

PART C – Decision under Appeal

The decision under appeal is the September 27, 2012 reconsideration decision that denied the appellant his request for a power wheelchair with attendant controls and manual tilt. The ministry of Social Development (Ministry) determined that the appellant had not met two legislative criteria. First, the ministry found that the assessment by an occupational therapist (OT) had not confirmed that a medical need was established for a power wheelchair with attendant controls and manual tilt as required by Schedule C section 3 (2) (b) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

Secondly, the ministry was not satisfied that the power wheelchair with attendant controls and manual tilt is medically essential to achieve or maintain basic mobility as required by Schedule C, section 3.2(2) of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) - Section 62
Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) - Schedule C,
section 3 and 3.2

PART E – Summary of Facts

The information before the ministry at the time of reconsideration consisted of the following:

- October 12, 2011 a Medical Equipment Request and Justification Form signed by the appellant that includes a prescription for a power wheelchair with tilt-in-space and attendant controls and signed by the appellant's physician. In describing the medical condition of the appellant the physician states "Wheelchair Bound Severe Traumatic Brain Injury. Expressive Aphasia."
- November 10, 2011 an assessment of the appellant performed by an OT(#1) with an attached quote dated November 3, 2011 for an Invacare TDX-SP Power Wheelchair with attendant controls and custom seating options in the amount of \$ 20,618.35. The OT describes the involvement of the appellant in a high speed motor vehicle accident of September 2009. The accident caused the appellant to sustain an extremely severe traumatic brain injury with diffuse axonal injury and a traumatic subarachnoid hemorrhage. The appellant also suffered multiple fractures of the face, skull, right humerus and clavicle and the tranverse processes of C7, T1 and T2. He also had pulmonary contusions and a right pneumothorax. The assessment describes that the appellant is dependent for all his activities of daily living. He has a lift for transfers and when he is not in bed he sits on a tilt-in-space wheelchair. The wheelchair fits poorly and the appellant cannot propel it. He also has decreased cognition that has improved and can attend to a conversation and follow simple directions. The OT(#1) outlines that a previous out-of-province OT involved with the appellant's rehabilitation trialed a power wheelchair and found that it gave the appellant some control over his mobility although requiring close supervision.

The OT(#1) undertook a re-assessment and a re-trial of the TDX-SP Power Wheelchair and found that if properly set up that it gave the appellant some independence. While driving this wheelchair the appellant can follow directions, maneuver around some of his home including a homemade obstacle course and can stop quickly. The OT notes that the appellant would still require close supervision and attendant controls would be mandatory for safety and his caregivers can take control when necessary. The OT recommends several features for the TDX-SP. To drive the wheelchair the appellant requires a custom trough to support his right arm which he cannot lift, a wheelchair drive set up not to respond to his tremors and a mushroom joystick as a standard joystick is too small to manage. Tilt-in-space is required for upright trunk positioning, energy conservation and pressure relief. The OT also reports that the appellant would require a specialized headrest for head control/positioning and support while in tilt, cushions for comfort and support, midline adductor supports for his legs, and an adjustable knee angle of the foot plate due to the appellant's tall height. The appellant attends outings and accesses the community including medical appointments in a wheelchair accessible van. However, because the power wheelchair with tilt-in-space is not low enough to allow the appellant access to the van, the addition of a manual recline function to his back is required.

