

## PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision dated June 20, 2012 in which the Ministry of Social Development (the “ministry”) denied the appellant’s request for a scooter. The ministry held that the legislated requirements set out in Schedule C, sections 3 and 3.4 of the *Employment and Assistance for Persons with Disabilities Regulation* had not all been met. Specifically the ministry held that the requirement in Schedule C, subsection 3(2)(b) of the Regulation –an assessment by an occupational therapist ... confirming the medical need for the [scooter] – had not been satisfied.

## PART D – Relevant Legislation

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

## PART E – Summary of Facts

The appellant was accompanied by an advocate at the hearing and, although the appellant had a basic grasp of English, an interpreter. The interpreter limited his intervention to translating questions and responses that employed words and constructions that were somewhat technical or expressed in non-standard English.

The appellant sought to introduce two documents that were not before the ministry on reconsideration, namely:

1. a one-page letter dated August 16, 2012 (the "OT August letter") from the Occupational Therapist (the "OT") who had performed the initial assessment of the appellant in connection with his request for a scooter; and
2. a one-page excerpt from a website describing the medical consequences of certain cardiac conditions.

The ministry representative did not object to the admission of the OT August letter saying that in her opinion it was relevant. The panel admitted this letter pursuant to subs. 22(4) of the *Employment and Assistance Act* as being in support of the evidence before the ministry on reconsideration. The ministry objected to the admission of the excerpt but the panel advised that it would not consider the admissibility of the document unless and until the appellant referred to it later in the hearing. It was not subsequently referred to.

The evidence before the ministry on reconsideration consisted of the following documents:

1. from the appellant's family doctor (the "Doctor"):
  - (a) note dated March 27, 2012,
  - (b) Physician Referral/Orders possibly dated April 11, 2012,
  - (c) note dated May 28, 2012 (the "Doctor's May note"),
  - (c) letter dated June 12, 2012 (the "Doctor's June letter");
2. undated 1-page note and attached undated 1-page letter (the "PT letter") from a physiotherapist who had assessed the appellant (the "PT") [this letter appeared to have been prepared following the assessment of the appellant by the PT on September 21, 2011];
3. second copy of the PT letter with March 27, 2012 handwritten annotation by OT (the "annotated PT letter");
4. Client Recommendation form dated March 8, 2012 completed by OT;
5. 2-page Medical Equipment Request and Justification dated September 21, 2011 signed by the Doctor and the PT;
6. 2-page Medical Equipment Request and Justification dated April 11, 2012 and attached 3-page letter dated April 11, 2012 from OT titled "Request for Motorized Scooter" (the "OT Request letter");
7. Medical Equipment Request - Tracking Sheet with entries from November 16, 2011 to April 25, 2012;
8. 2-page Medical Equipment and Devices Decision Summary dated April 24, 2012 (the "Decision Summary");
9. estimates for cost of supplying scooter to appellant, one from Shoppers Home Health Care dated October 6, 2011 in the amount of \$4,393.49 and one from another supplier May 4, 2012 in the amount of 3,289.50; and
10. 2-page submission to the reconsideration officer from the appellant's advocate.

At the hearing the advocate asked the appellant a comprehensive series of questions designed to inform the panel of the appellant's mobility challenges and his need for a scooter. The oral evidence of the appellant relevant to this appeal was as follows:

