

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the “Ministry”) February 18, 2013 reconsideration decision denying the Appellant’s request for funding for brake repairs and for a custom toggle switch to access electronic controls for his power wheelchair pursuant to the requirements in section 10 of the EAPWDA and Schedule C section 3 of the EAPWDR, because:

1. The Appellant did not request pre-authorization from the Ministry before purchasing his power wheelchair, components and accessories;
2. The Appellant did not provide information to the Ministry to establish that his family unit has no other resources to pay for the requested items;
3. The Appellant did not provide information to establish that the medical equipment and devices requested are the least expensive and appropriate;
4. An occupational therapist did not provide an assessment confirming the medical need for all of the components, specialty electronics and accessories attached to the Appellant’s wheelchair; and,
5. The Ministry was not satisfied that the components, specialty electronics and accessories attached to the Appellant’s wheelchair are medically essential for basic mobility.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (“EAPWDA”) Section 10.

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) Schedule C Sections 3 and 3.2.

PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Information from its records that the Appellant, a recipient of disability assistance, purchased a power wheelchair without Ministry authorization or funding in about May 2012.
2. Authorizations by the Ministry (with invoices and a doctor's letters) for modifications/repairs for the Appellant's wheelchair as follows: July 2012 – custom arm rest bracket, arm rest trough and joystick modifications; August 2012 – knee bolster pad, cut out burned wiring and re-wiring a new inhibit security switch; and October 2012 – adjustments to cushion, fabrication and installation of arm pad and custom bracket to hold cushion in place, yellow buddy button and labor to swap light control JSM for refurbished standard joystick and reprogram Omni menu for lighting control.
3. Medical equipment request and justification completed by the same doctor on December 14, 2012 who described the Appellant's medical conditions as morbid obesity – confined to wheelchair, osteoarthritis, knees bilateral. The recommended medical equipment is a power wheelchair and required repairs (tilt recline with power footboard), bariatric (700 lbs) rating. The specification part of this request was signed by an occupational therapist on December 18, 2012. She referred to a letter signed by the same doctor dated November 1, 2012 in which the doctor stated that he assessed the Appellant and he requested coverage on an "urgent basis" for the following wheelchair repairs/parts – custom toggle switch to access electronic controls.
4. Functional assessment from the same occupational therapist, dated December 18, 2012 with details about the Appellant's power wheelchair, his living environment (including social supports, functionality, bathing, transfers, ambulation and daily living activities). The therapist listed the suitability/justification for the request, in part, as follows:
 - Power wheelchair appears to be essential to maintain client's independence. He is in the chair all the time as he is non-ambulatory. He goes out on a regular basis.
 - Benefits from power tilt to relieve pressure and to open airways and facilitate air entry. Can breathe better when tilted or reclined. Recline feature opens up his hip angle; benefits him by relieving pressure in his abdominal area to allow better air entry to the lungs.
 - If reclining without elevating footrests, will feel pain in lower legs, especially the left one, so elevating footplate is helpful.
 - Due to medical conditions, requires power wheelchair for basic mobility because he is non-ambulatory. Chair size is appropriate at the present time. Power tilt, recline and elevating footplate features are also beneficial to relieve pressure, to allow for position changes and to facilitate breathing.The therapist also wrote that she supports the repairs to the chair. Without this chair, the client would be dependent on the medical system and would be unable to lead an independent life, perform basic self-care and instrumental activities of daily living. He also has no alternate pieces of furniture to sit on and arise, other than his bed.
5. Quote from a mobility supplier dated January 4, 2013 for a motor brake, toggle switch, wire, contacts, heat shrink, cable wrap, and labor for a Ranger 700 Power Chair for \$1095.90.
6. Quote from a mobility supplier dated January 31, 2013 for a joystick module with lighting controls. for \$799.

7. Appellant's affidavit sworn before a lawyer on January 31, 2013 attesting that: he is unable to disclose the funding source of the power wheelchair due to confidentiality agreements; if he discloses the information he will be sued; and, he assures the Ministry and the provincial government that there is no additional or any further funding for service for the power wheelchair or for any other medical equipment. The Ministry contacted the lawyer to verify that this affidavit was not forged.

8. Appellant's request for reconsideration with arguments supporting his request and the following information. He did not request pre-authorization for the power wheelchair because having just moved from another province there was no time, especially to find a family doctor and an occupational therapist, and then to go through the Ministry process. He needed the wheelchair. He also referred to the occupational therapist's assessment and the doctor's letter. The Appellant wrote that the power wheelchair is experiencing service issues. The brakes click on and off and do not lock correctly when stopped. These are major safety concerns.

9. Letter dated January 31, 2013 from the same doctor, submitted for the reconsideration and noting that the Appellant has been assessed by this doctor and that the Appellant requires the use of his motorized wheelchair for multiple medical indications, including morbid obesity, bilateral knee osteoarthritis and chronic left leg pains.

