

## PART C – Decision under Appeal

The appellant appeals the reconsideration decision of the ministry of social development dated August 15<sup>th</sup> 2012 in which the ministry denied the appellant's request for a third repair on the appellant's power wheelchair.

The ministry determined that the repairs were not the result of normal wear and tear and were not covered under warranty. The ministry submitted that it may not provide repairs for the appellant's wheelchair if the ministry considers that the medical equipment was damaged through misuse. The ministry reconsideration decision relied on Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C Section 3 (6)

## PART D – Relevant Legislation

EAPWDR, Schedule C, Section 3 (4),(5) and (6)

## PART E – Summary of Facts

The hearing scheduled for September 12, 2012 was adjourned at the request of the appellant, to October 1, 2012.

The evidence before the ministry submitted with the request for reconsideration included:

- A copy of a letter dated February 10, 2011 from a ministry adjudicator stating that the appellant's request for a power wheelchair was approved for a total of \$10,502.03
- A copy of a letter dated April 13, 2011 from the ministry authorizing the appellant's request for repairs on the appellant's power wheelchair.
- A copy of a letter dated April 13, 2011 from a ministry adjudicator stating that the appellant's wheelchair is covered by a two year all inclusive service warranty for repairs and maintenance that are required due to normal wear and tear but damage that results from misuse will not be covered by the ministry or the medical equipment supply dealer. The letter states that the ministry would fund the current repairs, but will not continue to do so if repetitive damage resulting from misuse, including inattention or intentional abuse continues.
- A copy of a letter dated May 18, 2012 from the ministry authorizing the appellant's request for a second repair on the appellant's power wheelchair.
- A copy of a medical equipment request tracking sheet May 22, 2012, listing dates, prices of two previous repairs for the appellant's power wheelchair as well as dates of conversations with appellant and medical equipment repair contact manager regarding repairs to appellant's power wheelchair.
- A copy of a letter dated June 22, 2012 listing a quote for the request for the third repair for appellant's power wheelchair.
- A copy of a ministry letter dated July 5, 2012 to the appellant denying the appellant's request to repair the power wheelchair for the third time.
- A copy of a letter dated August 10, 2012 from the appellant's doctor stating that the appellant has had six falls since she has not had a working power wheelchair, and that she urgently requires a working wheelchair.
- The appellant's Request for Reconsideration dated August 7, 2012.
- A typed note from the appellant submitted with her request for reconsideration stating that the last accident was not her fault as there was another person on the bus in a wheelchair who was pushing and abusive to the appellant while the appellant was trying to get off the bus to let the other person in a wheelchair out of the bus. The appellant went forward fast and the cord on the wheelchair came out of position. The appellant also states that the wheelchair company needs to fix the wires on the left side so they don't come out of position so quickly.
- The ministry's Reconsideration Decision, August 15<sup>th</sup> 2012 denying the appellant's request for repairs on her power wheelchair, as the appellant has requested the same repairs for her wheelchair three times and it has been determined that these repairs were not the result of normal wear and tear and were therefore not covered under warranty. The ministry submitted that they may not provide repairs of the appellant's power wheelchair if the ministry considers that the medical equipment was damaged through misuse.

The appellant's advocate submitted additional evidence at the hearing consisting of :

- A list of the appellant's falls in July and August 2012
- Pictures and explanations of features and benefits (2 pages) of a TDX power wheelchair.

- Notes prepared by the appellant's advocate which outlined the advocate's submission to the Tribunal.

The ministry did not object to this additional evidence being admitted and the panel determined that its contents were in support of the information available at the time of reconsideration and therefore admissible pursuant to section 22(4) of the Employment and Assistance Act.

The appellant was issued a TDX SP power wheelchair on February 10, 2011. On April 13, 2011 the first repair was authorized on the appellant's power wheelchair by the ministry and on May 18, 2012 a second repair was authorized on the appellant's power wheelchair. On that date the ministry sent a letter which stated that the ministry will not continue to fund repairs on the appellant's power wheelchair if repetitive damage resulting from misuse, including inattention or intentional abuse continues. On July 5, 2012 the ministry denied the appellant's third request for repairs stating that the ministry will not continue to repair the same left motor and wiring harness for the third time.

When the appellant submitted her notice of appeal she wrote that without the use of her power wheelchair she is now not able to leave her house, she can only walk short distances and she is falling all the time. She stated that the last accident with her power wheelchair was not her fault as there was a lady beside her who was pushing to get off the bus, that made her move forward very fast and that is when the wires came loose on the power wheelchair. The appellant wrote that it is always the same side that the wires come out and then are loose on the wheelchair.

The advocate and the appellant spoke at the hearing and first described using pictures the design of the power wheelchair and where the wires have come loose from the motor on three occasions. The advocate commented that the position of the wheelchair wires was possibly a poor design as they have become loose three times on the same side of the wheelchair. The advocate stated that he did not believe that the medical equipment repair company did an adequate job of fixing the wires on the wheelchair on the previous two repairs. He also questioned why it was necessary to replace the motor each time the wires pulled loose. He stated that he had gone to the address of the medical equipment repair company and it was now closed.

