

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated August 9, 2012 which denied the appellant's request for a supplement to cover the cost of a Scooter. The ministry found that the following requirements of Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met:

- the assessment by an occupational therapist does not confirm a medical need for the scooter, pursuant to Section 3(2)(b); and,
- the ministry is not satisfied that the scooter is medically essential to achieve or maintain basic mobility, pursuant to Section 3.4(3)(c).

### PART D – Relevant Legislation

Employment and Persons with Disabilities Regulation (EAPWDR), Section 62 and Schedule C, Sections 3 and 3.4

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Letter dated March 13, 2012 from an occupational therapist (OT) 'To Whom It May Concern', which states in part that the appellant lives in an apartment with a roommate who assists with several household duties. Due to a longstanding history of degenerative disc disease (DDD) with accompanying nerve compression, the appellant is finding it exceedingly difficult to manage various tasks. The appellant was observed ambulating around his apartment with the use of a cane and it was noted that his balance appeared poor and he leaned heavily upon his cane. The appellant stated that his roommate does most of the cooking and keeping the apartment tidy, that he would have a difficult time performing these tasks on his own due to fatigue and back pain. The appellant stated that the building laundry facilities are located on his floor and he generally manages his laundry but finds it difficult to transport his clothes back and forth. The appellant stated that he has difficulty managing shopping and socializing with friends due to his impaired mobility, that his roommate tries to do the shopping but she is not always available for this. On days that he is responsible for getting groceries or needs to go to the mall, the appellant uses a scooter provided by the mall or store. The appellant is reliant upon his roommate for transporting him to and from appointments. A scooter trial was performed March 5, 2012 at the appellant's home and he demonstrated driving the scooter with no concerns by the OT with respect to decision-making, judgement, safety or attention. It is the opinion of the OT that the appellant would benefit from a scooter so that he can manage such IADL as shopping, banking, laundry, and managing appointments;
- 2) Quote from a health product company dated March 15, 2012 for a Sunburst transfer bench in the total amount of \$138.60;
- 3) Client Care Communication Sheet dated March 19, 2012 stating in part that the community OT is working with the appellant to secure funding for a scooter and a tub bench, and it is signed back by the physician with the comment that he "... agree(s) that this patient would benefit from these items;"
- 4) Quote from a health product company dated March 20, 2012 for a Pride Celebrity DX sport 4 Wheeled Scooter in the total amount of \$3,415.50;
- 5) Medical Equipment Request and Justification dated March 28, 2012 which states in part that the medical equipment recommended is a Pride Celebrity DX 4-wheeled scooter;
- 6) Medical Equipment Request Tracking Sheet with notes dated June 7, 2012 which state in part that there are no previously funded equipment, scooter denied as it appears the appellant has basic mobility;
- 7) Letter dated June 7, 2012 from the ministry to the appellant denying his request for a scooter;
- 8) Letter dated July 5, 2012 from an advocate to the ministry regarding the cost of the scooter;
- 9) Letter dated July 9, 2012 from an advocate to the appellant's physician in which the physician indicates his agreement that the appellant states he is in severe back and leg pain and he is unable to mobilize without his cane, with a note "...25-30 year history of back pain related to DDD"; and also that the appellant states he gets sharp pains across his back and down his leg which cause him to fall down even though he is holding on to his cane, with the note "...has been using a cane for more than 1 year but shoulder pains preclude its use." In response to a question about the distance the appellant is able to walk with his cane, the physician indicates 1/2 block and that it would take him 10 minutes to do so. Asked if the appellant can use a manual wheelchair, the physician responds "...no, shoulder pain secondary to rotator cuff injury." Asked whether the appellant is safe accessing the community without the use of a motorized scooter, the physician responds "...no, unstable on feet secondary to pain and hampered by shoulder pain that keeps him from using a cane safely." Asked whether the appellant needs a scooter to achieve basic mobility, the physician responds "...agree" with no further comments. Asked whether the appellant's medical condition will worsen if he does not get a motorized scooter, the physician responds "...degeneration will worsen whether or not he gets a scooter;" and,
- 10) Request for Reconsideration.

The appellant consented to the attendance of a ministry observer at the hearing. In his Notice of Appeal, the appellant states that he does not have a person or persons taking him shopping, banking, to the library, to visit friends, or to the doctor. The appellant states that he is moving September 1, 2012 to a one-bedroom and requires a scooter for all daily transport. At the hearing, the appellant's advocate stated that the appellant just

got out of the hospital the day before and he is still medicated and finds it difficult to communicate. The advocate stated that the appellant's living arrangements have changed since the time of his request, that he no longer has a roommate to help him with his basic needs. The advocate explained that part of the reason the roommate left is that the demands of helping out the appellant were too much for her. The advocate stated that the letter dated July 9, 2012 was completed by the appellant's physician rather than the OT because the OT indicated to the advocate that she is not qualified to provide a medical opinion about the appellant's medical conditions, that the doctor knows the appellant better and is more aware of his limitations. The advocate stated that the OT did not specifically consider a 4-wheeled walker but the same muscles are used to operate a walker as a manual wheelchair. The advocate stated that the appellant has a rotator cuff tear which has now impacted both arms and it will not be long before the appellant cannot use a cane at all.

