

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated November 28, 2012 in which the ministry denied the appellant's request for a scooter. The ministry held that the legislated requirements set out in section 3.4(3)(c) of the Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) had not all been met. Specifically the ministry is not satisfied that the scooter is medically essential to achieve or maintain basic mobility.

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 ss. 3 and 3.4.

PART E – Summary of Facts

The appellant was accompanied by an advocate at the hearing and told the panel that the advocate knows her very well and she will be presenting her evidence.

The appellant's advocate sought to introduce two documents, namely:

1. An information guide to Handy Dart; and
2. A Trans-Link information guide "getting you everywhere you want to go in Metro Vancouver"

The ministry representative did not object to the admission of the information. The information is relevant to the evidence of the appellant and the availability of Handy-Dart on a daily basis. The panel admitted the information pursuant to subs. 22(4) of the Employment and Assistance Act (EAA) as being in support of the evidence before the ministry on reconsideration.

The evidence before the ministry on reconsideration consisted of the following documents:

- (a) Medical Equipment Request and Justification (MERJ) signed by the appellant's physician on May 11, 2012 and by the Occupational Therapist on (OT) June 18, 2012;
- (b) A Rehab Shop quote for scooter in the amount of \$ 3,177.70;
- (c) A letter from the OT dated June 19, 2012;
- (d) Medical equipment and devices decision summary dated September 18, 2012;
- (e) Ministry's decision denying the appellant's request dated September 18, 2012;
- (f) A letter from the appellant to the ministry dated November 5, 2012;
- (g) A letter from the OT to the ministry dated November 16, 2012;
- (h) A note from the physician dated November 16, 2012;
- (i) Submission to the reconsideration officer from the appellant's advocate dated November 19, 2012;

The physician in the MERJ reported that the appellant needs a scooter for ambulation inside and outside. The physician in a note dated November 16, 2012 stated that the appellant has a serious medical condition and a walker is not realistic for her to use to obtain the services in the community. The physician further reports that the appellant has fallen using the walker and experiences increased pain using the walker. The physician stated that the appellant needs a scooter to go to the pharmacy, the grocery store, to the bank and to attend appointments and a scooter is medically essential for her basic mobility.

The OT in the June 19, 2012 letter stated that the appellant is diagnosed with osteoarthritis with pain in most joints (mostly ankles and neck), intervertebral disc prolapse in cervical area, asthma, and liver disease. The OT reported that on observation the appellant had a slow antalgic gait with her walker and limited endurance before resting. The appellant walks holding furniture and walker indoors. The OT reports that the appellant tried a scooter and drove well and safely on the sidewalk and across a street (sic) "lights". The OT recommends a Shoprider Cobra 3 wheeled scooter. On November 16, 2012 the OT reports that in her opinion, a scooter should meet the appellant's needs for the next five years if her medical condition remains unchanged.

At the hearing the appellant's advocate submitted that the scooter is medically essential for basic mobility and the ministry has a narrow interpretation of basic mobility. The advocate submitted that

basic mobility includes being able to access the pharmacy, grocery stores, and to maintain a social support network. The advocate further submitted that the physician reported that the appellant needs a scooter and did not request the OT to assess her for using a manual wheelchair.

The advocate asked the appellant a series of questions designed to inform the panel of the appellant's mobility challenges and her need for a scooter. The oral evidence of the appellant relevant to this appeal is that the appellant has fallen at home and on the street on many occasions. She said that when using the walker, her legs get weak and in the last 3 months she has fallen over 27 times. When she falls she requires help from people on the street to be able to get up and back to her walker. On one of the occasions, she said she fell into a bench at a bus stop. She had a bump on her forehead and was bleeding. She called her physician and was told to go to hospital by an ambulance.

The appellant said that the OT observed her walking with her walker indoors and outdoors and also observed her driving a scooter. The appellant said that last year she borrowed a scooter from a friend who no longer was using it. She gave the scooter back when the battery died and she was not able to buy new batteries. The appellant said that she is suffering of osteoarthritis of knees and lower back. These problems resulted in an inability to walk without assistance. She said that when she falls, she requires assistance to stand up and is not able to stand up by herself.

The appellant further submitted that she is not able to walk, either inside or outside of her home without support. She said that she has been using the walker, but she has fallen many times and the falls occur when her legs get tired and give up on her. She described that she falls forward over top of the walker. The appellant said that she is very dependent on her physician and would like to enjoy her life and be able to go shopping, and to get to her medical appointments and the pharmacy with less pain and distress.

The appellant said that she can't use the Handy-Dart unless she calls and reserves it seven days in advance. She won't be able to go by Handy-Dart to a grocery store when she runs out of food, milk or needs to go the bank etc. Furthermore, she can't use her bus pass when using the Handy-Dart and it personally costs her \$2.50 each ride.

The panel admitted this oral evidence under Section. 22(4) of the EAA as being in support of the evidence that was before the ministry on reconsideration.

The witness for the appellant told the panel that he lives with the appellant and when he is feeling well enough, he does her grocery shopping and going to the pharmacy. The witness confirmed that the appellant fell many times using her walker and is unable to walk more than a block with the walker. He also informed the panel that it takes the appellant about an hour to walk one block.

The evidence of the ministry on appeal was set out in the reconsideration decision.

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the reconsideration decision dated November 28, 2012 in which the ministry denied the appellant's request for a scooter. The ministry held that the legislated requirements set out in section 3.4(3)(c) of the Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) had not all been met. Specifically the ministry is not satisfied that the scooter is medically essential to achieve or maintain basic mobility.

