

## **PART C – DECISION UNDER APPEAL**

The decision under appeal is the ministry's reconsideration decision dated August 9, 2012 which denied the appellant's request for a Pegasus 4 wheeled Scooter on the basis that the request does not meet the legislative criteria as per Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule 3, Sections: 3(2)(b) because an assessment by an occupational therapist (OT) has not confirmed the medical need for the equipment; 3.4(3)(b) because the total cost of the requested scooter exceeds the capped amount set out in legislation at \$3,500; and 3.4(3)(c) because the minister is not satisfied that the scooter is medically essential to achieve or maintain basic mobility.

## **PART D – RELEVANT LEGISLATION**

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

## PART E – SUMMARY OF FACTS

The evidence before the ministry at reconsideration consisted of:

- 16 April 2012, a quote for a Pegasus 4 wheeled scooter totaling \$3723.02;
- 17 April 2012, a Medical Equipment Request and Justification form;
- 17 April 2012, a report from the appellant's occupational therapist (OT);
- 12 June 2012, a copy of a medical equipment tracking sheet from the ministry; and
- 10 July 2012, a Request for Reconsideration.

In the Medical Equipment Request and Justification form, the appellant's physician described the appellant's medical condition as amputation of lower leg due to diabetes mellitus and recommends an electric scooter or an electric wheelchair.

The OT's assessment reported that the appellant is a diabetic male, who in 2011 had a prior right great toe amputation, followed by a left knee amputation. "Both surgeries were necessary due to gangrene and complications due to his diabetes." The appellant also has a medical history of hypertension, peripheral vascular disease and stenosis of the femoral and popliteal arteries. He is 5' 4" and weighs 180 lbs. The appellant is reported to have good trunk control and strength in his arms as well as a full range of motion in his upper limbs. His visual skills, perception skills and judgment are reported to be within normal limits.

Respecting functional information the OT noted the appellant to be independent with the following; eating, toileting and transfers. For daily living activities (DLA), the appellant is noted as independent with equipment (a manual wheelchair, grab rails, tub transfer bench and a reacher), all provided in 2011. For mobility, he is noted as wheelchair dependent; although, he has difficulty propelling wheelchair for "any distance independently". For bathing, the appellant uses a tub chair with transfer bench and requires assistance. It is further noted, that he spends all day in his wheelchair and his communication is good.

The OT also reports that the physiotherapist suggested that the appellant not ambulate due to increased likelihood of infection of his non-amputated leg as he has a history of multiple chronic wounds on his right leg and due to this, he is not currently a candidate for a prosthetic.

The OT further indicated that the appellant lives in a rental wheelchair accessible apartment, in the center of town and as his mobility is limited; he needs a mobility device to enable him to go outside in the community, independently. The OT advised that the noted scooter was trialed and the appellant demonstrated that that he was able to operate the scooter successfully. A second scooter was also trialed however, the appellant prefers the Pegasus as it was bigger, easier to handle and met his mobility needs more satisfactorily. The OT recommends that the appellant requires a scooter, as it is more appropriate for him than a power wheelchair because a scooter would provide the independence he needs to go out for essential needs, such as shopping, medical appointments and other needs. The appellant has no problems transferring on/off the scooter and he has good trunk balance and arm strength that he does not require the seating that is provided with a power wheelchair. "Although he is able to use his manual wheelchair at home he cannot push himself extensively around the community" and it is anticipated that he will be using the scooter for many years, as he continues to remain in the community.

In the copy of a medical equipment tracking sheet from the ministry, a request for a scooter was noted as well as that his current equipment is a manual wheel chair issued through non-insured health benefits in 2011. Further noted is that the appellant is requesting the scooter to enable him to go in to the community independently, not for basic mobility.

In the Request for Reconsideration, the appellant states that there is no community transportation after 5:00pm

or on Sundays or transit service after 6:00pm or on Sundays. He indicates that there are lots of hills and bad patches and sidewalks that he can't go over in his wheelchair and that no taxis provide wheelchair transportation. The appellant adds that he would like to go to evening and Sunday events but there is no transportation. The appellant argues that he only spent between one hour and 1 1/2 hours with the OT and questions her judgment.

A letter from the appellant's physician dated August 16, 2012 was included with the Notice of Appeal dated August 16, 2012. The physician indicates that the appellant needs something to help him move around. The physician reports that the appellant is currently using his manual wheelchair, "but it is getting hard for him to use since his arms are weak, because of his blocked arteries".

Included with the appellant's submission for the hearing was a letter of support dated September 7, 2012 from a community leader, who was also a former health director and has been authorized by the appellant to assist him with his appeal. It is argued that manual wheelchairs are a huge challenge for clients with diabetes and complications that affect full use of legs, arms and what we normally take for granted in good health. "Motorized scooters enable one to be more independent and be a contributing citizen far easier than one who is "home" bound and unable to frequent social and life obligations, in an easier and accommodating fashion." Additionally noted is that the appellant's increased wellness and mobility is sought by his appeal.

The panel admitted the appellant's physician's letter of August 16, 2012 and the letter of support from the community leader dated September 7, 2012 as further description of the impact on the appellant's mobility on his daily functioning and is therefore admissible under s. 22(4) of the Employment and Assistance as further information into evidence under Section 22(4) of the Employment and Assistance Act.

