

PART C – Decision under Appeal

The decision under appeal is the Ministry=s Reconsideration decision dated January 30, 2013 which denies the appellant=s request for a new scooter. The Ministry denied the request after determining that, based on the information provided, the appellant did not meet the program criterion set out in EAPWD Regulation Schedule C, sections 3(1)(b)(iii), 3(2)(b) and 3(a)(c). More specifically, the ministry says:

- It could not be established whether the requested scooter is the least expensive appropriate medical equipment or device;
- It could not be established that there is a medical need for the requested scooter;
- It could not be established that it is unlikely the appellant will have a medical need for a wheelchair during the 5 years following the assessment; and
- The ministry was not satisfied that the requested scooter is medically essential to achieve or maintain basic mobility.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities (EAPWD) Regulation Schedule C, Sections 3 and 3.4

PART E – Summary of Facts

The appellant has submitted a medical equipment request, and more specifically for a new power scooter. The original application was made on October 19, 2012. On January 2, 2013 the Ministry denied that request. On January 25, 2013 the appellant submitted a request for reconsideration. On January 30, 2013 the Ministry completed its review of the request for consideration and again denied the request.

The evidence before the Ministry included the following:

- A letter from the appellant explaining why she should be eligible for a new scooter;
- A January 3, 2013 letter from the appellant's doctor which explains that the appellant had a 10 day history of severe nausea, vomiting and diarrhea;
- An October 11, 2012 medical equipment request and justification form signed by the appellant's OT;
- An October 11, 2012 letter from a second physician confirming that the appellant has been diagnosed with HIV, COPD, seizures, severe arthritis, and frailty, and that she needs a new electric scooter;
- A September 19, 2012 letter/assessment from the appellant's OT. This letter recommends that the appellant requires a new scooter (Shoprider Explorer 888SLN) with shocks to replace her old scooter;
- A September 13, 2012 quote of \$3,415.50 for a Shoprider Explorer scooter; and
- A January 18, 2012 letter from a third physician reporting that the appellant has severe osteoporosis and neuropathy, therefore requiring an electric scooter with shocks ASAP to prevent any trauma to her lower spine.

Attached to her Notice of Appeal, the appellant provided a supplemental letter dated February 8, 2013 from her OT. The OT indicates that she has done a reassessment of the appellant's new evidence and her need for a different scooter. The OT states as follows:

1. Regarding whether the appellant will need a wheelchair within the next 5 years, there is no indication that she will progress to the point that she can't walk within her home and will need a power/manual wheelchair.
2. During the recent scooter trial, it was obvious that the appellant was purposely trying to avoid bumps/cracks etc. in the pathway. She is well aware of how to maneuver the scooter to minimize the bumps and jarring to her body.
3. In regards to meeting her basic mobility, the appellant's existing scooter does meet these needs. However, it also causes significant medical trouble by aggravating her stomach and having a harmful effect on her lumbar spine (related to her osteoporosis and arthritis). The appellant's basic mobility does include her community in terms of getting groceries and medications and doing her volunteer work. Having a medically appropriate scooter is very important for her to be able to still function day to day. With her present scooter, she drives it one day and then is physically impaired for the next few days as a result of the jarring on her body.
4. The appellant's new residence is not wheelchair acceptable inside due to a step down into a family room and a step up into her bedroom. A power wheelchair would not help her inside

this home, nor does the OT recommend she use a power wheelchair. She still needs to do some walking to maintain strength and for bone health. She is functionally able to walk inside her own home very carefully and for very short distances.

With the letter, the OT provided a second wheelchair quote showing the total cost to be \$3,415.50.

Also included with the Notice of Appeal is a letter dated February 6, 2013 from a wheelchair supply store. The letter confirms that the appellant's current scooter, namely a Shoprider Model TE888-4, is no longer made and does not support upgraded suspension springs. The letter further states that no suspension is available for this model.

At the hearing, the appellant gave the following additional evidence:

- Her current scooter is five years old;
- She had no say in the type of scooter that she was originally provided with;
- She asked for a scooter with shocks but didn't receive that;
- She is in a lot of pain whenever she goes out in her current scooter;
- The existing scooter has caused her osteoporosis to worsen;
- Although it is difficult to speculate, she doesn't anticipate requiring a power wheelchair within the next five years;
- She does not and cannot use the scooter in the home - she has a manual wheelchair which currently serves to assist her for that purpose;
- It takes a long time for her to recuperate from one trip out even if she is out for short duration; and
- She cannot put shocks on this scooter.

