

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated April 23, 2013 which denied the appellant's request for funding of a motorized scooter on the basis that the request does not meet the legislative criteria as per Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, Sections: 3(2)(b) because an assessment by an occupational therapist has not confirmed the medical need for the equipment; 3.4(3)(a) because an assessment by an occupational therapist has not confirmed that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment; and 3.4(3)(c) because the minister is not satisfied that the scooter is medically essential to achieve or maintain basic mobility.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of:

- o 15 February 2012, a Medical Equipment Request and Justification form, signed by the appellant's medical practitioner;
- o 13 November 2012, a quote for a Pegasus 4 wheel scooter totaling \$3,229.15;
- o 10 December 2012, a copy of a medical equipment tracking sheet from the ministry;
- o 10 December 2012, an assessment from the appellant's occupational therapist (OT);
- o 26 March 2013, a letter from the appellant's medical practitioner;
- o 3 April 2013, a letter from the appellant's case worker; and
- o 3 April 2013, a Request for Reconsideration.

In the Medical Equipment Request and Justification form, the appellant's medical practitioner describes the medical condition of the appellant as fibromyalgia, chronic back pain and loss of balance and recommends a scooter.

In the copy of a medical equipment tracking sheet from the ministry, a request for a scooter was noted as, "appears to be requested for transportation".

The OT diagnoses the appellant with fibromyalgia, chronic low back pain from a workplace injury in 2005, RA (rheumatoid arthritis), thyroid issues and loss of balance to the left. The appellant is also reported to have recurrent pneumonia, UTI's, insomnia, migraines and chronic depression. The appellant is on methadone for pain.

In the functional summary, the OT reports that the appellant has chronic swelling in her feet which makes walking any distance painful. When the appellant walks 2-3 blocks to town, she recovers in bed for several hours "from the exacerbated foot, knee and hip pain as well as her chronic LBP." No type of insole or orthotic that the appellant has tried has had any effect on the pain. The appellant's standing tolerance is 5-15 minutes in her small kitchen where she sits to do as many things as she can. Household chores are often neglected as recovery from pain and fatigue can take days and the appellant generally feels weak and has poor endurance.

The OT indicates that the appellant has trialed the scooter in town where she would be travelling and she has good traffic sense and good control while accessing difficult doorways and sidewalk approaches. Her apartment is big enough to accommodate the trialed scooter.

The OT recommends that the appellant be provided with a scooter so she has basic access to the community to attend medical appointments, do her banking and grocery shopping. Additionally, the scooter would allow the mental health worker to attend to things beyond chauffeuring the appellant about town. The OT states that the appellant would have decreased stress on her body from eliminating much of the walking and will provide her more energy to heal and attend to other functional activities in her life.

A letter from the appellant's medical practitioner reports that the appellant has chronic pain and fibromyalgia and is "being seen at a pain clinic receiving methadone." The medical practitioner indicates that the appellant "is markedly restricted in her mobility with her chronic pain" and that she is also being investigated for lung capacity which contributes to her decreased mobility. The medical practitioner reports that the appellant has depression and anxiety and isolation contributes to increasing symptoms. The medical practitioner states that it is imperative that the appellant have increased mobility.

A support letter from the appellant's case worker indicates that the scooter is requested in order for the appellant to have the ability to be mobile and maintain as much independence as possible. It is stated that this is not about, "simply transportation but about quality of life". The case worker indicates that the appellant would

rather walk than depend on a scooter but her declining health is preventing her ability to do that. When the case worker talked to the OT about the appellant walking 2-3 blocks, it was indicated that the appellant was "toast" at the end of it. The case worker further indicates that the appellant has been given support to increase her tolerance for exercise by enrolling her in a gym program which although she has tried several times, she is unable to continue due to pain, edema, shortness of breath and fatigue. The case worker states that due to the appellant's decreased mobility, she has become more isolated and her depression has worsened even to the point of suicidal ideation. In conclusion the case worker reiterates her support for the appellant's request for a scooter, "as it would at least somewhat improve her mobility."

In the Request for Reconsideration, the appellant states that:

- she has limited ability due to chronic pain which is being managed by a pain specialist;
- she has recently been diagnosed with Sleep Apnea and is waiting for a Pulmonary Function test;
- she was able to walk 2-3 blocks but was wiped for the day after;
- she is now on 2 inhalers for extreme shortness of breath;
- she has just been diagnosed with hyperthyroid which causes fatigue and loss of energy, worsening her depression;
- she indicates that her feet have swollen from size 7 to size 9 for which there is no answer and therefore pain in her legs and arms has increased;
- she has tried to attend a gym program but is unable to continue due to multiple medical issues;
- she sees her GP on a regular basis due to her declining health;
- she has become more depressed and isolated requiring her antidepressants to be increased, and
- she is not asking for transportation, she is asking for mobilization.

