

PART C – Decision under Appeal

The issue under appeal is the Ministry decision of 09 August 2012 in which the ministry denied the applicant's request for funding for a motorized scooter.

The ministry decision is based on the finding that: (1) the assessment by an Occupational Therapist (OT) does not confirm a medical need for the scooter, under Section 3(2)(b) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), and, (2) the ministry is not satisfied that the scooter is medically essential to achieve or maintain basic mobility, under Section 3.4(3)(c) of Schedule C of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation , Section 62 and Employment and Assistance for Persons with Disabilities Regulation, Schedule C, Section 3 and Section 3.4.

PART E – Summary of Facts

The appellant provided the panel with an updated physician report dated August 22, 2012 and an updated Occupational Therapy report dated August 31, 2012. The appellant also provided a fax cover sheet which demonstrated the 2 documents above were faxed to the Tribunal on September 05, 2012.

The panel reviewed the documents and admitted them as evidence under Employment and Assistance Act s. 22(4) as they were directly relevant to the information the ministry had at the time of reconsideration. The ministry did not have any objection to admitting the documents into evidence.

The information before the ministry at the time of reconsideration included :

- An Occupational Therapy Assessment dated April 27, 2012.
- A letter to the appellant, dated June 27, 2012, from the Ministry of Social Development denying the appellant's initial request for a motorized scooter.
- A medical equipment request tracking sheet with the appellant's name at the top
- Ministry of Social Development, medical equipment and devices decision summary regarding the denial of the appellant's request for a scooter.
- A Medical Equipment request and Justification letter from a Health Authority Home and Community Care completed by an Occupational Therapist and dated April 4, 2012.
- A note from the Occupational Therapist dated July 25, 2012 describing a home visit assessment of the appellant.
- A price quote from a supplier dated 03/06/12, outlining the cost of a motorized scooter for the appellant.
- An Employment and Assistance Request for Reconsideration form completed by the appellant and dated July 30, 2012.

The Appellant provided oral evidence for the panel by telling us how difficult it is for her to get around due to the arthritis she has in her hip and ankles, her breathing problems, dizzy or fainting spells, blood clots in her leg and ulcers on her legs which at the present time have healed. The Appellant reports that she is unsteady on her feet and must sit to do cooking, dishes and housework. In fact she fell and injured her shoulder while at the physician's office and while seated on her four wheeled walker. The Appellant states that she does not use her cane at all anymore as she is too unsteady. The appellant states that she does not leave her apartment much now as she is not mobile enough to go anywhere. She does not have access to a level street entrance or exit in her apartment and the only elevator in the building which provides access to a level exit is only available from Monday to Friday 8 am to 5 pm. The appellant was asked about other avenues of transportation and she replied that she and her husband do not have an operating vehicle anymore, the bus service is not accessible for her as not all busses have a ramp for her to board the bus and that even though all busses kneel, this is not adequate for her. The Handi dart bus is not reliable as it must be booked 24 to 48 hours in advance. The appellant was asked how she arrived at the hearing today and she said she walked with her 4 wheeled walker a total of 2 ½ blocks and it took her 45 minutes to do this as she is out of breath, in pain and very unsteady and had to rest frequently. The Appellant was asked about her social activities and she responded that she did not have any as she is unable to walk to anything. She is feeling depressed at being confined to her home and has been prescribed antidepressants.

The information provided by the appellant at the hearing included a report from her family physician which states "the appellant requires and would benefit from a motorized scooter due to her

respiratory illness". The second piece of documentation is from an assessment done by the Occupational Therapist (OT) and contains several new pieces of information. The OT states that despite using her four wheeled walker over the last 6 to 8 months the appellant continues to have shortness of breath, lightheadedness and increasing pain in her lower extremities and is unable to consistently walk out doors to safely complete her grocery shopping and attending appointments. - Her doctor is 5 blocks away and not on a bus route. The medical changes such as the shortness of breath, light headedness and leg pain would not be present if the appellant did not push herself physically in a local, outdoor hilly environment. Her lower extremities are weaker and walking increases pain. She has reduced overhead range of motion due to lung biopsy and shoulder injury. At this time the appellant uses her 4 wheeled walker at all times in her apartment and does not use her cane and a vehicle is no longer available to her family unit. The OT last statement in the report is It is this therapist's opinion that "the (Appellant) would benefit from a 4 wheeled scooter and the provision of this piece of medical equipment would allow her to meet her basic mobility needs in her building and in the community".

