

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 21, 2012 which denied the appellant's request for a supplement to cover the cost of a Scooter. The ministry found that the following requirements of Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met:

- the scooter is not the least expensive appropriate medical equipment or device, pursuant to Section 3(1)(b)(iii);
- the assessment by an occupational therapist does not confirm a medical need for the scooter, pursuant to Section 3(2)(b); and,
- the ministry is not satisfied that the scooter is medically essential to achieve or maintain basic mobility, pursuant to Section 3.4(3)(c).

PART D – Relevant Legislation

Employment and Persons with Disabilities Regulation (EAPWDR), Schedule C, Sections 3 and 3.4

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Quote from a health product company dated December 26, 2011 for a Shoprider Explorer 4 Wheel Scooter in the total amount of \$3,415.50;
- 2) Letter dated December 30, 2011 from an occupational therapist (OT) to the ministry, which states in part that the appellant lives in a trailer park with his friend a few kilometers from the nearest town, he has a brain tumour which was excised in July 2011 but has had a marked effect on his mobility, balance and vision. At present, the appellant uses a 4 Wheeled Walker (4WW) for indoor mobility assistance. The appellant has decreased standing balance both static and dynamic during mobility, he reports no falls, he has decreased strength in both upper and lower limbs since his surgery. The appellant's GP reports blindness as a medical condition and he recently underwent a visual assessment by a physician who was contacted for an opinion on the appellant's visual deficits and whether he should drive a scooter, but as yet have not received a report. The appellant manages to mobilize approximately 100 yards using his 4WW however the terrain around the trailer park is both rough and sloped which is unsafe for him to mobilize on due to his decreased balance, mobility and strength. The appellant needs to collect his mail which is at the entrance to the trailer park, approximately 200 yards from his trailer. The appellant is requesting a scooter to enable mail collection, to get around the trailer park for social interaction, to access his GP, pharmacy, and grocery shopping. The appellant would rely on his friend who has a vehicle suitable to transport the scooter from the trailer park to town for the appellant to utilize. A scooter trial was completed on December 28, 2011 and the appellant was able to demonstrate safe and independent use of the scooter; no visual deficits were noted during the assessment and he was able to avoid or drive around obstacles with no intervention/ prompting from the therapist;
- 3) Medical Equipment Request and Justification dated January 5, 2012 which states in part that the appellant has blindness and a pineal gland/ brain tumor and that the medical equipment recommended is a motorized scooter;
- 4) Medical Equipment Request Tracking Sheet with notes dated February 1, 2012 which state in part that there are no previous equipment requests, removal of brain tumor in July 2011 has resulted in a reduction of appellant's mobility, balance, vision. OT reports decreased balance in static/dynamic mobility but no falls, able to mobilize 100 yards with 4WW, OT states terrain in trailer park where appellant resides is rough and sloped making it unsafe. OT states appellant underwent a visual assessment by a physician and physician was asked for an opinion on whether appellant should drive a scooter and no report/opinion was provided to OT. Left message with OT re report on blindness, will ask if manual wheelchair option. OT returned call, did not received report from physician, OT stated appellant passed trial and had no problem navigating obstacles. Appellant has a caregiver who drives him to appointments, assists with ADL's; request appears to be for transportation;
- 5) Letter dated February 1, 2012 from the ministry to the appellant denying his request for a scooter;
- 6) Telephone Log dated March 7, 2012 for a conversation between the ministry and the OT who provided the letter dated December 30, 2011 to answer questions, namely: what effect has the appellant's brain tumour had on his mobility, balance and vision? The appellant has problems with mobility as he lives in a trailer park that is very steep and gravel is used on the roads, he must walk with someone in order to get around the park and to get his mail as he has balance problems and could fall. Why is the scooter recommended over a wheelchair or the 4WW? The appellant is not able to independently mobilize without a scooter, he has decreased strength in his arms and legs that make the use of a wheelchair inappropriate. Where was the assessment conducted? At the appellant's trailer park. How is the appellant currently getting to appointments? The appellant has a friend who takes him in her truck into town for his appointments, in town he can use the 4WW, he is not able to drive the scooter into town because of the distance which requires travel on a major highway. Does the appellant have a caregiver? The appellant has a friend who takes him into town for his appointments, he can independently manage the majority of his ADL's in his trailer but will still need to get into town for appointments. Question about the appellant's vision. No reports have been forwarded to the OT from the physician however the OT indicates that in his assessment the appellant was able to independently manage the scooter. Although he is not an eye doctor, he did not assess the appellant with a vision impediment that would negatively affect his ability to

