

### PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated October 25, 2012 which denied the appellant's request for funding of a motorized 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 has not confirmed the medical need for the equipment; 3.4(3)(a) because an assessment by an occupational therapist has not confirmed that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment; 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 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:

- 10 April 2012, a quote for a Fortress 1700-3 wheeled scooter totaling \$3496.00;
- 17 May 2012, a Medical Equipment Request and Justification form, unsigned by a medical practitioner;
- 28 May 2012, a revised Medical Equipment Request and Justification form;
- 31 May 2012, an assessment from the appellant's occupational therapist (OT);
- 6 June 2012, an osteopathic physician's report;
- 14 August 2012, a copy of a medical equipment tracking sheet from the ministry
- 11 September 2012, a nuclear medicine bone scan report;
- 10 October 2012, a 2<sup>nd</sup> report from the appellant's occupational therapist;
- 1 May 2011, prescription note about the appellant; and
- 12 October 2012, a Request for Reconsideration.

In the revised Medical Equipment Request and Justification form, the appellant's physician described the appellant's medical condition as general disability and recommends a 3 wheeled power scooter.

The OT's assessment reported that the appellant has severe back and leg pain from a workplace fall of 20 feet in 2005 (claim denied) and has chronic pain in his neck, lower back, and legs which create balance and mobility challenges and put him at risk for falls. The appellant also has a history of bladder tumors. He is 5'7" tall and weighs 120 lbs. The OT indicates that the goals of the requested equipment are to: enable the appellant to get to Dr's appointments, grocery shopping, access his community and get on city buses to be able to travel longer distances.

In the functional/environmental summary, the OT indicates that the appellant is a 52 year old male who lives alone on his boat in a harbour adjacent to a marina and finds that living on a boat with small spaces allows him to use the bathroom and living areas, safely. The OT reports that the appellant is able to walk independently for short distances, less than 50 meters and that the closest bus stop is 4 city blocks away; when walking and getting on and off the scooter he experiences low back and leg pain; walks with a limp and an uneven gait pattern; has difficulty sitting for longer than 30 minutes; is independent with self care and basic activities of daily living; has difficulty with grocery shopping (getting to town) and carrying groceries; finds that walking to the bus stop and using city transit is very difficult and causes a great amount of increased pain; and cannot afford to license his vehicle.

The OT reports that the appellant successfully completed a scooter assessment using the Fortress 1700 model. In the justification summary, the OT states that the appellant would be enabled to access public transit to perform instrumental activities of daily living (grocery shopping); pain caused by walking would be decreased in his back and legs; the risk of falls would be decreased and his independence and ability to access his community would be maintained.

The osteopathic physician (OP) reports that the appellant's physical examination showed some scarring of the skin over the coccygeal region and did not demonstrate any significant misalignment of the sacrum or coccyx. A review of x-rays from April 5, 2012 showed "some DJD changes of sacro-coccygeal joint and posterior spurring of the distal aspect of the coccyx. There is no significant coccygeal displacement." The OP adds that there are some lytic lesions of the coccyx which would be consistent with the appellant's explanation of having pulled some bone chips about the size of a pea from this region.

In the copy of a medical equipment tracking sheet from the ministry, a request for a scooter was noted as was that the appellant does not appear to have trialed more conservative medical equipment to assist him with mobility such as a walker or cane or that he has arranged access to community buses.

The nuclear medicine bone scan report impression is that the appellant has a moderate increased uptake in the mid lumbar spine consistent with spondyloarthropathy.

In the copy of a 2<sup>nd</sup> report from the appellant's occupational therapist, it is reported that: after a full functional assessment and a power mobility safety assessment, the prescribed scooter is deemed to be medically essential for the appellant for basic mobility in the community; the appellant's walking tolerance is severely limited to short distances of less than 100 feet which is related to a sacral injury (2005) with ongoing persistent severe back pain; a recent x-ray reveals degenerative arthritic changes at L3-L4 and the impression is that there is spondyloarthropathy in the mid lumbar spine; and the x-rays also reveal degenerative joint disease at the sacral-coccygeal joint which causes ongoing pain in the coccyx region.

The OT further indicates that a 4 wheeled walker was also considered however was not an option for mobility as the appellant experiences increased pain on ambulation in his legs, back, neck and shoulders and cannot complete the functional activities that he sets out to do (shopping, attend medical appointments). Also, the client cannot propel a manual wheelchair for the longer distances required in the community because of the increased strain on his neck, shoulders and spine which produces increased pain. Although the client can drive a van, he has difficulty walking from the parking lot into the stores to perform shopping activities; therefore, the scooter would facilitate independence in shopping as he would access the community and be able to enter the stores.

The prescription note indicates that the appellant had a cyst removed between May and September 2009 which has caused back pain and tailbone area.

In the Request for Reconsideration, the appellant states that he has tried crutches, a walker and bicycles and can no longer walk any distance from the pain in his lower back and that a scooter will provide him with the mobility he needs to perform daily living activities.

At the hearing, the appellant stated that he has been treated by a chiropractor, massage therapist and over the last year specifically, a physiotherapist who has made adjustments to his spine and recommended that he see an osteopath. When the appellant's physician refused to refer him, the appellant went to an osteopath regardless and is now waiting for a cat scan. After trying different medications that were indicated on a list, the appellant stated that he currently takes only hydro morphone for pain. As he suffers from muscle spasms, the appellant stopped driving for safety reasons. He did use a bicycle until last June and would take it on the bus however, some buses have higher reaches and now that he has more pain, he is unable to use his bicycle. A community charity has donated a 10 year old scooter to the appellant who borrowed batteries for it. However, this scooter can not be used on the community shuttle buses. The appellant also stated that a walker and manual wheelchair were not options as he has lost the strength in his shoulders and arms.

