

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated February 4, 2013 which held that the appellant was not eligible under the Employment and Assistance for Persons with Disabilities Regulation, Schedule C, 3(2)(b) and 3.2(2) for a supplement to pay for push handles on the appellant's replacement wheelchair, because the Occupational Therapist's assessment did not confirm the medical need for the push handles and the ministry was not satisfied that the push handles are medically essential to achieve or maintain basic mobility, in accordance with the regulation.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)

Section 62, General health supplements, and

Schedule C, Sections 3 and 3.2

PART E – SUMMARY OF FACTS

The Request for Reconsideration asked for a power elevating seat, custom crutch holders and push handles to be added to the appellant's replacement wheelchair. The Reconsideration Decision approved the power elevating seat and the custom crutch holders but denied the push handles. Where possible, this panel has limited our review of evidence before the minister to that pertaining to the push handles. That evidence includes the following documents.

- A letter dated April 24, 2012 from a medical chair supplier listing the eight repairs done to the appellant's wheelchair over the last five year period, setting out the chair's current malfunction and worn state and recommending the chair be replaced.
- An itemized quote from the same medical chair supplier for a replacement chair including a number of component parts, including push handles at \$355.12, faxed by the supplier on April 18, 2012 to the Occupational Therapist and forwarded to the ministry by fax on August 15, 2012.
- A Medical Equipment Request dated August 2, 2012 signed by a medical practitioner and a recommendation from an occupational therapist dated May 8, 2012.
- A 5 page letter dated August 14, 2012 from an Occupational Therapist setting out the appellant's medical conditions, physical and functional status, other details of her mobility and daily living activities. The letter sets out in detail a recommendation for a replacement wheelchair listing push handles, but without a rationale for their necessity.
- A letter and two purchase authorization forms from the ministry dated December 6, 2012 approving the appellant's request for a permobile wheelchair with tilt/recline and custom seating.
- A letter from the ministry dated December 6, 2012 denying the appellant's requested medical supplements for her wheelchair, which included the push handles.
- A letter dated January 8, 2013 from an Occupational Therapist stating:
"Push-Handles: The push-handles are essential for a person to be able to push the power wheelchair in free-wheel manual mode, in the event that the power wheelchair breaks down. Push handles for manual wheelchairs are indicated in the BC Transit guidelines."
- The Request for Reconsideration from the appellant dated January 17, 2013 stating in part:
"Re: Push Handles ...When a motor fails, there has to be a way to push the chair in manual. The permobile (chair) does not come with push handles attached.The health benefit has to be realized when a dead motor becomes a safety hazard leaving one stranded anywhere, including god forbid, the middle of a street, when crossing."
- A letter dated January 21, 2013 from the same Occupational Therapist stating:
"The Push-Handles on the power wheelchair are essential for a person to be able to push the power wheelchair with controlled direction in event that the power wheelchair breaks down."

In addition, the Reconsideration Decision notes the reconsideration officer contacted the supplier who confirmed that a power wheelchair can be pushed from any solid part of the wheelchair, such as the frame. The Reconsideration Decision states that in the supplier's experience, such a breakdown might occur once or twice in a power wheelchair's lifetime and breakdowns are not found to occur with any frequency.

At the hearing the appellant confirmed her replacement wheelchair was the same model as the wheelchair she has had since 2002. The appellant called her wheelchair components positional, meaning that most of the component parts move, thereby repositioning her body to assist with circulation and comfort. The appellant explained that this type of wheelchair can be pushed by the frame or by push handles affixed to the frame, if it is pushed by the movable components, such as the chair back the component part will break. The frame where the push handles on her current chair are affixed is located behind the lower third of the chair back, close to the level of the seat. The appellant explained that the wheelchair is powered by a battery that takes 8 hours to charge, when fully charged the battery will last between 12-15 hours of normal daily living use (not continuous). The appellant stated the battery used to power the wheelchair is a deep cell battery that cannot be boosted by a car battery if it loses power.

The appellant told the panel of a time when she was travelling by air to attend a conference where the airline took her wheelchair apart and in doing so damaged the cable between the chair and the battery, leaving the appellant immobile, with an expensive bill to correct the damage. The panel determined the additional oral evidence set out above was admissible under s. 22(4) of the EAA as it is in support of the records before the minister at reconsideration.

