

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the “Ministry”) March 20, 2013 reconsideration decision denying the Appellant, who has Persons with Disabilities designation, funding for a Breeze C4 scooter because the Ministry determined that:

- The occupational therapist’s assessment did not confirm the medical need for the requested scooter as required by section 3(2)(b) Schedule C of the Employment and Assistance for Persons with Disabilities Regulation;
- The Minister is not satisfied that the scooter is medically essential to achieve or maintain basic mobility as required by section 3.4(3)(c) Schedule C of the same regulation; and,
- The occupational therapist’s assessment did not confirm that 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 section 3.4(3)(a) of the same regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) section 62 and Schedule C.

PART E – Summary of Facts

For its reconsideration decision, the Ministry had the following evidence:

1. Medical Equipment Request and Justification signed by a doctor on October 5, 2012 describing the Appellant's medical condition as degenerative disc disease, lumbar spine and recommending a mobility scooter/electric bicycle.
2. An assessment by an occupational therapist dated November 23, 2012 providing the following information about the Appellant and her need for the scooter:
 - Specified the medical equipment required to meet the Appellant's need as a mobility scooter.
 - Goals/outcomes for the scooter – to safely mobilize outdoors and have less falls.
 - Has a number of medical conditions including degenerative disc disease and a history of chronic pain mostly on the left side of her body, numbness in arms and legs reported; alcohol dependency – has declined help from drug and alcohol centers.
 - Lives in a small apartment close to a shopping center; can independently transfer and manages daily living activities; abilities fluctuate depending on level of pain.
 - Ambulates with cane or four wheeled walker short distance; has tried a manual wheelchair and is unable to propel it more than 20 feet due to pain.
 - Has used a bicycle; however, due to recent falls her level of pain and balance are impaired.
 - Relies on friends to get groceries.
 - Is physically and cognitively capable of driving the scooter; has demonstrated the ability to drive it well in a high traffic area and through a very tight door to her apartment.
 - Her vision and cognition were good during the assessment; is able to remember instruction, process information, follow the rules of the road.
 - She reported that she will not drive the scooter if she has been drinking.
 - A manual wheelchair is not useful for outdoor mobility as it exacerbates the Appellant's back pain when she propels it.
 - The four wheeled walker is useful for short distances; however, is not practical for outings to the grocery store or to medical appointments.
 - Due to numbness in her feet, she remains a fall risk when using a walker outdoors; she is a fall risk on the bike.
 - Proudrider Breeze C with walker holder was tried and is recommended.
3. November 27, 2012 quote from a medical supplier for \$3,496 for the scooter, and a separate quote of \$128.80 for a scooter-walker holder.
4. Appellant's request for reconsideration with written submissions from her advocate including the following information about the Appellant:
 - Her physical impairments have worsened; she is reliant on a cane and 4 wheeled walker, but needs the motorized scooter for basic mobility outside the home where the walker and cane no longer stabilize her adequately.
 - Walking any distance and self-propelling a manual wheelchair are problematic, impacting her ability to shop and attend appointments, including doctor's appointments.
 - Her doctor verified that the scooter is medically necessary for mobility in attached notes in which he described her conditions.
 - She can no longer use her bicycle or a bus because she is not stable enough.
 - Her financial and behavioral issues make using a taxi impossible, and time constraints and these issues make it impractical and impossible to use the Handy Dart.
 - She requires the scooter for almost all her mobility outside of home, including shopping, appointments, banking and for socializing outside of the house.

5. Note dated February 28, 2013 from the doctor who completed the equipment request, stating "Required motorized scooter due to medical conditions osteoarthritis; degenerative disc disease".
6. Note dated November 27, 2012 from the same doctor stating, "Requires motorized scooter to aid mobility. Has degenerative disc disease".

