

PART C – Decision under Appeal

The issue under appeal is the reconsideration decision of August 14, 2012 of the Ministry of Social Development (the "Ministry") which denied the appellant's request for a power wheelchair, as his request did not meet the legislated criteria set out in subsections 3(2) and 3.2(2) of Schedule C of EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") Section 62

Employment and Assistance for Persons with Disabilities Regulation Schedule C ("Schedule C of EAPWDR"), Section 3 and 3.2.

Employment and Assistance Act ("EAA") Sections 22 and 24

PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision included:

- Request for Reconsideration application submitted August 8, 2012 (the "Request");
- a medical equipment funding request signed by the Appellant on December 5, 2011 and submitted by the Occupational Therapist ("OT") on February 15, 2012 [8 pages] ("Funding Request"), which included:
 - an Assessment Memo addressed to the Ministry, dated February 15, 2012, and prepared by the OT who was at that time covering the practice of a second occupational therapist ("Second OT") [2 pages] (the "Memo");
- a telephone log dated August 14, 2012 in respect of a call by the reconsideration officer to the Second OT ("Telephone Log")
- a Medical Equipment Request Tracking Sheet.

The Ministry did not attend at the hearing. After confirming that the Ministry was properly notified of the hearing, the matter proceeded under section 86(b) of the Employment and Assistance Regulation.

The evidence of the OT in the Memo was that:

- Appellant is diagnosed with multiple diseases, including chronic neck/back pain and degenerative disc disease.
- Appellant's physical functioning summary includes the ability to stand 30 seconds unsupported and pick up an object from the floor with supervision, turn 360 degrees slowly; and inability to stand with eyes closed unsupported, to stand on one foot unsupported, or to stand with one foot in front of other unsupported.
- Appellant uses his manual wheelchair for mobility purposes in his home and in the community.
- Appellant relies on Handi-Dart transportation services to access community for medical appointments, grocery shopping and adult day program.
- Powered wheelchair would allow Appellant to independently access the community without relying on Handi-Dart.
- Appellant required a tight turning radius at his home and thus was better suited to a powered wheelchair than a scooter.
- Powered wheelchair was recommended for the Appellant.

The evidence of the Second OT in the Telephone Log was that:

- Appellant portrayed no difficulty manoeuvring his manual wheelchair.
- Appellant was observed to have walked 10 to 20 feet without the use of a mobility aid.

At the Hearing the Appellant presented an oral submission and stated that:

- His medical practitioner ("GP") promised to write a note for the Ministry in support of his request; and advised the Appellant that such a note was provided to the Ministry.
- His GP, Geriatric physician and Psychiatrist all have recommended that he use a powered wheelchair.
- He feels like a prisoner in his own home; powered wheel chair would assist him in getting out of the house to do shopping and move about in the community.
- His back is gradually self-fusing, which affects his lungs and his heart; and also makes him vulnerable to his back/spine snapping.
- He can walk to a limited degree, however without warning his back will "click" and then he will fall to the ground.
- His neurosurgeon has confirmed that repeated incidents of this nature will result in his being in a wheelchair permanently as a complete paraplegic.
- He is right handed; he has no or very little use of his right arm to power himself in his manual wheelchair.
- He is losing use of his upper body as a result of his diagnosed disease.
- On a good day he can propel himself in his manual wheelchair for a little bit; however those days are ever fewer in number, perhaps 2 or 3 good days per week.
- He is stranded in his wheelchair unless someone is available to assist.
- His wife cannot push him around in his wheelchair as she has undergone recent heart surgery.
- His son cannot push him around as he is handicapped himself and also has recently suffered from three strokes.
- He believes he needs the powered wheelchair now and not in the future.
- He confirmed that he does rely on and utilize Handi-Dart transport services; however Handi-Dart only services from and to the curbside. Thus, once deposited at the curb he still cannot propel himself to his destination without the assistance of another third party

The Panel admitted the Appellant's oral testimony under section 22(4)(b) of the Act as evidence in support of the information and records that were before the reconsideration officer.

The panel finds that:

- Appellant is an eligible family unit; eligible to receive health supplements.
- Health Supplements include medical equipment and devices and medical or surgical supplies.
- The wheelchair is an eligible item included in the listed descriptions of a health supplement as set out in the legislation.

