

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the "Ministry") February 19, 2013 reconsideration decision denying the Appellant, who has Persons with Disabilities ("PWD") designation, reimbursement of \$1,500 towards the cost of a new manual wheelchair and \$1420.50 for new seating for his power wheelchair because the Ministry determined that:

- the Appellant did not receive pre-authorization from the Ministry before purchasing these items as required by section 3(2)(b) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation;
- these items are not medically essential for basic mobility as required by sections 3.2 and 3.3 of Schedule C of the same regulation; and,
- there is no information establishing that these items were needed because the Appellant faced a direct and imminent life threatening need as provided for in section 69 of that regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") Section 62, 69 and Schedule C.

PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Medical Equipment Request completed by a medical practitioner on June 8, 2012, who reported the Appellant's medical condition as paraplegic since birth from spina bifida and who recommended a new manual wheelchair and new seating for a power wheelchair
2. Equipment Funding Request completed June 5, 2012 by a physiotherapist who indicated that:
 - seating in the Appellant's power chair is generally badly worn and his manual wheelchair is very deteriorated and obsolete.
 - the Appellant needs to use the manual wheelchair in his apartment to access the bathroom; uses the power wheelchair for outings and uses the city bus; will need to use the manual wheelchair when public transportation is not an option.
 - Appellant is requesting \$1500 for funding of new manual wheelchair for back-up to a power wheelchair and new Roho Elite seat cushion for power wheelchair because of excellent pressure distribution at the pelvis with a firm thigh area for transfers Jay 3 back is recommended because of needed depth adjustability and durability.
3. Quote dated August 6, 2012 from a medical chair supplier for \$5,412.60 for a wheelchair and various parts and quote dated April 6, 2012 for \$1,361.60 for cushion and Jay 3 Back.
4. Letter from the Ministry to the Appellant, dated September 12, 2012, advising him that his June 2012 request for the manual wheelchair was cancelled because he moved to another part of the province and would need an assessment done in his new residence by a community therapist.
5. Occupation therapist's assessment dated October 16, 2012 completed at the Appellant's new residence, and stating that:
 - the appellant reported that the equipment purchase was completed prior to formal approval in the midst of his move to another community. The move was necessitated due to poor health and the need to be closer to family.
 - the appellant manages to transfer independently, is able to propel the chair efficiently and uses the manual wheelchair to access the nearby town areas.
 - requires the manual wheelchair and prescribed seating to be able to maintain independence in self care activities within his apartment, particularly when health fluctuates and he is unable to use a four wheeled walker; also requires the manual wheelchair for daily living activities including doing the groceries, errands, attend doctor's appointments and participate in leisure activities.
 - Appellant requests funding towards A4 Manual wheelchair, and front and rear suspension requested because the Appellant sometimes experiences back pain when he goes over rough ground.
 - wheelchair dimensions and seating components were assessed as subjectively and objectively providing an optimal fit.
6. Appellant's request for reconsideration submitted on his behalf by his step-father who provided the following statement:
 - the appellant lacks financial comprehension of the situation, is severely physically handicapped and mentally incapable of dealing with this issue.
 - because of a severe medical incident resulting in the Appellant's hospitalization, he travelled to where the Appellant was living and moved him to another community in June 2012.
 - before the move, he took the Appellant's old wheelchair to the medical supplier to be repaired because it was missing parts and non-functional; it was returned untouched because it was not worth repairing; but then was repaired to make it temporarily functional.
 - discussions with a physiotherapist, social worker, medical supplier and the Appellant's doctors

indicated that the Appellant needed to start moving and become more active; he would need a mode of transportation and mobility to complete his recovery.