For this appeal, the Appellant submitted the following documents:

1. Letter dated March 30, 2013 from a registered massage therapist who is the Appellant's representative, who has treated the Appellant for low back and leg pain for the past two years and who stated that:
 - The Appellant is no longer able to walk or ride her bike; she still tries to ride her bike short distances but not up any hills, and for every strenuous hour biking, she is in bed for a day recouping.
 - Her legs have deteriorated over the winter to the extent that she can barely push a walker around.
 - The bus stop is half a kilometer or more from her apartment and a similar distance to the store; a trip for simple groceries wears her out.
 - The therapist helps her out with rides if she is available, but it is hugely inconvenient during daytime hours due to distance and traffic.
 - The Appellant is an intelligent, functioning woman just trying to live her life and her legs don't work anymore.
2. Letter dated March 27, 2013 from a friend of the Appellant stating that:
 - The Appellant needs transportation; she has such a bad back, her legs are often too numb to let her get out of bed in the mornings; when she does she can only walk about twenty feet before she nearly collapses with pain.
 - A scooter with a basket would help her get around to shop and do other necessary things.
 - The Appellant is an intelligent person who could make a better life for herself if she had reliable transportation.
 - Buses are too far away, taxis are too expensive and friends are not always available.
3. Letter dated April 4, 2003 from the same doctor who completed the medical equipment request and the two notes described above, stating that he was writing in response to the decision to decline a mobility scooter as it has been deemed that she has basic mobility. The doctor wrote "I would contest this based on several diagnoses:
 - Degenerative disc disease, which results in chronic pain for the majority of days, sometimes restricting her to her home only.
 - Generalized anxiety disorder, which causes social anxiety sufficient for her not to be able to use public transport.
 - Irritable bowel disorder makes scheduling transport difficult due to the need to be proximal to a bathroom. A mobility scooter would expedite travel easing the distress caused by having poor control of bowel function.

The use of the bicycle has been prolonged despite it being an inappropriate form of transport on the grounds of safety. It has been used in an attempt to maintain her independence thus far."

The Ministry did not object to the admission of these letters into evidence.

At the hearing, the Appellant submitted oral and written argument to support her appeal. These arguments are summarized in Part F of this decision. In the written submission and in a hand written statement by her dated April 22, 2013 the Appellant described her conditions as follows:

- Degenerative disc disease – problematic all day long, often resulting in days of bed rest.
- Osteoarthritis – conditional on weather.
- Sciatic nerve – basically caused by daily living, to meet basic needs, also results in being absolutely bed ridden.
- Generalized anxiety disorder – restricted to personalized driver and errand helper.
- Irritable bowel disorder – unpredictable increasing anxiety, unable to attend to daily living as doctor's appointments, dentist, shopping, etc.
- Dental issues – mouth of rotten teeth and thus equals the next point.
- Dietary issues – as above, has a poor diet and little nutritional value, also resulting in all conditions mentioned thus far.
- Chronic pain – next to never having relief, unable to attend pain clinic, massage, chiropractor.
- Isolation – unbearable and reliant on personal outings, often results in suicidal thoughts.

The Appellant wrote that she is pleading for her quality of life and for her dignity. She was an active woman. The Appellant described her pain similar to that of a woman in labour. She considers her body as a barometer, extreme weather makes it not possible to do most things to do with daily life and a good barometer is sunny days, but always accompanied with pain. The Appellant stated that she simply tires with a simple task. Walking in the grocery store takes her forever and completely exhausts her. It will take her hours and/or days of bed rest to recuperate. The Appellant also wrote that she thanked all who have supported her through this enormous life changing experience and attached a letter with about 30 names to support her.

The Ministry did not object to the admissibility of these documents.

At the hearing, the Appellant described the same medical conditions and their effects on her daily life as she set out in the documents she provided and which are described above. She also said the degenerative disc disease and sciatica are getting worse and worse. The Appellant described how in one year she went from riding her bike to now using a walker and cane. Now, because of her conditions she is isolated and feels suicidal. She stated that she just wants quality of life. The Appellant also said that when she is in a grocery store she needs someone to push her in a store provided wheelchair because she cannot use her walker for very long.

The Appellant stated that she did not feel that the occupational therapist assessed her at all. According to the Appellant, the occupational therapist only paid a 20 minute visit to her place and just had a scooter for her to try. The Appellant said that through the freedom of information process she obtained a copy of the checklist that the therapist used in her assessment. The Appellant said that many portions of that checklist were not completed by the occupational therapist and therefore, the Appellant feels that a great deal of information was left out.

