

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the “Ministry”)’s Reconsideration Decision dated January 30, 2013 which denied the appellant’s request for a replacement Shoprider SLN888 scooter.

The Ministry held that the criteria in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, section 3(3)(a) and (b) and section 3.4(4) had not been met in that the appellant had not provided information from a qualified technician to establish that her present scooter was damaged, worn out, not functioning, unsafe to operate, or that it was more economical to replace the scooter than repair it. In addition, the Ministry held that the appellant was not eligible for a replacement scooter until December 4, 2014 as it had not been five years since her previous scooter was purchased.

The Reconsideration Decision also states that the Ministry determined that the requirement of EAPWDR, Schedule C, section 3(6) was not met as the appellant had not provided information to establish that the scooter has not been subject to misuse.

PART D – Relevant Legislation

Employment and Assistance Act for Persons with Disabilities Regulation (EAPWDR) Section 62 and Schedule C, Sections 3 and 3.4.

PART E – Summary of Facts

At reconsideration, the documents that were before the Ministry included the following:

- 1) Letter from the Ministry to the appellant dated December 1, 2009 advising that the Ministry approved her request for a Shoprider scooter.
- 2) Letter from the Ministry to the appellant dated December 9, 2010 advising that the Ministry received information from a technician stating that they felt that there were serious issues of misuse and intentional neglect with regard to the use of the appellant's Shoprider scooter (the "2010 Ministry Letter"). The 2010 Ministry Letter states the technician advised the Ministry that when they attended the appellant's home to complete repair work, the scooter was being used by another individual which is considered to be misuse. The Ministry also states that while the warranty is intended to provide routine maintenance for wear and tire items, it does not cover misuse and that if additional documentation is received confirming that misuse continues to occur, neither the Ministry nor the technician will provide funding to repair the scooter.
- 3) Letter from the Ministry to the appellant dated January 27, 2011 advising that the technician will no longer be providing warranty service to the appellant. The Ministry also advised that it has been confirmed that the scooter is safe to operate, requires no further repairs, and can be picked up at the technician's business (the "Misuse Letter").
- 4) Quotation from a medical equipment provider dated May 26, 2011 for a Shoprider scooter repair assessment.
- 5) Letter from the Ministry to the appellant dated June 1, 2011 advising that the Ministry approved the appellant's request for scooter repair – batteries.
- 6) Quotation from a medical equipment provider dated June 3, 2011 for a repair assessment on the appellant's Shoprider scooter.
- 7) Quotation from a medical equipment provider dated July 18, 2011 for tires for the appellant's Shoprider scooter.
- 8) Quotations from a medical equipment provider dated August 9, 2011 for repair assessments to the appellant's Shoprider scooter regarding the front replacement cowling, labor, rims and service.
- 9) Letter from the Ministry to the appellant dated August 12, 2011 advising that the Ministry approved the appellant's request for repairs to the rims and shrouds of her Shoprider scooter.
- 10) Quotation from a medical equipment provider dated September 14, 2011 for various scooter accessories and letter from the Ministry to the appellant dated September 17, 2011 advising of approval for her request.
- 11) Quotations from a medical equipment provider dated September 21, 2011 and October 14, 2011 for repairs to the appellant's Shoprider scooter and Ministry's approval for the requested

repairs.

- 12) Adjudicator overview dated January 4, 2012 indicating that a scooter was provided in July 2007, that the appellant was using it until late summer when she deemed it unsafe to drive. The overview states that the appellant's request was denied as it appears that the current scooter is still functional and that it does not appear that the appellant is unable to use public transportation ("Adjudicator Overview").
- 13) Estimate from a medical equipment provider dated April 3, 2012 for a magnetic brake and labor for the appellant's Shoprider scooter and Ministry note dated April 20, 2012 for approval of the requested repairs.
- 14) Estimate from a medical equipment provider dated April 28, 2012 for batteries for the appellant's Shoprider scooter and documentation regarding the Ministry's approval of her request.
- 15) Letter from the Ministry to the appellant dated September 6, 2012 advising the appellant as to sections of the Medical Equipment Request and Justification form that needed completion.
- 16) Medical Equipment Request and Justification form completed by a medical practitioner on September 9, 2012 stating that the appellant has bilateral knee osteoarthritis and requires a motor scooter (replacement) referring to the Assessment Summary.
- 17) Quotation from a medical equipment provider dated October 24, 2012 for a Shoprider SLN Explorer Scooter at a cost of \$3,483.81 and a cane holder at a cost of \$55.08 for a total of \$3,538.89.
- 18) Medical Equipment Request and Justification form completed by an occupational therapist (OT) dated October 29, 2012 with attached assessment summary stating that the appellant has a history of hyperthyroidism, rheumatoid arthritis, hypercholesterolemia, diabetes mellitus Type 2 and bipolar disorder. The OT states that the appellant fatigues easily and her walking tolerance is affected by pain in her back, hips, knees and legs and that she needs a reliable scooter to help her conserve energy, manage her pain and enable her to do the necessary outdoor activities such as grocery shopping and getting to the doctor. The OT states that the appellant told her that her present scooter was not performing safely for her and although it was sent for repair, the problem was not corrected. The OT also states that the appellant is requesting the same model of replacement scooter as she felt comfortable on it (the "Assessment Summary").
- 19) Letter from an occupational therapist dated October 29, 2012 stating that the appellant's present scooter is under 5 years old but has been in need of frequent repairs ("October 2012 OT Letter")
- 20) Letter from the OT dated December 5, 2012 indicating that he had faxed previous documentation regarding the appellant's request for a replacement scooter to the Ministry on October 29, 2012. The OT states that the appellant has been without the use of a scooter for the last 3 months and requests that her application be processed as soon as practical