- the step-father was advised that approval from the Ministry for a wheelchair would take months and would only cover \$1,500 for the cost of the wheelchair.
- because the Appellant was being released from the hospital, and on advice from the physiotherapist, doctors and supplier, he bought a wheelchair using his credit card for \$5,000, assuming that he would pay \$3,500 and the Ministry would pay \$1,500.
- the new chair was received in July 2012 and the invoice showed an extra charge of \$1426 for a seat, which the physiotherapist stated was critical to the Appellant's needs.
- the physiotherapist and supplier said they had submitted the requests to the Ministry but had not heard back, and he would be reimbursed once the Ministry paid the supplier.
- he has no savings, had to pay the entire \$6420.50 for the wheelchair and seat with a line of credit, he is trying to pay off this debt, and always expected to pay only \$3500, with the Ministry covering the rest; that is, \$2920.50
- if he had not stepped in the costs of the Appellant's recovery would have been higher
- the Appellant was not in a position to request prior approval because of his hospitalization and inability to deal with replacing his wheelchair; the wheelchair and seating were critical to his recovery from illness and surgery, and he needs the wheelchair and seating for mobility.
- the Appellant did make a request to the Ministry before receiving the wheelchair and seating, but time constraints precluded waiting until authorization was received.
- these circumstances were unusual, mitigating and extenuating circumstances existed; there was no intent to receive benefits that the Appellant was not entitled to; he followed the direction of medical and professional staff; he believes that not obtaining prior approval from the Ministry for the wheelchair is an administrative technicality.

On behalf of the Appellant, the Appellant's step-father submitted written arguments for this appeal, which are set out in Part F of this decision.

The Ministry relied on its reconsideration decision.

The Panel makes the following findings of fact:

1. A medical practitioner completed a Medical Equipment Request for a new manual wheelchair and new seating for a power wheelchair on June 8, 2012.
2. A physiotherapist completed an assessment for a new manual wheelchair and new seating for the power wheelchair on June 5, 2012.
3. The Appellant moved to another community in about June-July 2012.
4. The Appellant's step-father purchased a new manual wheelchair and new seating for the power wheelchair in June/July 2012.
5. An occupational therapist completed an assessment for the manual wheelchair and new seating at the Appellant's new residence in October 2012.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably denied the Appellant reimbursement of \$1,500 towards the cost of a new manual wheelchair and \$1420.50 towards the cost of new seating for his power wheelchair because the Ministry determined that the Appellant did not receive pre-authorization from the Ministry before purchasing these items as required by section 3(2)(b) of Schedule C of the EAPWDR, these items are not medically essential for basic mobility as required by section 3.2 and 3.3 of Schedule C of the same regulation, and there is no information establishing that these items were needed because the Appellant faced a direct and imminent life threatening need as provided for in section 69 of that regulation.

The following sections of the EAPWDR apply to the Appellant's circumstances in this appeal:
 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
 (a) a recipient of disability assistance.

69 The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that
 (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
 (b) the health supplement is necessary to meet that need,
 (c) the person's family unit is receiving premium assistance under the *Medicare Protection Act*, and
 (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
 (i) paragraph (a) or (f) of section (2) (1);
 (ii) sections 3 to 3.11, other than paragraph (a) of section 3 (1).

Schedule C Health Supplements

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.

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.

3.3(1) 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 a person's positioning in a wheelchair:

(a) a wheelchair seating system; (b) an accessory to a wheelchair seating system.

The Panel will consider the parties' positions under each of the criteria at issue in this appeal.

Pre-authorization

The Ministry's position is that because the new manual wheelchair and new seating for the power wheelchair were purchased without pre-approval from the Ministry, the Ministry could not approve the request for reimbursement.

The Appellant's position is that the manual wheelchair had to be purchased quickly because the new wheelchair would help him recover from a serious health incident and because he was moving to another community. There was no time to wait for Ministry approval. The Appellant's step-father submitted that health professionals and the supplier advised him that he would be reimbursed for part of the costs. He also submitted that the Ministry has options allowing payment of benefits after the fact and has authority to approve medical requests at any time.

The Panel's Findings

The Panel finds that there is no dispute that both the new manual wheelchair and the new seating for the power wheelchair were purchased without Ministry pre-authorization. EAPWDR Schedule C section 3(1) clearly states that the medical equipment and devices described in section 3.1 to 3.11 (including wheelchairs in 3.2 and wheelchair seating in 3.3) may be provided if a number of requirements are met, including that "the family unit has received the pre-authorization of the minister for the medical equipment or device requested". This is a legislative requirement, which the Panel finds the Ministry reasonably applied in the Appellant's circumstances.

