

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 9, 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 (EAPWD) Regulation had been met.

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

1. the requirement 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 confirm that it is unlikely that the appellant will have a medical need for a wheelchair during the next 5 years; and
3. the requirement under section 3.4(3)(c) that the scooter is medically essential to achieve or maintain basic mobility.

PART D – Relevant Legislation

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

PART E – Summary of Facts

At reconsideration, the documents that were before the ministry included the following:

- 1) Employment and Assistance Request for Reconsideration dated January 8, 2012 in which the appellant's request for a scooter was denied.
- 2) Advocate's submission, 8 pages (the "Submissions").
- 3) Exhibit I - Appellant's statement dated February 9, 2012 (the "Statement").
- 4) Exhibit II - Letter from a physician dated February 10, 2012 stating that the appellant is unable to walk more than 500 meters, even with the assistance of a cane, is unable to stand for more than 5 minutes at a time, has difficulty navigating the distance to and area around his community, that his access to the community would improve significantly with a scooter and that he requires a scooter to maintain basic mobility (the "Doctor's Letter").
- 5) Radiological Consultation dated November 15, 2011 – CT Right Foot and Ankle indicating that *"... the appellant has a markedly comminuted fracture fixated by a lateral metallic plate and multiple threaded screws is ununited"*.
- 6) Radiological Consultation dated November 15, 2011 – CT Lumbosacral Spine indicating the appellant has old superior endplate compression fractures of L1 and L2, mild lumbar degenerative disease about the L5 level, distortion and narrowing of the L5-S1, intervertebral foramina bilaterally with mild compression of the exiting right L5 nerve root as it passes over the right sacral ala.
- 7) Physiatrist report dated October 28, 2011 indicating that the appellant presents with *"... rather complex posttraumatic consequences with a history of calcaneal fracture treated surgically and now complicated with the development of severe osteoarthritic changes in the subtalar joint as well as severe pelvic fractures requiring open reduction and internal fixation. The course presumably is complicated with lumbosacral plexus injury. There is also a suspicion of peroneal nerve palsy with foot drop"*. The physiatrist states that the appellant is awaiting further assessment such as electrophysiological testing as well as ongoing orthopedic assessment. The physiatrist provided the appellant with instructions regarding the use of a cane. The physiatrist notes that the appellant appropriately abstains from driving.
- 8) Physiatrist report dated September 30, 2011 indicating that further tests are required to investigate is symptoms and that the physiatrist will follow up with him after EMG/nerve conduction studies.
- 9) Physiatrist report dated August 16, 2011 stating that the appellant had previously suffered a complex pelvic ring fracture and required posterior and anterior stabilization as well as possible treatment for an acetabular fracture. The physiatrist also notes that the appellant had previously lost his balance while standing on his roof trimming a tree. The physiatrist states that the appellant has a significant deformity and flattening of his right calcaneus and weakness involving his hip flexors and distally as well.

