for a motorized version.

The panel finds that, as there is no confirmation on record that an OT has provided confirmation that

it is unlikely that the appellant will have a medical need for a wheelchair during the next five years, the ministry reasonably determined that the appellant did not meet this criterion.

Scooter medically essential for basic mobility.

With respect to whether it is been established that the scooter is medically essential to achieve or maintain basic mobility, the position of the ministry at reconsideration was that as an OT had not confirmed the medical need for a scooter, there was insufficient information to determine that this criterion had been met. With HandyDART available, there was no evidence to suggest she could not ambulate safely at her shopping and appointment destinations.

The position of the appellant is that the physician's prescription and the OT's recommendation demonstrate that there is a medical need for a scooter, as her condition is deteriorating to the point where she can no longer get out and go to the store or to medical appointments without assistance. Even going to the gate area for showering or laundry is a trial and even unsafe with a risk of falling.

The evidence at reconsideration was that the appellant has a walking tolerance of only 5 minutes before stopping to take a rest, and that any walking is accompanied by shortness of breath and pain. The additional evidence shows that, despite having HandyDART available to take her to shopping or appointment destinations, she needs to walk 500 feet over a gravel road with many potholes, and where she has a history of falls, to get to the bus. On arrival, she has the above-mentioned walking tolerance of only 5 minutes before needing a break, with a history of falls in supermarkets as well. She must then travel the same 500 feet with purchases on return. She must also take the 500 feet trip for such daily living activities as showering and laundry. For these reasons, the panel finds that the ministry was not reasonable in determining that a scooter was not medically essential to achieve basic mobility.

Therefore the panel finds that the ministry decision that the appellant is ineligible for a scooter because she did not meet all the requirements in sections 3 and 3.4 of Schedule C of the EAPWDR is a reasonable application of the legislation in the circumstances of the appellant. The panel thus confirms the ministry decision.