The Appellant's representative stated that she drives the Appellant when she can, but because of her business and how far she is from the Appellant's residence that isn't always possible. The representative, a registered massage therapist, also described how she has observed how the Appellant's condition has deteriorated from last summer when she was able to ride a bike, and even gather and sell flowers. The representative confirmed that the Appellant can only use her walker for short distances and is unable to use it outside except for very short distances.

The Panel finds that the information in the documents submitted for this hearing, in the Appellant's testimony and in her representative's testimony about the Appellant's degenerative disc disease and

chronic pain, and how those conditions affect her daily life, especially her mobility, provides more details about the impacts of those medical conditions and is in support of information that was before the Ministry at reconsideration. Therefore, the Panel admits that information into evidence pursuant to section 22(4) of the Employment and Assistance Act. As for the information about the Appellant's other medical conditions and their impacts; that is, generalized anxiety, irritable bowel syndrome and sciatica, the panel finds that this is new information that was not before the Ministry when it made its reconsideration decision and is not in support of the information that was before the Ministry at reconsideration. Therefore, the Panel does not admit that information into evidence.

At the hearing, the Ministry reviewed and relied on its reconsideration decision.

The Panel makes the following findings of fact:

1. The Appellant's doctor stated she requires a motorized scooter due to degenerative disc disease.
2. An occupational therapist specified the medical equipment required to meet the Appellant's need as a mobility scooter.
3. A medical supplier quoted \$3,496 for the recommended scooter.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably denied the Appellant funding for a Breeze C4 scooter because the Ministry determined that:

- The occupational therapist's assessment did not confirm the medical need for the requested scooter as required by section 3(2)(b) Schedule C of the EAPWDR;
- The Minister is not satisfied that the scooter is medically essential to achieve or maintain basic mobility as required by section 3.4(3)(c) Schedule C of the same regulation; and,
- The occupational therapist's assessment did not confirm that 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 section 3.4(3)(a) of the same regulation.

The following sections of the EAPWDR apply to the Appellant's circumstances in 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 for 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

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.

3.4 (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;

(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 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.
- (3.1) The maximum amount of \$4,500 under subsection (3)(b) applies if an assessment by an occupational therapist or a physical therapist has confirmed that the person for whom the scooter has been prescribed has a body weight that exceeds the weight capacity of a conventional scooter but can be accommodated by a bariatric scooter.

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

Assessment Confirming Medical Need for the Scooter

The Appellant's position is that both the doctor and the occupational therapist clearly stated more than once that she needs the scooter because of her medical conditions. The occupational therapist specifically stated that the requested motorized scooter will enable the Appellant to safely mobilize outdoors and have less falls. The therapist also stated that her balance is impaired and she remains a fall risk when using a walker outdoors. The therapist reported that she can only use a cane or walker for short distances and is unable to use a wheelchair for more than 20 feet because of pain.

The Ministry's position is that it is not satisfied that the assessment performed by the occupational therapist confirms the medical need for the requested scooter. Although the Ministry noted that the Appellant's abilities fluctuate with pain levels, it submitted that the Appellant independently transfers and manages activities of daily living, and she can use a cane or four-wheeled walker for short distances. The Ministry's position is that a four-wheeled walker is useful for short distances, but not for outings to a grocery store or medical appointments. The Ministry did note that the Appellant remains a fall risk when using a walker outside and she was unable to propel a manual wheelchair for more than 20 feet due to pain.

The Panel's Findings

The Panel finds that the assessment by the occupational therapist provided detailed information about the Appellant's conditions, such as her chronic pain and instability, as well as the need for the requested motorized scooter. First, the therapist specified a mobility scooter as the medical equipment required to meet the Appellant's needs and identified the specific model of motorized scooter which would be suitable. Then in her assessment, the therapist specifically stated the outcome/goals for the use of that equipment, as follows, the Appellant "will safely mobilize outdoors and have less falls". In her assessment, that therapist reported that a four wheeled walker is useful for short distances; however, is not practical for outings to the grocery store or to medical appointments. The therapist further wrote that due to numbness in the Appellant's feet she remains a fall risk when using a walker outdoors. Also, a manual wheelchair is not useful for outdoor mobility because it exacerbates the Appellant's back pain when she propels it. In addition to all of this evidence from the occupational therapist, the Panel notes that the Appellant's doctor also specified a motorized scooter as the required equipment due to the Appellant's medical condition of degenerative disc disease. Therefore, based on the evidence from the occupational therapist as well as the doctor, the Panel finds that it was not reasonable for the Ministry to conclude that the therapist's assessment did not confirm that the Appellant has a medical need for the requested motorized scooter.