In the Notice of Appeal dated May 1, 2013, the appellant states that her medical issues strongly affect her ability to leave her home and be an independent person in the community. This negatively affects her mental, emotional and physical health and her depression increases with the lack of ability to access the community. The appellant indicates that she has an 8 year old son who loves the skateboard park, but she cannot take him as she cannot walk there, although he can.

At the hearing, the appellant's caseworker/advocate submitted that:

1. The appellant had an abnormal ECG in April which resulted in the need to discontinue one of her medications and that results of a new ECG are pending;
2. The appellant has now been diagnosed with Hypoxemia related to Sleep Apnea;
3. The appellant has had numerous falls in the past 6 weeks secondary to low blood pressure; and
4. The continuation of diarrhea and vomiting have resulted in a significant weight loss for the appellant which also makes it difficult for the appellant to plan regular outings especially using her walker as she does not have quick access to bathroom facilities;
5. There is no taxi saver program available in the community.

The appellant's caseworker/advocate also indicated that she had been in touch with the appellant's OT after reconsideration.

At the hearing, the appellant testified that; she has scoliosis of the spine, has always been susceptible to back pain, needs help with household chores, has pain in her hands due to arthritis, her every muscle hurts and her prescriptions keep changing effecting her body in different ways. The appellant added that her vision is blurred in the left eye, she can't grip the brakes on her walker and that her body doesn't function on the same schedule as Handy Dart. The appellant feels that her body is slowly dying and that her lack of mobility affects her kids. The appellant indicated that she has used a walker for over 2 years, after having first used a cane and that the OT was aware that she used a walker. In response to a question by the panel, the appellant stated that the only pain medication she uses is methadone.

The panel admitted the appellant's oral testimony as further description of the impact on the appellant's mobility on her daily functioning as evidence under section 22(4) of the Employment and Assistance Act as being in support of the information and records that were before the ministry.

The ministry stood by their record of the Reconsideration Decision.

Finding of Facts

The appellant is eligible for medical equipment and devices under Section 62 of the EAPWDR.

The appellant's medical practitioner describes the appellant's medical condition as fibromyalgia, chronic back pain, loss of balance, depression and anxiety.

There are no other resources available to the appellant to pay for or obtain the medical equipment requested.

The scooter has been recommended by both the appellant's medical practitioner and the OT.

The total cost for a Pegasus 4 wheel scooter is \$3,229.15

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision which denied the appellant's request for funding of a Pegasus 4 wheeled Scooter on the basis that the request does not meet the legislative criteria as per Employment and Assistance for Persons with Disabilities Regulation Schedule C, Sections: 3(2)(b) because an assessment by an occupational therapist has not confirmed the medical need for the equipment; 3.4(3)(a) because an assessment by an occupational therapist has not confirmed that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment; and 3.4(3)(c) because the minister is not satisfied that the scooter is medically essential to achieve or maintain basic mobility.

The following sections of the EAWPDR, Schedule C apply to this decision.

3 (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.

3.4 (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.

Section 3(2)(b)

The appellant's position is that she is eligible for a scooter because her physician and OT have confirmed her medical requirement for a scooter. The OT recommends that the appellant be provided with a scooter so she has basic access to the community to attend medical appointments, do her banking and grocery shopping. The OT also states that the appellant would then have decreased stress on her body from eliminating much of the walking and will provide her more energy to heal and attend to other functional activities in her life. The medical practitioner indicates that the appellant "is markedly restricted in her mobility with her chronic pain" and that she is also being investigated for lung capacity which contributes to her decreased mobility. The medical practitioner states that it is imperative that the appellant have increased mobility.

The ministry's position in the Reconsideration Decision is that while the appellant has been diagnosed with fibromyalgia, chronic back pain and loss of balance; the OT's assessment report does not confirm that the appellant has a medical need for the scooter. The ministry indicates that as described by the OT, pain is the limiting factor affecting the appellant's mobility issues and that remedial measures are in place in the form of methadone and lidocaine injections to ameliorate the pain and allow for better functionality.

