



PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated April 12, 2012 that denied the appellant's application for an electric scooter. The ministry found that the request for a scooter does not meet the criterion in EAPWDR schedule C 3(1)(2)(b) that an OT must confirm that the device is medically needed. The ministry also maintains that the appellant has not met the criterion in EAPWDR section 3.4 (3)(a) nor (c) that the OT must confirm that it is unlikely that the appellant will need a wheelchair during the five years following the assessment and that the minister is satisfied that the device is medically essential for basic mobility.

PART D – Relevant Legislation

Employment and Assistance For Persons With Disabilities Regulation (EAPWD) section 62
Employment and Assistance For Persons With Disabilities Regulation (EAPWD) schedule C section 3
(1)(a)(d)

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration was:

- A letter written by the appellant's advocate on her behalf that asked the appellant's physician to respond to several statements about the appellant's condition dated March 20, 2012. In this letter the physician notes that the appellant requires her walker or cane as well as the assistance of her husband to mobilize and that she has had falls in the past. He writes that it takes her longer than usual to walk and that due to muscle weakness she can not use a manual wheelchair but he notes that he is not sure if she will require a wheelchair within the next five years. He adds that due to fall risk the appellant is not safe accessing the community without the scooter and her condition may worsen without the scooter. He concludes that she needs the scooter for basic mobility.
- A letter written by the appellant's advocate on her behalf that asked the appellant's Occupational Therapist (OT) to respond to several statements about the appellant's condition dated March 20, 2012. In this letter the OT notes that the appellant requires her walker or cane as well as the assistance of her husband to mobilize and that the appellant has reported that she has fallen in the past. He estimates that the appellant can walk 20 feet outdoors in about 1 minute and functional distances in her home with the assistance of a walker. He writes that he has not assessed her ability to operate a manual wheelchair and that he cannot answer if she will require a wheelchair within the next five years. He adds that the appellant is safe accessing the community without the scooter noting that her husband drives her to town and that a scooter would provide a sense of independence. He concludes that her condition will not deteriorate without the scooter, but adds that her physician should be consulted, and that he would require the definition of "basic mobility" before he could comment if the appellant requires a scooter for such.
- A letter from the appellant's Occupational Therapist (OT) dated September 28, 2011 diagnosing the appellant with severe brain injury (2000), intracranial hemorrhage, and paraplegia. The letter states the appellant is only able to mobilize functional distances in her own home with the assistance of her spouse. Outdoors she is able to mobilize from her door to the car with the assistance of her spouse. He adds that the appellant lives 4km from town where her mail pick-up and shopping is while her physician is approximately 125km from home. He concludes by writing that the scooter would enable the appellant to compensate for her loss of basic mobility, allowing her to access her mail, pharmacy and grocery shops.
- A medical equipment request and justification form completed by the appellant and her OT dated September 28, 2011.
- A prescription note from the appellant's physician dated August 13, 2011 prescribing an electric scooter.
- A ministry Medical Equipment Request Tracking Sheet with notes ranging from November 10, 2011 to March 1 2012 noting the progress of the appellant's request for the scooter from when the request was received to when it was denied.
- A document titled rehab progress notes completed by the appellant's OT with his notes of correspondence with the ministry regarding the appellant's request.
- A quote from a medical equipment supply company for a scooter addressed to the appellant dated September 1, 2011.
- A letter of denial addressed to the appellant dated February 29, 2012. The letter states the

appellant's request did not establish that the legislative criteria had been met.

- A telephone log dated April 5, 2012 detailing a call from the ministry to the appellant's OT. The note reads that the OT confirmed that the appellant's husband can drive her to her destination and then she is able to sufficiently mobilize with the use of her 4-wheeled walker. The use of the car in conjunction with the cane and walker allows her to maintain basic mobility.

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

At the hearing the ministry stated that there was insufficient information in the OT's report to approve the appellant's request. The OT did not assess the appellant's ability to operate a wheelchair nor did he confirm that it was unlikely that the appellant would require a wheelchair within the next 5 years. The ministry added that the OT report was not clear how much more mobile the appellant would be with the scooter since he wrote the appellant is able to mobilize from her house to the car and she is able to use her 4-wheeled walker to shop at stores. The ministry noted that the reconsideration officer made a call to the OT on April 5, 2012 to clarify the appellant's ability to mobilize and the OT told the officer that the appellant could maintain her basic mobility by using a cane or walker in conjunction with a car to get to the stores. The ministry told the panel that the appellant received a special transportation subsidy to cover the extra cost of using her car.

The panel finds that:

- The appellant has been diagnosed with severe brain injury (2000), intracranial hemorrhage, and paraplegia.
- The appellant can mobilize short distances using her walker or cane.
- The appellant's spouse assists her in moving to and from the house.
- The appellant has the use of a vehicle.
- The OT did not assess the appellant on her ability to use a wheelchair.
- The OT did not comment on the likelihood of the appellant requiring the use of a wheelchair within the next five years.

