

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development (the ministry) dated 15 January 2013 that denied the appellant's request for plastic-coated push-rims for his wheelchair as medical equipment under section 3.2(b) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation. The ministry found that the request did not meet the requirement of section 3(2)(a) of Schedule C as there is no prescription from a medical practitioner or nurse practitioner for the requested item. The ministry also found that the appellant's physical therapist did not confirm the medical need for the requested item under section 3(2)(b). Moreover, the ministry held that the request did not satisfy section 3(1)(b)(iii) as the current gummy covered metal hand rims are deemed to meet adequate performance measures and plastic coated ones are considered an upcharge or upgraded item. The ministry further held that the appellant was not eligible for the replacement rims under section 69 of the regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 69 and Schedule C, sections 3 and 3.2

PART E – Summary of Facts

The ministry did not attend the hearing. After verifying that the ministry had been notified of the hearing, the panel proceeded pursuant to section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration consisted of the following:

1. From the ministry's files:
 - The appellant is eligible for medical services only (MSO), previously in receipt of disability assistance.
 - A history of the appellant's wheelchair provided him by the ministry in April 2010, including several upgrades, including E-Motion power assist wheels in August 2010.
2. A letter providing an Equipment Funding Request on the appellant's behalf dated 27 August 2012, completed by a physiotherapist (PT) at a health authority clinic. The PT states the following:
 - Presenting issues: The gummy push rim covers provided with the wheels have not been adequate because they fit too loosely on the rims. This problem has been steadily worsening with time.
 - Physical issues: The appellant has a very severe kyphoscoliosis. His trunk is significantly rotated, bringing his shoulders in a very asymmetrical position relative to the wheels. The appellant does not have finger grip ability and needs to press the rims with the heels of his palms to maneuver the wheelchair.
 - Recommendation: Solidly fixed traction covering is necessary for the E-Motion push rims on his manual wheelchair.

A cost quote from a specialty provider is attached, showing an amount of \$460.12 for plastic coated handrims and labour.

3. The appellant's Request for Reconsideration dated 30 December 2012. The appellant writes: "No difference; gummy covers, plastic rims in terms of a 'life threatening need,' both fall into category (same)." He notes that the wheelchair provider's original quote was because they did not think plastic push rims were an option. He states that a letter from his doctor is being requested and will be faxed in.

In his Notice of Appeal, dated 31 January 2013, the appellant states that:

- The gummy covers were not assessed by the wheelchair provider as stated in the ministry's reconsideration decision.
- A letter from his doctor was sent in at his request.
- The wheelchair provider's original quote was not accurate. He was incorrectly informed that rubberized push rims were not available for this product. He cannot use E-Motion wheels without rubber push rims.

Attached to the Notice of Appeal is a letter headed Equipment Funding Request dated 08 January 2013, completed by the same PT and the appellant's physiatrist, giving additional rationale for plastic coated push rims and for new tires at backup wheels. This document states:

"The gummy push rim covers provided with the wheels have not been adequate because they fit too loosely on the rims. This problem has been steadily worsening with time.
[The appellant] does not have finger grip ability and needs to press the rims with the heels

of his palms to maneuver the wheelchair. Solidly fixed traction covering is necessary for E-Motion push rims on his manual wheelchair. This is required to allow the appellant to have adequate speed for life-threatening situations such as fire evacuation and crossing of busy streets. Without these more stable push grips he is [in] more imminent danger to his life.

As well, the appellant needs to use regular wheels on his wheelchair when he is having the E-Motion wheels charged. New tires are required of these backup wheels at this time. The tires are badly worn. Without these wheels he is [in] imminent danger because he would not be able to evacuate in case of emergency."

At the hearing, the appellant explained that the E-Motion wheels could be readily interchanged with his regular, standard wheels. The E-Motion wheels have an electric motor around the hub. The electric motors provide power assist. The push rims on the E-Motion wheels have some slight "play" relative to the wheel itself. When the rims are pushed forward, the power assist is activated. Unlike the push rims on his standard wheels, which have a rubber coating, the E-Motion wheels have uncoated stainless steel rims.

The appellant stated that he opted for the propulsion provided by the E-Motion wheels instead of requesting a power wheelchair. He said that he did not like the idea of the smaller wheels that are usually associated with a power wheelchair; besides, he was used to using a regular wheelchair, as this had been part of his life since the accident that damaged his back when he was 17 years old.

The appellant stated that when he was first provided E-Motion wheels in 2010, he was told by the staff at the store that they did not come with rubber coated push rims. He was advised at that time that the gummy push rim covers would be a satisfactory alternative. These covers are a soft rubber circular tube with a slit all the way around the inside circumference. They easily slip onto the E-Motion wheel push rims and, according to the appellant, easily slip off. The appellant stated that the gummy covers would probably be satisfactory for a paraplegic with full functionality in his hands and fingers, being able to grip the covers tightly. However, due to his paralysis he does not have that functionality and can only push the rims using the heels of his hands. Doing so with the gummy covers results in the covers falling off. As a result, with the gummy covers the E-Motion wheels are useless to him and since trying them a couple of times when he first obtained the wheels, he has not used them since.

The appellant explained that only recently, after some online research, he had discovered that plastic coated (i.e. with a rubberized coating) push rims for the E-Motion wheels are in fact available, and as he is getting older finds that he needs the power assist for better mobility.