manage a scooter. Is the appellant unlikely to have a medical need for a wheelchair in 5 years? It is unlikely that the appellant would require a wheelchair for 5 years, the tumour was totally excised but the OT does not know if the tumour could grow back;

- 7) Fax dated March 8, 2012 from the appellant's physician to the ministry in response to a request for information from the physician regarding the visual assessment with the handwritten note "...will forward report when received, however appointment pending as of March 9, 2012;"
- 8) Letter dated March 9, 2012 from the appellant's physician to the ministry which states in part that in lieu of the request for the appellant to be referred to the physician for a visual assessment, of which this is now pending, the appellant's physician will wait for the physician's report prior to filling out the ministry's request;
- 9) Fax dated March 14, 2012 from the OT to the ministry which states in part that during the 'on road' assessment the appellant demonstrated no obvious visual deficits, he negotiated obstacles independently and was observed to undertake road crossing at appropriate designated places, he was seen to observe the current road situation in a safe manner prior to crossing the road. This statement is purely observational assessment and does not constitute an assessment of vision that could be completed by an optometrist; and,
- 10) Request for Reconsideration- Reasons.

The appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

In his Request for Reconsideration, the appellant states that he is unable to walk more than 100 feet, that he had a brain tumour which has now been removed but his balance and eyesight have been affected. The appellant states that he has fallen several times due to dizziness caused by his brain tumour and he is requesting a scooter to assist with daily living tasks. In his Notice of Appeal, the appellant adds that he was informed by his doctor that he was refused because she indicated that he is blind but he is not blind, that he is followed by an ophthalmologist who is forwarding a document stating he is not blind and can use a scooter as he does shopping at different stores.

The ministry's evidence included that in the appellant's Medical Equipment and Justification application, the appellant's physician diagnosed him with a brain tumour, which was excised in July 2011, and blindness. The appellant's OT provided a Functional Assessment and Equipment Recommendation on December 30, 2011. The OT contacted the physician for his opinion on the appellant's visual deficits and whether the appellant should drive a scooter, but as of December 30, 2011 the OT had not received a report. A scooter trial was completed on December 28, 2011 by the OT where the appellant was able to demonstrate the safe and independent use of the scooter and no visual deficits were noted. The appellant was assessed as requiring a Shoprider 4 Wheel mobility scooter. A telephone call was made to the OT on March 7, 2012 and the OT commented that in his assessment the appellant was able to independently manage the scooter. The ministry requires confirmation from a medical practitioner that the blindness that was diagnosed by the appellant's physician would not negatively affect the appellant's ability to manage a scooter. A fax was sent to the appellant's physician on March 8, 2012 asking her to confirm that the appellant is medically fit to operate a scooter considering that she has diagnosed blindness. In a return fax, the appellant's physician indicates that she will forward the visual assessment when it is received in her office. The appellant's appointment for a visual assessment was still pending and no definite date has been confirmed. The ministry did not request a visual assessment. There has been no information forwarded to the ministry that confirms that although the appellant has been diagnosed with blindness, he is medically able to manage a scooter.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of a scooter because:

- the scooter is not the least expensive appropriate medical equipment or device;
- the assessment by an OT does not confirm a medical need for the scooter; and,
- the ministry is not satisfied that the scooter is medically essential to achieve or maintain basic mobility, as required by Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Pursuant to Section 62 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the applicant must be a recipient of disability assistance, or be a dependent of a person in receipt of disability assistance in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has not disputed that the requirement of Section 62 has been met in that the appellant has been approved as a recipient of disability assistance.