- December 30, 2011 the appellant submitted a request for a power wheelchair. The ministry states in the record and in regard to this request *"You can manage to drive the wheelchair in house and around obstacles if not distracted. You tire easily and then require supervision.... You do have an OTS manual wheelchair that does not fit well. Your manual wheelchair bought by your parents is a good buy but not a wonderful fit."*
- January 4, 2012 the ministry spoke with OT (#1) who advised she is not comfortable with the appellant using a power wheelchair without a hand held control because he is impulsive and if left alone can take off. The ministry log notes document a discussion with OT (#1) and writes *" She [OT #1) does not feel that she is comfortable giving [the appellant] power without attendant control. Client is v impulsive and if left alone can take off....[parents] do not want man.. has to be power to satisfy clients racing car feelings."*
- January 5, 2012 the ministry spoke again to OT (#1) and its log notes indicate *" Spoke to OT #1- client is dependent in all areas-but in p/w/c can move the p/w/c. Due to judgement and impulsivity cannot operate w/c independently-needs constant supervision and so would need a p/w/c with attendant control."*
- January 17, 2012 the ministry decided that it was willing to consider a base Power Wheelchair with tilt but will not consider funding the recline and attendant controls.
- May 28, 2012 the ministry receives a telephone call from OT (#1), who conveys she cannot recommend the funding of a Power Wheelchair without the attendant control. She understands the ministry does not usually fund attendant controls and only funds Power Wheelchairs for independent base mobility. The OT (#1) also conveys that the family does not want a Power Wheelchair without manual recline as they would need this to take the Power Wheelchair in their van. The ministry notes state *" As client requires constant supervision in p/w/c OT feels attendant controls is essential-OT cannot recommend funding of p/w/c without attendant control. "Also client has a m/w/c with tilt so it appears basic mobility and seating/positioning needs have been met with this m/tilt in space w/c."*
- June 28, 2012 the ministry log notes indicate OT (#1) will not support funding of a Power Wheelchair without attendant controls due to safety issues. The ministry notes the following *"the ministry only funds power mobility for client operated –independent mobility. Client has mwc for mobility."*
- June 29, 2012 in a ministry letter to the appellant his request for a TDX-SP Power Wheelchair and custom seating is denied.
- September 13, 2012 the appellant's Request for Reconsideration which includes a new and undated assessment by an OT(#2) and two attached quotes dated September 10, 2012; one for an Attendant Control for TDX-SP Wheelchair and a Buddy Button Kill Switch. In the amount of \$ 1,167.55 and another for an Invacare TDX-SP Power Wheelchair with custom

seating options in the amount of \$ 19,682.60. In the updated assessment the OT (#2) reports that the appellant works daily to gain his independence with his daily living activities by participating in as much rehabilitation as possible. The appellant is reported to have made some functional gains in a range of daily living activities in areas such as feeding orally, drinking water from a cup, simple communications, sitting in a family hot tub, swimming 3 laps in the pool independently, assisting the family in household chores, actively participating in the family's hobby of racing, using an active/passive trainer bike for upper and lower extremities and directing his own care and manage personal affairs. Despite the gains the appellant is still dependent on family and caregivers for transfers, setting up all meals, any mobility in his manual wheelchair which he cannot maneuver by himself, toileting routine, bathing and personal hygiene routine and community outings.

The OT (#2) notes that providing the appellant with power mobility would have a significant impact by increasing independence in day to day life such as maneuvering inside his home independently, snacking independently, emptying his own urinal bottle, taking on tasks in the family workshop, socializing with friends at the race track, motoring around his home neighborhood and having independence at community outings.

The OT (#2) reports that there are a number of features that contribute to the appellant's success in using the Power Wheelchair as follows:

- Power Tilt and Angle Adjustable Seating used a positioning device for postural controls in remaining upright; for pressure relief and trunk weakness by allowing the appellant varying tilted positions; and for maximizing sitting tolerance and comfort in the chair.
- Custom Arm Rest (right side only) with an integrated Heavy Duty Joy Stick to offset weakness and tremors in the appellant's right upper extremity and limit lateral movement to facilitate safe and precise driving. The Heavy Duty Joy Stick allows the appellant to use his whole palm and his tremors won't damage it and the display feature which is a standard feature is needed for the appellant to see an adjust driving and speed modes.
- A Head Rest as part of the Cushioning and Seating System when the appellant is in the tilted position; a Hard Shell Back Rest with lateral supports because of poor trunk control; Moderate Pressure Relieving Cushion with Riser to increase comfort and sitting time and positioning and a foot plate to maintain posture and pelvic positioning.
- Attendant Controls that are not to take away the appellant's independence or as the main driver when using the using the Power Wheelchair. The OT (#2), however, outlines that attendant control is warranted in several situations such as maneuvering the power chair into the side entrance of the wheelchair accessible van, onto the small platform lift that goes in and out of the appellant's house and the small platform elevator used by the appellant from the main floor of the garage to the second floor gym area. The OT (#2) also indicates that because of the small amount of clonus in the appellant's hands and his susceptibility to distractions the attendant controls are warranted given the potential dangers of the above situations to both the appellant and his caregivers.
- Kill Switch that can disable the chair in higher risk situations (i.e. large crowds of people

