

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration decision dated April 16, 2013 which denies the appellant's request for a scooter. The Ministry denied the request after determining that, based on the information provided, the appellant did not meet the program criterion set out in EAPWD Regulation Schedule C, sections 3(1)(b)(iii), 3(2)(b) and 3.4(3)(a) and (c). More specifically, the ministry says:

- It could not be established whether the requested scooter is the least expensive appropriate medical equipment or device as a four wheeled walker with a padded seat or a manual wheelchair with appropriate seating has not been trialed;
- It could not be established that there is a medical need for the requested scooter;
- It could not be established that it is unlikely the appellant will have a medical need for a wheelchair during the 5 years following the assessment; and
- The ministry was not satisfied that the requested scooter is medically essential to achieve or maintain basic mobility.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities (EAPWD) Regulation Schedule C, Sections 3 and 3.4

PART E – Summary of Facts

The appellant has submitted a medical equipment request, and more specifically for a power scooter. The original application was made on February 8, 2013. On March 14, 2013 the Ministry denied that request. On April 5, 2013 the appellant submitted a request for reconsideration. On April 16, 2013 the Ministry completed its review of the request for consideration and again denied the request.

The evidence before the Ministry included the following:

- A letter from the appellant dated April 2, 2013 explaining why she should be eligible for a scooter;
- A medical equipment request and justification form dated November 27, 2012 signed by the appellant's physician and OT. In this form, the physician indicates that the appellant has severe osteoarthritis left ankle (post surgery), severe degenerative disc disease, lumbar spine, and peripheral neuropathy – feet. The appellant has arthritis in her feet, ankles, knees, hips and back;
- A letter dated February 7, 2013 from the appellant's OT supporting the appellant's request for a scooter; and
- A quote dated February 6, 2013 for \$3,063.75 for a Victory DX 4-wheel scooter; and

Attached to her Notice of Appeal, the appellant provided a supplemental letter dated April 25, 2013 from her OT, a consult letter dated January 7, 2013 from the appellant's specialist to the appellant's physician, and the specialist's report dated November 26, 2012.

The OT provides additional information regarding the appellant's physical capabilities. In particular she states:

- Although it was stated that the appellant can walk for ½ block before she has pain", this is actually an exacerbation of her daily level of pain;
- She has not walked 3 blocks to the bus stop in over a year because she has borrowed a neighbor's scooter but that will no longer be available to her;
- The appellant trialed a 4ww just recently and it exacerbated her pain level significantly;
- The appellant was unable to maneuver a wheelchair due to her functional and physical limitations;
- The appellant is unable to transport herself with either a wheelchair or a 4ww without unacceptable increases to her neck, shoulder and back pain. She becomes non functional for several days as a result;
- Handi Dart requires 3 days notice to pre book trips and the cost of using this service is beyond the appellant's financial means;
- A scooter is not used in the house unless it is a small 3 wheeler. A 3 wheeler is not suitable for lengthy outside transportation especially in the appellant's community which is very hilly;
- It is not recommended that the appellant rely on a scooter within her home as she needs to maintain her physical abilities as well;
- A scooter is necessary to perform her day to day activities in her community;

- The appellant's present physical condition appears to be relatively stable and no changes in her condition are expected. That does not eliminate the fact that there may be sudden changes in her medical status, falls, fractures, etc. within the next 5 years that may necessitate a revamping of her medical equipment.

The medical consult letter between the two physicians largely outlines the history of the appellant's back and leg pain. It explains that the appellant's symptoms are aggravated by physical activity. The physician indicates that the appellant has chronic low back pain related to lumbosacral spondylosis.

In her Notice of Appeal, the appellant says that the wheelchair and 4ww does not work in her home, and that her home would need to be modified to accommodate these items. She adds she has carpal tunnel in her right wrist.

At the hearing, the appellant gave the following additional evidence:

- She tried to buy a scooter on her own due to her limited mobility but she cannot afford it - she needs help;
- She has tried a 4ww and a manual wheelchair (as provided to her by the OT) but neither worked;
- The attempted use of the 4 ww and manual wheelchair aggravated her neck and she had troubles getting any distance;
- She has to be careful where and how she walks due to left ankle pain, and she has troubles on stairs also;
- The wheelchair is especially difficult for her as she lives in a hilly community, and she has troubles using it on grass;
- Her arthritis has set it really bad;
- She mentioned the Handi Dart being too expensive.
- She cannot afford a taxi
- She needs access to the downtown for banking, groceries and to access the food banks;
- The distance between her residence and downtown is 2 or 3 km one way on a large hill
- On a good day her pain level is between 6 – 9 out of 10.