10. Ministry's list of contracted medical equipment/service providers including information about services they provide as part of their contracts, such as a 2 year all inclusive warranty for wheelchairs, a discount and a fixed hourly rate for labor.

11. Ministry telephone log of its February 15, 2014 contact with the mobility supplier of the Appellant's wheelchair indicating that: the Appellant bought the wheelchair from them in May 2012 and that it has a manufacturer's warranty for parts but no maintenance warranty. The provider also gave the following information:

- The chair is a Ranger Power Chair 706, can accommodate up to 700 lbs., 24" x 28" height and width, with power tilt, recline and legs, PG electronics with OMNI display and Ottobock Cushion.
- Uses an Arndt electronics system because the Pilot isn't sophisticated enough to handle the number of power features on the chair (tilt, recline and foot rests).
- The Omni is a display device connected to the control system. Considers the power features – tilt, recline and elevated footrests as essential, but not the Omni.
- Custom arm rest bracket, custom arm trough arm rest, custom "I" handle joystick, knee bolster pad, adjustments to Ottobock cushion, installation of arm pad and custom bracket to hold cushion in place, yellow buddy button, swap light control J&M for refurbished standard joystick and reprogram Omni menu for lighting control, custom toggle switch to access electronic controls – are all modifications, not repairs.
- Brakes as far as he knew were still functional, but had no contact with the Appellant for about three weeks. The problem is that the Joystick Gimble is broken, and the brakes are not designed to go on and off, on and off. It's like driving with an emergency brake, eventually it overheats and gives out.

At the hearing, the Appellant asked whether the Ministry adjudicator who denied his initial request and the reconsideration officer are the same person. Because if they are, the Appellant argued that the Ministry demonstrated bias in making its reconsideration decision. The Panel pointed out that its

jurisdiction is limited by section 24 of the Employment and Assistance Act to determining whether the Ministry's reconsideration decision was reasonably supported by the evidence and/or was a reasonable application of the applicable enactments in the Appellant's circumstances, and not whether the Ministry was biased.

The Appellant provided information about his medical conditions, the need for his customized wheelchair and the specific requests that the Ministry denied as well arguments in support of his position in this appeal. The arguments are set out in Section F of this decision.

The Appellant stated that he is a young man with educational aspirations and is involved in human rights issues. His custom made wheelchair is essential for his mobility and his overall health. Because of his size and medical conditions, he had to have a wheelchair custom built and subsequently modified to give him basic mobility, to help him breath, to relieve his chronic leg pains and to address his various medical conditions.

The Appellant said that a power wheelchair like his costs between \$35,000 and \$55,000. He cannot disclose the actual costs or specifications of his wheelchair because he is bound by confidentiality agreements. The Appellant explained that he provided an affidavit, sworn before a lawyer to confirm the confidentiality restrictions and to confirm that he has no funds for the items he is requesting. That lawyer was very surprised that the Ministry called him to verify that the affidavit was not forged. The Appellant also said that he saved the province a lot of money by funding his custom wheelchair and he is just asking for service expenses.

The Appellant explained why the special features of his wheelchair are important. No standard wheelchair will hold a man of his size. His chair provides him with basic mobility and has features that are medically suitable for his special circumstances. For example, the power features allowing him to recline to help his breathing and alleviate his leg pains. The Appellant said he suffers from chronic pain, breathing difficulties, muscular disabilities and other conditions. For him this specific wheelchair is basic equipment for living and without it, he would be bed ridden for life.

The Appellant also clarified the requests he made to the Ministry. He stated that the custom toggle switch to access electronic controls would be a modification to his wheelchair. The request for a new motor brake, momentary toggle switch, supplies and labor are brake repairs to his wheelchair. The Appellant said he has been having brake issues and he needs the brakes fixed right away for safety reasons.

The Panel makes the following findings of fact:

1. In May 2012, the Appellant purchased a customized wheelchair without pre-authorization or funding from the Ministry.
2. The Ministry approved modifications/repairs for the Appellant's chair in July, August and October 2012.
3. In January 2012, the Appellant requested brake repairs and a custom toggle switch modification for the wheelchair.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably denied the Appellant's request for funding for brake repairs and for a custom toggle switch to access electronic controls for his power wheelchair pursuant to the requirements in section 10 of the EAPWDA and Schedule C section 3 of the EAPWDR, because:

1. The Appellant did not request pre-authorization from the Ministry before purchasing his power wheelchair, components and accessories;
2. The Appellant did not provide information to the Ministry to establish that his family unit has no other resources to pay for the requested items;
3. The Appellant did not provide information to establish that the medical equipment and devices requested are the least expensive and appropriate;
4. An occupational therapist did not provide an assessment confirming the medical need for all of the components, specialty electronics and accessories attached to the Appellant's wheelchair; and,
5. The Ministry was not satisfied that the components, specialty electronics and accessories attached to the Appellant's wheelchair are medically essential for basic mobility.

