

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision of August 23rd, 2012 wherein the ministry denied the appellant's request for medical equipment - a Pride Pursuit scooter, model PRM-Sc713HD - in accordance with Section 62 Employment and Assistance for Persons with Disabilities Regulations (EAPWDR) because the ministry determined the appellant did not meet the legislated criteria.

The ministry's decision is based on the following requirements set out in Schedule C EAPWDR:

1. The occupational therapist (OT) did not confirm the medical need for the medical equipment or device as set out in Schedule C, section 3(2)(b) EAPWDR;
2. The medical equipment or device that is recommended (scooter) is not the least expensive appropriate medical equipment or device as set out in Schedule C, section 3(1)(b)(iii) EAPWDR
3. The OT did not confirm in the assessment that it is unlikely that the appellant, for whom the scooter has been prescribed, will not have a medical need for a wheelchair during the 5 years following the assessment as set out in Schedule C, section 3.4(3)(a) EAPWDR;
4. The ministry is not satisfied that the medical equipment or device (scooter) is medically essential for the appellant to achieve or maintain basic mobility as set out in Schedule C, section 3.4(3)(c) EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 62, Schedule C section 3(1), 3(2) and 3.4(3)

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

1. Request and justification for Medical Equipment dated April 27th, 2012 signed by medical practitioner (MP) on April 27th, 2012 and Occupational Therapist (OT) on May 24th, 2012.
2. Quote from Medi-Chair for a Pride Pursuit scooter, model PRM-Sc713HD, cost - \$3,499.62.
3. Letter dated May 23rd, 2012 from OT to ministry detailing the functional assessment of appellant.
4. Health Assistance Branch decision summary regarding appellant's request for scooter.
5. Request for reconsideration dated August 15th, 2012.

The appellant has a Persons with Disabilities designation (PWD) and is eligible for general health supplements under section 62 EAPWDR including medical equipment and devices – scooters under Schedule C, EAPWDR. On April 16th, 2012 an EAW provided the appellant with a Medical Equipment Request and Justification form which was completed by the MP on April 27th, 2012. The MP completed section 2 of the form describing the appellant's medical conditions as mobility affected, foot pain, diabetic neuropathy, degenerative disc disease and osteoarthritis. The MP recommended an electric scooter, no make, no model.

The OT's letter of assessment was divided into five areas: Physical; Transfers and Mobility; Assessments; Environment; and Trial. Under the heading Physical the OT referred to the MP diagnoses with these additions; Type II diabetes, ongoing sciatic nerve pain, foot pain from missing cartilage in toes and wears a Morton extension.

Under Transfers and Mobility, the OT's report indicates the appellant advised he can transfer independently but requires/uses 4 wheeled walker outside; can walk 2 blocks but experiences significant pain in his legs and joints so stops frequently. The appellant told the OT he needs a scooter to get to and from the grocery store as he does not feel safe accessing public transportation because he is not given enough time to get to his seat and sit down prior to the bus moving. The appellant told the OT he finds Handy-Dart limiting as first priority is given to people with medical appointments and bookings require 24 hour notice.

Under Assessments the OT stated the appellant was assessed with a Berg Balance and scored 33 out of 56 which indicates assistance is needed when walking; the visual assessment took 3+ minutes longer to complete but was completed accurately and no cognitive concerns were noted.

Under Environment no concerns were noted by the OT and, if approved, the scooter would be stored in a storage locker at the facility.

Under Trial the OT stated that on May 17th, 2012 a home visit was made to assess the appellant's ability to safely operate a scooter which found the appellant demonstrated a safe use of the recommended scooter. The appellant told the OT his main goal for the scooter is to enable him to leave his apartment and access the community.

The OT recommended the Pride Pursuit scooter to address the appellant's medical needs/problems.

