

PART C – Decision under Appeal

The appellant's request for a motorized scooter was denied. The ministry determined in its Reconsideration Decision dated January 15, 2013 that the appellant's request did not meet the legislative criteria for the scooter as an assessment by an occupational therapist had not confirmed the medical need, nor 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. It found further that it was not confirmed that the medical equipment or device was the least expensive appropriate medical equipment or device.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation(EAPWDR), section 62 and Schedule C, sections 3(1) (a) (b) (i,ii,iii), 3(2) and 3.4

PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at the time of the Reconsideration Decision was as follows:

- July 19, 2012: a prescription from the appellant's doctor noting she suffers from severe osteoarthritis of the hips and requires a motorized scooter to get around.
- August 9, 2012: a Medical Equipment Request and Justification application form signed by her personal physician for a scooter and with respect to the medical condition of the appellant he comments "severe osteoarthritis of hip/lumbar spine and sciatica."
- August 30, 2012: a letter from the appellant's Physical Therapist (PT) supporting her request of a motorized scooter to assist with mobility issues. The PT indicates that the appellant shows advanced spondylosis in her lumbar spine as well as advanced arthritic changes in her right hip. It further notes that the appellant struggles to walk short distances with a cane and is not able to travel longer distances without assistance. It observes that even when the appellant travels short distances by herself she suffers from significant increases in pain levels and would highly benefit with a motorized scooter to maintain her independence and get around.
- December 5, 2012: the appellant submits a request for a scooter.
- December 5, 2012: the ministry denies the appellant's request for a scooter and attaches its detailed reasons.
- December 17, 2012: the appellant submits a request for reconsideration and comments "It is imperative prior to surgery" and refers to the August 30, 2012 letter from her PT. The appellant also attaches a December 13, 2012 note from her personal doctor who notes the appellant has been a patient of his for 25 years and that she suffers from severe arthritis of the hip and is awaiting hip surgery and definitely requires a scooter to get around as this is essential to her well being.
- December 18, 2012: a Medical Equipment Request and Justification application form signed by her PT for a motorized scooter and with respect to the medical condition of the appellant comments "Spondylosis lumbar spine-degenerative osteoarthritis of right hip-both advanced."
- January 2, 2013: a letter from the appellant's advocate who reports the appellant is being considered for hip replacement surgery, but has medical conditions that may prevent her from being able to have this surgery. The letter indicates the appellant has osteoarthritis in her back and legs which would not be helped by the surgery if she gets it. The letter reports the appellant needs a motorized scooter for appointments, shopping, etc. and has been using a walker that is no longer sufficient for her needs.

In her Notice of Appeal (NOA) dated January 12, 2013, the appellant states, "It is imperative I have the use of a handicap scooter to be able to shop and get to appointments because of the severity of my pain. This has already been described by my doctor and physiotherapist." The panel admits the NOA under section 22(4) of the Employment and Assistance Act as being in support of the information that was before the ministry at the time of reconsideration.

At the hearing, the ministry stood by the record. The ministry, however, observed that the appellant's physical therapist has outlined her medical condition and certain restrictions of mobility and supports the prescription for a scooter as prescribed by her doctor. However, the physical therapist has not, pursuant to Schedule C, section 3(2)(b) and 3.4(3)(a) of the EAPWDR, performed the necessary assessments to confirm the medical need for the scooter and to confirm that it is unlikely that the appellant, for whom the scooter is prescribed, will have a medical need for a wheelchair during the 5 years following the assessment. Further, without these assessments the ministry was unable to determine if the scooter is the least expensive appropriate medical equipment or device pursuant to Schedule C, section 3(1)(b)(iii) of the EAPWDR.

PART F – Reasons for Panel Decision

The issue of this appeal is the reasonableness of the ministry's reconsideration decision to deny the appellant's request for a motorized scooter. The ministry determined that the appellant's request did not meet the legislative criteria for the scooter as an assessment by an occupational therapist had not confirmed the medical need for a scooter, and 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. It found further that it was not confirmed the medical equipment or device was the least expensive appropriate medical equipment or device.

The EAPWDR, section 62 states 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 family unit who is a recipient of disability assistance.

The legislation under the EAPWDR, Schedule C, sections 3(1), 3(2) and 3.4 provides the following:

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 – 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.

The ministry argues that the appellant's physical therapist has not provided an assessment confirming the medical need for the motorized scooter and has not provide an assessment that confirms that it is unlikely that the appellant for whom the scooter is prescribed will have a medical need for a wheelchair during the 5 years following the assessment.

The appellant argues she needs the motorized scooter because of her medical conditions and that she struggles to walk short distances with a cane and cannot walk long distances without assistance. Further, she needs the scooter to maintain independence and get around while she awaits surgery.

The panel finds that section Schedule C, section 3(2)(b) sets out a different requirement than that of 3.4(3)(a) of the EAPWDR and will consider this separately.

Firstly, Schedule C, section 3(2)(b) requires an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device. The panel finds that the ministry's Medical Equipment, Request and Justification Form section 3 requires an assessment to

be completed by an occupational, physical or respiratory therapist and outlines what that assessment should contain. The panel finds that the appellant submitted two of these forms: one dated August 9, 2012 and signed by her doctor and another on December 18, 2012 signed by the PT. Also submitted was a letter dated August 30, 2012 from the appellant's PT that supports her request for a motorized scooter. The letter details the appellant's medical conditions as well as her mobility issues and restrictions. The letter notes the appellant would benefit from a scooter to ease her pain and get around. The panel finds this letter falls short of the assessment required by the ministry's form in that it does not address or supply the full range of information such as health information including diagnosis/prognosis, identifying possible equipment solutions and trials, etc. As a result, the panel finds that the ministry's determination that the appellant's physical therapist did not confirm the medical need for the scooter by providing an assessment was reasonably supported by the evidence.

Secondly, the ministry also determined that the information provided did not establish that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment as required by Schedule C section 3.4(3)(a) of the EAPWDR. The panel in reviewing the ministry's Medical Equipment, Request and Justification Form observes that it provides a note to an on-line resource manual regarding full details on eligibility. Further, in its December 5, 2012 letter of denial to the appellant, the ministry disclosed that one reason for its denial was that an occupational therapist did not confirm that the appellant will not require a wheelchair within the next 5 years. The panel finds the appellant had sufficient notice to address this requirement, but did not provide the required information. Therefore, the panel finds that it was reasonable for the ministry to determine that the appellant did not provide the required confirmation from an occupational therapist to satisfy the requirement of Schedule C, section 3.4(3)(a). Finally, the panel finds that because the required assessments were not performed under Schedule C, section 3(2)(b) and 3.4(3)(a) of the EAPWDR and because of a lack of detail not provided through an assessment, the ministry was unable to determine if a motorized scooter is the least expensive appropriate medical equipment or device. The panel, therefore, finds the ministry's determination in this regard was reasonable in the circumstances of the appellant.

The panel finds that the ministry's reconsideration decision was a reasonable application of the applicable enactment in the circumstances of the appellant and is reasonably supported by the evidence. The panel, accordingly, confirms the ministry's decision.