

PART C – DECISION UNDER APPEAL

The decision under appeal is the ministry's reconsideration decision dated August 29, 2012, which denied the appellant's request for co-funding for a new manual wheelchair on the basis that the request does not meet the legislative criteria as per Employment and Assistance for Persons With Disabilities Regulation, Schedule C, subsections: 3(1)(b)(i) because the appellant did not receive pre-authorization from the minister for the medical equipment requested; 3(1)(b)(iii) because the medical equipment purchased was not established to be the least expensive appropriate medical equipment and 3.2(2) that the item is medically essential to achieve or maintain basic mobility.

PART D – RELEVANT LEGISLATION

Employment and Assistance For Persons With Disabilities Regulation, EAPWDR, Section 62 and Schedule C, Section 3.

PART E – SUMMARY OF FACTS

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

The evidence before the ministry at reconsideration consisted of:

1. 20 September 2011, a letter from the appellant's physician indicating that the appellant requires a new wheelchair;
2. 16 January 2012, a paid in full invoice of \$5191.20 for a manual wheelchair from Company B;
3. 29 January 2012, a copy of a claim statement and a copy of a cheque from an insurance company totaling \$4672.08 made out to the appellant's spouse;
4. 6 February 2012, a fax from the appellant to the ministry requesting funding for the uncovered portion of the purchase of a new wheelchair;
5. 7 February 2012, an invoice indicating a balance owing for \$519.12, for a manual wheelchair from Company B;
6. 27 February 2012, a funding authorization request from the appellant's Occupational Therapist (OT) to the ministry;
7. 17 May, 2012, a letter from Company B to the ministry requesting payment of the outstanding balance of the wheelchair purchased by the appellant;
8. 26 June, 2012, a letter from the appellant's OT to the ministry;
9. 27 June 2012, a copy of a medical equipment tracking sheet from the ministry;
10. 31 July 2012, a Request for Reconsideration with a 20 day extension request;
11. 2 August 2012, a letter from the appellant's physician indicating that the appellant requires a specific type of new wheelchair;
12. 10 August 2012, a submission from the appellant's advocate; and
13. copies of descriptions of 4 top end wheel chairs.

In the letter from the appellant's physician dated September 20, 2011, it is reported that the appellant has cerebral palsy and that he requires a new wheelchair as his current one is worn out. Added is that the appellant will be purchasing it through Company A or Company B.

In the fax from the appellant to the ministry dated February 6, 2012, he urgently requests funding for the uncovered portion of the purchase of a new wheelchair. The amount requested is \$519.12 to be paid to Company B requesting funding for the uncovered portion of the purchase of a new wheelchair.

In the funding authorization request dated February 27, 2012, the appellant's OT reported that the appellant has cerebral palsy, spastic diplegia, is dependent on his wheelchair full-time for all mobility needs, is a very active wheelchair user and enjoys many recreational pursuits. His current 7-year old Crossfire T6 wheelchair with an adjustable tension backrest and BFF foam cushion is quite worn from daily usage and mileage and he now needs a new rigid manual wheelchair. As the appellant presents with a mild scoliosis and posterior pelvic tilt, his current seating does not provide adequate support to correct these positioning issues and his backrest and cushion are quite old and worn and need to be replaced with more supportive components.

The OT indicates that several wheelchairs were reviewed and the Invacare Crossfire T7 is the recommended frame for the appellant for the following reasons:

- o the wheelchair base is extremely lightweight, has excellent adjustability in axle position for optimizing wheeling efficiency and reducing fatigue and strain on the appellant's shoulders as well as maximizing

- wheel ability and endurance for the long term;
- o it has quick release rear tires and fold-down option for the backrest which are crucial for vehicle transport;
- o the Spinergy Spox wheels with Schwaibe flat resistant tires will significantly decrease the overall weight of the chair;
- o the aluminum soft roll casters are needed to increase shock absorption during wheeling, decreasing the appellant's spasms from sudden bumpy movements;
- o a new B-Gel Custom foam and gel combination cushion is lightweight and provides some pressure reduction to prevent skin breakdown and provides enough postural support to keep the appellant seated in a good wheeling position; and
- o a new Ride Corback upholstery backrest will provide more support to correct the appellant's posterior pelvic tilt and can also be modified to provide some lateral trunk support to reduce the appellant's scoliosis.