### **Finding of Facts**

The appellant is eligible for medical equipment and devices under Section 62 of the EAPWDR.

The appellant's physician describes the appellant's medical condition as amputation of lower leg due to diabetes mellitus.

The appellant has requested pre-authorization from the minister for the medical equipment requested.

There are no other resources available to the appellant to pay for or obtain the medical equipment requested.

The scooter has been recommended by both the appellant's physician and the OT.

The cost for a Pegasus 4 wheeled scooter totals \$3723.02.

## PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry's reconsideration decision which denied the appellant's request for a Pegasus 4 wheeled Scooter on the basis that the request does not meet the legislative criteria as per Employment and Assistance for Persons with Disabilities Regulation Schedule 3, Sections: 3(2)(b) because an assessment by an occupational therapist (OT) has not confirmed the medical need for the equipment; 3.4(3)(b) because the total cost of the requested scooter exceeds the capped amount set out in legislation at \$3,500; and 3.4(3)(c) because the minister is not satisfied that the scooter is medically essential to achieve or maintain basic mobility.

The following sections of the EAWPDR, Schedule C apply to this decision.

**3 (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.

**3.4 (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.

### **Section 3(2)(b)**

The appellant's position is that he is eligible for a scooter because his physician has confirmed his medical requirement for a scooter and also reports that it is getting hard for the appellant to use his manual wheelchair, since his arms are weak because of blocked arteries.

The ministry's position is that the evidence does not confirm that the appellant has a medical need for the scooter and that the OT has not indicated any change to the appellant's physical condition since 2011 and why he would now require a scooter in 2012 for medical reasons.

The panel finds that although the OT confirms that the appellant is wheelchair independent, has good trunk control and strength in his arms as well as full range of motion in upper limbs; the appellant's physician, four months after the OT's assessment, reports that it is getting hard for the appellant to use his manual wheelchair, since his arms are weak because of blocked arteries. The OT had also indicated that the appellant has difficulty propelling his, without providing an estimate of what distance the difficulty occurs. "Although he is able to use his manual wheelchair at home he cannot push himself extensively around the community". As the legislation requires that an assessment by an OT or physical therapist confirm the medical need for the medical equipment requested; the panel finds that the evidence does not confirm that there is a medical need for the scooter, thus the ministry reasonably determined that the requirement was not established, as per Schedule C, Section 3(2)(b) of the EAPWDR.

### **Section 3(4)(3)(b)**

The appellant's position is that the Pegasus 4 wheeled scooter was trialed and he demonstrated that he was able to operate the scooter successfully. A second scooter was also trialed however, the appellant preferred

the Pegasus as it was bigger, easier to handle and met his mobility needs more satisfactorily. Additionally, the OT recommends that the appellant requires a scooter, as it is more appropriate for him than a power wheelchair because a scooter would provide the independence he needs to go out for essential needs, and he has no problems transferring on/off the scooter that he does not require the seating that is provided with a power wheelchair.

The ministry's position is that the appellant's request included a quotation for a Pegasus 4 wheeled scooter for a total of \$3723.02 which exceeds the \$3500 limit as specified in the legislation.

Regarding the requirement that the total cost of the scooter and any accessories attached to the scooter do not exceed \$3500, the panel finds that the appellant has not satisfied this requirement as the cost for a Pegasus 4 wheeled scooter totals \$3723.02 therefore; the requirement of Schedule C, Section 3.4(3)(b) of the EAPWDR was not met.

### **Section 3.4(3)(c)**

According to the ministry "medically essential to achieve or maintain basic mobility", refers to the appellant's need for equipment due to a mobility impairment which is necessary to perform his day to day activities in his home and or community. The ministry is not satisfied that a scooter is medically essential for the appellant to achieve or maintain basic mobility as the OT has reported that the appellant has the functional ability to use a manual wheelchair in his home and to go outside into the community. The ministry also indicates that the appellant lives in a wheelchair accessible apartment in the center of town and has access to community and public transportation and could ambulate adequately once he reaches his destination.

The appellant argues that there is no community transportation after 5:00 pm or on Sundays or transit service after 6:00 pm or on Sundays. He indicates that there are lots of hills and bad patches and sidewalks that he can't go over in his wheelchair and that no taxis provide wheelchair transportation. The appellant states that he would like to go to evening and Sunday events but there is no transportation. Also, the physiotherapist suggested that the appellant not ambulate due to increased likelihood of infection of his non-amputated leg as he has a history of multiple chronic wounds on his right leg. The appellant adds that "Motorized scooters enable one to be more independent and be a contributing citizen far easier than one who is "home" bound and unable to frequent social and life obligations, in an easier and accommodating fashion." Also, the OT recommends that the appellant requires a scooter because a scooter would provide the independence he needs to go out for essential needs, such as shopping, medical appointments and other needs.

The panel acknowledges that the appellant has mobility challenges with his manual wheelchair and that an electric scooter may enhance his access to the community and provide a convenient mode of transportation to push himself extensively around the community; however, the panel finds that the supplement under the legislation is not intended to provide independent access to the community but rather it must only be medically essential to basic mobility. Therefore, the panel finds that the ministry reasonably determined that Schedule C, Section 3.4(3)(c) of the EAPWDR was not established.

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 the requirements of the legislation. Thus, the panel confirms the ministry's decision.