At issue is whether the requested item, namely a Shoprider Explorer 4 Wheel Scooter, is an eligible item under Schedule C of the EAPWDR, including:

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. ...

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. ...

The ministry's position is that the appellant is eligible to receive health supplements under Section 62 of the EAPWDR, but the appellant's request for a supplement to cover the cost of a Shoprider Explorer 4 Wheel Scooter does not meet all of the applicable criteria of Schedule C of the EAPWDR. Firstly, the ministry argues that the requirements in Section 3(1)(b)(iii) have not been met as the scooter is not the least expensive appropriate medical equipment or device. The ministry's position is that due to the appellant's diagnosis of blindness, there is not enough information from the appellant's OT or physician to determine if the assessment provided by the appellant's OT confirms that a scooter is the least expensive 'appropriate' medical equipment or device. The appellant argues that the requirements of the section have been met by the information provided to the ministry by his OT and physician and that he is not blind.

The panel finds that the appellant's OT provided information regarding the appropriateness of the scooter for the appellant in a written report dated December 30, 2011, in a telephone call with the ministry on March 7, 2012, and again in a written statement dated March 14, 2012 and that the appellant's physician recommended a motorized scooter for the appellant in the Medical Equipment Request and Justification dated January 5, 2012 where she also diagnosed the appellant with blindness. The OT reported on the appellant's trial of a scooter at the trailer park and stated that the appellant was able to demonstrate safe and independent use of the scooter, no visual deficits were noted during the assessment and he was able to avoid or drive around obstacles with no intervention/ prompting from the therapist. The OT further stated that, although he is not an eye doctor, he did not assess the appellant with a vision impediment that would negatively affect his ability to manage a scooter. The OT also stated that during the 'on road' assessment of the scooter, the appellant was observed to undertake road crossing at the appropriate designated places, he was seen to observe the current road situation in a safe manner prior to crossing the road, and this is based on an observational assessment and does not constitute an assessment of vision that could be completed by an optometrist. The panel finds that the OT assessed the appellant's ability to manoeuvre the scooter safely and recommended the scooter as an appropriate piece of equipment for the appellant. The panel finds that the ministry's conclusion that there is not sufficient information to determine that the scooter is the least expensive 'appropriate' medical equipment or device was not reasonable.

The ministry argues that the requirements in Section 3(2)(b) have not been met as the assessment by the OT does not confirm the medical need for the medical equipment. The ministry argues that at the present time there is not enough information from the appellant's physician or OT to determine if the affects of his blindness impact his ability to safely manage a scooter. The appellant argues that the requirements of the section have been met by the information provided to the ministry by his OT and physician, that he is unable to walk more than 100 feet, that he had a brain tumour which has now been removed but his balance and eyesight have been affected.

The panel finds that the assessment by the OT identifies impacts from the appellant's medical condition, being the pineal gland/ brain tumor that was excised, that dictate a medical need for a motorized scooter in particular. The panel finds that, as part of this analysis, the OT considered the need for a scooter in relation to other types of equipment that may be available to address the restrictions to functioning in order to show that the scooter addresses particular restrictions that cannot be addressed by other equipment. In his report dated December 30, 2011, the OT stated that the appellant presently uses a 4WW for indoor mobility assistance, and that the he has decreased standing balance both static and dynamic during mobility and he has decreased strength in both upper and lower limbs since his surgery. The OT reported that the appellant manages to mobilize approximately 100 yards using his 4WW but the terrain around the trailer park is both rough and sloped which is unsafe for him to mobilize on due to his decreased balance, mobility and strength. In the telephone log dated March 7, 2012, the OT was specifically asked why the scooter was recommended over a

wheelchair or the 4WW and he stated that the appellant is not able to independently mobilize without a scooter as he has decreased strength in his arms and legs that make the use of a wheelchair inappropriate. When questioned by the ministry about the appellant's vision in view of the physician's diagnosis of blindness, the OT provided an assessment that the appellant is currently able to independently manage a scooter. Although the ministry argues that there is not enough information from the appellant's physician or OT to determine if the affects of his blindness impact his ability to safely manage a scooter, the panel finds that the sub-section does not require information from the appellant's physician and the information from the OT addresses the medical need for the scooter as well as the appellant's ability to safely use the scooter. Therefore, the panel finds that the ministry's determination that the assessment by the OT has not confirmed the medical need for the scooter, pursuant to Section 3(2)(b) of Schedule C of the EAPWDR, was unreasonable.