The panel notes that in the OT's assessment the appellant is reported to have fibromyalgia, chronic low back pain, rheumatoid arthritis, thyroid issues and loss of balance to the left. The OT indicates that with a scooter the appellant would have decreased stress on her body from eliminating much of the walking and will provide her more energy to heal and attend to other functional activities in her life. The panel finds that while the medical practitioner indicates that the appellant "is markedly restricted in her mobility with her chronic pain"; the evidence is that the appellant's pain is being managed by a pain specialist and that she is receiving methadone at a pain clinic. Also, the OT's assessment confirms that the appellant is able to walk 2-3 blocks, able to stand for up to 15 minutes and does not indicate that the appellant suffers from shortness of breath or that other assistive devices were trialed and unsuitable. In consideration of all the evidence, the panel appreciates that the scooter would benefit and improve the quality of life for the appellant; however, the panel finds that the OT's assessment report does not confirm a medical need for the scooter and therefore, the panel

finds that the ministry reasonably determined that the requirement was not established, as per Schedule C, Section 3(2)(b) of the EAPWDR.

Section 3(4)(3)(a)

The appellant's position is that the 4 wheeled power scooter has been recommended by both her physician and the occupational therapist to increase her mobility. Accordingly, the OT recommends that the appellant requires a scooter, as the decreased stress on her body from eliminating much of the walking will provide her with more energy to heal and attend to other functional activities in her life. The appellant argues that her medical issues strongly affect her ability to leave her home and be an independent person in the community. This negatively affects her mental, emotional and physical health and her depression increases with the lack of ability to access the community.

The ministry's position is that the information in the OT assessment report does not confirm that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment.

The panel finds that the OT assessment report does not confirm that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment and therefore, the panel finds that the ministry was reasonable to determine that the legislated criterion was not met as required under Schedule C, Section 3.4(3)(a) of the EAPWDR.

Section 3.4(3)(c)

The appellant's position is that she is not asking for transportation; she is asking for mobilization and that this is about quality of life. The scooter is requested in order for the appellant to have the ability to be mobile and maintain as much independence as possible. The appellant's case worker states that due to the appellant's decreased mobility, she has become more isolated and her depression has worsened even to the point of suicidal ideation.

The ministry's position is that the minister is not satisfied that a scooter is medically essential for the appellant to achieve or maintain basic mobility and that the appellant is independently able to perform activities of daily living and her difficulty arises with the need to perform activities such as grocery shopping and other chores in town. As the appellant is able to walk 2-3 blocks, able to stand for up to 15 minutes and able to run errands for 1-2 hours (albeit requires a rest afterwards), the ministry finds that she has basic mobility. The ministry also notes that there is no information to confirm that alternative solutions to the transportation issue have been tried such as the taxi saver program for PWD recipients or Handy/Dart services. Also, the ministry argues that the appellant does not currently require the use of other assistive devices such as a cane, walker or manual wheelchair.

The panel finds that while the OT's assessment report has confirmed that the appellant is able to walk 2-3 blocks and has standing tolerance of 5-15 minutes, although fatigued afterwards; it does not indicate the type and status of the present equipment and why it is no longer meeting the needs of the client. The panel notes from the evidence that no type of insole or orthotic that the appellant has tried has had any effect on the pain; that the appellant does use assistive devices; specifically a walker which was not mentioned in the OT's report, and that she is being seen at a pain clinic and using methadone for pain. The panel also notes that the appellant testified that her body doesn't function on the same schedule as Handy Dart which must be booked days ahead of time and does not work for a person whose physical condition is unpredictable. The panel also finds that the evidence is that there is no taxi saver program in the community and that according to the appellant other public transportation and community transportation services could not help meet her need for increased mobility. However; the panel finds that the OT's assessment confirms that the appellant is able to walk 2-3 blocks, able to stand for up to 15 minutes and does not indicate that the appellant suffers from

shortness of breath or that other assistive devices were trialed and unsuitable. In view of the above, the panel finds that the evidence does not confirm that a scooter is medically essential for the appellant to achieve or maintain basic mobility. Therefore, the panel finds that the ministry was reasonable in not being satisfied that the requirement of Schedule C, Section 3.4(3)(c) of the EAPWDR was not established.

Conclusion

In applying the legislation to the facts of the case, the panel finds that the ministry's decision was reasonable as the evidence confirms that the appellant does not meet all the requirements of the legislation. Thus, the panel confirms the ministry's decision.