

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the "Ministry") May 23, 2013 reconsideration decision denying the Appellant's request for a supplement for a power wheelchair because the Ministry determined that the information from the Appellant did not establish that she met the requirements in the Employment and Assistance for Persons with Disabilities Regulation, and specifically that:

- A power wheelchair is the least expensive appropriate medical equipment or device as required by Schedule C section 3(1)(b)(iii); and,
- A power wheelchair is medically essential to achieve or maintain basic mobility as required by Schedule C section 3.2(2)(a).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") section 62 and Schedule C sections 3 and 3.2.

PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Medical equipment request and justification completed by a doctor on March 7, 2012 describing the Appellant's medical condition as progressive muscular weakness and recommending a "power wheelchair, scooter as recommended by occupational therapist".
2. Assessment by an occupational therapist dated January 18, 2013 with the following information:
 - Diagnosis and Medical Background – progressive muscular weakness for past 2 years – no clear diagnosis, chronic pain issues; shooting pains bilaterally in lower extremities, arms, shoulder and back; altered sensation; burning pain bilaterally in feet, back and temples; numbness in left hand, 4th and 5th fingers since 2011; balance issues, occasionally right leg buckled in weight bearing transferring from sit to stand at night; chronic fatigue on a daily basis; overactive bladder.
 - Physical Status – Height 5' 4"; weight 198 lbs.; issues of pain and altered sensation affect length of time to carry out daily routines from bed transfers to brushing hair to showering to meal preparation. Has decreased upper extremity function to raise arms above head. Can no longer swim for exercise. Appellant stated that in May 2012 she had minimal left arm function due to left shoulder pain that lasted about 5 days. Balance is compromised and Appellant is at risk for falls without being supported in standing.
 - Functional Status and Environment – lives with husband in a trailer at a campsite; four steep steps up to trailer, railing on one side. Appellant furniture walks inside trailer as living space very small in area. Outside, Appellant uses a 4 wheel walker or holds onto spouse to walk from trailer to car. Can remain standing for 5 – 10 minutes before has to sit down. Mobility limited by constant leg pains and associated fatigue accompanying pain. Cannot negotiate walking over an uneven surface unsupported and has fallen, inside and outside the trailer. Would benefit from transfer aids by bed and in the shower, but no room for bedrail and shower structurally would not support transfer aids. Appellant drives and when carrying out independent daily living activities in the community she uses the courtesy power mobility wherever available.
 - Equipment Needs/Target Outcomes – basic power wheelchair with captain's seat to address chronic pain, fatigue and compromised balance with mobility for outside mobility in rural setting. Power wheelchair that is 20" wide to accommodate Appellant's weight. Wheelchair seat that reclines to accommodate for back pain. Appellant is unable to sit upright at 90 degrees.
 - Equipment Trial – trial of base TDXSP was successful. No captain/van seat was available to trial so trialed the TDXSP with Rehab seating and then a 4 wheel scooter with 19" seat width. Determined Appellant requires a 20" captain seat to accommodate her hip width. Had no difficulties driving the power wheelchair and aware of rules of the road.
 - Recommendation – TDXSP with van seat will met Appellant's outside mobility needs and eliminate chronic pain, fatigue and risk of falls associated with walking. 20" wide van seat with back recline accommodates Appellant's current weight and will accommodate increased weight if Appellant regains 14 lbs.
 - Specification of medical equipment required to meet the Appellant's needs – power wheelchair – TDXSP with van seat.
3. Quote from mobility products supplier for TDXSP power wheelchair with van seat and other accessories in the amount of \$7,127.12.
4. Appellant's request for reconsideration with the following additional documents:
 - Written statement from the Appellant providing detailed information about her medical condition, mobility difficulties and what medical equipment she feels would help her,

