

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (“the ministry”) dated April 5, 2012 which held that the appellant did not meet all of the eligibility criteria under s. 3 and 3.4 of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*, for the provision of a scooter. The ministry determined that the requirement that an assessment by an occupational therapist (OT) or physical therapist (PT) confirm the medical need for the scooter was not met as required under s. 3(2)(b) of Schedule C. Additionally, the minister was not satisfied that the requested scooter is medically essential to achieve or maintain basic mobility as required under s. 3.4(3)(c) of Schedule C.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The ministry was not in attendance at the hearing. After confirming that the ministry was notified, the hearing proceeded pursuant to s. 86(b) of the *Employment and Assistance Regulation*.

The evidence relevant to the issue under appeal which was before the ministry at reconsideration comprised:

- 1) A Medical Equipment Request and Justification (MERJ) form with Section 2 completed by a medical practitioner on September 27, 2011. The physician recommends a scooter, describes the appellant's medical condition as chronic pain in her feet, and comments "She has difficulty walking to the store to do her shopping." Section 3 was completed on January 13, 2012 by an OT with an Occupational Therapy Report attached providing the following information:
 - Living Situation: The appellant lives alone in a 2-level home which is below street level with 21 stairs down. The bathroom is narrow and would not accommodate a wheelchair. The bathtub is quite deep. No adaptive equipment in the home was noted during the assessment. There is no power mobility access to the home. The scooter would be parked at the top of the stairs.
 - Current Physical Status: The appellant experiences pain in her neck and shoulders related to cane use. Her right foot and heel are quite sore which is aggravated from standing and walking; presents with functional U/E range of motion; bilateral hips and knees are also within functional limits; calf muscles are tight and right foot dorsiflexion is reduced; neck rotation is mild decreased; currently presenting with functional upper and lower extremity strength; standing balance is functional.
 - Current Functional Status:
 - Mobility: presents with a right limp and has difficulty putting weight through her foot; avoids right heel strike and tends to off load her hind foot due to pain; most of the weight bearing is through her forefoot; uses a cane and reports she is able to walk short distances; longer distances difficult related to increased pain and swelling in right foot; able to negotiate stairs to/from her home
 - Transfers: independent with sit to stand, toilet transfers, and bed transfers; has difficulty with tub transfers (stepping over the edge).
 - Independent with dressing, bathing (with above noted difficulty), toileting, and feeding.
 - Recommendations: currently presenting with difficulty mobilizing more than short distances; would no doubt benefit from a scooter to allow her to access the community.
- 2) An undated letter from the OT who completed Section 3 of the MERJ provided as justification of the appellant's Request for Reconsideration. The OT writes that the appellant's mobility is compromised related to her heel spur, arthritis and neuropathy. She is able to ambulate for short distances in her home however her ability to mobilize greater distances is limited. The topography of [city] and limited transit service are also barriers to community access.

At the hearing, the appellant stated that walking up and down lots of hills in her community puts pressure on her heels. Despite recently getting shoe inserts, her pain has worsened. Her diabetic neuropathy has also increased resulting in the need for more medication. The appellant stated that her basic mobility has gotten worse since the application forms were completed and that she can still walk but it is very irritating. Long term walking irritates her foot and the use of a cane irritates her hip. Although she can still do short walks, she requires rest and the use of a cold pack following a long

walk. In response to questions from the panel, the appellant stated that the nearest bus stop is one house away, that the bus runs not every half hour but about every two hours, and that the nearest grocery store is approximately $\frac{3}{4}$ of a mile away. The appellant stated that she is able to walk to the grocery store but does not rush once in the store and has to take her time. The appellant added that she feels much older than her age and tires more easily due to her walking difficulties.

As the appellant's oral testimony was directly related to the issue of her ability to mobilize, it was admitted under s. 22(4) of the *Employment and Assistance Act* as being in support of the information and records before the ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision to deny the requested scooter was reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances. The ministry determined that the requirement under s. 3(2)(b) of Schedule C of the *EAPWDR* for an assessment by an (OT) or physical therapist (PT) confirming the medical need for the scooter was not met and the minister was not satisfied that the requested scooter is medically essential to achieve or maintain basic mobility as required under s. 3.4(3)(c) of Schedule C.

The relevant portions of sections 3 and 3.4 of Schedule C of the *EAPWDR* are set out below.

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 (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's position is that she has a disability related to a heel spur and cannot walk more than moderate or short distances without experiencing foot and hip pain which limits her ability to access the community.

The ministry's position is that the information provided by the OT respecting the appellant's current functioning identifies certain limitations but does not confirm the medical need for the scooter or satisfy the minister that the scooter is medically essential to achieve or maintain basic mobility.

With respect to the ministry's first reason for denial, that the OT assessment does not confirm a medical need for the requested scooter as required under s. 3(2) of Schedule C of the *EAPWDR*, the panel finds that the information provided by the OT is that the scooter is recommended to assist with mobilizing greater than short distances due to mobility difficulties the appellant experiences as a result of her medical conditions, namely a heel spur, arthritis, and neuropathy. Based on the OT's information in both the MERJ and the letter submitted at reconsideration, the panel finds that the ministry was unreasonable in determining that the OT's assessment did not confirm a medical need for the requested scooter.

With respect to the ministry's second reason for denial, s. 3.4 of Schedule C of the *EAPWDR* requires that the minister be satisfied that the requested scooter is medically essential to achieve or maintain basic mobility. The panel finds that the evidence of the OT and the appellant establishes that the appellant has functional balance, functional upper and lower extremity strength, bilateral functionality of her hips and knees, manages the 21 steps to her home, and is able to walk short distances and distances up to $\frac{3}{4}$ of a mile with a cane. Additionally, the appellant confirmed that, although bus service is not available at half hour intervals, there is regular bus service within a short walk from her home. Based on this evidence, the panel finds that the ministry reasonably viewed the information as establishing that the appellant has certain limitations but not that the requested scooter is "medically essential to achieve or maintain basic mobility."

The panel finds that the ministry's reconsideration decision which found that all of the legislated criteria for the requested scooter were not met was reasonably supported by the evidence and therefore the panel confirms the decision.