The panel admitted the appellant's testimony as further description of the impact on the appellant's mobility on his daily functioning and is therefore admissible under section 22(4) of the Employment and Assistance Act as being in support of the information and records that were before the ministry.

At the hearing, the ministry testified that they were now satisfied that the report from the appellant's occupational therapist dated October 10, 2012 did confirm the medical need for the requested scooter and that the minister is also satisfied that the scooter is medically essential to achieve or maintain basic mobility. The ministry further indicated that the only criterion that was not met is the confirmation from the OT's report that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the

assessment. The ministry also indicated that they would be prepared to contact the appellant's OT on this issue and in fact stated that it was routine to make that confirmation.

### **Finding of Facts**

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

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

The appellant's physician describes the appellant's medical condition as general disability.

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 Fortress 1700-3 wheeled scooter totals \$3496.

## 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 funding of a motorized scooter 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 has not confirmed the medical need for the equipment; 3.4(3)(a) because an assessment by an occupational therapist has not confirmed that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment; 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 and OT have confirmed his medical requirement for a scooter and also he reports that a walker and manual wheelchair were not options as he has lost the strength in his shoulders and arms and can no longer walk any distance due to the pain in his lower back. Additionally, the appellant takes hydro morphone for pain.

The ministry's position in the Reconsideration Decision was that the appellant's OT's assessment report does not confirm that the appellant has a medical need for the scooter. The ministry indicates that as described by the OT, pain is the limiting factor effecting the appellant's mobility issues and that remedial measures are available in the form of analgesics which would ameliorate the pain and allow for better functionality. The ministry further indicates that the appellant is independently able to perform activities of daily living (ADL); his difficulty arises with the need to perform instrumental ADL's such as grocery shopping and other chores in town. While the public transit is 4 blocks from his residence, the ministry indicates that a community shuttle is available for transportation from the appellant's location to town. The ministry adds that while the OT rationalizes that a 4-wheeled walker is not an option as the appellant experiences increased pain on ambulation; if the appellant's pain was ameliorated with medication, there is a likelihood that he could manage to walk the 4 blocks to access public transit as he would have a seat for resting and a basket to carry groceries.

The ministry representative testified that the appellant's OT's assessment report of October 10, 2012 does in fact confirm that the appellant has a medical need for the scooter.

Although the panel acknowledges the ministry representative's testimony, the panel can not make a new decision but must rule on the Reconsideration Decision.

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 OT has documented in the assessment report that the

appellant is only able to walk independently for short distances, less than 50 meters and confirmed that other options such as a 4-wheeled walker are not suitable. The panel also finds that the evidence is that the appellant is on hydro morphone for pain and despite trying other mobility devices, they are not options as he has lost the strength in his shoulders and arms. In consideration of all the evidence, the panel finds that the OT's assessment report has confirmed a medical need for the scooter and therefore, the panel finds that the ministry unreasonably determined that the requirement was not established, as per Schedule C, Section 3(2)(b) of the EAPWDR.

#### **Section 3(4)(3)(a)**

The appellant's position is that the 3 wheeled power scooter has been recommended by both his physician and the occupational therapist after trying crutches, bicycles, a 4 wheeled walker with a seat and a manual wheelchair. Additionally, the OT recommends that the appellant requires a scooter, as it enables him to access public transit to perform instrumental activities of daily living (grocery shopping); decrease the risk of falls and his independence and ability to access his community would be maintained.

The ministry's position is that the information in the OT assessment report does not confirm that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment.

The panel finds that the OT assessment report does not confirm that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment and therefore, the panel finds that the ministry was reasonable to determine that the legislated criterion was not met as required under Schedule C, Section 3.4(3)(a) of the EAPWDR.

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

The appellant argues that as described by the OT, pain is the limiting factor effecting mobility issues and that a 4 wheeled walker would not be an option as he experiences increased pain on ambulation in his legs, back, neck and shoulders and cannot complete the functional activities that he sets out to do such as shopping, attend medical appointments, etc.

The ministry's position is that the minister is not satisfied that a scooter is medically essential for the appellant to achieve or maintain basic mobility for the same reasons contained above in Schedule C, Section 3(2)(b) of the EAPWDR.

The panel finds that the OT's assessment report has confirmed that the appellant has a medical need for a scooter and in light of the other evidence such that the appellant is on hydro morphone for pain and although having tried other mobility devices has eliminated them as options due to having lost the strength in his shoulders and arms; the panel also finds that a scooter is medically essential for the appellant to achieve or maintain basic mobility and the panel finds that the ministry unreasonably determined that Schedule C, Section 3.4(3)(c) of the EAPWDR was not established.

In applying the legislation to the evidence, the panel finds that not all the legislative criteria were established. Although, the ministry representative has testified that given the circumstances of the appellant and when only one criterion is not met, it is routine for the ministry to contact the OT to make a confirmation, the panel may accept that testimony for information purposes but has the jurisdiction to rule only on the Reconsideration Decision. Therefore, the panel confirms the ministry's Reconsideration Decision.