In the Request for Reconsideration the appellant stated his need for a scooter has been falsely and deviantly assessed through misrepresentations, irrelevant issues, false statements, and obvious omissions. The appellant stated the OT simply did not do her job and neglected to mention his most serious medical issue, Diabetic Neuropathy. The appellant stated the bottom line is that when he walks he suffers from pain regardless of the distance and the walker only provides a portable seat to sit on when his legs are too weak and painful to continue.

The appellant did not attend the oral hearing. The panel being satisfied the appellant was properly notified of

the date, time and location, proceeded with the hearing under section 86(b) Employment and Assistance Regulation (EAR).

The ministry relied on the facts in the reconsideration decision and did not introduce any new evidence.

The panel makes the following finding of fact:

1. The appellant has a PWD designation and is eligible for health a supplement (medical equipment) under section 62 EAPWDR.
2. The total cost of the scooter being recommended and any accessories attached is less than \$3,500.
3. The appellant is capable of walking 2 blocks with the assistance of a 4 wheeled walker.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of August 23rd, 2012 wherein the ministry denied the appellant's request for medical equipment - a Pride Pursuit scooter, model PRM-Sc713HD - in accordance with Section 62 Employment and Assistance for Persons with Disabilities Regulations (EAPWDR) and Schedule C EAPWDR because the ministry determined the appellant did not meet the legislated criteria set out in sections 3(1)(b)(iii), section 3(2)(b), 3.4(3)(a) and 3.4(3)(c) of Schedule C of the EAPWDR.

Legislation considered: EAPWDR

General health supplements

Section 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,
- (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 (f), 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
- (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.
- (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)

Medical equipment and devices

Section 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 [OT] or physical therapist [PT] confirming the medical need for the medical equipment or device.

Medical equipment and devices - scooters

Section 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.
- (4) 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.
- (5) A scooter intended primarily for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

In the reconsideration decision the ministry argued that the appellant failed to meet criteria set out in Schedule C, section 3 and 3.4 EAPWDR to be considered for a scooter which includes:

- s. 3(1)(b)(iii) EAPWDR – that the medical equipment or device is the least expensive appropriate medical equipment or device;
- s. 3(2)(b) EAPWDR – that an assessment by an OT confirming the medical need for the medical equipment or device;
- s. 3.4(3)(a) EAPWDR – that an assessment by an OT has confirmed that it is unlikely that the person will have a medical need for a wheelchair within the next five years;
- s. 3.4(3)(c) EAPWDR – that the minister is satisfied that the item is medically essential to achieve or maintain basic mobility.

In reference to s. 3(1)(b)(iii) EAPWDR the ministry argued that the appellant utilizes a 4 wheeled walker for mobility outside the home and the OT did not confirm that this equipment is not appropriate for his mobility needs. The ministry also argued there has been no assessment to determine if a manual wheelchair or electric wheelchair would be appropriate for the appellant's needs and the legislation states the medical equipment or device that is approved must be the least expensive appropriate medical equipment.

At reconsideration, the appellant argued that he needs a scooter for quality of life and to provide him with mobility. The appellant argued the 4 wheeled walker only provides a portable seat to sit on when the pain in his legs is too great to continue.

The panel finds that at the present time the appellant is able to ambulate inside the home and utilizes a four wheeled walker to assist him outside with a recommendation from both the MP and the OT for a scooter. The panel finds that an assessment has not been completed to determine what the appropriate medical equipment should be given his circumstances. The panel finds the estimated cost of the scooter is \$3,499.62 which is within the legislated guidelines but without additional information the panel is not able to determine if the scooter is the least expensive appropriate medical equipment or device to assist the appellant.

The panel finds the ministry's decision to determine that the scooter is not the least expensive appropriate medical equipment or device was reasonable.

In reference to s. 3(2)(b) EAPWDR the ministry argued that the OT's assessment did not confirm the medical need for a scooter. The ministry argued that the OT stated the appellant advised that he needed a scooter in order to go to the grocery store and to better access the community which is not a medical need. The ministry argued that although the appellant has safety concerns when taking public transit and with the procedures in using the Handi-dart system these are not medical reasons to require a scooter. The ministry argued that from the information provided it is unclear if the appellant requires a four wheeled walker or scooter in order to manage his ADL's inside his home.