1. He was 71 years old and lived on the 5<sup>th</sup> floor of a co-operative housing residence with his 66-year old wife.
2. He had a lengthy list of health problems the more significant of which in the regard to the appeal were osteoarthritis of both knees, degenerative disc disease, valvular heart disease, hypertension, shortness of breath and reduced range of motion. These problems resulted in an inability to walk without some sort of assistance for more than a few steps, an inability to walk with a walker for more than a short distance (less than 20 feet) without stopping to rest and capture his breath, and gait and balance problems that resulted in frequent falls. He had limited ability to reach above his head or to bend over. He could bend over sufficiently to reach his shoes when he was sitting but he could not tie his shoes and the act of bending over caused him considerable pain.
3. His wife also had significant and worsening health problems which progressively limited her ability to assist him to the point that by the time of the appeal she was providing little assistance.
3. He relied on a hand-pushed, 4-wheel walker with a built-in seat for mobility in both his home and in the community. He had recently been provided with a new walker because his prior walker was mechanically defective. Those defects contributed to frequent falls, none of which had seriously injured him though they did cause him pain and distress. Sometimes after a fall he was able to get back up on his own but when he was outside he usually relied upon the assistance of persons who came to help. The new walker was safer although, since acquiring it about two weeks ago, he had fallen a time or two, most recently while he was coming to the hearing. This fall occurred when he tried to maneuver over a curb. His greatest difficulties with his walker occurred when he needed to negotiate changes in elevation.
4. He was unable to walk, either inside or outside his home, more than a few paces without support. Using the walker he was limited to walks of 15- to 20-feet after which he had to sit and wait until he had caught his breath and the physical discomfort had passed. Normally when he needed to go more than a block or two he relied upon public transit and required a bus that had a ramp that could be lowered so that he could push his walker onto the ramp to enter the bus.
5. He was heavily dependent on the Doctor, his cardiologist and other medical persons. His family doctor's office was near his home and he was usually able to use his walker to get to the doctor's office. He had frequent medical incidents that he thought required that he seek medical treatment and most weeks he saw the Doctor 3 or 4 times.
6. The OT had met with him twice. The first time for about 2 hours, which meeting was in connection with the installation and use of mobility assistance devices in his home. The second time was in connection with the scooter. On that occasion the OT had spent about 30 minutes with him in his home observing him using his walker within the home and about 30 minutes outside his home observing him operate a scooter on the sidewalk. He had demonstrated that he could successfully operate the scooter.
7. Regarding the 30-minute time he spent with the OT within his home on the second meeting, he agreed that he had walked about 50 feet (down a corridor and back) without stopping – as the OT subsequently reported in the OT Request letter – but he said he persisted this long

because the OT had insisted that he do so and despite considerable pain and discomfort. He had told the OT that he wanted to stop but she firmly said that he had to keep going.

8. His mobility problems had reduced his life to one of feeling largely imprisoned in his home. He could get fresh air by sitting on his balcony but he wanted to be able to go out and enjoy some aspects of a social life and be able to go to stores, to other public places such as the local museum (he had spent part of his working life in museums) and to get to his medical appointments and the pharmacy with less pain and distress.

The panel admitted this oral evidence under subs. 22(4) of the EAA as being in support of the evidence that was before the ministry on reconsideration. Indeed, the panel noted, much of it was part of the appeal record or was implicit in that record and simply added detail.

The evidence of the ministry on appeal was largely that set out in the reconsideration decision. However, the ministry representative asked several questions of the advocate and the appellant. Several of her questions confirmed the oral evidence of the appellant previously summarized. In addition she asked three questions as follows:

1. She questioned the advocate regarding the source of the OT August letter. The advocate said that she had originally sent a form letter to the OT that was identical to the Doctor's June letter seeking clarification of the issues that would be addressed on the appeal. The OT did not respond to that letter. After a number of follow-up telephone calls and fax messages, none of which were returned, the advocate finally spoke to the OT by telephone and was told by the OT that her manager had instructed her not be involved in the appeal. To the advocate's surprise, the OT August letter arrived shortly thereafter.
2. She questioned the appellant as to whether or not the Doctor had tested his walking functionality. The appellant responded that he had but that the Doctor had then said he wanted the appellant to be seen by a physiotherapist. The Doctor then walked with the appellant to the office of the PT. This consultation resulted in the PT letter.
3. She questioned the appellant as to whether or not he used the HandyDART service. His answer appeared to be that it was not a convenient form of transportation for his needs.
4. She questioned the appellant as to whether the Doctor had prescribed the new walker to replace the one which was mechanically defective. The appellant said it was not the Doctor; the initiative had been taken by the ministry or perhaps the contractor who had provided the walker in the first place.

Except as regards the first item, above, the panel admitted the oral evidence of the ministry pursuant to subs. 22(4) of the EAA. It was in support of the evidence before the ministry on reconsideration. As regards the first item, the panel admitted this evidence because, as a matter of fundamental fairness, questions regarding the source of admissible evidence is necessarily admissible particularly, as in this instance, it affects the credibility of that evidence and the weight to be accorded it.

## PART F – Reasons for Panel Decision

In its June 20, 2012 reconsideration decision the ministry denied the appellant's request for a scooter. The ministry held that the legislated requirements set out in Schedule C, sections 3 and 3.4 of the Regulation had not all been met. Specifically the ministry held that the requirement in Schedule C, subsection 3(2)(b) of the Regulation had not been satisfied: the OT who assessed the appellant regarding his medical need for a scooter had not confirmed that he had a medical need for a scooter.

The relevant legislation is as follows:

### EAPWDR, Schedule C

- 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.