("October 2012 OT Letter").

- 21) Letter from the Ministry to the appellant dated January 4, 2013 advising that her request for Health Supplements of a Shoprider Scooter was denied.
- 22) Health Assistance Branch Medical equipment and devices decision summary (the "Summary") dated January 4, 2013 noting that the appellant is eligible for health supplements, that pre-authorization from the minister was requested and that there are no other resources to pay for the medical equipment. The Summary states that the requested medical equipment is not the least expensive appropriate equipment available because the appellant already has a scooter funded by the Ministry and that there is no information from a technician to support the appellant's statements that the scooter is not performing safely. The Summary also notes that the appellant has a walker for basic mobility within her residence and for short distances outdoors, and is able to take public transportation for access to the community so it has not been confirmed that there is a medical need for a new scooter. The Summary also notes that the OT has confirmed that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment and that the total cost of the scooter and any accessories is less than \$3,500. The Summary also notes that the Ministry is not satisfied that a new scooter is medically essential to achieve or maintain basic mobility. The Summary states that the Health Assistance Branch recognizes that the appellant is concerned that her current scooter is unsafe; however we require information from a repair technician confirming this. The Summary also states that the appellant has a 4 wheeled walker and access to public transportation. The Ministry also notes that it has been greater than 5 years since the Ministry last provided the item being replaced.
- 23) Request for Reconsideration dated January 13, 2013 in which the appellant states that she qualifies for a medical handicapped scooter, that the Ministry had previously purchased her two scooters, and she is requesting a replacement scooter. The appellant states that the reconsideration process is greatly affecting her normal mobility and costing her more in transportation which she cannot afford.

In her Notice of Appeal dated February 4, 2013, the appellant states that she is eligible for her request, that she urgently needs a replacement scooter as it is greatly affecting her health issues and that the Ministry should be satisfied because all the information is the same.

Admissibility of New Information

For purposes of the appeal hearing, the appellant provided a Consent to Disclosure of Information dated March 1, 2013 ("Consent") and signed by the appellant. The appellant also provided a Release of Personal Information to the advocate dated March 1, 2013 ("Release"). The appellant also provided a work order from a technician dated July 17, 2012 (the "Work Order") noting that the appellant's Shoprider scooter was test ridden, that the motor seems to be laboring and slowing down on hills, that it may need a motor replacement, and that the tires will need replacing. At the appeal hearing, the appellant and her advocate gave oral testimony which provided more detail with respect to her request for a replacement Shoprider scooter.

The panel has admitted the oral testimony, Consent, Release and Work Order into evidence as being

in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*.

At the hearing, the appellant, through her advocate, who is also her caregiver, roommate and friend, stated that she is aware that she is requesting a replacement scooter one year before the normal replacement time but that her scooter was not safe for use. The appellant's advocate stated that last summer, the scooter's electrical system shut down, the brake gave way on a steep hill and if he had not grabbed the steering wheel, the appellant would have gone over a steep hill and been severely injured.

The appellant stated that she had several technicians review the scooter but it was never repaired to her satisfaction. The appellant stated that the Work Order indicates that the technician completed an assessment of her scooter and states that it was test ridden and told her that it was safe and functioning but the appellant did not agree. The appellant's advocate stated that although the Work Order indicates that the scooter may need motor replacement and tires, and that it seemed to be laboring and slowing down on hills, there are no notes indicating what repairs were actually made, and as they did not agree that it was functioning properly or safe, they did not sign the Work Order. The advocate stated that they were not able to find a mechanic that they trusted to repair the scooter.