and/or busy vehicle traffic).

The OT (#2) reports that the appellant's current manual wheelchair does not meet the standard for basic mobility as he cannot propel the wheelchair to "*achieve mobility*." The OT (#2) says the appellant lacks the postural control and strength and coordination in his upper extremities required to mobilize a manual chair. The appellant every day is "pushed and placed" by family and caregivers and his current chair forces him to be more dependent on his family and caregivers. The OT (#2) says the current manual chair does not meet the standard of "*achieving and maintaining basic mobility*." The OT (#2) adds power mobility on top of the functional gains made by the appellant would not only increase the appellant's day to day independence it will further his rehabilitation by providing more opportunities to practice newly learned skills in a "*real-life*" setting and in, her opinion only power mobility will meet the standard for basic independent mobility.

The appellant is 24 years of age and is a recipient of disability assistance.

In his Notice of Appeal (NOA) dated October 4, 2012 a note is attached explaining his reasons for appeal. The note says that the appellant and his family are disagreeing with the ministry's reconsideration decision, but are willing to have the power wheelchair without attendant controls. The family will now build a ramp at their home for independent access of the appellant in and out of the house without using the elevator wheelchair lift now installed and will look at alternative transportation such as HandiDart and are willing to purchase a rear entry wheelchair van. The note states "yes [the appellant] does have a primary mobility device but it does not, in any way, support or achieve independent mobility." The NOA also attached a revised assessment from the OT (#2) which was essentially a replicate of that provided at the time of the appellant's Request for Reconsideration minus the portions of the assessment that described the need for attendant controls. Also enclosed was an updated quote for a Power Wheelchair without the attendant controls.

The panel acknowledges the appellant's modified request in his above NOA, but notes that its jurisdiction on this appeal is the Ministry's Reconsideration Decision dated September 27, 2012.

At the hearing, the ministry stood by the record and relied on the ministry reconsideration decision. The ministry added that its reconsideration decision considered and relied on all the evidence presented including that of several different OTs in reaching its decision.

At the hearing, the appellant was represented by his parents. The parents explained that the appellant cannot move on his own in his manual wheelchair, but can maneuver a power wheelchair in his home. They report that the appellant always has supervision, but the goal is to give the appellant some independent mobility. Also important is to keep the appellant's psychological health improved and to make everyone's life easier with a power wheelchair. They further indicated that they had written the note attached to the appellants NOA referred above.

The panel admits the new evidence from the appellant's parents as being oral testimony in support of the information and records that were before the minister at the time of the reconsideration decision, in accordance with section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision to deny the appellant request for a power wheelchair on the grounds that an OT has not confirmed the medical need for a power wheelchair with attendant controls and tilt as required by the EAPWDR, Schedule C, section 3(2)(b) and that the wheelchair is not medically essential to achieve or maintain basic mobility as required by the EAPWDR Schedule C, section 3.2 (2).

The EAPWDR provides the following:

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...

Schedule C

General health supplements

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.

Medical equipment and devices

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.

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.

Medical equipment and devices – wheelchair seating systems

3.3 (1) 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 a person's positioning in a wheelchair:

- (a) a wheelchair seating system;
- (b) an accessory to a wheelchair seating system.

(2) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is 2 years from the date on which the minister provided the item being replaced.

