

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (the "Ministry")'s Reconsideration Decision dated May 14, 2012 which denied the appellant's request for a Shoprider Pathfinder scooter (the "scooter"). The Ministry held that the criteria in Schedule C, Section 3(2)(b) and Section 3.4(3)(a) and (c) of the Employment and Assistance for Persons with Disabilities Regulation had not been met. The Ministry held that the medical evidence did not establish that the Scooter is medically essential to achieve or maintain basic mobility or that it is unlikely that the appellant will have a medical need for a wheelchair during the five years following the assessment.

**PART D – Relevant Legislation**

*Employment and Assistance Act for Persons with Disabilities Regulation (EAPWDR) Section 62 and 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) Request for Reconsideration dated March 16, 2012. The appellant did not complete Section 3, the area to include reasons why the appellant disagreed with the Ministry's decision.
- 2) Letter from the Adjudicator to the appellant dated February 26, 2012 advising the appellant that her request for a scooter was denied because all of the regulatory criteria had not been met.
- 3) Medical Equipment Request – Tracking Sheet
- 4) Health Assistance Branch Medical equipment and devices decision summary (the "Summary") dated February 26, 2012 noting that the appellant is eligible for health supplements, that pre-authorization from the minister was requested, that there are no other resources to pay for the medical equipment and that the medical equipment is the least expensive appropriate available. The Summary also notes that the medical equipment was prescribed by a medical practitioner and that a therapist had submitted an assessment. The Summary notes that the therapist assessment did not confirm the medical need for the scooter in that although the appellant has pain in her neck, back and hips and has difficulty walking she is able to ambulate on her own by taking frequent breaks. The Summary also notes that the therapist assessment has not confirmed that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment. The Summary also indicates that the minister is not satisfied that the scooter is medically essential to achieve or maintain basic mobility and that no information was provided to indicate whether the appellant had trialed a four wheeled walker, or a cane or that she had tried to access Handydart or public transit.
- 5) Medical equipment and justification request dated April 21, 2011 completed by a doctor noting that the appellant has degenerative disc disease and recommending a four wheel scooter.
- 6) Report of an Occupational Therapist (the "therapist") dated February 19, 2012 stating that the appellant has various medical conditions including a history of back pain and disc bulges that resulted in several surgeries and decreased mobility. The therapist states that the appellant reported pain in her back, neck and hips, that makes it difficult for her to ambulate more than 10-20 minutes at a time and then needs to sit down. The appellant advised that therapist that she is mostly independent with her activities of daily living but that her spouse assists as needed. The therapist notes that the appellant advised that she works a 4-hour shift 3 days per week at a lottery booth but reported needing to sit frequently to relieve her back and hip pain but did not feel that she needed power mobility in her apartment. The therapist indicates that the appellant trialed a scooter and a wheelchair. The therapist requested that the ministry fund a scooter for the appellant to increase her access to the community and assist with activities such as shopping, banking, outings with her spouse and family and accessing her workplace.
- 7) Three quotations from medical equipment providers dated December 17, 2010, August 31, 2011 and February 21, 2012 for a scooter at a cost of \$3,599.99, \$3,388 and \$3,465

respectively.

- 8) Report from a medical practitioner dated August 25, 2011 stating that the appellant had previous back surgery and disc bulges. The medical practitioner notes that the appellant had reported that she was unable to walk longer than 10 feet and had to lean forward when standing and walking. The medical practitioner states that he signed the form supporting the appellant's request for a scooter.
- 9) Report from a medical practitioner dated November 29, 2010 stating that the appellant is morbidly obese and reported pain in her back, hips, thighs and calves, numbness in her right leg from her toes to her knees and that she has difficulty walking and has pain in her lumbar spine and leg.
- 10) Report from a medical practitioner dated January 21, 2011 noting that the plaintiff has several abnormalities at the L3-4 and L4-5 levels in her back. The medical practitioner noted that the appellant was taking a variety of medications including Gabapentin, Naproxen and Tylenol #3. The medical practitioner recommended a trial of epidural steroid injections.
- 11) Imaging Consultation report dated January 18, 2011 of the appellant's spine, noting disc bulges at L3-4 and L4-5 as well as bilateral foraminal narrowing at L4-5 and L5-S1.
- 12) Hospital Procedure Report dated January 6, 2011 indicating that the appellant underwent a flexible cystoscopy for urinary incontinence.
- 13) Prescription from a physician dated July 2011 recommending a four wheel motorized scooter.

In her Notice of Appeal dated May 25, 2012, the appellant states that she had to stop work about two months ago and is unable to work at all. The appellant states that she has been confined to her apartment and cannot walk at all without extreme pain. The appellant states that her back disease has worsened effecting her hips, upper back, shoulders and arms, and that her legs give out and she ends up on the floor. The appellant states that she is currently having more tests and that her doctors suspect she might have Parkinson's Disease. The appellant states that she cannot walk at all or leave her home.

The information provided in the appellant's Notice of Appeal is new evidence submitted by the appellant. At the time of the Reconsideration Decision the appellant had not provided any facts or arguments to indicate that she was not able to work, that she might have Parkinson's Disease, or that she could not walk at all or leave her home. The panel finds that this new evidence is not admissible under section 22(4) of the Employment and Assistance Act as it is not evidence in support of the information and records that were before the Ministry when the Reconsideration Decision was made.