At the hearing the advocate on behalf of the appellant stated that the damage to the power wheelchair was not the appellant's fault. The advocate explained that when the appellant was on a public bus, another individual in a wheelchair asked to get off the bus and told the appellant she would have to get off the bus first as she was in the way. This individual became quite "aggressive, pushy and naggy" and the appellant felt stressed so she decided she should get off the bus even though it was not her stop. The panel was told that the bus driver had secured the appellant in the space on the bus with hooks and the appellant had asked the bus driver to unhook her so she could get off the bus. The bus driver was not quick to help but eventually she did, and said to the appellant "you are good to go". The appellant thought she was unhooked and moved forward, but she was not totally unhooked and the wires got caught and the wheelchair started flashing and would not move. The appellant stated that she cannot see when she is unhooked from the bus as she can't turn around, so she depends on the bus driver to tell her when she is unhooked so she can move forward.

The appellant clarified that the sequence of events was not as she had written in the notice of appeal. The other wheelchair user told her she was in the way and would have to get off first. The appellant

asked the bus driver to unhook her wheelchair. The bus driver partly untied the wheelchair and told her she was good to go. Then the appellant went forward, causing damage to the wheelchair.

The appellant submitted that although the recurring damage to her wheelchair is most unfortunate the damage came about through circumstances that were beyond her control and not through misuse of the power wheelchair and therefore the repairs should be allowed.

At the hearing the ministry asked the appellant, "What does it mean to take care of your wheelchair?" The appellant answered that she needed to keep it clean and watch that nothing is popping out with the wiring on the wheelchair.

At the hearing the ministry did not submit any new evidence. The ministry relied on its reconsideration decision which stated that the appellant had two repairs to her power wheelchair and was told in writing that damage that results from misuse will not be covered by the ministry or the medical equipment supply dealer and that the appellant had requested the same repair to her power wheelchair three times and that there is a documented history of accidents from misuse of the power wheelchair resulting in the necessity of repairs.

The panel accepts the evidence of the appellant regarding the more detailed description of the accident on the bus with the power wheelchair and finds that this accident was not the fault of the appellant. The panel further finds that the appellant did not misuse her wheelchair, and the damage was not deliberate but an unfortunate accident.

The panel makes the following findings of fact.

- The appellant has a Person with Disabilities designation.
- The ministry approved a power wheelchair for the appellant on February 10, 2011. The ministry approved the appellant's request for the first repair for the appellant's power wheelchair. (\$1284.80 for a left motor and wiring harness) on April 13, 2011 and the second repair (\$1454.80 for the same parts) on May 18, 2012.
- The appellant's use of her power wheelchair to ride the bus is an ordinary or normal use of the wheelchair. Part of this ordinary or normal use of the wheelchair is the securing of the wheelchair by hooks or other devices.
- The appellant needs the assistance of a third party to secure her wheelchair on the bus.
- When seated in her chair, the appellant cannot see whether the wheelchair is secured or not.
- In the most recent incident, the bus driver partially untied the wheelchair.
- The appellant asked the bus driver if the wheelchair was untied and the bus driver said "You're good to go".
- The damage to the wheelchair in these circumstances was not a result of misuse by the appellant.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision, which denied the appellant's third request for repairs on a power wheelchair because of a determination that the damage was due to misuse of the power wheelchair by the appellant, pursuant to EAPWDR Schedule C, Subsection 3(6) is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Schedule C, Section 3(4 to 6) of the EAPWDR states:

- (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.

Based on the evidence of the ministry and the appellant at the hearing, the panel finds that the appellant was not at fault when the power wheelchair was damaged on the bus. The appellant asked the bus driver to untie her wheelchair. The bus driver partially untied the appellant's wheelchair and told her she was good to go. The appellant could not turn around to see if the wheelchair was fully untied. The appellant thought she was untied so she moved forward causing damage to the wires on her power wheelchair.

The damage to the appellant's wheelchair came about through circumstances that were beyond her control and not through misuse of her power wheelchair.

The panel accepts the evidence of the appellant regarding the more detailed description of the accident on the bus with the power wheelchair.

The panel finds that the appellant did not misuse her wheelchair, and the damage was not deliberate but an unfortunate accident.

Therefore, the panel finds that based on the evidence, the ministry's decision to deny the appellant's request to repair the power wheelchair for the third time was unreasonable. The legislation EAPWD Regulation Section 3(6) states that the minister may not provide repairs of medical equipment or a medical device if the minister considers that the medical equipment or device was damaged through misuse. The panel finds that the appellant did not misuse her power wheelchair therefore the panel finds that the ministry's decision to deny the repair to the power wheelchair is not reasonably supported by the evidence and therefore rescinds the ministry's decision.