PART F – Reasons for Panel Decision

The issue is whether the Ministry's decision to deny the Appellant his request for a power wheelchair, because the request was not prescribed by a medical practitioner, did not confirm that the wheelchair was required to meet a medical need; and did not show that the item was medically essential to achieve or maintain basic mobility as required by sections 3(2) and 3.2(2) of Schedule C of the EAPWDR, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

The relevant statutory provisions to be considered in this appeal are set out below:

Section 62 of the EAPWDR provides:

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 (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

- (a) a recipient of disability assistance,
- (b) a person with disabilities who has not reached 65 years of age and who has ceased to be eligible for a disability assistance because of
 - (i) employment income earned by the person or the person's spouse, if either the person or the person's spouse
 - (A) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (B) is aged 65 or more and a person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)
 - (ii) a pension or other payment under the *Canada Pension Plan* (Canada), or
 - (iii) money received by the person or the person's spouse under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry. (B.C. Reg. 92/2005)
 - (c) a person who was a recipient of disability assistance on the day he or she became 65 years of age and a dependant of that person, if the dependant was a dependant of the person on that day and remains a dependant of that person,
 - (d) a dependant of a person referred to in paragraph (a) or (b) (iii),
 - (d.1) a dependant of a person referred to in paragraph (b) (i), if any person in the family unit
 - (i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)
 - (d.2) a dependant of a person referred to in paragraph (b) (ii),
 - (d.3) a dependant of a person referred to in paragraph (b) (i), if any person in the family unit
 - (i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)
 - (e) a dependent child of a recipient of hardship assistance,
 - (f) a person with disabilities who has ceased to be eligible for disability assistance because of an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or the person's spouse, if
 - (i) the person is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (ii) the person is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income

supplement, or

(B.C. Reg. 170/2008) (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(g) a person whose family unit ceases to be eligible for disability assistance because of financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*, during the term of the agreement. (B.C. Reg. 67/2010)

(1.1) A person eligible to receive a health supplement under subsection (1) (b) (ii) or (d.2) may receive the supplement

(a) while any person in the family unit is

- (i) under age 65 and receiving a pension or other payment under the Canada Pension Plan, or
- (ii) aged 65 or more and receiving the federal spouse's allowance or the federal guaranteed income supplement, and

(b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only. (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(1.2) A person eligible to receive a health supplement under subsection (1) (c) may receive the supplement

- (a) while any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, and
- (b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(1.3) A person who was eligible to receive a health supplement under subsection (1) (b) (i), (d.1), (d.3) or (f) but ceases to be eligible for medical services only may continue to receive the supplement for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only. (B.C. Reg. 114/2010)

(2) A person referred to in subsection (1) (b) or (f) and his or her dependants and a person referred to in subsection (1) (c) cease to be eligible for any supplement under this division if the person's family unit takes up residence outside British Columbia. (B.C. Reg. 170/2008)

Section 3 of Schedule C of the EAPWDR provides:

Medical equipment and devices

3 (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in section 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 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.

Section 3.2 of Schedule C of the EAPWDR sets out criteria for the provision of the following health supplement:

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 argues that although he is able to walk short distances at this time, the symptoms of his diagnosed disease is causing him to rapidly lose even the slightest ability to walk in within his home and his ability to self propel himself in his wheelchair, whether at home or otherwise. He further notes that very soon his standard manual wheelchair will be of little use to him in assisting him to achieve basic mobility. The Appellant argues further that his medical condition, namely that of his heart condition has deteriorated quite significantly in recent months since the Memo was prepared and Telephone Log made. The panel finds that the Appellant's mobility is significantly impaired however there is no evidence of a prescription from his medical practitioner as required by section 3(2)(a) of Schedule C of the EAPWDR. Further the panel notes that the Memo does not appear to clearly set out confirmation of a medical need as required by section 3(2)(b) of Schedule C of the EAPWDR. The panel notes further that the Appellant has not by virtue of the Memo, Telephone Log, Request or the Funding Request shown that the wheelchair is medically essential to achieve or maintain basic mobility to the satisfaction of the minister.

The Ministry did not appear at the Hearing to provide further argument. In the Reconsideration Decision the Ministry argued firstly that subsection 3(2) of Schedule C requires the Appellant to provide the Ministry with either a prescription of a medical practitioner for the wheelchair and/or an assessment by an occupational or physical therapist confirming the medical need for the equipment. The panel finds no evidence of a prescription from the Appellant's medical practitioner.

With respect to the assessment by an occupational or physical therapist, the panel finds that the Memo is such an assessment. However in reviewing the Memo in greater detail, the panel notes that although the OT recommends that the Appellant obtain a powered wheelchair, the OT does not specifically confirm this to be a medical need as required by the legislation, but rather the Memo suggests that the wheelchair would meet more of a social and access to community need than a strictly medical need. Thus the panel finds that the Ministry reasonably concluded that the appellant does not meet the legislated criterion set out in section 3(2) of Schedule C of the EAPWDR.

Secondly, the Ministry argued that the Appellant failed to provide evidence to satisfy the minister that the wheelchair was medically essential to achieve or maintain basic mobility as required by section 3.2(2) of Schedule C. The panel finds there to be no evidence in any of the Memo, Request Memo or the Telephone Log to show that the powered wheelchair is medically essential for the Appellant to be able to achieve or maintain basic mobility. The manual wheelchair combined with the Handi-Dart service and the limited assistance of family and third parties appears to provide the Appellant with basic mobility.

Thus the panel finds that the Ministry reasonably concluded that the appellant does not meet the legislated criterion set out in section 3.2(2) of Schedule C of the EAPWDR.

The panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and confirms the Ministry's decision.