Applicable Legislation

The following sections of the EAPWDA apply to the Appellant's circumstances in this appeal:

10(1) For the purposes of

(b) determining or auditing eligibility for disability assistance, hardship assistance or a supplement, the minister may do one or more of the following:

(e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;

(2) The minister may direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for disability assistance, hardship assistance or a supplement.

The following sections of the EAPWDR apply to the Appellant's circumstances in this appeal:

Schedule C Health Supplements -- 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.

(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.

Medical equipment and devices – wheelchairs

3.2 (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.

The Panel's Findings

In its reconsideration decision, the Ministry made a number of separate findings. Therefore, the Panel will consider the parties' positions regarding each of those.

To support his appeal, the Appellant cited two previous tribunal decisions, which rescinded Ministry decisions denying funding for wheelchairs and repairs to wheelchairs. While other tribunal decisions may provide guidance, the Panel points out that, in accordance with section 22(4) of the Employment and Assistance Act, it must decide this appeal based on whether the Ministry's decision was reasonable in the Appellant's specific circumstances.

Pre-Authorization and Eligibility for Modifications/Repairs

The Ministry's position is that because it did not authorize the purchase of the Appellant's power wheelchair it is not authorized to fund any subsequent modifications or repairs. It acknowledged that it did authorize previous modifications/repairs for the Appellant's wheelchair; however, its position now is that it authorized those in error. The Ministry also submitted that the Appellant did not meet the requirements of section 3(5) of Schedule C, which in certain circumstances allows the Ministry to fund repairs to equipment not pre-authorized by it.

The Appellant argues that by funding his needed customized wheelchair, he saved the province a lot of money. He has no resources to pay for repairs to his brakes or for the custom toggle switch. It is his position that it would be far more economical for the Ministry to fund the brake repairs and the customized toggle switch than to replace the wheelchair.

The Panel finds that there is no dispute that the Ministry did not authorize or fund the purchase of the Appellant's wheelchair. Therefore, the Appellant's request for repairs to his brakes falls within the requirements of section 3(5) of Schedule C. Under that regulation, the Appellant must demonstrate that he satisfied the requirements of section 3.2 and that it is more economical to repair the medical equipment or device than to replace it. The Appellant testified that a customized wheelchair like his would cost between \$35,000 and \$55,000. The quote from the service provider for brake repairs was for \$1095.90. Therefore, the Panel finds that repairing the brakes on this wheelchair is more

economical than replacing the Appellant's customized wheelchair. As for satisfying the requirements in section 3.2, the Panel addresses that issue below.

The Panel also finds, based on the Appellant's testimony, that the custom toggle switch is not a repair. He described it as a modification and therefore the Panel finds that the Appellant is requesting a new piece of medical equipment or device. To obtain funding for that, the Appellant must satisfy the requirements of section 3 and 3.2 of Schedule C and the Panel's findings regarding these requirements are below.

No Resources Available

The Ministry argues that, as required by Schedule C section 3(1)(b)(ii), the Appellant did not provide any information to establish that he does not have the resources to pay for his requests. He also did not provide any concrete evidence of the confidentiality agreements and the funding for his wheelchair; for example, by having a lawyer attest to their existence, review them and confirm the confidentiality requirements.

The Appellant's position is that he has no resources to pay for the brake repairs and toggle switch modification to his wheelchair. All of his funds were used to pay for the customized wheelchair and he is receiving disability assistance. Also, the Appellant argues that he provided the Ministry with as much information as he can about the purchase of the wheelchair, even having his affidavit sworn to attest that he is bound by confidentiality agreements and has no resources to pay for his requests.

The Panel finds that section 10 of the EAPWDA provides the Ministry with the authority to direct the Appellant to supply the Ministry with information that it requests as well as verification of any information supplied by the Appellant. The onus is therefore on the Appellant to provide the Ministry with verification that the confidentiality agreements exist and that they prevent him from disclosing what his financial resources were when he bought his wheelchair. The onus is also on the Appellant to verify what resources he has or does not have for the repairs and modification he requested in January 2013. The Panel finds that the Appellant has not provided the information or the verification requested by the Ministry. He has only asserted that he has no resources to pay for the requested items. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant did not establish that he has no other resources to pay for the brake repairs or the toggle switch modification.

Requested Modification/Repairs are the Least Expensive/Appropriate

The Ministry submits that, as required by section 3(1)(b)(iii), the Appellant did not provide information to establish that the medical equipment repairs and modifications are the least expensive appropriate medical equipment and device. The Ministry noted that the Appellant did not provide a copy of any manufacturer's warranty for his wheelchair so the Ministry cannot determine whether coverage from another source is available. The Ministry also noted that it has a number of contracted medical equipment service providers to ensure that the least expensive medical equipment and devices are funded by it. These providers provide free assessments for fitting and trial of equipment, 2 year all inclusive warranties, a discount and a fixed hourly labor rate.