The appeal proceeded by way of written hearing. Neither the appellant nor the Ministry provided further submissions.

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

- The appellant has had previous back surgery and has neck, back, hip and leg pain causing her

decreased mobility;

- At the time of the Reconsideration Decision, the appellant was working 4 hour shifts, 3 days per week at a lottery booth; and
- At the time of the Reconsideration Decision, the appellant was able to perform most activities of daily living independently with some assistance from her spouse.

**PART F – Reasons for Panel Decision**

The issue under appeal is whether the Ministry's decision to deny the appellant's request for a scooter was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Schedule 62 and Schedule C, Sections 3(1), (2) and 3.4(3)(a), (b) and (c), of the EAPWDR sets out the criteria that must be met for a request for a scooter to be approved. The Ministry may provide funding for a scooter if the legislated criteria are met. The appeal is only dealing with the issues of whether the therapist has confirmed the medical need for the scooter, whether the scooter is medically essential to achieve or maintain basic mobility and whether the assessment 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 as required by Schedule C, Section 3(2)(b) and Section 3.4(3)(a) and (c) of the EAPWDR. The Ministry found that the other criteria had been met.

The relevant sections of Schedule C, EAPWDR the legislation at issue are as follows:

**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.

(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.

Section 3(2)(b) - assessment by an occupational therapist or physical therapist confirming the medical need for the scooter

The Ministry argued that while the evidence confirms the appellant has had surgeries for back pain and struggles with decreased mobility, the appellant is mostly independent in her activities of daily living and was working a 4 hour shift, 3 days per week at a lottery booth. The Ministry notes that the therapist's report is based on the appellant's self-reported limitations only and there is no information to indicate whether a cane or 4 wheeled walker was trialed, as less expensive, more appropriate pieces of equipment.

The Ministry argues that while the therapist indicates that the scooter will assist the appellant to access the community and assist with activities such as shopping, banking, going to outings with her spouse and friends and getting to and from work, this does not constitute confirmation of the medical need for the scooter.

The appellant's physician states that the appellant reported being unable to walk longer than ten feet and that she leans forward when standing and walking. The therapist states that the appellant reported needing to sit down after ten minutes and rest due to the pain. However, the therapist also reports that the appellant was working a 4-hour shift, 3 days per week at a lottery booth.

The panel finds that while the therapist's evidence confirms that the scooter may be beneficial for the appellant, the evidence does not establish that there is a medical need for the scooter. The Summary indicates that although the appellant has pain in her back, neck, hips and has difficulty walking, she is able to ambulate on her own with frequent rest breaks.

In her Notice of Appeal the appellant states that her condition has worsened and she is now unable to walk at all, has stopped working and is confined to her apartment. While the panel has considered this new evidence, it was not admitted as it was not evidence that was in support of the information and records before the Ministry at the time the Reconsideration Decision was made. However, the panel notes that even if the new evidence was admitted, the legislation requires that the therapist confirm the medical need for the scooter and there is no evidence from the therapist confirming the appellant's physical deterioration as required by the legislation to demonstrate that there is a medical need for the scooter.

The panel finds that the ministry's decision that the criteria required of EAPWDR Schedule C, section (3)(2)(b) was not met was reasonable.

Section 3.4(3)(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

The Ministry's position is that the therapist has not confirmed that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment so the criteria of EAPWDR Schedule C, Section 3.4(3)(a) has not been met.

The panel finds that while the therapist reports that a wheelchair was trialed there is no evidence confirming that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment. The panel finds that the ministry's decision regarding this criteria was reasonable.

Section 3.4(3)(c) - the minister is satisfied that the item is medically essential to achieve or maintain basic mobility

The Ministry argues that the therapist's report does not establish that if the appellant uses Handy-Dart services or public transit that she would have not have sufficient mobility to safely ambulate upon her arrival with the use of a less expensive, more appropriate piece of equipment, such as the use of a cane or 4 wheeled walker. The Ministry was not satisfied that the scooter is medically essential to achieve or maintain basic mobility.

The Reconsideration Decision states that there is "... *no information provided regarding the appellant's home environment or living situation*", but in the panel's view, this statement is not

accurate as the therapist's report does provide information regarding the appellant's self-reports. In particular, the therapist notes that the appellant is "...*mostly independent with her ADL's, but her spouse assists as needed. Mr. Robertson does the shopping, cleaning, and most of the cooking*". However, the panel does note that the therapist does not provide any information as to whether she conducted her own assessment of the appellant's home environment or living situation and the therapist notes that the appellant states that she did not feel that she required power mobility in her apartment.

Again, while the panel finds that the scooter could enhance the quality of the appellant's life, the evidence at the time of the Reconsideration Decision indicates that the appellant was able to get around in her home and in her community and was able to work. The panel finds that the ministry's decision that the legislated requirement that the scooter is medically essential for the appellant's basic mobility was not met was reasonable.

In conclusion, the panel finds that the Ministry's decision was a reasonable application of the legislation in the circumstances of the appellant and was reasonably supported by the evidence. Therefore, the panel confirms the Ministry's decision.