The appellant's current wheelchair has push handles that the appellant says the ministry paid for. The ministry noted that this was new evidence, which had not been apparent through a file review. The appellant was very strong in her assertion that she did not pay for the push handles that are on her current chair and believes the ministry did pay for them.

The panel accepts that the appellant's evidence that current wheelchair came with the push handles. We do not question the findings of the ministry's file review; however it is improbable that any party other than the ministry paid for the push handles. It may be that the cost of the push handles were included as part of the wheelchair's base price in 2002 or that detail was missing from the ministry record. As a result the panel finds the additional oral to be admissible under s. 22(4) of the EAA, as it was in support of the records before the minister at reconsideration.

The appellant brought 2 witnesses; the first was an employee of the medical equipment supply company who brought a new chair for demonstration purposes. The chair was the same make and model as the appellant's, with one exception, the location of large wheel mount was in the center whereas the appellant's chair and replacement chair have the large wheels mounted at the front of the base. The chair did not have push handles and was brought to demonstrate how it could be pushed without handles. The witness could not give exact evidence on the weight of the chair but said it would be about 250 pounds when occupied the total "push weight" if so would be about another 100 to 130 lbs., he said the battery alone weighs between 80 and 100 pounds.

The second witness was the appellant's care attendant; she has been working with the appellant for one and a half years. The care attendant said the push handles are necessary for basic mobility. The care attendant described assisting the appellant into the hearing location where the grade of the ramp was at such an angle that the care attendant had to put her weight on the push handles to counter balance the weight of the appellant and the wheelchair to prevent the risk of the chair tipping and the appellant falling. The care attendant said she has to take these measures on a weekly

basis; it might be because of the angle of a bus ramp where there is not a curb or access to a building such as experienced today. The care attendant told of a trip she took with the appellant to another city where the appellant was visiting a family member. The wheelchair battery was charged, but not fully, and died before arriving at the destination. The care attendant had to push the appellant in her chair 3 blocks with pedestrians, curbs, lights and traffic; she said it took almost an hour and described the amount of effort as difficult. The care attendant describes herself as athletic and physically fit. She said that the push handles greatly enhanced steering ability both in terms of actually facilitating steering but also allowing better vision of where one is going since pushing on the chair frame requires an individual to push from a lower position on the chair and thus one's field of vision is impaired.

The panel determined the additional oral evidence given by both witnesses to be admissible under s. 22(4) of the EAA as their evidence was in support of the records before the minister at reconsideration.

The ministry relied on the record before the minister at reconsideration. In addition, the ministry representative stated that in preparation for the hearing she spoke with someone at the Health Assistance Branch, from whom she learned the majority of wheelchairs funded by the ministry do not have push handles paid for by the ministry. The appellant objected to this information being accepted as evidence without more detail and supporting documentation.

Under s. 22(5) of the EAA evidence may be admitted whether or not it would be admissible in a court of law. This evidence, although hearsay, falls within those parameters. The panel accepts the additional oral evidence of the ministry as admissible under s.22(4) of the EAA as it is in support of the records before the minister at reconsideration; however we find it to be so general as to have very little weight respecting this appeal.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's decision to deny the appellant a supplement to pay for push handles on the appellant's replacement wheelchair, under the EAPWDR, Schedule C, 3(2)(b) and 3.2(2) was reasonably supported by the evidence because the Occupational Therapist's assessment did not confirm the medical need for the push handles and the ministry was not satisfied that the push handles are medically essential to achieve or maintain basic mobility.

The relevant legislation is set out in the Employment and Assistance for Persons with Disabilities Regulation, as follows:

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 (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

- (a) a recipient of disability assistance,

Schedule C

Medical equipment and devices

3 (2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, 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:

(B.C. Reg. 197/2012)

- (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.