The letter dated May 17, 2012 from business B to the ministry advised that the appellant was told by the ministry that the outstanding balance for his wheelchair would be paid by them.

The letter from the OT dated June 26, 2012 to the ministry provided a list of potential rigid chairs that were reviewed for the appellant to include; Invacare A4, Quickie 7, TI ZR and Top End Everyday.

The copy of the medical equipment tracking sheet for the appellant dated June 27, 2012 indicates that the appellant requested a repayment of \$519.12 for a manual wheelchair provided by Company B, which is not a contracted supplier for the ministry. It is noted that private insurance paid \$4672.08 toward the new wheelchair balance of \$519.20.

The letter from the appellant's physician dated August 2, 2012 indicates that the appellant requires a Top End Crossfire T7A wheelchair because it is medically necessary and essential to meet his needs. As part of his employment, he has to carry things on his lap, be able to move quickly and maneuver easily. "This particular wheelchair was necessary for him to be able to continue with this work. If he was unable to work he would end up on social assistance and he does not want to do this."

A submission from the appellant's advocate dated 10 August 2012 states that the appellant has cerebral palsy, spastic diplegia which has left him wheel bound for many years. It is stated that due to the appellant's increasingly severe mobility restrictions that an Invacare Crossfire T7 Manual wheelchair with B-Gel Custom cushion and Ride Corback backrest upholstery have been recommended to meet his needs by both his physician and OT.

Furthermore, the appellant's advocate states that while it is acknowledged that the appellant did not seek pre-authorization from the Minister prior to his purchase of the wheelchair that this was due to the urgency of his need. "His mobility restrictions are such that he was unable to wait until the Ministry approved his request, which can sometimes take up to several weeks." Also, it is submitted that while the appellant's private insurance provided funding towards the requested wheelchair, this insurance covered only \$4672.08 of the total cost of \$5191.20 leaving a balance of \$519.12 and that the appellant has no other resources available to him to pay this balance. The wheel chair that was purchased is also the medical equipment that was recommended by the OT to meet the appellant's need and was also confirmed by the appellant's physician in her letter of support as "medically necessary" to meet the appellant's needs as he has cerebral palsy and is unable to walk.

At the hearing, the appellant presented new evidence, comprising a copy of a letter to him dated 11 January 2012 from Patient & Practitioner Services, Health Insurance BC, Medical Services Plan. The letter stated that the MSP does not cover the cost of a wheelchair.

He said that he believed that since MSP doesn't cover wheelchairs, pre-approval was not necessary. The letter from MSP had been solicited in order to send it to the appellant's spouse's insurance company as part of their claim for the wheelchair.

The appellant explained that he had dealt with the same wheelchair supply company, Company B, for some fifteen years, which was why he had purchased his new wheelchair from that company. He further explained that the cheapest type of wheelchair would essentially have been a hospital chair, which would be much heavier. Such a chair would impede his ability to move around and maneuver, to lift the chair into his car, or to move around as necessary for his work.

The appellant further stated that his employer will give him a maximum of 21 hours of work a week, and therefore he has no benefits. His spouse's benefits had covered 90% of the cost of the new wheelchair; had they both been receiving benefits the entire cost could have been covered between them. He stated that he did not agree with the statement that he was "gainfully employed" as his doctor had noted in a letter.

Since submitting his Notice of Appeal to the Employment and Assistance Appeals Tribunal, the appellant hurt his back at work and a decision on worker's compensation is pending.

A discussion ensued concerning the time-line of events leading up to the Appeal. The appellant stated that while a letter from his doctor dated September 20, 2011 had established the requirement for a new wheelchair, the purchase had not been made until January of 2012 due to the amount of time it had taken to gather the necessary information to submit to his spouse's insurance company for the claim. The appellant and his spouse had understood at the time that the insurance company would only pay 90% and that there would be an outstanding balance.

The appellant's spouse said that they had been under the impression that the ministry would pay the balance of the claim. She said that on several occasions she had attempted to contact the ministry for advice about claiming the balance, but that the experience had been very frustrating and her phone-calls had not been answered. (She said that this was also the experience of an employee of Company B, who had been trying to assist them in the matter.)

It was established that the ministry had first heard of the appellant's request on February 6, 2012, and that the Ministry's decision was dated June 27, 2012.