The appellant stated that he has moved to a place where there is cleaner air and a hot tub in the facility. The appellant stated that his previous roommate is not a family member and she wanted to spend time with her boyfriend and discovered that she was spending a lot of time helping the appellant. The appellant stated that the grocery store and banking at his new residence is about a mile away, that people from his facility either ride their bikes or take their scooters to get there and people have brought him food and a neighbour has even offered to lend him his scooter. The appellant stated that he has been in and out of the hospital for blood tests and for his heart and he has had to rely on others to fulfill his basic needs, although he has started doing his banking on the computer. The appellant stated that he cannot walk very far, if he walks half a block with his cane his back hurts and he "...has to take so much medication that it's ridiculous." The appellant said that he has resorted to driving to his doctor's appointments and to the drug store but with the medications he is on he is not supposed to be driving. The appellant stated that he is on morphine and Percocet for the pain in his back. The appellant stated that he has been taking medicine and getting cortisone shots in his back for about 20 years. The appellant stated that he has to go to the hospital once a year for the cortisone injection in his back. The appellant stated that he gets cortisone shots in his shoulder for the rotator cuff injury every 3 months and that his other arm now has a problem with the same issue. The appellant stated that he cannot remember if he mentioned his rotator cuff injury to the OT, that he might have recently received a shot so that it would not have been as bad as it usually is. The appellant stated that he cannot lean forward because of the discs in his back and that this would make it difficult to operate a 4-wheeled walker, plus his arms cannot take any pressure. The appellant stated that he has been going to his current doctor for 2 or 3 years. In response to a question, the appellant stated that he has no access to Handi-Dart where he lives now. The panel admitted the appellant's evidence of his current living arrangement and the impact of his impairments as being oral testimony in support of the information and records that were before the ministry on reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act (EAA).

The ministry's evidence included that the appellant has been diagnosed with degenerative disc disease with accompanying nerve compression and shoulder pain due to a rotator cuff injury. The OT reported that the appellant lives with a roommate who assists the appellant with household duties, does most of the cooking, keeping the apartment tidy and shopping. On the days that the appellant is responsible to get the groceries, he uses a scooter provided by the mall. In addition, the appellant generally does his laundry as the laundry room is close to his apartment. The OT observed the appellant ambulating around his apartment with the use of a cane and noted that his balance appeared poor and he leaned heavily on his cane. The OT reported that the appellant relies on his roommate for transportation to/from appointments in town and the appellant would like a scooter for independent mobility in going shopping, banking, doing laundry, managing appointments and socializing with friends. The ministry contacted the appellant's advocate regarding a reference to a letter to the OT and the advocate confirmed that a letter was originally sent to the OT but she felt she could not answer the questions and, therefore, the letter was re-directed to the appellant's physician. The information provided does not show that either a 4-wheeled walker with padded seat or a manual wheelchair with appropriate seating was trialed or fully considered to meet the appellant's mobility needs. The physician notes in the additional letter that the appellant could not use a manual wheelchair because of shoulder pain secondary to a rotator cuff injury but the OT does not mention this as a factor impacting the appellant's functional abilities.

APPEAL #

Information is not provided to show that the appellant is not able to access public transit or HandyDart services when his roommate is not available to provide transportation and that these services in combination with the use of either a 4-wheeled walker or a manual wheelchair would not enable the appellant to reach destinations and have sufficient mobility upon arrival to safely perform activities and access community resources.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of a scooter because:

- the assessment by an OT does not confirm a medical need for the scooter; and,
- the ministry is not satisfied that the scooter is medically essential to achieve or maintain basic mobility, as required by Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Pursuant to Section 62 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the applicant must be a recipient of disability assistance, or be a dependent of a person in receipt of disability assistance in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has not disputed that the requirement of Section 62 has been met in that the appellant has been approved as a recipient of disability assistance.

At issue is whether the appellant's request for a Pride Celebrity DX sport 4 Wheeled Scooter meets the requirements under Schedule C of the EAPWDR, including:

### 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. ...

### 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. ...

The ministry's position is that the appellant is eligible to receive health supplements under Section 62 of the EAPWDR, but the appellant's request for a supplement to cover the cost of a Pride Celebrity DX sport 4-wheeled Scooter does not meet all of the applicable criteria of Schedule C of the EAPWDR. Firstly, the ministry argues that the requirements in Section 3(2)(b) have not been met as the assessment by the OT does not confirm the medical need for the medical equipment. The ministry argues that the assessment by the OT reviewed the appellant's use of his cane and reported that the appellant relies on his roommate for transportation to/from appointments but did not consider either a 4-wheeled walker or a manual wheelchair to meet the appellant's mobility needs. The appellant argues that the requirements of the section have been met by the information provided to the ministry by his OT that he has a longstanding history of DDD with accompanying nerve compression, that the appellant is finding it exceedingly difficult to manage various tasks and the OT is of the opinion that the appellant would benefit from a scooter so that he can manage such IADL as shopping, banking, laundry, and managing appointments.