In response, the ministry gave the following evidence:

- The original information before the ministry does not show that the appellant trialed a 4 ww or manual wheelchair and these would be the usual first steps when a person request a scooter. Her records showed no rental of this equipment through their office and she wondered how the appellant had accessed the equipment. It was explained by the appellant that the equipment was brought to her house by the OT.
- The ministry accepts the new evidence of the OT as provided by the appellant.

The panel has considered the new evidence submitted by the appellant and finds that it is admissible under section 22(4) of the Employment and Assistance Act as it is evidence in support of the information and records that were before the Ministry when the original decision was made. More

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specifically, it provides further details of the Appellant's functionality as it relates to her impairments and it further explains the efforts the appellant has made in trialing other basic mobility equipment.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry reasonably concluded that the appellant is not eligible for a scooter.

Schedule C, Sections 3 and 3.4 of the EAPWD Regulation set out the criteria that the appellant must meet to be approved for medical equipment. Those sections read 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 3.11 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.

(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 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.

(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.

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.

It is the ministry's position that, notwithstanding the information provided by the appellant, they could not provide the scooter at reconsideration because the evidence fell short of proving that the appellant had met all of the criteria set out in the EAPWD Regulation. Specifically, the Ministry's position was that the request for a scooter has not met the criterion in Schedule C, sections 3(1)(b)(iii), 3(2)(b) and 3(a)(c). More specifically, the ministry said:

- It could not be established whether the requested scooter is the least expensive appropriate medical equipment or device as a four wheeled walker with a padded seat or a manual wheelchair with appropriate seating has not been trialed;
- It could not be established that there is a medical need for the requested scooter;
- It could not be established that it is unlikely the appellant will have a medical need for a wheelchair during the 5 years following the assessment; and
- The ministry was not satisfied that the requested scooter is medically essential to achieve or maintain basic mobility.

The appellant submits that, in consideration of the letter of the OT April 25, 2013 she has now met all of the criteria set out in Schedule C, sections 3 and 3.4.

The supplemental letter from the OT dated April 25, 2013 is significant as it provides additional critical information that was not before the ministry at reconsideration. Specifically, the OT confirms:

- The requested scooter is the least expensive appropriate medical equipment as a four wheeled walker and a manual wheelchair have both been trialed without success (section 3(1)(b)(iii)). The OT explains the physical and functional limitations that the appellant experienced with her recent trials of both the 4ww and the wheelchair. Specifically, the OT says the appellant was able to walk ½ block with a 4ww when her low back, shoulders and neck were aggravated, and that her pain level rose to 8 out of 10 as a result. The pain level resolved to only 7 out of 10 the next day with pain medications. Additionally, the OT says that the appellant tried the wheelchair but was unable to push it up the grassy incline to the ramp at the back of her trailer. She has a functional range pushing the wheelchair of about 100 feet on pavement due to neck and shoulder pain. Also the OT says the appellant is 5'2" and weighs 200 lbs so has to sit in a 20" wheelchair which is wide and cumbersome and increases the stress on her neck and shoulders. She has short arms and reaching out to push a 20"

wheelchair is physically difficult. She adds that the appellant cannot foot propel due to her left ankle pain and fusion;

- The appellant will not likely require a wheelchair within the next 5 years (section 3.4(3)(a)). The OT says that, although she is not a medical doctor, the appellant appears relatively stable and no changes in her condition are expected.
- The appellant has a medical need for a scooter (section 3(2)(b)) as established by OT's own assessment and the information provided by the appellant's doctors;
- The appellant requires a scooter to maintain or achieve her basic mobility needs (section 3.4(3)(c)). The OT says that the appellant needs to access the food bank twice weekly, and needs access to the community to pay her bills, do her banking etc. The

The ministry reiterates that the information before the ministry at reconsideration did not establish that the appellant met all of the criterion set out in Schedule C, sections 3 and 3.4. The ministry also acknowledges that the new information does clarify the issues that were before the ministry at reconsideration.

Given the new information provided by the appellant, the panel finds that the Ministry's decision was not reasonably supported by the evidence and rescinds the decision pursuant to section 24(2)(b) of the Employment and Assistance Act.