The appellant's spouse participated as a witness and he gave the following additional evidence:

- There is no way to attach shocks to the current scooter;
- The original scooter was not suitable, and the appellant has used it for as long as she has because she had no other option;
- Continued use of the current wheelchair is causing the appellant's medical conditions to worsen which is having the further result of making the appellant more bed ridden;
- The appellant is not dependent on power mobility in the house, only in the community;
- The current scooter is wearing. It is five years old, has had the speedometer replaced, its current tires are worn, and it has leaked oil for the past six months;
- If the current scooter could be upgraded with shocks, that would serve the appellant's need;
- The new letter of February 6, 2013 confirms that the current scooter is no longer made and cannot be upgraded or equipped with shocks; and
- Although they have a personal vehicle, they cannot rely on that for transportation a lot of the time because the appellant cannot easily travel by vehicle, and his own health issues are making it difficult for him to transport his wife by vehicle.

In response, the ministry gave the following evidence:

- At the time of the reconsideration, the information before the ministry was limited and insufficient to approve a new power scooter; and
- Most scooters can be upgraded. Having said that, there is no evidence before the ministry that the current scooter can be upgraded. To the contrary, the ministry acknowledges the new letter of February 6, 2013 confirming that the current scooter is no longer made and cannot be upgraded or equipped with suspensions.

The panel has considered the new evidence submitted by the appellant and finds that it is admissible under section 22(4) of the Employment and Assistance Act as it is evidence in support of the information and records that were before the Ministry when the original decision was made. More specifically, it provides further details of the Appellant's functionality and use of her current scooter.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry reasonably concluded that the appellant is not eligible for a scooter.

Schedule C, Sections 3 and 3.4 of the EAPWD Regulation set out the criteria that the appellant must meet to be approved for medical equipment. Those sections read as follows:

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.
- (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.

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.

(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.

It is the ministry's position that, notwithstanding the information provided by the appellant, they could not provide the scooter at reconsideration because the evidence fell short of proving that the appellant had met all of the criteria set out in the EAPWD Regulation. Specifically, the Ministry's position was that the request for a scooter has not met the criterion in Schedule C, sections 3(1)(b)(iii), 3(2)(b) and 3(a)(c). More specifically, the ministry said:

- It could not be established whether the requested scooter is the least expensive appropriate medical equipment or device;
- It could not be established that there is a medical need for the requested scooter;
- It could not be established that it is unlikely the appellant will have a medical need for a wheelchair during the 5 years following the assessment; and
- The ministry was not satisfied that the requested scooter is medically essential to achieve or maintain basic mobility.

The appellant submits that, in consideration of the letter of the OT dated February 8, 2013 and the letter dated February 6, 2013 by the wheelchair supply store, she has now met all of the criterion set out in Schedule C, sections 3 and 3.4.

The supplemental letter from the OT dated February 8, 2013 is significant as it provides additional critical information that was not before the ministry at reconsideration. Specifically, the OT confirms:

1. The appellant will not likely require a wheelchair within the next 5 years (section 3.4(3)(a)). The OT says there is no indication that the appellant will progress to the point that she can't walk within her home and will need a power/manual wheelchair;
2. The appellant has a medical need for a scooter (section 3(2)(b)) as established by the letters from the physician's and the OT's own assessment;
3. The appellant requires a scooter to maintain or achieve her basic mobility needs (section 3.4(c)). In this regard, the OT confirms the appellant's existing scooter does meet her basic mobility needs. However, she adds that the existing scooter also causes significant medical trouble by aggravating the appellant's stomach and having a harmful effect on her lumbar spine (related to her osteoporosis and arthritis). The OT says the appellant's basic mobility does include her community in terms of getting groceries and medications and doing her volunteer work. Having a medically appropriate scooter is very important for her to be able to

still function day to day. With her present scooter, she drives it one day and then is physically impaired for the next few days as a result of the jarring on her body.

With respect to the criteria set out at section 3(1)(b)(iii), this is addressed by the letter February 6, 2013 from a wheelchair supply store. The letter confirms that the appellant's current scooter, namely a Shoprider Model Te888-4, is no longer made and does not support upgraded suspension springs. The letter further states that no suspension is available for this model.

The ministry reiterates that the information before the ministry at reconsideration did not establish that the appellant met all of the criterion set out in Schedule C, sections 3 and 3.4. The ministry also acknowledges that the new information does clarify the issues that were before the ministry at reconsideration.

Given the new information provided by the appellant, the panel finds that the Ministry's decision was not reasonably supported by the evidence and rescinds the decision pursuant to section 24(2)(b) of the Employment and Assistance Act.