- 10) Ministry of Social Development Health Assistance Branch form re Medical equipment and devices decision summary – Scooters dated January 8, 2012 (2 pages); indicating the appellant's request for a scooter was denied. The ministry states that although the OT had indicated that a wheelchair was not appropriate due to limited access to his home and due to the difficulty managing hills and rough terrain in the area, the family had moved to a new location and there was no indication that a wheelchair had been tried at the new location. The ministry notes that the appellant did not satisfy the criteria of section (3)(2) in that although there was an assessment by an OT confirming the need for the scooter, the request is for access to the community rather than medical need. The ministry states that although a therapist submitted an assessment indicating the applicant has difficulty walking and has increased pain with mobility, the appellant currently uses a four-wheeled walker with a seat for resting. The ministry also notes that the applicant could also use HandyDart to access medical appointments. The ministry notes that the information provided does not confirm the medical need for the scooter. The ministry also indicates that they are not satisfied that the criteria of section 3.4(3)(c) was met as it does not satisfy the requirement that the scooter is medically essential to achieve or maintain basic mobility. The ministry notes that the appellant uses a walker with a seat and is requesting a scooter to allow "more thorough and spontaneous community access". The ministry notes that there is no indication that the appellant has tried a manual wheelchair.
- 11) Medical Equipment Request – Tracking Sheet
- 12) Occupational Therapy Note dated November 21, 2011 (OT Addendum Report) stating that the appellant and his wife will be moving to a townhouse on December 1, 2011, that there are no steps at the entrance so the appellant will be able to access his suite via the main entrance and plans to store the scooter in a nearby storage room. The OT notes that if funding is approved, she will need to re-trial the 4-wheeled scooter to ensure that it will access the suite, and may need to look into a 3-wheeled scooter.
- 13) Occupational Therapy Report dated October 31, 2011 (OT Report) indicating that she trialed the appellant with a 4-wheeled scooter and he travelled well around his community. The OT notes that the client lives in a 3-level townhouse and the scooter cannot be lifted down the stairs to be stored in his ground-level patio, ramping is not feasible and there is no other safe storage for the scooter available. The OT recommends funding for a scooter as the appellant would "...benefit functionally, physically and emotionally with the improved spontaneous and comprehensive community access that this machine would give him".
- 14) Occupational Therapy Functional Assessment dated October 17, 2011 (OT Assessment) recommending funding for a scooter to facilitate more comprehensive and spontaneous community access. The OT Assessment indicates that the appellant has difficulty with bathing/showers as he does not feel secure to stand to shower self, that he seeks "escape" through sleeping too much, that he is independent with transfers to and from the toilet, bed and sofa/chairs. The OT Assessment indicates that walking endurance is the appellant's main issue, that he uses a 4-wheeled walker but that despite the walker seat he finds walking to be wearing and painful with one day's efforts requiring two days of resting at home to recover. The OT Assessment notes that the appellant is able to manage stairs with increased pain and

swelling in his right limb and that his right hip aches when sitting or standing too long. The OT Assessment indicates that the appellant's wife does the shopping, that the appellant is able to manage basic kitchen management tasks including basic meal preparation, but that he cannot stand and balance himself for too long. The OT Assessment indicates that the appellant would like a scooter to allow "... *more thorough and spontaneous community access*". The OT Assessment indicates that the appellant is "... *quite depressed and suffering feelings of hopelessness and frustration at continued isolation within his own home*".

15) Quotation for Shoprider Explorer 888 SLN Scooter dated October 31, 2011.

16) Medical Equipment Request and Justification form completed by a medical practitioner on May 10, 2011 and a physiotherapist on June 15, 2011 recommending a scooter.

In the Reconsideration Decision, the ministry states that subsequent to the appellant's original application he has moved residences and a full assessment of his daily functioning and ability to access the community within his current environment has not been submitted. The ministry states that the information provided does not establish that either a four-wheeled scooter or a three-wheeled scooter has been trialed or fully considered to meet the appellant's mobility needs in his new residence. The Reconsideration Decision also states that the OT Assessment does not establish (a) the medical need for a scooter, or (b) that a scooter is medically essential to achieve or maintain basic mobility.

In his Statement, the appellant indicates that he moved to a new residence in order to have a flat entrance and storage room for a scooter. The appellant also states that in his new home a cane meets his basic movement but not his basic mobility and that he remains restricted from completing all of his daily living activities as he is unable to stand on his feet or walk more than 500 meters. The appellant states that he currently has a four-wheeled walker that he cannot maneuver in his home so it is reasonable to conclude that he is unable to maneuver a scooter or wheelchair in his home too. The appellant states that he uses the four-wheeled walker for outdoor trips when he needs more support than a cane can provide. He also states that he uses HandyDart and public transit for appointments. The appellant states that his chronic pain becomes exacerbated and he is exhausted and requires long periods to rest so public transportation and the four-wheeled walker are not meeting his basic mobility needs.

In the Submissions, the appellant's advocate states that the legislation does not specify who must confirm that the scooter is medically essential to achieve or maintain basic mobility and that the Doctor's Letter confirms that the appellant requires the scooter to maintain basic mobility. The appellant's advocate also states that the OT recommended the scooter as the most suitable medical equipment for the appellant and states that he does not need a wheelchair. The appellant's advocate argues that the ministry's statement that there is no information indicating that the appellant has tried a manual wheelchair is unreasonable and irrelevant. The Submissions also state that although the appellant has a walker with a seat it is not meeting his basic mobility needs.