PART F – Reasons for Panel Decision

The issue to be decided in this case is the reasonableness of the ministry's reconsideration decision that found the appellant is not eligible for a personal mobility device, an electric scooter, because the machine is not medically essential for basic mobility, as set out in the prescribed legislation.

The applicable legislation is the EAPWDR section 62, and schedule C section 3(1)(a) and section 3 (2) which state:

- 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,

Schedule C, 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.
- (3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if
- (a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and
- (b) the period of time, if any, set out in sections 3.1 to 3.11 of this Schedule, as applicable, for the purposes of this paragraph, has passed.
- (4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.
- (5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if
- (a) at the time of the repairs the requirements in this section and section 3.1 to 3.11 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and

- (b) it is more economical to repair the medical equipment or device than to replace it.
(6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

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 appellant's position is that she requires the scooter to maintain basic mobility. Her physician has issued her a prescription for a scooter and her OT has written that she is capable of operating the scooter and that the device would enable her to compensate for her loss of basic mobility.

The ministry's position is that the appellant does not meet the criterion in EAPWDR schedule C 3(1)(2)(b) that an OT must confirm that the device is medically needed. The ministry also maintains that the appellant has not met the criterion in EAPWDR section 3.4 (3)(a) nor (c) that the OT must confirm that it is unlikely that the appellant will need a wheelchair during the five years following the assessment and that the minister is satisfied that the device is medically essential for basic mobility. The ministry contends that the appellant is able to mobilize with the assistance of a 4-wheeled walker or cane and has the use of a vehicle to take her to and from her destination.

In consideration of the first criterion, EAPWDR schedule C 3(1)(2)(b), that an OT confirms that the device is medically needed, the panel considered the written comments of the OT in the letter to the ministry dated September 28, 2011, the letter dated March 20, 2012 written by the advocate with the OT's response, and the telephone conversation that the ministry had with the OT on April 5, 2012. In the letter to the ministry the OT stated that the appellant could mobilize functional distances in her house as well as to her vehicle with the assistance of her spouse. He wrote that the scooter would enable the appellant compensate for her loss of basic mobility. In the letter dated March 20, 2012 the OT wrote that the appellant's "spouse drives and she is accessing the community at present, a

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scooter would provide a sense of independence." In the same letter he agreed that the appellant is unable to mobilize without the use of her cane/walker or the assistance of her husband. In the telephone conversation on April 5 the OT told the ministry that the appellant requires the use of a vehicle, her cane/walker, and her spouse to mobilize, however, that with this assistance she can sufficiently mobilize around a grocery store and her appointments. In determining if the ministry was reasonable in finding that the appellant did not meet this condition the panel relied on the OT's written and oral comments that the panel finds describe the appellant as someone who would benefit from a scooter however does not have a medical need for one. The panel finds that the ministry was reasonable in its determination that the appellant did not meet the criterion EAPWDR schedule C 3(1)(2)(b).

In consideration of the second criterion, EAPWDR section 3.4 (3)(a) that the OT has confirmed that he appellant is unlikely to require a wheelchair during the five years following the assessment, the panel considered the letter to the ministry dated September 28, 2011 and the letter dated March 20, 2012. The September 28 letter only deals with the appellant's current needs as they relate to the scooter and the letter does not address the appellant's anticipated requirements. The letter dated March 20 asks the OT if the appellant will require a wheelchair within the next five years. The OT replied that this was unknown and that it would need to be discussed with her physician to ascertain the stability of her medical condition. The panel finds that the ministry was reasonable in its determination that the appellant did not meet the criterion EAPWDR section 3.4 (3)(a).

In consideration of the third criterion, EAPWDR section 3.4 (3)(c), that the minister is satisfied that the scooter is medically essential to achieve or maintain basic mobility, the panel considered the written comments of the OT in the letter to the ministry dated September 28, 2011, the letter dated March 20, 2012 written by the advocate with the OT's response, and the telephone conversation that the ministry had with the OT on April 5, 2012. In the letter to the ministry the OT stated that the appellant could mobilize functional distances in her house as well as to her vehicle with the assistance of her spouse. He wrote that the scooter would enable the appellant compensate for her loss of basic mobility. In the letter dated March 20, 2012 the OT wrote that the appellant's "spouse drives and she is accessing the community at present, a scooter would provide a sense of independence." In the telephone conversation on April 5 the OT told the ministry that the appellant requires the use of a vehicle, her cane/walker, and her spouse to mobilize, however, that with this assistance she can sufficiently mobilize around a grocery store and her appointments. In determining if the ministry was reasonable in finding that the scooter is not medically essential to achieve or maintain basic mobility the panel finds that the evidence describes that the appellant currently is able to access her community and maintain her basic mobility with the use of her walker and her husband. The panel finds that the ministry was reasonable in its determination that the appellant did not meet the criterion EAPWDR schedule C 3(1)(2)(c).

The panel finds that the ministry's decision was reasonably supported by the evidence and therefore confirms the ministry's decision.