summarized as follows - a power chair will allow for her independence and quality of life. She described having attacks when she walks (more than a block) or drives too often (more than once a day); i.e., burning in her legs, "pins and needles" sensation with temporary paralysis or her legs feeling very heavy like having a cement block attached and she is unable to move. The attacks are very painful and cause extreme fatigue. Her legs are always weak, always achy and she can't lift them without assistance to get into vehicles. She has to use her left leg to push herself up steps or into a vehicle, has no reflexes in her feet, her big toe on her left foot is numb and she loses her balance regularly. She drives short distances, usually only in the local area and a power chair is required at her destination; e.g., grocery stores without power mobility devices, doing laundry, picking up prescriptions, shopping in the mall, being out with family or friends. A power chair is medically required to assist in preventing attacks from over use of her legs in daily activities. Walking too far or too often, driving too far or too often always left her exhausted, her legs very sore and feeling rubbery, very heavy and weak. Her walker is only satisfactory for short distances of a block. Walking any distance takes everything she has even with a walker.

- Letter dated May 2, 2013 from the doctor who completed the equipment request, confirming the diagnoses and the medical need for a power wheelchair - as progressive muscular weakness for past 3 years with no clear diagnosis, recent neurologist consult suspects a lumbar sacral radiculopathy; Graves disease for past 3 years; shooting pains have increased bilaterally in lower extremities, arms, shoulders and back; altered sensation; burning pain also increased bilaterally in feet, back and temples; also suffers from temporary paralysis in both legs; has balance issues; occasionally right leg has buckled in weight bearing transferring from sit to stand at night. He wrote that the Appellant is severely restricted in her ability to get around and the walker is only used for very short distances (a block). A power wheelchair is medically essential to achieve or maintain basic mobility. The Appellant's physical impairments are both permanent and severe, and will continue for more than 2 years.
- Letter dated May 6, 2013 from an occupational therapist who was covering for the therapist who completed the January 2013 assessment, and who indicated that she reviewed the Appellant's file, including the assessment and power mobility recommendation. She met with the Appellant in her home, completed a review assessment and based on medical need and significant compromised mobility at all destination points, she supports the first therapist's original power mobility recommendation. This therapist also confirmed the same diagnosis as the doctor and made the same statement about the power wheelchair being medically essential to achieve or maintain basic mobility and quality of life.

With her notice of appeal, the Appellant submitted written arguments which are summarized in Part F of this decision. She also submitted a letter dated June 11, 2013 from the same occupational therapist who completed the first assessment in January 2013.

That therapist wrote that she left a voice mail for a Ministry representative stating that the Appellant wants to be independent with mobility at destinations – a manual wheelchair cannot be propelled independently and the Appellant would be dependent on her spouse for mobility with a manual wheelchair. A power wheelchair would allow mobility at destinations; e.g., beach access and corner store. The Appellant's spouse wanted to hook up a trailer to transport a power wheelchair to destinations. The therapist asked the Ministry representative to contact her if she had further questions. The therapist also wrote that the opportunity to trial a manual wheelchair was never requested, nor did the Ministry call her back. Based on her initial assessment with the Appellant, a

manual wheelchair would not be a recommended option for basic mobility. It was ruled out.

The therapist also clarified the home living situation. She wrote that although her report described the living space as being tight, she did not specifically state that there is no room for a 4 wheeled walker, manual wheelchair, scooter or power wheelchair. The therapist stated that the Appellant may benefit from a 4 wheeled walker in the home and at times power mobility, but there is no room for the equipment. The therapist also addressed the Ministry's rationale about not recommending a 4 wheeled scooter. The therapist wrote that the Appellant has a progressive muscle weakness for the past 2 years with no clear diagnosis. She stated that as an occupational therapist, she must look at basic equipment that will last for the next 5 years. Given the current diagnosis, the therapist wrote that a scooter may not meet the Appellant's mobility needs today and down the road in 5 years should her physical function deteriorate to the point that she needs power mobility for inside and outside mobility. The Appellant may not be able to stay living in her current home if she requires power mobility inside. The therapist wrote that she had been off work and had not been able to assist the Appellant with her appeal. If she had been able to speak with the Ministry in March 2013, these issues could have been clarified. If further trials were requested, they could have been arranged and the Appellant may not be in her current position.

The Ministry did not object to the admissibility of this letter.