The appellant's advocate also states that the ministry's statement that the appellant could use HandyDart is unreasonable and that the ministry is trying to shift the scope away from the legislation. The appellant's advocate also states that the ministry has failed to support their statement that the request for a scooter is not for a medical need given the OT Assessment indicating the appellant has

significant movement and mobility restrictions. In the Submissions, the appellant's advocate requests that the ministry interpret the legislation in a broad manner with a benevolent purpose.

In his Notice of Appeal dated March 16, 2012, the appellant states that he disagrees with the ministry's decision as it is a narrow interpretation of the legislation.

Before the hearing the appellant's advocate provided further written submissions dated April 8, 2012 (5 pages). The advocate argues that the appellant has satisfied the criteria and that the ministry has unreasonably denied the appellant's request for a scooter based on his move to a new residence. The appellant's advocate states that based on the OT Report, the ministry ought to conclude that the appellant does not have a medical need for a wheelchair during the 5 years following the assessment.

The appellant's advocate also submits that the medical practitioner has confirmed the appellant's direct and significant restrictions and that the appellant's limited mobility and constant pain has been described in detail by both the OT and the appellant. The appellant's advocate also states that the OT continues to recommend the scooter even after the appellant moved to a new residence. The appellant's advocate argues that the ministry is narrowly interpreting the legislation and creating grounds to deny the appellant's request.

The appeal proceeded by way of a written hearing, and the ministry did not provide any further submissions.

Based on the evidence, the panel's finding of facts are as follows:

- The appellant has mobility issues with respect to bathing/and showering transfers, sleeping, walking endurance, and sitting for prolonged periods;
- The appellant's medical practitioner, a physiotherapist (PT) and an occupational therapist (OT) have all recommended a scooter for the appellant;
- After submitting his Request for Reconsideration of the ministry's decision to deny his request for a scooter the appellant moved to a new residence and there is no OT assessment regarding the appellant's new residence;
- At his new residence the appellant uses a cane to complete basic tasks such as personal care, grooming and toileting; and
- The appellant has a four-wheeled walker which he cannot maneuver in his new residence.

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 section 3 and 3.4 of Schedule C of the EAPWD Regulation 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 requirement under section 3(2)(b) for an assessment by an occupational therapist (OT) or physical therapist (PT) confirming the medical need for the scooter; and
2. the requirement under section 3.4(3)(a) that an assessment by an OT confirm that it is unlikely that the appellant will have a medical need for a wheelchair during the next 5 years; and
3. the requirement under section 3.4(3)(c) that the scooter is medically essential to achieve or maintain basic mobility.

The relevant legislation is set out in the EAPWD Regulation, Schedule C:

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 of both of the following, as required 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

The ministry noted that the OT reported the appellant's medical condition including a previous fractured right hip fracture and right calcaneus, soft tissue and nerve damage, drop-foot on the right, non-union in the right heel and a dropped right arch. The ministry noted that the OT reported that the appellant has difficulty with bathroom transfers, stairs, that walking endurance is a problem and that the appellant uses a cane and leans on furniture when ambulating indoors. The ministry also noted that the OT reported that the appellant is able to manage basic tasks but that he cannot stand and balance himself for long. The ministry also notes that the OT reports that the appellant uses a four-wheeled walker with a seat for resting but that a scooter is recommended to allow more access to the community. The ministry's position is also that the appellant can use HandyDart to access medical appointments. The ministry's position is that the information provided was not sufficient to establish that the scooter was required for a medical need.

The position of the appellant is that the scooter was prescribed by his physician and recommended by an OT and that should be sufficient to satisfy the ministry's need for the scooter.

The panel has carefully reviewed the OT Report and OT Assessment which both list the appellant's medical conditions and recommend a scooter. The OT Assessment states that the appellant has "*reduced spontaneous access to community: to engage with his young children in watching their activities (school and sports), assisting his wife with shopping*", and getting to the Skytrain to access specialists appointments. The OT Report states that the scooter is recommended to allow the appellant "*...improved spontaneous and comprehensive community access*". The panel also notes that the Medical Equipment Request and Justification form completed by a physiotherapist reports that the scooter is recommended to allow the appellant to regain some of his independence in some of his daily activities.