Medically Essential/Basic Mobility

The Ministry determined that the assessments from the occupational therapist and then the physiotherapist do not confirm the medical need for the manual wheelchair or that the Appellant lacks basic mobility without it because he has a power wheelchair to meet his medical and mobility needs.

The Appellant's position is that the new manual wheelchair and new seat are critical to his medical and mobility needs because his new apartment is accessible to his manual wheelchair but not accessible to his power wheelchair. Also, to become more active and fit, the Appellant needs to use his manual wheelchair for exercise and for transportation locally in town. As for the new seating, the Appellant's step-father submitted that the professional medical and equipment staff made the fitting decisions and then, the seating was constructed and designed to fit both chairs. He argued that the Ministry should accept the recommendations of these professionals. Specifically, he referred to the physiotherapist's assessment, who he argued was adamant that the manual wheelchair and seating were critical to the Appellant's health and mobility.

The Panel's Findings

The Appellant submitted that doctors and other professionals recommended a new manual wheelchair for basic mobility and to improve his health, but the Panel finds that is not confirmed by the medical evidence in the record, which consists of the following:

- a medical practitioner's recommendation for a new manual wheelchair and new seating for the power wheelchair, but no information that the items are medically essential for mobility or that the seating is medically essential to achieve or maintain the Appellant's positioning in the wheelchair.
- an assessment by a physiotherapist in June 2012 recommending funding for a manual

wheelchair for "back up to a power chair"; and new seating for the power chair recommended because of excellent pressure distribution at the pelvis but with a firm thigh area for transfers, and the Jay 3 back recommended because of needed depth adjustability and durability. The assessor did not indicate that either of these items was medically essential for basic mobility. The therapist also did not indicate that the new seating is medically essential for the Appellant to achieve or maintain positioning in the wheelchair.

- an assessment by an occupational therapist in October 2012 describing how the Appellant uses his manual wheelchair in his apartment and to access the nearby town area, and stating that he needs the manual wheelchair and prescribed seating to maintain independence in self care activities especially when he is unable to use his walker, and he needs the manual wheelchair for daily living activities. There is no mention of the Appellant's power wheelchair or any indication that the power wheelchair cannot also be used by the Appellant in his residence for his daily living activities and to access the nearby town. For mobility inside the residence, the Appellant also has a walker. There is no information indicating that the new seating is medically essential to achieve or maintain his positioning in the wheelchair.

Based on this evidence, the Panel finds that although in each of these assessments there is a recommendation for a new manual wheelchair and new seating, there is no clear evidence that the new manual wheelchair and new seating are medically essential for the Appellant's basic mobility or that the new seating is medically essential to achieve or maintain the Appellant's positioning in his wheelchairs. Therefore, the Panel finds that for the two requested items, the Ministry reasonably determined that the information provided did not establish that the Appellant satisfied the requirements in section 3.2 or 3.3 of Schedule C of the EAPWDR.

Life Threatening Need

In the reconsideration decision, the Ministry referred to a policy that may allow the Ministry to consider exceptions for medical equipment purchased without prior approval in cases of a life-threatening emergency. The Ministry's position is that based on the information provided, the new manual wheelchair and new seating for the power wheelchair were not purchased and paid for under a life-threatening, emergency situation.

The Appellant's step-father submitted that getting a new manual wheelchair, new seating and a new place to live were critical and life-saving steps for the Appellant. Otherwise, he would be in an extended care facility, experiencing a costly and poor quality of life. The Appellant remains independent and continues to improve his health because he has the new equipment.

The Panel's Findings

The Panel notes that there is no copy of or citation for the policy referred to by the Ministry in the appeal record. However, section 69 of the EAPWDR provides, in part, that health supplements may be provided to a person who is otherwise ineligible if the Minister is satisfied that the person faces a direct and imminent life threatening need. The Panel finds that there is no medical evidence that the Appellant needed a new manual wheelchair and new seating for his power wheelchair because he was facing a direct and imminent life threatening health need and therefore the Ministry was reasonable in concluding that the Appellant did not satisfy this requirement.

Conclusion

Having reviewed all of the evidence and relevant legislation, the Panel confirms the Ministry's reconsideration decision because it was reasonably supported by the evidence.