The ministry provided information for the panel that the ministry does not fund scooters for clients whose medical information addresses transportation issues only and not basic mobility issues. The Occupational Therapy assessment dated April 27, 2012 indicates the appellant's medical history as severe interstitial lung disease and Sjogren's syndrome with arthritis in hips and ankles. In terms of physical status, the appellant's lower extremities are functional although strength is decreased in lower extremities and upper extremities. There is decreased standing tolerance due to burning sensation in soles of feet. Cardiovascular status- functional for current activity level which limits walking distance tolerance. Respiratory system-limited, short of breath on exertion, e.g. walking up/down steps or any distance; chronic pain in joints. Mobility in the home- use of 4-wheeled walker occasionally and most often uses cane and furniture holding. Mobility outdoors- uses walker to mailbox at building entrance; previously the appellant was able to walk slowly to the grocery store (approximately 3 blocks away) with walker, but she feels she no longer has the physical tolerance due to shortness of breath and weakness. Grocery shopping is shared with the appellant's husband and the appellant uses a walker to complete the task, although recently she is unable to get to the store; her husband did drive a vehicle but was away during the day and the appellant was unable to rely on him for drives.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry decision to deny the appellant funding for a motorized scooter was a reasonable application of the legislation or reasonably supported by the evidence.

Employment and Assistance for Persons with Disabilities Regulation

General health supplements

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,

Employment and Assistance for Persons with Disabilities Regulation
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 ministry argues that the requirements of Section 3(2) (b) and Section 3.4 of Schedule C of the EAPWDR have not been met since the assessment by the OT does not confirm the medical need for the scooter and the ministry is not satisfied that the scooter is medically essential to achieve or maintain basic mobility. The ministry points out that the appellant is able to ambulate inside with the use of a cane and occasionally a walker.

The ministry argues that the appellant is able to ambulate around stores with her 4-wheeled walker once she has reached her destination. The ministry points out that while public transit is deemed to be difficult and Handi-Dart requires advance booking, these are not factors that are considered to determine whether a scooter is medically essential to achieve or maintain basic mobility.

The appellant argues that the requirements of Section 3(2)(b) and Section 3.4 have been met by the information

In the updated OT assessment dated August 31, 2012 in which the OT provides an opinion that the appellant would benefit from a scooter. The OT further reports that the appellant only uses her 4-wheeled walker indoors and her lower extremities are weaker and walking increases the pain. The OT reports that medical changes, including shortness of breath, light headedness and leg pain would not be present if the appellant did not push herself physically in a local outdoor hilly environment. EAPWDR 3.4(c) states that the minister must be satisfied that the item is medically essential to achieve or maintain basic mobility.

The panel finds that the appellant has provided medical information which confirms her health is deteriorating and has made it impossible for her to easily move about in her apartment or in the community. The OT has provided an assessment which clearly outlines the restrictions the appellant is faced with and has stated that a motorized scooter would allow the appellant to maintain her basic mobility.

The assessment done by the Occupational Therapist (OT) contains several new pieces of information. The OT states that despite using her four wheeled walker over the last 6 to 8 months the appellant continues to have shortness of breath, lightheadedness and increasing pain in her lower extremities and is unable to consistently walk out doors to safely complete her grocery shopping and attending appointments. - Her doctor is 5 blocks away and not on a bus route. The medical changes such as the shortness of breath, light headedness and leg pain would not be present if the appellant did not push herself physically in a local, outdoor hilly environment. Her lower extremities are weaker and walking increases pain. She has reduced overhead range of motion due to lung biopsy and shoulder injury. At this time the appellant uses her 4 wheeled walker at all times in her apartment and does not use her cane and a vehicle is no longer available to her family unit. The OT last statement in the report is It is this therapist's opinion that "the (Appellant) would benefit from a 4 wheeled scooter and the provision of this piece of medical equipment would allow her to meet her basic mobility needs in her building and in the community".

The appellant also provided a note from her physician which indicates that the appellant requires a motorized scooter due to her respiratory illness.

The panel considered the ministry's position that the information provided by the appellant appeared to stress that the appellant's need was for transportation only. With the new information provided by the appellant and relating that information to the requirements of the legislation, the panel finds that ministry's conclusions that the assessment by the OT has not confirmed a medical need for the scooter and that the evidence does not establish that a scooter is medically essential to achieve or maintain basic mobility were not reasonable.

The panel finds that the ministry's decision to deny the request for a scooter as not meeting the requirements in Schedule, Sections 3(2)(b) and 3.4(3)(c) of the EAPWDR was not a reasonable application of the legislation and rescinds the decision, which is overturned in favour of the appellant.