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 statutory scheme**

Eligibility in general for a health supplement ("supplement") under the EAPWDR is determined by reference to criteria set out in the Regulations. Some of those criteria are common to most if not all such supplements but particular supplements have specific and in some instances unique criteria which must be satisfied. In this appeal the appellant sought the minister's approval for a motorized scooter. For that supplement the criteria that he had to satisfy were set out in Sections 3 and 3.4 of Schedule C of the EAPWDR.

To assist the ministry in determining the eligibility of persons such as the appellant for a motorized scooter (a "scooter") the ministry has developed a form, referred to in this appeal as the Decision Summary, that is in the nature of a checklist. By using this form the ministry can cross-reference the applicable provisions of the EAPDWR and ensure that it has dealt with each of the criteria. The form also serves, or should serve, the purpose of ensuring that the ministry does not introduce extraneous considerations in determining an applicant's eligibility for a supplement.

The panel reviewed the Decision Summary. The panel was satisfied that the ministry had reviewed the appellant's circumstances and found that he had either satisfied all the applicable criteria – or had appropriately deemed them to be non-applicable – except for two. The two he had not satisfied, or so the ministry held, were those set out in Schedule C, subs. 3(2)(b) and 3.4(3)(c), namely that: (a) the appellant had to provide to the minister, "an assessment by [the OT] ... confirming the need for the

[scooter] and (b) the minister had to be "satisfied that the [scooter] is medically essential to achieve or maintain basic mobility".

### **The issue on this appeal, restated**

The issue on this appeal can be restated as whether or not the OT *confirmed* the appellant's *need* for a scooter. There was considerable discussion at the hearing of the appeal as to whether or not the OT had recommended that the appellant have a scooter. That, however, is not the statutory test. To confirm something is not to recommend it. The question is not whether the OT, acting in her professional capacity, thought that the appellant should have a scooter. Rather it is whether or not, looking at the assessment of the OT - that is the OT Request letter (and the subsequent OT August letter) - a reasonable person would conclude that the OT had confirmed that the appellant needed a scooter.

The appeal proceeded on the basis that if the appellant could successfully establish that he had satisfied the test set out in Schedule C, subs. 3(2)(b) then the minister, acting reasonably, would necessarily be satisfied that the scooter was essential in order for the appellant "to achieve or maintain basic mobility". There was no evidence before the minister on this appeal which would have enabled the minister to conclude otherwise.

### **The position of the parties**

The position of the appellant on this appeal was that the evidence persuasively established that the appellant needed a scooter. He had satisfied the legislative criteria. In particular, though the OT Request letter might have been written less clearly than one might have expected, when looked at as a whole the OT's assessment, using the language of Schedule C, subs. 3(2)(b), established the appellant's medical need for a scooters.

The position of the ministry on this appeal was that the medical evidence was not sufficient to establish that the appellant required a scooter to achieve basic mobility. Much of the evidence to which the OT referred was anecdotal and had been provided by the appellant. It had not been verified by independent testing and, accordingly, it was suspect. The OT had observed him walking with walker a greater distance than he said he could and he did so without stopping. Further, the OT did not observe any shortness of breath nor pain or discomfort. The ministry was skeptical of what the appellant said and, in the absence of hard evidence to the contrary, the ministry discounted much of what he said. In the result, the OT had not established a medical need for a scooter and the minister reasonably concluded that a scooter was not medically essential to achieve basic mobility.

### **Review of the evidence regarding basic mobility**

The evidence of the appellant and the Doctor is to the effect that the appellant required a scooter to provide him with basic mobility, if not in his home then clearly outside his home. The ministry does not dispute this but says that is not the opinion of the OT and, pursuant to Schedule C, subs. 3(2)(b), confirmation from the OT is a prerequisite for approval of a scooter. Thus this appeal must be decided on the assessment of the OT contained in the OT Request letter as expanded, explained or modified by the OT August letter. Does it confirm the appellant's medical need for a scooter?

The uncontradicted evidence of the Doctor, repeated by the appellant and incorporated into the OT Request letter, was that the appellant had health problems that severely restricted his basic mobility.

The Doctor described the appellant as a 71-year old man with a history of osteoarthritis in both knees, valvular heart disease, degenerative disc disease, hypertension, depression and anxiety. He advised that the appellant was "at cardiac risk for walking long distances", though he did not clarify what he meant by long distances. It was the opinion of the Doctor that he should have a scooter because, in addition to the health problems listed above, "he feels off balanced with walker and is at risk if fall [sic]".