While a letter from Company B indicated that the ministry had told the appellant that the Ministry would cover the balance of the claim, neither the appellant nor his spouse could remember that specifically being the case.

The appellant said that he had considered other models of wheelchairs, but his new one is the best fit. He has scoliosis of the spine and the new chair puts him in the correct position. It was the model preferred by his occupational therapist, and he had taken her word for it. He added that it was the least expensive of the four under consideration. He clarified that it was an aluminum, not a titanium, wheelchair.

The appellant said that he understood that Company B was not a contracted service provider; rather, the owner of Company B was a friend of some fifteen years' standing whose experience he trusts and with whom he always has dealt.

The appellant agreed that Company B had not given him any advice about dealing with the ministry, but the appellant's spouse suggested that perhaps the company's experience of dealing with the ministry had been as frustrating as her own.

The appellant pointed out that had it not been for his spouse's insurance, the ministry would have had to pay out the full purchase price of a wheelchair, rather than just the ten per cent being requested to pay the balance of the claim. He added that there would be no trade-in value for his old chair.

The panel admits the letter from Patient & Practitioner Services, Health Insurance BC, Medical Services Plan and the appellant's oral testimony as being directly related to the purchase of a manual wheelchair and in support of evidence that was before the ministry at the time of reconsideration pursuant to section 22(4) of the Employment and Assistance Act.

Findings of Fact

The appellant's family unit, which is comprised of the appellant and his spouse, were transitioned to Medical Services only in May 2009 because their combined monthly incomes exceeded the amount of disability assistance for which they would have been eligible.

The request to the ministry was to fund the portion of the purchase of the new wheelchair that was not covered by the appellant's insurance.

The appellant's private insurance has paid 90% of the cost for the new wheelchair; however, a balance of \$519.20 remained unpaid.

The appellant does not have other resources to pay the outstanding balance of the new wheelchair.

Both the appellant's physician and his OT have confirmed that the Invacare Crossfire T7 Manual wheelchair with B-Gel Custom cushion and Ride Corback backrest upholstery meets all the appellant's mobility needs.

The old wheelchair was old and worn due to daily usage and mileage and had no trade-in value.

Company B was not a ministry contracted service provider; rather, the owner of the company was a friend of the appellant some fifteen years standing whose experience he trusts and with whom he always has dealt.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's reconsideration decision which denied the appellant's request for co-funding for a manual wheelchair on the basis that the request does not meet the legislative criteria as per Employment and Assistance Regulation, Schedule C, subsections: 3(1)(b)(i) because the appellant did not receive pre-authorization of the minister for the medical equipment requested; 3(1)(b)(iii) because the medical equipment purchased was not established to be the least expensive appropriate medical equipment; and 3.2(2) because the equipment purchased was not established to be essential to achieve or maintain basic mobility was either a reasonable application in the circumstances of the appellant or was reasonably supported by the evidence.

The following sections of the EAR, Schedule C apply to this decision:

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 – wheelchairs

3.2 (1) In this section, "wheelchair" does not include a stroller. (2) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility: (a) a wheelchair; (b) an upgraded component of a wheelchair; (c) an accessory attached to a wheelchair. (3) 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. (4) A high-performance wheelchair 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 the letter from Patient & Practitioner Services, Health Insurance BC, Medical Services Plan stated that the MSP does not cover the cost of a wheelchair. He therefore believed that since MSP doesn't cover wheelchairs, pre-approval was not necessary. Also, the appellant admits not seeking pre-authorization from the ministry prior to the purchase of his new wheelchair due to the urgency of his need and because his mobility restrictions are such that he was unable to wait until the ministry approved the request, which can sometimes take several weeks.

The advocate requests consideration for the following legal principles:

Section 8 of the Interpretation Act, chapter 238 states: "[e]very enactment must be construed as remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its object." It is submitted that if any ambiguity is found in the interpretation of the legislation that this is to be resolved in favour of the appellant and;

In *Abrahams v. Canada*, the Supreme Court of Canada found that where social welfare benefits were concerned, ambiguities arising from difficulties with the legislative language should be given a liberal interpretation and resolved in the favour of the appellant.

The ministry's position is that the appellant did not seek pre-authorization from the ministry before purchasing the wheelchair. The ministry also indicates that there is a provision in policy to allow the ministry to accept payment responsibility without prior approval in cases of life threatening emergency. Therefore, the ministry found that the appellant did not inform the ministry of his need for a new wheelchair prior to purchase and the information provided does not establish that the appellant faced a life threatening emergency at the time of purchase.