The Appellant's position is that he needed his customized power wheelchair quickly and in May 2012, he had the funding to purchase it. He is now asking for funding for brake repairs for safety reasons and for a customized toggle switch modification. The Appellant provided quotes for these from the mobility supplier who sold him his customized chair so that these items could be properly installed.

The Panel notes that the Appellant only provided quotes from the one supplier which sold him his wheelchair and who provided the modifications/repairs in 2012. He did not provide quotes from any other supplier nor did he provide the Ministry with sufficient information for it to be able to determine whether the requested brake repairs and toggle switch modification could be obtained from another less expensive source, particularly one of its contracted providers. Therefore, the Panel finds that it was reasonable for the Ministry to determine that the Appellant did not provide information to establish that the requested repairs and equipment or device are the least expensive appropriate medical equipment or device.

Occupational Therapist Assessment

The Ministry submits that the Appellant did not provide an occupational therapist's assessment confirming the medical need for all the components, specialty electronics and accessories attached to the Appellant's wheelchair and/or related modifications and repairs, as required by section 3(2)(b) of Schedule C.

The Appellant submits that the occupational therapist stated that, in his specific circumstances and with his medical conditions, he needs his customized wheelchair for basic mobility and to alleviate his other health conditions, including breathing problems and chronic leg pains. The therapist also stated that without this chair the Appellant would be unable to lead an independent life and perform basic self-care. The Appellant's position is that because he medically needs this wheelchair, he also needs the brake repairs and custom toggle switch modification for his chair to meet his mobility and medical needs.

First, with respect to the request for funding for brake repairs, the Panel notes that, in her December 18, 2012 assessment, the occupational therapist provided a detailed description of the Appellant's need for his power wheelchair and repairs. She described the Appellant's medical conditions, how they impact his life and provided reasons for the suitability of the power wheelchair for his conditions. The Panel also notes that in the December 2012 medical equipment request, the doctor prescribed a power wheelchair and required repairs. Therefore, the Panel finds that the therapist did provide an assessment for the medical need for the power wheelchair and repairs. In addition, the Appellant's mobility supplier told the Ministry that the brakes are not designed to go on and off. Eventually they will overheat and give out. Therefore, based on the evidence, the Panel finds that repairs to the brakes are needed to maintain the power wheelchair's operation, and further that it was not reasonable for the Ministry to determine that the Appellant did not provide an assessment from an occupational therapist confirming the medical need for brake repairs.

As for the customized toggle switch modification, the Panel finds that the occupational therapist did not address the need for this specific device. Also, the Appellant did not provide any information about why this particular modification is medical equipment or a medical device, which he medically needs. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant did not provide an occupational therapist's assessment confirming the medical need for this item as required by section 3(2) of Schedule C.

Medically essential items

The Ministry's position is that it is not satisfied that the upgraded components, specialty electronics and accessories attached to the Appellant's wheelchair are medically essential for basic mobility, as required by section 3.2(2) of Schedule C.

The Appellant's position is that not only is his customized wheelchair medically essential for his specific basic mobility and medical needs, but the occupational therapist and doctor have confirmed that. He submitted that the requested repairs and modifications are also medically essential for him to maintain his mobility.

The Panel notes that the Ministry's stated position is that it is not satisfied that the components, specialty electronics and accessories to the Appellant's wheelchair are medically essential for basic mobility. In this appeal, however, the issue is whether the requested brake repairs and the customized toggle switch modification are medically essential for the Appellant's basic mobility.

As noted in the previous finding, the occupational therapist indicated that the Appellant needs the power wheelchair and repairs for his basic mobility and for his medical conditions. In addition, the Appellant's evidence is that functioning brakes are essential for the safe operation of his power wheelchair, a wheelchair he needs for his basic everyday mobility. Based on the evidence, therefore, the Panel finds that it was not reasonable for the Ministry to find that the brake repairs to the wheelchair are not medically essential for the Appellant to maintain basic mobility.

With respect to the customized toggle switch, the Panel finds that there is no information that this modification is a medically essential upgrade or accessory to the wheelchair, which would allow the Appellant to achieve or maintain basic mobility. Therefore, the Panel finds that for this specific modification request, the Ministry reasonably determined that the Appellant did not satisfy the requirements in section 3.2(2) of Schedule C.

Conclusion

Having reviewed all of the evidence, the Panel finds that the Ministry's reconsideration decision to deny funding for the brake repairs and for the custom toggle switch modification was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances. Therefore, the Panel confirms the reconsideration decision.