The panel finds that the assessment by the OT identifies impacts from the appellant's medical condition, being a longstanding history of DDD with accompanying nerve compression, that dictate a medical need for a motorized scooter in particular. The panel finds that, as part of this analysis, the OT considered the need for a scooter in relation to other types of equipment available to address the restrictions to functioning in order to show that the scooter addresses particular restrictions that cannot be addressed by other equipment. In her letter dated March 13, 2012, the OT stated that she observed the appellant ambulate around his apartment with the use of a cane but that the appellant's balance appeared poor and he leaned heavily upon his cane. The OT reported that the appellant is heavily reliant on his room-mate to perform most of the household tasks as he would have a difficult time performing them on his own due to fatigue and back pain. The OT indicated that the appellant is also reliant upon his roommate for transporting him to and from appointments. The letter dated July 9, 2012, which has been completed by the appellant's physician, states that the appellant could not use a manual wheelchair as a result of shoulder pain secondary to a rotator cuff injury and also that he is "...unstable on feet secondary to pain and hampered by shoulder pain that keeps him from using a cane safely." The advocate explained that this letter was completed by the appellant's physician rather than the OT because the OT stated that the doctor would be better qualified to answer questions relating to the appellant's medical condition. However, the OT also indicates in her letter dated March 13, 2012 that it is her opinion that the appellant would benefit from a scooter so that he can independently manage such IADL as shopping, banking, laundry, and attending appointments. Therefore, the panel finds that the ministry's determination that the assessment by the OT has not confirmed the medical need for the scooter, pursuant to Section 3 (2)(b) of Schedule C of the EAPWDR, was unreasonable.

The ministry's position is that the requirements in Section 3.4(3)(c) have not been met as the ministry is not satisfied that the scooter is medically essential to achieve or maintain basic mobility. The ministry argues that at the present time the appellant is able to use his cane or possibly a 4-wheeled walker or manual wheelchair in combination with transportation by his roommate or either public transit or HandyDart when she is not available, in order for the appellant to achieve or maintain his basic mobility. The appellant argues that the requirements of the section have been met by the information provided to the ministry by his OT and physician, that he has limited options available to him for equipment as a result of his back pain, fatigue and shoulder injuries and that since he no longer has a roommate to rely upon for daily activities and transportation a scooter is required to achieve his basic mobility.

The panel finds that the evidence shows that the appellant has a need for equipment due to his back pain, difficulties with balance, fatigue and shoulder injuries to be able to safely perform his daily activities. In terms of identifying a scooter as medically essential to achieve or maintain basic mobility, the panel finds that an assessment of a variety of types of equipment is relevant and necessary to this analysis, in order to specify the equipment features that address the appellant's particular restrictions and provides for "basic" mobility along

the range of various levels of mobility (with 'no mobility' at one extreme and 'perfect mobility' at the other).

In the letter dated March 13, 2012, the OT reports that the appellant currently uses a cane for indoor mobility assistance but that his balance appeared poor and he leaned heavily upon his cane. The appellant's physician indicates in a letter dated July 9, 2012 that the appellant states he gets sharp pains across his back and down his leg which cause him to fall down even though he is holding on to his cane, with the note "...has been using a cane for more than 1 year but shoulder pains preclude its use." Asked if the appellant can use a manual wheelchair, the physician responds that he cannot "...shoulder pain secondary to rotator cuff injury." The advocate argued that the same shoulder muscles would be required for use of a 4-wheeled walker and would also preclude its use. Asked whether the appellant is safe accessing the community without the use of a motorized scooter, the physician responds that he is not "...unstable on feet secondary to pain and hampered by shoulder pain that keeps him from using a cane safely." The physician agrees that the appellant needs a scooter to achieve basic mobility. The appellant also provided evidence that whereas he previously relied on his roommate to perform most of the household chores for him and to provide transportation to access the community, he has moved and no longer has a roommate to assist him. The panel finds that the evidence demonstrates that due to the combination of the appellant's current restrictions, the options for appropriate equipment to allow him to ambulate indoors are limited and that he no longer has the assistance of a roommate to help him with daily living activities or to transport him to destinations. Therefore, the panel finds that the ministry's determination that the evidence does not establish that the scooter is medically essential to achieve or maintain basic mobility, pursuant to Section 3.4(3)(c) of Schedule C of the EAPWDR, was not reasonable.

In conclusion, the panel finds that the ministry's decision to deny the request for a scooter as not meeting the legislated criteria of Schedule C, Sections 3(2)(b) and 3.4(3)(c) of the EAPWDR, was not reasonably supported by the evidence and rescinds the decision. Therefore, the ministry's decision is overturned in favour of the appellant.