With regard to the appellant's request for funding of \$519.20, the portion that was not covered by his insurance for his new wheelchair, the panel finds that this request to the ministry was first made on February 6, 2012, while the wheelchair had been purchased on January 16, 2012. Given the evidence that the appellant's physician had reported in her letter dated September 20, 2011 that the appellant has cerebral palsy and that he requires a new wheelchair as his current one is worn out and that the appellant will be purchasing it through Company A or Company B, the panel also finds that the time lapse of nearly four months before the purchase of the new wheelchair provided sufficient time to present a formal request for co-funding to the ministry. Therefore, the panel finds that the ministry reasonably determined that the request does not meet the legislative criteria as per Employment and Assistance Regulation, Schedule C, subsection; 3(1)(b)(i) because the appellant did not receive pre-authorization of the minister for the medical equipment required.

With regard to Schedule C, subsection 3(1)(b)(iii) under which the medical equipment purchased was not established to be the least expensive appropriate medical equipment, the appellant argues that due to his severe mobility restrictions that an Invacare Crossfire T7 Manual wheelchair with B-Gel Custom cushion and Ride Corback backrest upholstery had been recommended to meet his needs by both his physician and OT. The OT had reviewed several other potential rigid chairs for the appellant but recommended this frame. The appellant submits that had it not been for his spouse's insurance, the ministry would have had to pay out the full purchase price of a wheelchair, rather than just the ten per cent being requested to pay the balance of the claim. He added that there would be no trade-in value for his old chair.

The ministry argues that the information provided does not establish that the Invacare Crossfire T7 Manual wheelchair is the least expense appropriate medical equipment for the appellant nor has it been established that other less expensive wheelchairs might not meet the appellant's needs. The ministry indicates that contracted service providers provide a free assessment (fitting and trial of medical equipment), no charge for rental equipment during the trial period, nor while a client's application for funding is pending, free delivery and home set up, training on the use of the equipment, a 2 year all inclusive warranty for wheelchairs and attached seating, 10 day new equipment delivery or provide free suitable loaner equipment until such time as the ordered equipment can be supplied and a discount from 9.8% to 12.9%.

The panel finds that although it is confirmed by both the appellant's physician and OT that the Invacare Crossfire T7 Manual wheelchair meets all his personal, employment and medical needs, there was no information provided to establish that a less expensive wheelchair would not also meet those same requirements. The panel also finds that the legislation does not specify that contracted service providers must be used by the appellant. In view of the above, the panel finds that the ministry reasonably determined that the request does not meet the legislative criteria as per Employment and Assistance Regulation, Schedule C, subsection 3(1)(b)(iii) because the medical equipment purchased was not established to be the least expensive appropriate medical equipment.

With regard to Schedule C, subsection 3.2(2) wherein the Minister must be satisfied that the item is medically essential to achieve or maintain basic mobility, the appellant argues that the new wheel chair is also the medical equipment that was recommended by the OT to meet his needs and was also confirmed by the appellant's physician in her letter of support as "medically necessary" to meet the appellant's needs as he has cerebral palsy and is unable to walk.

The ministry argues that it is not satisfied that the wheelchair purchased is medically essential to achieve or maintain basic mobility because the information provided does not demonstrate that only the Crossfire T7 will meet the appellant's needs and is medically essential to achieve or maintain basic mobility.

The panel finds that the evidence presented confirms that the appellant has been mobilized in his old manual wheelchair for many years. Also, although the appellant's physician in her letter of support indicated that the Invacare Crossfire T7 is "medically necessary" to meet the appellant's needs as he has cerebral palsy and is unable to walk, the panel finds that the evidence did not establish that only the Invacare Crossfire T7 Manual wheelchair was medically essential for the appellant to achieve or maintain basic mobility. Therefore, the panel finds that the ministry reasonably determined that the legislated criteria as per Employment and Assistance Regulation, Schedule C, subsection 3(2)(2) was not established.

APPEAL # _____

In applying the legislation to the facts of the case, the panel finds that the ministry's decision was reasonable as the evidence confirms that the appellant does not meet all of the requirements of the legislation and thus, confirms the ministry's decision.