With the exception noted below, the panel finds the letter signed by the appellant's physiotherapist and his physiatrist, and the testimony of the appellant at the hearing are in support of information that was before the ministry at reconsideration. The letter signed by the two professionals clarifies the reasons for the appellant's request as set out in the physiotherapist's original letter; it is also further to the statement by the appellant in his Request for Reconsideration that a letter from his doctor was to be expected. The appellant's testimony clarifies the technical background to his request. The panel therefore admits this new information as evidence pursuant to section 22(4) of the Employment and Assistance Act. The panel cannot accept as evidence the reference in the physiotherapist/physiatrist letter regarding the need for new tires for his regular wheels as this relates to a new request that was not before the ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry denial of the appellant's request for plastic-coated push rims for his wheelchair as medical equipment under section 3.2(2)(b) of Schedule C of the EAPWDR was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. In particular, the issue is whether the ministry reasonably found that A) the request did not meet the requirement of section 3(2)(a) of Schedule C as there is no prescription from a medical practitioner or nurse practitioner for the requested item, B) that the appellant's physical therapist did not confirm the medical need for the requested item under section 3(2)(b), C) that the request did not satisfy section 3(1)(b)(iii) as the current gummy covered metal hand rims are deemed to meet adequate performance measures and plastic coated ones are considered an upcharge or upgraded item and D) that the appellant was not eligible for the replacement rims under section 69 of the regulation.

The relevant legislation is from the EAPWDR:

From Schedule C:

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.

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.

The panel will consider each party's position regarding the reasonableness of the ministry's decision under the applicable criteria at issue in this appeal.

Plastic covered push rims for E-Motion wheels as a health supplement

The ministry does not dispute the requested item is a health supplement under section 3.2(2)(b) of Schedule C of the EAPWDR: an upgraded component of a wheelchair; the ministry does dispute that certain criteria have not been met.

Basic eligibility

The ministry has determined that the appellant is an MSO client. This is the appellant's understanding as well. Under the legislation, a person eligible for MSO is eligible for certain health supplements under schedule C, including the medical equipment and devices referred to in section 3 of Schedule C, such as those under section 3.2.

Section 69 of the EAPWDR gives the Minister the authority to provide certain health supplements set out in Schedule C, including those referred to in section 3, 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 the regulation and if the Minister is satisfied that other criteria are met, including that the person faces a direct and imminent life-threatening need. As the appellant is otherwise eligible for a health supplement set out in section 3 of Schedule C because he is eligible for MSO, the panel finds that section 69 does not apply to the appellant's request and therefore the ministry was not reasonable in applying the "imminent life-threatening need" criterion to his request.

Prescription from a medical practitioner – section 3(2)(a) of Schedule C

The position of the ministry is that a prescription from a medical practitioner as required by the legislation has not been provided.

The position of the appellant is that the letter dated 08 January 2013 and signed by his physiatrist, a medical practitioner, constitutes the required prescription.

The panel has admitted as evidence the letter dated 08 January 2013, signed by both the appellant's physiotherapist and his physiatrist. The panel considers this letter is confirming a prescription for the requested item. The panel notes that this letter was not available to the ministry at the time of reconsideration; on the basis of all the information provided, the panel finds that the ministry was not reasonable in determining that this criterion had not been met.

Confirmation of medical need by a physical therapist -- section 3(2)(b) of Schedule C

The position of the ministry is that the information provided by the physiotherapist does not substantiate the need for replacement of the hand rims due to a medical need for them.

The position of the appellant is that the physiotherapist has provided ample information to meet this criterion.

The panel notes that at issue here is not the medical need for the E-Motion wheels already provided by the ministry, but the medical need for plastic-coated push rims for them. The evidence is that the physiotherapist has written: "The appellant has a very severe kyphoscoliosis. His trunk is significantly rotated, bringing his shoulders in a very symmetrical position relative to the wheels. The appellant does not have finger grip ability and needs to press the rims with the heels of his palms to maneuver the wheelchair." And the two professionals have stated: "[The appellant] does not have finger grip ability and needs to press the rims with the heels of his palms to maneuver the wheelchair. Solidly fixed traction covering is necessary for E-Motion push rims on his manual wheelchair." To the panel, this means that due to the appellant's medical condition – the form of his paralysis and lack of finger/hand functionality -- the gummy covers are not adequate and he has a medical need for rim covers providing better traction in order to be able to properly and safely use the E-Motion wheels. The panel therefore finds that the ministry was not reasonable in determining that this criterion had not been met.

Least expensive appropriate medical equipment or device – section 3(1)(b)(iii) of Schedule C

The position of the ministry is that the current gummy covers were not assessed by the dealer to be deficient or in need of placement. This item is under warranty should replacement be required in the future. The gummy covers are deemed to meet adequate performance measures and plastic coated hand rims are considered an up charge or upgraded item.

The position of the appellant is that he acknowledges that gummy covers could well prove adequate for a wheelchair user with good hand/finger functionality. The ones he has do not require replacement because of wear and tear; indeed he has hardly used them. The point is that because he cannot grip the rims, but pushes instead, the gummy covers detach from the rims: they simply do not work for him and he needs something with better traction so that he can operate his E-Motion wheels by pushing with the heel of his hand.

The panel notes that the ministry's position is based on the proposition that the gummy covers provide adequate traction for the appellant to operate the E-Motion wheels. The panel finds that the evidence from the physiotherapist, the physiatrist and the appellant himself clearly shows that gummy covers do not work for the appellant and the requested plastic covered push rims are an appropriate means of providing traction for the appellant in pushing the rims to activate the power assist feature of the E-Motion wheels. The panel therefore finds that the ministry was not reasonable in determining that this criterion had not been met.

Conclusion

Based on the foregoing, the panel finds that the ministry's decision that denied the appellant's request for plastic covered push rims was not reasonably supported by the evidence. Accordingly, the panel rescinds the ministry's decision in favour of the appellant.