(B.C. Reg. 61/2010)

The ministry argues the push handles are an accessory that is not “medically essential to achieve or maintain basic mobility”. The ministry points to the Occupational Therapist's letter of January 21, 2013: “The Push-Handles on the power wheelchair are essential for a person to be able to push the pusher wheelchair with controlled direction in event that the power wheelchair breaks down” as the only example where the push handles may be

necessary to maintain basic mobility, the Occupational Therapist has not confirmed the medical need for the push handles as set out in the regulation. The ministry also points to the information provided in the Reconsideration Decision sets out in part: ...the reconsideration officer contacted the supplier...In the supplier's experience, such a breakdown might occur once or twice in a power wheelchair's lifetime and breakdowns are not found to occur with any frequency." The Ministry argues the appellant's current wheelchair is approximately 11 years old, if it were to break down over the course of that time once or twice, that would not be enough to meet the test set out in the Regulation.

When asked if the expected term should be considered 5 years (the minimum before replacement), the ministry responded that the same argument applies, one or two breakdowns over the course of five years is not enough to warrant push handles as medically essential to achieve or maintain basic mobility. If push handles were essential, the ministry questions why they are itemized separately on the medical equipment supplier's quote. The ministry argues the language of the regulation should be taken to mean a wheelchair basically cannot run without the item, while they might be nice to have, push handles are an extra that cannot be justified under the Regulation.

The appellant argues that the fact the medical supplier has said the wheelchair could break down once or twice is significant and enough of a reason to find push handles medically essential to achieve or maintain basic mobility. The appellant does go out in the community, usually accompanied but occasionally on her own, and she posed the question: "What would happen if her wheelchair were to stop functioning while she was in the middle of a street?" The appellant observed that someone would have to push her, which is difficult enough with push handles, and without them, there would be the added need to explain where someone offering to help could push the chair. There are added difficulties when pushing a chair from a lower point for the person pushing to be able to see and to steer the wheelchair around dips in pavement and sidewalks, other pedestrians and through traffic. The appellant argues that power wheelchairs stop working because the batteries are not fully charged or a cable has become loose, it is not only because of one or two breakdowns that the ministry reported. Additionally there are many times when the appellant's helper uses the handles to assist the appellant in safely going down ramps or getting off buses, the appellant argues her need to feel safe and secure should be a consideration to her basic mobility.

The Occupational Therapist's August 14th letter states in part: "(The appellant) mobilizes in her power wheelchair out in the community and uses the regular BC Transit buses as her means of transportation.....She is extremely motivated to challenge herself and to do as much as she can independently." At the hearing the appellant relayed her experience of a broken cable while travelling to a conference by air; her care assistant gave evidence of using her own weight on the push handles to counter balance the appellant in her wheelchair on a weekly basis and including the day of the hearing; and of a trip to another community where the wheelchair battery lost its charge 3 blocks from their destination. The appellant lives in a community with hilly terrain and uses public transit. In the appellant's circumstances, given her outgoing life style within the community, the panel finds that is a need to have push handles both as a counter balance tool and so she can be safely pushed in the very possible circumstance of a battery charge failure to be essential to achieve or

maintain basic mobility.

The Occupational Therapist's letter of January 21, 2013 when considered in conjunction with her additional August 14th letter describing the appellant's activity in the community reinforced by the evidence given at the hearing, leads the panel to conclude that the Occupational Therapist has confirmed a medical need for the push handles as set out in the regulation.

The panel does not accept the ministry's suggestion that the regulation should be interpreted to mean that a wheelchair basically cannot function without the accessory in question. In our view, this is a too narrow a view of the regulation. The uncontroverted fact that the appellant's care assistant regularly uses the push handles, even when the battery is fully charged and the chair is otherwise fully functional, suggests to us that the push handles are an integral element of the wheelchair and are medically essential to prevent possible accident and injury and to facilitate the appellant's basic mobility. We wish to emphasize, however, that we are not suggesting, as a matter of general policy, that all motorized wheelchairs funded by the ministry must be equipped with push handles; our decision relates solely to the somewhat unique circumstances of this appellant as outlined in the evidence before us. The panel is not persuaded that the medical supplier's quote listing push handles as a separate optional accessory has any probative force; the panel notes that a total of 11 items are separately itemized in the supplier's quotation including items such as a backrest, headrest, seat and battery all of which are essential components of the wheelchair.

For all of the foregoing reasons, the panel finds the ministry's determination to deny push handles under EAPWDR, Schedule C, 3.2 (2) (c) was not reasonably supported by the evidence and rescinds the decision.