While the panel appreciates that a scooter would benefit the appellant and quite likely improve the quality of his life, the panel finds that the ministry's decision that the evidence of the OT and the PT did not establish that the scooter was necessary to meet a medical need and satisfy the criteria of EAPWD Regulation Schedule C, Section 3(2)(b) was reasonable.

OT confirmation that wheelchair need unlikely

The ministry's position is that the OT has not provided confirmation that it is unlikely that the appellant will have a medical need for a wheelchair during the next five years.

In the Submissions, the appellant's advocate argues that the OT's Report and OT Assessment confirm that the most suitable medical equipment for the appellant is a scooter and that the OT submitted that the appellant does not need a wheelchair.

The panel notes that in the Doctor's Letter, the appellant's physician did not check off the box "*[h]e will not benefit from a Motorized or Manual wheelchair due to his severe medical condition*". In the OT Report the OT recommends a scooter but does not make any comment on whether the appellant will have a medical need for a wheelchair during the next five years. On the OT Assessment, the OT

states that a "... *manual wheelchair is not appropriate at this time; limited access in home and difficulty managing hills and rough terrain in area*". In the OT Note, the OT does not comment on whether the appellant will likely require a wheelchair in the next five years or not.

The panel finds that as there is no evidence that the OT has confirmed that it is unlikely that the appellant will have a medical need for a wheelchair during the five years following the assessment, the ministry reasonably determined that the appellant did not meet the criterion of EAPWD Regulation, Schedule C, section 3.3(a).

Scooter medically essential for basic mobility

The ministry's position at reconsideration was that it was not satisfied that the scooter is medically essential to achieve or maintain basic mobility. The ministry notes that the appellant uses a walker with a seat and has requested the scooter to allow "...*more thorough and spontaneous community access*". The ministry also notes that there is no indication that the appellant has tried a manual wheelchair since moving. The ministry also notes that the appellant could use HandyDart to access medical appointments. The ministry's position is also that a full assessment within the appellant's new residence has not been provided.

The appellant's position is that the scooter is necessary for him to achieve basic mobility. In his Statement, the appellant's evidence is that with a cane he can complete basic tasks inside his home, and a "...*cane satisfies minimal basic movement but not basic mobility*". In his Statement, the appellant states that he is unable to maneuver his four-wheeled walker in his new residence so it is reasonable to conclude that he will be unable to maneuver a scooter or a wheelchair in his new residence.

In his Statement, the appellant states that he uses his four-wheeled walker for outdoor trips but still cannot complete activities that require standing and mobility such as shopping, paying for purchases, carrying purchases home, paying his rent and bills and attending medical appointments. The appellant's evidence is that his pain becomes exacerbated and he is so exhausted after outings that he requires long periods to rest. The appellant's position is that the four-wheeled walker is not sufficient to meet his basic mobility needs. The appellant's position is that the scooter is medically essential to achieve mobility in the community and that he should not have to remain housebound because of his severe disability.

The appellant's advocate also argues that the ministry has narrowly interpreted the legislation and not provided sufficient grounds for its denial of the appellant's request.

The Doctor's Letter states that the appellant is unable to walk more than 500 meters, even with the assistance of a cane, that he is unable to stand for more than five minutes at a time, that he has difficulty navigating the distance to and area around his community and that his access to the community would significantly improve with a scooter. The OT Report and OT Assessment both indicate that the appellant would benefit "...*functionally, physically and emotionally*" and would have "...*improved spontaneous and comprehensive community access*" with a scooter.

The OT Note that states that the appellant has moved and the OT will need to re-trial the four-wheeled scooter to ensure that it will access the suite and that "...*we may need to look into a three-wheeled*

scooter".

Although the evidence indicates that the appellant may benefit from a scooter as it would improve his ability to access and participate in activities in his community, the evidence indicates that the appellant is able to use his four-wheeled walker to complete many activities outside his residence and is able to use HandyDart and public transportation to access his medical and other appointments. The panel finds that the ministry's decision that the evidence did not demonstrate that the scooter was medically essential to achieve or maintain basic mobility was reasonable.

Therefore the panel finds that the ministry decision that the appellant is not eligible for a scooter because he did not meet all of the requirements in sections 3 and 3.4 of Schedule C of the EAPWD Regulations was reasonably supported by the evidence and is a reasonable application of the legislation in the circumstances of the appellant. The panel thus confirms the ministry's decision.