

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated 30 April 2013 in which the Ministry determined that the appellant was not eligible for medical equipment, a scooter, because the item is not medically essential to achieve or maintain basic mobility under section 3.4(3)(a) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and an occupational therapist does not confirm the medical need for the scooter under s. 3(2)(b) of Schedule C of the EAPWDR and that it is unlikely the appellant will have a medical need for a wheelchair during the 5 years following the assessment as required under section 3.4(3)(c) of Schedule C of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 67.
Employment and Assistance for Persons with Disabilities Regulation, Schedule C, sections 3 and 3.4.

PART E – Summary of Facts

The evidence before the Ministry at reconsideration included:

- A 2-page document titled “Medical Equipment – Request and Justification”, page 1 dated 30 January 2012 and signed by a medical or nurse practitioner states that the appellant suffers from left hip and knee arthritis and that she is finding it difficult to walk more than 100m and that being overweight, she would have difficulties using a normal wheelchair. Page 2 is dated 24 January 2013 and is signed by an occupational therapist (OT) and describes the scooter that would meet the appellant’s needs.
- A 2-page document titled “Functional Assessment – Power Mobility” dated 24 January 2013, signed by the same OT as the previous document, states that the appellant needs this equipment for community mobility for IADL management such as grocery shopping and appointments in order to reduce pain and increase her ability and ease to perform and complete her community IADLS. In terms of functional and environmental summary, the appellant is described as:
 - Independent without assistive device for functional status;
 - Independent for transfers;
 - Takes city bus and lives on bus route, walks slowly outside and can walk 2 blocks one way and must stop and rest in terms of community mobility;
 - Independent for self care;
 - Independent for home IADL management;
 - Pain exacerbation with walking;
 - Chronic pain – generalized fibromyalgia pain;
 - Current equipment: no ambulatory devices;
 - Diagnosis of osteoarthritis left knee, knee muscle weakness and patellar tenderness.
- A 1-page quote for a scooter by a provider, dated 19 December 2012 for a total amount of \$3,541.82, including equipment.
- A referral letter dated 16 April 2013 and signed by a medical practitioner states that the appellant has severe knee and hip pain and that she is not able to “walk very far without pain”. It also mentions she is currently on prescription drugs for her pain “but it is not controlling” and adding that her weight is contributing to her pain but that they are working on that as well.
- At section 3 of the request for reconsideration dated 17 April 2013 and signed by the appellant, she indicates that due to straining her left knee, she finds it increasingly very difficult to walk and needs help for her necessities. She twisted her knee very badly, it is painful all the time and a scooter would help her be more independent to do things for herself.

In her Notice of Appeal dated 7 May 2013, she indicates she disagrees with the ministry decision because she did 30,000 hours of volunteer work over the last 30 years and that she has continuously helped people and is still doing it by cleaning, feeding and generally helping them. She has some help from two members of her family but fears that one of them will leave the region and she will have to rely only on the other one, once a month. She states that her left knee is worsening and she can only walk 3 or 4 blocks at a time. In a document dated 16 May 2013, the appellant further indicates that in March and April she could not get out of bed due to back problems and had to buy a new bed because of her incontinence, not being able to get out of bed to relieve her bladder. She also has to use an elevated toilet seat and a shower chair, not being able to bend her knee too well. She finally indicates she intends to take an online income tax course.

At the hearing, the ministry indicated that they are not looking at future prognosis in terms of the appellant's medical condition but only at the time the OT does the assessment.

The appellant indicated that she was taking issue with the way her doctor deals with her, mentioning he lied to her in the past, and she points out to the part of his medical report where he states that she is on prescription drugs for her pain – she says that this is not correct, as she is on medication but none of the drugs she takes are for pain relief. When asked what kind of medical help was available in her community, she stated it was difficult to get another doctor and she could only go to a walk-in clinic as an alternative. She also mentioned she used to walk five miles per day and now she is limited to staying at home. She works hard to get what she needs, for example making and selling crafts for many years to buy items needed by her. She says she has good days and bad days and on those bad days, she cannot get out of bed. She confirms she can take the city bus outside her door to go to a mall if she needs any necessities and that would entail walking approximately 700 or 800 feet altogether to and from the bus and at the mall, while going to a doctor's appointment would take her 2 ½ hour return and she would have to walk approximately 500 feet, including stairs. She tried to use a cane to assist her walking but she felt it was a hindrance and she finds a walker would not work for her as she prefers to keep her hands free and she is concerned that she could fall and not be able to use her hands to help her.

The panel determined the additional oral and documentary evidence was admissible under s. 22(4) of the Employment and Assistance Act (EAA) as it was in support of the records before the minister at reconsideration in terms of her medical condition and her ability to walk.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision that the appellant was not eligible for medical equipment, a scooter, because the item is not medically essential to achieve or maintain basic mobility and an OT does not confirm the medical need for the scooter under s. 3(2)(b) of Schedule C of the EAPWDR and that it is unlikely the appellant will have a medical need for a wheelchair during the 5 years following the assessment as required under section 3.4(3)(c) of Schedule C of the EAPWDR, was a reasonable application of the legislation or reasonably supported by the evidence.

Medical equipment and devices are dealt with in section 3 of Schedule C of the EAPWDR:

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...

And, specifically for scooters, section 3.4 applies:

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 or a physical 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 or, if subsection (3.1) applies, \$4 500;
- (c) the minister is satisfied that the item is medically essential to achieve or maintain basic mobility...

The ministry first argues that the evidence does not show the OT confirmed it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment. The only reference in the evidence on this issue can be found in the medical / nurse practitioner report to the effect that the appellant is also overweight "and would find it difficult to use normal wheelchair". The OT report does not address this issue. The ministry argues further that the appellant does not qualify for a scooter because the OT does not confirm the medical need for a scooter and because she does not need such a device to achieve or maintain basic mobility but rather to provide additional mobility, to improve community access. The legislation does not allow the ministry to provide a means of transportation but rather to address basic mobility needs and that usually starts by trying and using a walker and only after some time going on to larger equipment, like a scooter.

The appellant argues that she needs a scooter as a medical necessity because she does not have the ability and the stamina to go shopping on her own without that item. She needs it to be able to access what she needs in the community if only to be able to have fresh air, go to her appointments and socialize. Now she depends heavily on other people and a scooter would allow her to be independent. She argues that her medical condition is worsening and that there are days she must even stay in bed and has difficulties walking any distance, so a scooter would really help her and alleviate the pain she feels in her knee.

After reviewing all the evidence, the panel finds that there is no evidence from the OT, or a physical therapist, confirming it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment. Therefore, it was reasonable for the ministry to determine the appellant had not met the requirement of s. 3.4(3)(a) of Schedule C of the EAPWDR. The panel also finds the OT does not confirm the medical need for that device and thus, it was reasonable for the ministry to determine the appellant had not met the requirement of s. 3(2)(b) of Schedule C of the EAPWDR.

The panel also finds that the evidence shows that the appellant can walk unassisted for some distance. One report mentions up to two blocks and then she needs to rest, another mentions that the appellant finds it difficult to walk more than 100m, and the appellant in her Notice of Appeal mentions she can walk 3 or 4 blocks at a time. Further, the appellant has access to transit in front of her residence to go to the mall for her errands or to go to her medical appointments. She is not excluded from doing those basic errands and manages without a walker or a cane. Thus, the panel finds it was reasonable for the ministry to determine that the need for the scooter was not essential to achieve or maintain basic mobility and as such that it did not meet the requirements of s. 3.4(3)(c) of Schedule C of the EAPWDR.

Therefore, the panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.