In the Doctor's June letter he confirmed "that a scooter is medically essential to achieve and maintain basic mobility". The panel noted that this statement was contained in a form letter sent to the Doctor by the appellant's advocate. Though the letter was signed by the Doctor the panel recognized that because of its source it must be treated with some skepticism. Given the brevity of the other evidence provided by the Doctor and his failure in those other documents to address the statutory criteria, it would be easy to dismiss the letter as having been signed by the Doctor somewhat perfunctorily. That is what the ministry appears to have done on reconsideration given that no mention is made of this letter. However, the panel was not prepared to go that far. At a minimum the panel concluded that this letter was consistent with the general opinion of the Doctor that the appellant had a serious mobility problem that would be addressed, insofar as it could be addressed, by the provision of a scooter to the appellant.

The panel noted that the Doctor's June letter was the same letter that had been sent to the OT and which she had failed to sign and return. According to the advocate, which evidence the panel accepted, her failure to respond to the letter was because she had been advised by her manager not to become involved in an appeal. The panel drew no conclusion regarding the mobility issue from the failure of the OT to sign the letter. There are rational explanations on both sides of this issue consistent with the OT's failure to sign the letter and to have come down on either side would have been an act of pure speculation on the part of the panel.

The OT Request letter states that the appellant had largely normal upper extremity function except for pain at the end ranges. Regarding his back and lower extremity function, the OT quoted the assessment of the PT to whom the appellant had been referred in late 2011. The PT had reported that she had tested the appellant's range of motion and found it restricted. The OT, in a follow-up telephone call to the PT learned, however, that the testing was visual, not measured. In the testing done by the OT she reported that the appellant was able to touch his ankles when sitting though this caused lower back pain. The PT had reported that the appellant's "static balance is normal, patient has a history of falls and dynamic balance especially to the left side is impaired". The OT Request letter contains no contrary findings in this regard to the question of balance and so the panel concluded that the OT had adopted the PT's assessment. The panel noted that mobility is concerned primarily with dynamic balance and that static balance is of much less importance.

The OT Request letter states that the appellant reported "he is unable to walk for more than 10 – 15 steps at a time before having to stop and sit on his walker seat due to reported shortness of breath and back and knee pain". Further, he reported that his legs "often give out" on him resulting in falls. The OT tested his ability to walk with the walker on two occasions. On March 8, 2012 "he walked about 8 – 10 steps and than sat on his walker seat due to reported [shortness of breath] and back and knee pain". The OT went on to observe that "there were nominal visible signs of [shortness of breath] or walking difficulty". On April 4, 2012 the OT again assessed the appellant's ability to walk



and this time he walked, with the walker, approximately 50 feet without stopping. This is the occasion described in the oral evidence of the appellant summarized above as follows:

*Regarding the 30-minute time he spent with the OT within his home on the second meeting, he agreed that he had walked about 50 feet (down a corridor and back) without stopping – as the OT subsequently reported in the OT Request letter – but he said he persisted this long because the OT had insisted that he do so and despite considerable pain and discomfort. He had told that OT that he wanted to stop but she firmly said that he had to keep going.*

At the time of the walking test on April 4, 2012 the OT also monitored the appellant's pulse rate. She recorded his pulse rate as 63 prior to the 50-foot walk and 75 at the end. This 19% increase in pulse rate seemed to the panel to be a rather dramatic increase following a rather modest walk on a level floor inside the appellant's apartment. When this information was viewed in conjunction with the Doctor's diagnosis of hypertension and valvular heart disease the concern that even mild exertion placed the appellant at cardiac risk appeared to be warranted.

At the hearing the ministry representative urged the panel to discount the evidence of the appellant that was identified by the OT as having been reported by the appellant. The panel was not inclined to do so. The panel accepted the evidence of the appellant that on April 4, 2012 the OT spent approximately 30 minutes with him inside his house. Had she thought it useful to subject the appellant to a more rigorous assessment, she could have done so. The panel, noted, also that the OT was the same person who had a few months previously evaluated the appellant and found that he required the installation of hand bars and mobility-related devices in his apartment to enhance his ability to perform basic daily activities.

If the panel was not prepared to discount the self-reported evidence of the appellant, the ministry representative urged the panel to conclude that the OT was skeptical of what the appellant reported to her. But the OT does not say this in her assessment and it is not for the panel to read such a dramatic limitation into her assessment. Without any evidence to suggest otherwise, the panel must take the assessment of the OT at face value. It is the opinion of the panel that the ministry, acting reasonably, should have done so too.