The relevant legislation is as follows:

EAPWDR, Schedule C

- 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.
- (3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if
- (a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and
 - (b) the period of time, if any, set out in sections 3.1 to 3.11 of this Schedule, as applicable, for the purposes of this paragraph, has passed.
- (4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.
- (5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if
- (a) at the time of the repairs the requirements in this section and section 3.1 to 3.11 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and
 - (b) it is more economical to repair the medical equipment or device than to replace it.
- (6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the

minister considers that the medical equipment or device was damaged through misuse.

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 this appeal the appellant sought the minister's approval for a motorized scooter. For that supplement the criteria that she had to satisfy were set out in Sections 3 and 3.4 of Schedule C of the EAPWDR.

The panel reviewed the Decision Summary. The panel was satisfied that the ministry had reviewed the appellant's circumstances and found that she had either satisfied all the applicable criteria – or deemed them to be non-applicable – except for two, namely that: (a) the occupational therapist did not confirm 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 assessment and that (b) the minister had to be "satisfied that the [scooter] is medically essential to achieve or maintain basic mobility".

The ministry, in the reconsideration decision, denied the appellant's request for a scooter concluding that although the physician prescribed a scooter for ambulation, there is no indication that an OT has performed a detailed assessment of the appellant's functioning to clearly establish her mobility and limitations, and to demonstrate that the use of other mobility devices were assessed. The ministry further stated that there is no indication that the appellant is unable to access Handy-Dart service. The position of the parties:

At the hearing the ministry agreed that the OT provided a letter stating that if the appellant's medical condition remains unchanged a scooter should meet the appellant's need for the next five years.

The position of the ministry on this appeal was that the medical evidence was not sufficient to establish that the appellant required a scooter to achieve basic mobility. Much of the evidence to which the OT referred had been provided by the appellant. The ministry further argued that the OT

had not established a medical need for a scooter and the minister reasonably concluded that a scooter was not medically essential to achieve basic mobility.

The position of the appellant on this appeal was that the evidence established that the appellant needed a scooter. She had satisfied the legislative criteria. In particular, when looked at as a whole the OT's assessment, using the language of section 3.4(3)(c) of the Schedule C established the appellant's medical need for a scooter. The appellant further stated that the physician requested to OT to assess her for a scooter and not a manual wheelchair.

The evidence of the appellant and the physician are that that the appellant requires a scooter to provide her with basic mobility, inside and outside of her home. The ministry does not dispute this but says that is not the opinion of the OT and, pursuant to Schedule C, subs. 3(2)(b), confirmation from the OT is a prerequisite for approval of a scooter.

The panel notes that the physician stated that the appellant had health problems that restricted her basic mobility. The physician further reported that the appellant should have a scooter because the appellant feels off balanced and has fallen using her walker. The physician reported that because of the appellant's specific medical conditions a walker is not realistic for her to use to obtain the services of her community and the scooter is medically essential to achieve and maintain basic mobility.

The OT stated that the appellant wears a supportive type brace. The OT said that on observation the appellant had a slow antalgic gait with her walker and limited endurance before resting. The appellant walks holding furniture and walker indoors. She tried a scooter and drove it well and safely indoors and outdoors.

The panel finds that the assessment of the OT contained in the OT request letter confirms the appellant's medical need for a scooter. The OT concludes by identifying a particular scooter that is recommended for the appellant. The OT submitted that the appellant had difficulty using her walker in her residence and reported that she observed that the appellant had to hold onto furniture to walk inside. The panel further finds that the OT acknowledged that the appellant's health conditions prohibited her from basic mobility and accessing community services.

The appellant's evidence is that she has fallen many times using her walker, was taken to a hospital for injuries she received as a result of falling and is unable to walk with the walker outside of her home. The panel concludes that the appellant is a person with a number of medical conditions that significantly and negatively affect her mobility, the major ones being osteoarthritis in both knees, and pain in all of her joints especially ankles and neck, intervertebral disc prolapse in cervical area, asthma, and liver disease and a general range of motion limitations. The assessment of the OT included references to all these medical conditions. Read as whole, the assessment of the OT satisfied the requirements of the legislation that is it confirmed the appellant's medical need for a scooter. The panel finds that based on the evidence provided by the physician, the OT and the appellant, the appellant is severely restricted using a walker outside of her residence, as it is painful for her and in the attempt to do so, she ran a significant risk of falling.

It is the view of the panel that basic mobility must involve more than being able to manoeuvre around one's home. The panel finds that the appellant has a medical need for a scooter and it was

unreasonable for the ministry to conclude that the scooter was not medically essential for the appellant to achieve or maintain basic mobility. Accordingly, the panel finds that the ministry's conclusion that there is no indication that an OT has performed a detailed assessment of the appellant functioning to clearly establish her mobility and limitation is not a reasonable decision. Furthermore, the panel finds that there is no requirement in the legislation that an OT must assess a client for other devices other than the one requested by a physician. The panel finds that the ministry's conclusion stating that the OT should have assessed the use of other mobility devices, such as a manual wheelchair is not reasonable based on the evidence and the applicable legislation.

Accordingly, the panel concluded that the decision of the ministry - that the appellant had not satisfied the statutory criteria for being provided a scooter - was a not a reasonable application of the applicable legislation in the circumstances of the appellant. Therefore, the ministry's decision is rescinded.