The advocate stated that he checked the scooter after the repairs were made and that there were two pieces of tape around the melted wiring harness where the junction box is. The appellant did not feel safe with the scooter so they donated it to a family who could repair it. The appellant did not tell the Ministry that she had donated her scooter to another family. Neither the appellant nor the advocate were entirely certain but they believe that the family that now has the appellant's scooter had it repaired and is using the scooter. The appellant confirmed that she has an indoor walker but no outdoor scooter now and that she needs one urgently.

The appellant's evidence is that she attends poetry, painting and crafts classes at a community centre approximately twice a week and because she has bipolar disorder this is necessary for her mental health, not just for recreational purposes. When she had her scooter, the advocate would help her get ready to go and pack her suitcase, then she would ride her scooter down to the community centre, a distance of approximately seven blocks. The appellant also stated that she has to see her doctor once or twice each month, her dentist as needed, and has to see her cardiologist and lung specialist on a regular basis. She also has periodic emergency trips to the hospital. She also stated that she used to attend physiotherapy twice per month but she has not done that since she gave her scooter away as she cannot afford to get there.

The appellant stated that the Ministry provides her with \$50 for transportation each month, and that she can purchase a book of tickets for Handy-Dart at a cost of \$21 for 10 tickets. For the \$50, she gets approximately 2 ½ books for 30 trips. However, for all of her medical appointments, treatment, poetry and arts, that is not enough. In addition, she has to save some money for the emergency trips to the hospital.

The appellant states that only she used her scooter and that the advocate only test-drove it when she was concerned about its operation. The appellant states that she kept good care of the scooter, maintained it every month and did not misuse it or let others ride it.

The advocate stated that the appellant is 57 years old, handicapped and requires a scooter. He stated that the fact that he did not notify the Ministry that they had donated the scooter should not be held against the appellant.

The Ministry did not attend the hearing or provide any submissions.

Based on the evidence, the panel's finding of facts are as follows:

- On December 1, 2009 the Ministry approved funding for a 888SLN Shoprider 4 Wheel Scooter that was delivered to the appellant,
- The appellant used the scooter regularly and had it repaired on various occasions; and
- In late summer 2012, the appellant gave her scooter away.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision to deny the appellant's request for a replacement scooter on the basis that she did not meet the eligibility requirements set out in the EAPWDR Schedule C, section 3(3)(a) and (b), 3(6) and 3.4(4) was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Section 62 and Schedule C, Sections 3(1) to 3(6) and 3.4 of the EAPWDR sets out the criteria that must be met for a request for a replacement scooter to be approved. The Ministry may provide funding for a scooter if the legislated criteria are met. This appeal is only dealing with the following issues:

- whether there is information to establish that the appellant's present scooter is damaged, worn out or not functioning and it is more economical to replace than to repair it as required by EAPWDR Schedule C, section 3(3)(a) and (b);
- the appellant's eligibility for a replacement scooter pursuant to 3.4(4); and
- whether the Ministry was reasonable in denying the appellant's request for a replacement scooter pursuant to EAPWDR section 3(6) on the basis that her previous scooter was damaged through misuse.

The Ministry found that the other criteria for a replacement scooter had been met.

The relevant sections of Schedule C, EAPWDR the legislation at issue are 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 3.12 of this Schedule are the health supplements that may be provided by the minister if (B.C. Reg. 197/2012)

(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 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.
- (2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section 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 a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.
- (B.C. Reg. 197/2012)
- (3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or 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 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed. (B.C. Reg. 197/2012)
- (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 sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and (B.C. Reg. 197/2012)
 - (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.
- (B.C. Reg. 61/2010)**

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.

Section 3(3)(a) and (b) – whether it is more economical to replace than to repair the scooter

The appellant's evidence is that they could not find a technician that they could trust to repair the scooter so they gave it away and now the appellant has been without a scooter for approximately seven months and urgently needs a replacement scooter. The appellant's position is that the repairs that were performed by the technician were not satisfactory and the appellant did not trust that she would be safe with the scooter she had. The advocate admitted that he is not a qualified technician and is a "backyard mechanic" but in his opinion the repairs were not safe.

The Ministry's position is that there is no information from a qualified technician to establish that the appellant's scooter is damaged, worn out, or not functioning and that it is more economical to replace than to repair the scooter.