The appellant's position is that he is eligible for a power wheelchair because his current manual wheelchair as confirmed by his occupational therapist does not meet the standard for basic mobility and only power wheelchair with attendant controls will meet the standard for basic independent mobility. Further, his occupational therapist indicates the appellant lacks the postural control and strength to and coordination in the upper extremities required to mobilize a manual wheelchair.

The ministry's position is that a power wheelchair with attendant controls and manual tilt is not medically essential for the appellant to achieve or maintain basic mobility as required by the legislation in performing day-to-day activities in their home and/or community. The ministry argues the appellant's manual wheelchair meets his basic mobility, seating and positioning needs. The ministry further submits that the appellant's most recent OT assessment has not confirmed a medical

need for the requested power wheelchair with attendant controls and manual tilt.

The panel finds the scope of this appeal is limited to a review of the ministry's decision at reconsideration which found that two legislative criteria have not been met; Section 3 (2) (b) and Section 3.2(2) of Schedule C of the EAPWDR.

Sections 3(2)(a) and (b) of Schedule C of the EAPWDR gives the minister, respectively, the latitude to require one or both of a prescription from a physician and an assessment by an occupational therapist. The ministry makes no reference to the doctor's prescription which was completed. However, at issue is the ministry finding that the first criterion as set out in Schedule C, section 3(2)(b) requiring an assessment by an occupational therapist or physical therapist that confirms the medical need for the medical equipment or devices in sections 3.1 to 3.8 was not met. In the appellant's case the medical equipment and devices include those under 3.2(2) including a wheelchair, an upgraded component of a wheelchair and an accessory attached to a wheelchair. Specifically, in the appellant's circumstances a power wheelchair with tilt-in-space and attendant controls. While the doctor's prescription recommends a power wheelchair with tilt-in-space and attendant controls, it does not specifically address or consider the range of risks posed by the various OT assessments regarding the appellant operating a power wheelchair without attendant controls. The panel finds that attendant control was an imperative feature by all the OT assessments up to and including the time the ministry made its reconsideration decision. This needed feature of attendant control conveyed the OT concerns regarding the appellant's overall ability to operate a power wheelchair independently due to his need for constant supervision, his impulsivity and that he tires easily and is susceptible to distractions. A feature that was mandatory for the appellant's safety and to allow his caregivers control as necessary. The panel finds the need for attendant control an accessory and that the assessment by the occupational therapist makes this a condition in recommending a power wheelchair; one that conveys on balance a stronger overall control need for caregivers so the appellant can manage the power wheelchair given his physical and mental limitations over that of a medical need. Therefore, the panel finds the ministry's determination reasonable that the assessment by the occupational therapist has not confirmed the medical need for the power wheelchair with attendant controls pursuant to Schedule C, Section 3(2)(b) of the EAPWDR.

The second criteria set out in Schedule C, section 3.2(2) of the EAPWDR at issue is one that requires the ministry to be satisfied that the power wheelchair with attendant controls and tilt is medically essential to achieve or maintain basic mobility. The panel interprets the meaning of medically essential as meaning indispensable, absolutely necessary or cannot be done without. The panel finds the appellant's position that the power wheelchair with attendant control will meet the standard of achieving and maintaining basic mobility or basic independent mobility without any strong foundation in the overall evidence. While the panel acknowledges the usefulness and convenience that these medical equipment and devices might provide in the circumstances of the appellant including possible quality of life and psychological improvements, the evidence overall does not support that the appellant can achieve or maintain basic physical mobility as contemplated by the legislation. The appellant requires constant supervision and is dependent on others for most of the time because of mental and physical impairments noted consistently in several different OT assessments and outlined above. Further, the assessments by the OTs include a range of concerns regarding the appellant's ability to make use of the power wheelchair on his own without the attendant controls. The appellant has a current manual wheelchair with a tilt function that meets his basic mobility needs. As a result,

the panel finds that the ministry reasonably concluded that the power wheelchair with attendant controls is not medically essential to achieve or maintain basic mobility.

The panel in conclusion finds that the ministry's reconsideration decision was a reasonable application of the applicable legislation and is reasonably supported by the evidence and confirms the decision.