At the hearing, the Appellant asked for clarification about the scope of this appeal; i.e., whether this was an appeal of both the Ministry's original denial and its reconsideration decision, or just the reconsideration decision. The Panel explained that, under the appeal provisions in section 24 of the Employment and Assistance Act, it can only review the reconsideration decision.

The Appellant said that she has been using a 4-wheeled walker for very short distances, so she could not understand why the Ministry wanted her to trial one. Also, there are explanations from her and the occupational therapist as to why the walker does not provide her with the mobility she needs, especially outside and about the community. She cannot walk far with her walker and when she goes shopping she strategically plans what to shop for. She also said that with her deteriorating health she will not be able to use a walker. The Appellant stated that the occupational therapist provided information about why a manual wheelchair is not appropriate, including her progressive muscle weakness, numbness in her left hand and chronic pain. She could not turn the wheels and would need to rely on someone to propel it. The Appellant stated that the occupational therapist also provided good reasons why a scooter would not be appropriate.

The Appellant said that she did try a power wheelchair and was able to maneuver it well. Because of her deteriorating health conditions and her husband's health, they will need to move from the trailer to a larger home. A power wheelchair like the one she tested would work in a house.

Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the June 13, 2013 letter from the occupational therapist and the Appellant's testimony at the hearing because they provide additional details about the Appellant's medical conditions and her need for a power wheelchair, and are in support of evidence that was before the Ministry at reconsideration.

At the hearing, the Ministry relied on the reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably denied the Appellant funding for a power wheelchair because it determined that the information provided did not establish that the Appellant met the requirements of the EAPWDR, and specifically that:

- a power wheelchair is the least expensive appropriate medical equipment as required by section 3(1) of Schedule C; and,
- a power wheelchair is medically essential for the Appellant to achieve or maintain basic mobility as required by section 3.2 of Schedule C of the EAPWDR.

The following sections of the EAPWDR apply to 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 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.

Schedule C – Health Supplements

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 3.12 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.

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.

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

Least expensive appropriate medical equipment or device

The Ministry's position is that the requested power wheelchair is not the least expensive appropriate medical equipment for the Appellant. The Ministry noted that the occupational therapist reported that the Appellant trialed a 4 wheeled scooter with a 19" seat; however, many scooters can have a 20" seat and accommodate a person with additional weight. The Ministry noted that no reasons were given as to why a scooter was not considered an appropriate medical device. The Ministry also noted that the Appellant drives her car to appointments in the community and therefore it is not clear why a scooter that can be attached to her car would not be a suitable option. Finally the Ministry determined that the occupational therapist did not detail why a manual wheelchair is not appropriate for the Appellant's needs.

The Appellant's position is that the doctor, the occupational therapists and she herself provided a

great deal of information about why other mobility devices are not appropriate for her. The reports clearly state that her walker is useful only for short distances and not at all in the rural areas where she lives. The Appellant argues that the information from her doctor, the occupational therapists and herself also establish why she cannot use a manual wheelchair. That would require using her hands and arms which she cannot do because of her physical limitations described in the reports. Also, in the rural area where she lives it would be difficult to maneuver a manual wheelchair. The Appellant submitted that in a bigger home she will be able to use a power wheelchair, and as her medical conditions deteriorate the power wheelchair will become even more important. Finally, the Appellant referred to the therapist's explanation about why a scooter would not be appropriate.

The Panel's Findings

The Panel finds that the Appellant's doctor, the occupational therapists and the Appellant all provided detailed information about the Appellant's medical conditions and which mobility devices will work for her now and as her health deteriorates, further restricting her mobility. The first occupational therapist and doctor both described the Appellant's diagnoses as progressive muscular weakness. The doctor and the therapist reported that the Appellant has shooting pains bilaterally in lower extremities, arms, shoulder and back, that she has numbness in her left hand since 2011, that she has chronic fatigue issues on a daily basis and that she has decreased upper extremity function. The occupational therapist specifically wrote that based on her assessment with the Appellant, a manual wheelchair would not be a recommended option for basic mobility. The Appellant's descriptions about her medical conditions, the limited use of her arms, fatigue and weakness are consistent with the occupational therapist assessment and the reasons given for why a manual wheelchair would not be appropriate.