The panel notes that the legislation does not require that the appellant provide documentation from a qualified technician and the Ministry could, if they chose to do so, accept the appellant's evidence that the scooter was not functioning properly. The panel has no reason to doubt the appellant and advocate's concerns regarding the repairs to the scooter and if the melted wiring harness was simply taped up as the advocate states, it may be that the repairs may not have been sufficient. At the same time however, the appellant gave her scooter away rather than trying to find someone else to assess

the scooter further and did not obtain any information from another technician, or provide any other documentation, such as photographs of the scooter, to show that it was not repaired satisfactorily or functioning properly.

The other information regarding the scooter's state of functioning is the Work Order which indicates that while the scooter may need a new motor and would need new tires, it was functioning. There is nothing on the Work Order to indicate that the wiring harness was repaired or that the scooter was not functioning. While the technician stated that the motor was laboring and the scooter may need a new motor and tires, this does not establish that the scooter was damaged, worn out or not functioning to the point that it would be more economical to replace than to repair the scooter.

The evidence of the appellant and the Work Order are in almost direct opposition to each other, but as there is no reason for the technician who completed the Work Order to state that the scooter was functioning if it was not, and as the appellant did not take any further steps to provide information to the Ministry to demonstrate that the scooter was damaged, worn out, not functioning, or unsafe to operate, the panel finds that the ministry's decision that the criteria required of EAPWDR Schedule C, section (3)(3)(a) and (b) was not met was reasonable.

Section 3.4(4) - replacement within five years

The appellant admits that she is seeking a replacement scooter one year before the normal replacement time of five years. However, the appellant states that because the scooter was unsafe and she gave it away and she otherwise qualifies for the replacement scooter, the Ministry should provide her with a replacement scooter now, rather than waiting until the five years has passed.

The Ministry's position is that they approved funding for the appellant's previous scooter on December 1, 2009, that the scooter was delivered to her on December 4, 2009 and she is not eligible for a replacement scooter until December 4, 2014, which will be five years from the date that she was provided with her previous scooter.

The panel notes that the Adjudicator Overview states that a scooter was funded by the Ministry in July 2007 and the Summary indicates that it was over five years since the Ministry last provided the item being replaced. However, the Misuse Letter and the Reconsideration Decision indicate that the scooter was purchased in December 2009 and the appellant confirms that she is making her request prior to the five year time period, so the panel finds that the appellant's scooter was purchased in December 2009 not 2007.

The panel finds that as it is less than five years since the Ministry provided the appellant with her scooter and as there is no documentation indicating that the scooter was not functioning or could not have been repaired, the Ministry's decision that the appellant is not eligible for a replacement scooter until December 4, 2014 was reasonable.

Section 3(6) – whether the scooter was subject to misuse

The appellant states that she took good care of her scooter, maintained it regularly and did not misuse it. The appellant argues that the only time someone else rode her scooter was when she had concerns about how the scooter was functioning and her advocate test drove it for her.

The Ministry's position is that they received evidence from the medical equipment provider indicating that someone other than the appellant was using her scooter which indicates that the scooter was being misused.

The panel finds that although the Ministry had information that someone other than the appellant was seen using the scooter, the Ministry did not provide any further details, in either the 2010 Ministry Letter or the Misuse Letter as to when or how often the suspected misuse occurred. The panel finds that the appellant and advocate's evidence that the only person using the scooter besides the appellant was the advocate and only at times when the appellant had concerns about the scooter's functioning was believable, as it was consistent with the likelihood that the repair technician would have attended to assess the scooter's functioning and that is when the advocate would have been test driving the scooter. The panel also notes that there are numerous invoices indicating that the appellant had the scooter repaired at various times indicating her attention to keeping the scooter in reasonable repair.

In addition, the panel notes that the legislation permits the Ministry to decide that the scooter was damaged through misuse; it does not impose a positive obligation on the appellant to establish that it was not misused. The panel also notes that the legislation deals with equipment that is damaged through misuse and it is not enough to demonstrate misuse but that the equipment was damaged through misuse. The panel finds that there is no evidence to indicate that the appellant's scooter was damaged through misuse and without further information as to the suspected misuse and information to establish that the misuse caused damage to the scooter, the Ministry's decision that the appellant's scooter was subject to misuse was not reasonable.

In conclusion, the panel finds that the Ministry's decision to deny the appellant a replacement scooter as she did not meet the requirements of the EAPWDR Schedule C, section 3(3)(a) and (b) and 3.4(4) was a reasonable application of the legislation in the circumstances of the appellant and was reasonably supported by the evidence. Therefore, the panel confirms the Ministry's decision.