In the Request for Reconsideration the appellant argued that the local transit transportation and the Handi-dart system having nothing to do with his needs or his request for a scooter. The appellant argued that he has medical conditions which have been confirmed by his MP and the OT that make the scooter necessary for him to access the community. The appellant argued that the scooter is needed because when he walks he is in constant pain which weakens his legs and the four wheeled walker only provides him with a portable seat.

The panel finds that the appellant is able to ambulate inside his home and is able to walk outside with the assistance of a four wheeled walker, albeit it is only short distances before he is required to stop and rest his legs. The panel finds that in the OT's assessment (letter) she stated "I recommend the following (Pride Pursuit) to address the above mentioned problems" that his statement alone does not address the appellant's medical need for a scooter. The MP made no comment on the appellant's application.

The panel finds the ministry's decision to determine that the OT's assessment does not confirm the medical need for the medical equipment or device was reasonable.

In reference s. 3.4(3)(a) EAPWDR, the ministry argued the assessment by an OT has not confirmed that it is unlikely that the appellant will not have a medical need for a wheelchair within the next five years.

The appellant argued that he needs a scooter and not a four wheeled walker or an electric wheelchair.

The panel finds the OT did not comment on this criteria in her report and there is no medical evidence (assessment by an OT) before the panel that confirms that it is unlikely that the appellant will not have a medical need for a wheelchair in the next five year period.

The panel finds the ministry's decision that it has not been confirmed that it is unlikely that the appellant will not have a medical need for a wheelchair during the 5 years following the assessment was reasonable.

In reference to s. 3.4(3)(c) EAPWDR the ministry argued that the appellant has not demonstrated that the item (scooter) is medically essential to achieve or maintain basic mobility. The ministry argued "medically essential to achieve or maintain basic mobility" refers to a client's need for equipment due to mobility impairment and is necessary to perform their day-to day activities in their home and/or community. The appellant told the OT his main goal for the scooter is to enable him to leave his apartment and access the community. The ministry argued that the appellant utilizes a 4 wheeled walker outside the home and that he is only able to walk short distances due to the pain in his legs. The ministry argued the appellant utilized the local transit system and the Handi-dart bus to access the community but found the Handi-dart limiting as they require a 24 hour advance reservation and the local transit system, in the appellant's opinion, was unsafe as the bus would move before he could get seated in his seat. The ministry argued there was no information that the appellant spoke to the local transit authority about his concern. The ministry argued that a combination of the local transit and the Handi-dart system with the use of the 4 wheeled walker would enable the appellant to attend to appointments, purchase groceries and access community resources. The ministry argued that the OT's assessment does not make it clear if the 4 wheeled walker or scooter is needed inside the home to assist the appellant with his ADL's.

In the Request for Reconsideration the appellant argued that because of his medical conditions he can only walk a few blocks; that he is in pain constantly and the pain in his legs is not relieved by the use of a four wheeled walker. The appellant argued he needs a scooter because he is in pain and can only walk a few blocks because his medical conditions and without a scooter to provide him with mobility he cannot access his community.

The panel finds the evidence is that the MP has diagnosed the appellant with several medical conditions but there is no medical evidence or medical opinion provided by the MP or the OT describing why a scooter is medically essential for the appellant to achieve or maintain his basic mobility. The ministry argued the appellant can walk two blocks with the use of his four wheeled walker and the OT stated that the appellant can transfer independently inside his home. There is no evidence before the panel that the appellant needs a scooter to assist him with his ADL's.

The panel finds the ministry's decision that the ministry was not satisfied that a scooter is medically essential for the appellant to achieve or maintain basic mobility was reasonable.

The Panel finds the ministry's decision is reasonably supported by the evidence and confirms the decision pursuant to Section 24(1)(a) and Section 24(2)(a) of the Employment and Assistance Act.