In addition, the Appellant's doctor in his May 2013 letter wrote that the Appellant is severely restricted in her ability to get around and the walker is only used for a very short distances – a block. The second occupational therapist also noted the limited usefulness of the walker for the Appellant's conditions. Their information is consistent with the Appellant's descriptions of how her walker helps her mobility in a very limited fashion. Also, the first occupational therapist clearly stated why a scooter was not recommended. The occupational therapist wrote that she must look at basic equipment that will last for the next 5 years and given the Appellant's current diagnoses and progressive muscle weakness, the occupational therapist stated that a scooter may not meet the Appellant's needs in five years. However, her recommendation for a basic power wheelchair will meet the Appellant's mobility needs today and down the road in 5 years should her physical function deteriorate to the point she needs power mobility for inside and outside. The Panel finds that, when all of the information from the occupational therapists, the doctor and the Appellant is considered it was not reasonable for the Ministry to determine that a power wheelchair is not the least expensive appropriate medical equipment or device for the Appellant.

Medically essential to achieve or maintain basic mobility

The Ministry was not satisfied that the information provided established that a power wheelchair is medically essential for the Appellant to achieve or maintain basic mobility. The Ministry noted that the occupational therapist reported that the Appellant can furniture walk in her home, that she can use a walker or hold on to her spouse to walk from her residence to the car, and that she uses her car to travel to community appointments and activities. The Ministry determined that it did not have clear confirmation or information that the Appellant has a medical need for a power wheelchair when other mobility devices have not been considered or that other mobility devices are not suitable, such

as a scooter. The Ministry noted that a manual walker and appropriate scooter have not been trialed by the occupational therapist.

The Appellant submitted that she cannot use a manual wheelchair because of problems with her arms and numbness in her left hand, and uneven terrain in the rural area where she lives. These physical restrictions are confirmed by the occupational therapist and the doctor. She needs a power wheelchair for shopping, attending social events, family outings, medical appointments etc. She uses a car to travel to appointments, but the wheelchair is required upon arrival at the destination because power mobility devices are not offered in her community. The Appellant also submitted, that as the therapist reported, she lives in an RV where there is no room for equipment so she furniture walks. However, once she moves to a larger house she will need the power wheelchair of inside and outside mobility. The Appellant further referred to the doctor's reports that she is severely restricted in her ability to get around and a walker is only used for short distances. Also the therapist explained why a scooter would not work for her.

The Panel's Findings

The Panel finds that the first occupational therapist and the doctor both clearly and specifically described the Appellant's functional limitations and her mobility needs. In its discussion and findings for the issue above, the Panel reviewed all of the information provided by the occupational therapists and the doctor about why other mobility devices would not address the Appellant's mobility needs and why a power wheelchair would. The Panel refers to all of that evidence, the professional opinions reviewed above, and it adopts all of its findings for this issue as well. In addition, the Panel notes that the functional assessment by both occupational therapists explained how the Appellant's limited mobility is caused by her health conditions, why the Appellant needs a power wheelchair for basic mobility and why other devices suggested by the Ministry would not satisfy the Appellant's basic mobility needs. Also, the doctor and both occupational therapists clearly stated that the Appellant medically needs a power wheelchair to achieve and maintain basic mobility, not just to get around a store. Moreover, the first occupational therapist explained why a scooter was not recommended. She wrote that she must look at basic equipment that will last for the next 5 years and given the Appellant's current diagnoses and progressive muscle weakness, a scooter may not meet the Appellant's needs in five years. However, that occupational therapist wrote, that her recommendation for a basic power wheelchair will meet the Appellant's mobility needs today and down the road in 5 years should her physical function deteriorate to the point she needs power mobility for inside and outside. Therefore, based on all of the medical evidence, the Panel finds that it was not reasonable for the Ministry to determine that the information provided did not establish that a power wheelchair is medically essential for the Appellant to achieve or maintain basic mobility.

Conclusion

Having considered all of the evidence and the applicable regulations, the Panel finds that the Ministry's reconsideration decision was not reasonably supported by the evidence. Therefore, the Panel overturns that decision in favour of the Appellant and she is successful in her appeal.