Looked at as a whole, it is the opinion of the panel that the assessment of the OT contained in the OT Request letter objectively confirms the appellant's medical need for a scooter, possibly not in his apartment, but clearly outside his apartment. Further, it is the opinion of the panel that the OT was not only objectively of the view that the appellant needed a scooter but also subjectively of that view. The OT Request letter begins "I am writing on behalf of [the appellant] to request funding for a scooter with cane holder." A reasonable interpretation of this sentence is that the OT is of the view that the case for providing the appellant with a scooter has been made and the balance of the letter provides the factual basis for that conclusion. The OT concludes her letter by identifying a particular scooter that she describes as "recommended equipment" and states that "This scooter is recommended as it can be easily loaded on and off the bus so he can attend various doctor appointments and shop." This, the panel submits, is not the language of an occupational therapist whose professional opinion is that a person has no medical need for a scooter.

The OT August letter requires some discussion. Its source was described above. It was sent to the advocate by the OT after the advocate had been advised by the OT that she would provide no further comment. In that letter the OT stated that the appellant had successfully used his walker within his

apartment and for short distances within his apartment building. She then includes the following quotation: "he walked approximately 50' (twice) down the condo hallway, walked two blocks outside".

The panel was puzzled by this quotation. Although the first 9 words appear in the OT Request letter, the final 4 words do not appear in any document in the appeal record. The evidence of the appellant, which the panel accepted, was that the reference to walking outside referred to the time he spent operating the scooter under the supervision of the OT. The panel concluded that the OT included the final 4 words in quotation marks inadvertently and that her failure to refer to the two blocks outside as the distance traversed by scooter was also inadvertent. This conclusion is fortified by the next sentence of the OT August letter which states: "Based on [the appellant's] report and [the Doctor's] prescription that [the appellant] is at cardiac risk for walking longer distances, the occupational therapist did not request [the appellant] to walk more than 2 blocks with his walker". The OT concluded her letter by stating "[the appellant] reported that depending on what community tasks he needs to perform on a given day (i.e. going to the pharmacy, doctor appointments, shopping, banking, attending Mosque, visit friends and family), that he have to walk more than 2 blocks to get to and from various bus stops." Clearly the OT acknowledged that the appellant's underlying health problems prohibited him from the basic mobility demands of living his life outside the confines (the "prison" as he referred to it in his oral evidence) of his home. And, further, what he required was a scooter, not a walker.

The ministry representative somewhat indirectly invited the panel to conclude that the appellant was a person who exaggerated. There is no question that the panel was inclined to take some of the appellant's statements with a grain of salt – for example, that with his previous walker he fell several times a day, that he visited the Doctor 4 or 5 times a week – but such embellishment, if such it was, did not, in the panel's view, damage his credibility on any material issues. Persons in the appellant's difficult circumstances sometimes become overly focused on those difficulties to the point that they overstate their effect. But the broad outline of the appellant's evidence was consistent with the evidence of the professionals in this appeal. The panel accepted the appellant's evidence, taking into account the possibility, indeed probability, that it contained some exaggeration.

### **Conclusion**

The panel concluded that the appellant was a person with a number of medical conditions that significantly and negatively affected his mobility, the major ones being osteoarthritis in both knees, disc degeneration, hypertension, valvular heart disease, shortness of breath, difficulties with dynamic balance, gait problems and a general range of motion limitations. The assessment of the OT included references to all these medical conditions. Read as whole, the assessment of the OT satisfied the requirements of Schedule C. subs. 3(2)(b), that is it confirmed that the appellant had a medical need for a scooter. Though the appellant might well continue to use a walker within his apartment, it was unreasonable to expect him to access his life outside the apartment using a walker. Using the walker outside the apartment severely restricted the geographical area to which he could realistically gain access. Use of the walker outside his home was painful for him and, in the attempt to do so, he ran a significant risk of falling or suffering a cardiac event.

It is the view of the panel that basic mobility must involve more than being able to manoeuvre around one's home or being able to go further afield but only at the cost of having to assume significant medical risks. Thus, having established that the appellant had a medical need for a scooter, it was

unreasonable for the minister to conclude, pursuant to Schedule C, subs. 3.4(3)(c), that the scooter was not medically essential for the appellant to achieve or maintain basic mobility.

Thus the panel concluded that the decision of the ministry - that the appellant had not satisfied the statutory criteria for being provided a scooter - was not a reasonable application of the relevant legislation in the circumstances of the appellant. The June 20, 2012 reconsideration decision is rescinded.