The ministry's position is that the requirements in Section 3.4(3)(c) have not been met as the ministry is not satisfied that the scooter is medically essential to achieve or maintain basic mobility. The ministry argues that at the present time the 4WW allows the appellant to achieve or maintain his basic mobility. The ministry also argues that it is unclear due to the appellant's diagnosed blindness, his problems with balance and his reported falls, that a scooter would allow the appellant to achieve or maintain his basic mobility. The ministry points out that the information from the OT indicates that a scooter would be used to collect the appellant's mail and to travel around his trailer park for social interaction due to the rough terrain rather than as an essential medical item to achieve or maintain the appellant's basic mobility. The appellant argues that the requirements of the section have been met by the information provided to the ministry by his OT and physician, that he has fallen several times due to dizziness caused by his brain tumour and he is requesting a scooter to assist with daily living tasks.

The panel finds that the OT has identified a number of restrictions as a result of the appellant's surgery to remove a brain tumor and that it has had a marked effect on his mobility, balance and vision. The OT reported that the appellant has decreased standing balance both static and dynamic during mobility and has decreased strength in both upper and lower limbs since his surgery. The panel finds that the evidence shows that the appellant has a need for equipment due to his balance, strength and mobility impairment to be able to safely perform his daily activities. In terms of identifying a scooter as medically essential to achieve or maintain basic mobility, the panel finds that an assessment of a variety of types of equipment is relevant and necessary to this analysis, in order to specify the equipment features that address the appellant's particular restrictions and provides for "basic" mobility along the range of various levels of mobility (with 'no mobility' at one extreme and 'perfect mobility' at the other).

In the report dated December 30, 2011, the OT reports that the appellant currently uses a 4WW for indoor mobility assistance and that the appellant manages to mobilize approximately 100 yards using his 4WW. However, the OT indicated that the terrain around the appellant's residence in the trailer park is both rough and sloped which is unsafe for him to mobilize on due to his decreased balance, mobility and strength. The OT reported that the appellant's mail is delivered at the entrance to the trailer park, which is approximately 200 yards from the appellant's trailer, and a scooter would allow the appellant to collect his mail and to travel around the trailer park for social interaction. The OT confirmed with the ministry on March 7, 2012 that the appellant must currently walk with someone in order to get around the park and to get his mail because he has balance problems and could fall. The appellant lives a few kilometers from the nearest town and the OT confirmed that the appellant would not be able to drive the scooter into town because of the distance which requires travel on a major highway but he has a friend with a vehicle who could transport the scooter into town to allow him to attend to appointments. The OT indicated that the appellant can use his 4WW in town, and the panel finds that this would be for distances up to 100 yards. The panel finds that the OT has confirmed that the appellant can independently manage a majority of his ADL's in his trailer with his 4WW but that he cannot get around outside his residence to collect his mail or to socialize with his neighbours, and that he can only mobilize up to 100 yards in the community with his 4WW. The OT also clarified on March 7, 2012 that the appellant is not able to independently mobilize without a scooter and that he has decreased strength in his arms and legs that make the use of a wheelchair inappropriate. Therefore, the panel finds that the ministry's

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determination that the evidence does not establish that the scooter is medically essential to achieve or maintain basic mobility, pursuant to Section 3.4(3)(c) of Schedule C of the EAPWDR, was unreasonable.

In conclusion, the panel finds that the ministry's decision to deny the request for a scooter as not meeting the legislated criteria of Schedule C, Sections 3(1)(b)(iii), 3(2)(b) and 3.4(3)(c) of the EAPWDR, was not reasonably supported by the evidence and rescinds the decision. Therefore, the ministry's decision is overturned in favour of the appellant.