Medically Essential for Mobility

The Appellant's position is that she needs the scooter for basic mobility, not just for trips now and

then to the store or to an appointment. The Appellant argued that medically essential for mobility means that she needs this scooter to perform her day-to-day activities in her home and in her community. The Appellant also submitted that the information from her doctor, from the occupational therapist and her own descriptions of her functional restrictions establish the medical basis for needing the scooter for basic mobility. That evidence establishes that her degenerating medical conditions, her chronic pain and instability severely restrict her functional abilities. She is only able to use a walker for a short distance as confirmed by the occupational therapist. That therapist also confirmed that she cannot use a wheelchair for more than 20 feet because of the pain and cannot use one outdoors. In addition, her doctor specifically stated that she requires a motorized scooter due to her medical conditions.

The Ministry's position is that it is not satisfied that a scooter is medically essential to achieve or maintain basic mobility. Although the Ministry noted that the Appellant's abilities fluctuate with pain levels, it submitted that, based on the assessment, the Appellant independently transfers and manages activities of daily living, and she can use a cane or four-wheeled walker for short distances. The Ministry's position is that a four-wheeled walker is useful for short distances although it did note that the Appellant remains a fall risk when using a walker outside and she was unable to propel a manual wheelchair for more than 20 feet due to pain.

The Panel's Findings

The Panel finds that in her assessment, the occupational therapist, clearly described the Appellant's functional limitations and mobility needs. That therapist wrote that the Appellant needs the scooter to "safely mobilize outdoors and have less falls" and "due to the numbness in her feet she remains a fall risk when using a walker outdoors." The therapist further stated, "a manual wheelchair is not useful for outdoor mobility as it exacerbates [the Appellant's] back pain when she propels it". In addition, the therapist reported that the Appellant has tried a manual wheelchair and was unable to propel it more than 20 feet due to pain. The Appellant is also limited to using her cane and four wheeled walker for short distances. The therapist specifically recommended the scooter to meet the Appellant's medical needs. The doctor also specified a motorized scooter for the Appellant's mobility needs. Neither the occupational therapist nor the doctor qualified their medical opinions by stating that the Appellant needs this scooter only for occasional trips to a store or to appointments. Their medical opinion was clear that the Appellant needs the scooter for mobility. In fact, the doctor contested the Ministry's first decision that the Appellant has basic mobility. He wrote "I would contest this based on several diagnoses" including "degenerative disc disease, which results in chronic pain for the majority of days, sometimes restricting her to her home only". Also, all of the information from these two medical professionals is consistent with the descriptions the Appellant provided about her mobility restrictions and why she needs a motorized scooter. Based on all of the information provided, the Panel finds that the medical evidence establishes that the Appellant needs the motorized scooter for basic mobility, not just for occasional outside trips. Therefore, the Ministry's conclusion that the motorized scooter is not medically essential to achieve or maintain basic mobility was not reasonable.

Need for a wheelchair during the 5 years following the assessment.

The Appellant's position is that she needs this scooter to be mobile. The occupational therapist confirmed that she cannot use a wheelchair for mobility. As confirmed by the doctor and the occupational therapist, she needs a motorized scooter.

The Ministry's position is that because the occupational therapist did not confirm that it is unlikely that

the Appellant will have a medical need for a wheelchair in the 5 years following the therapist's assessment, it did not have enough information to determine that the requirements in Schedule C section 3.4(3)(a) were met.

The Panel's Findings

The Panel notes that the Ministry's medical equipment requisition form does not refer to this 5 year assessment requirement. It is also not clear to the Panel how the occupational therapist after one assessment, that according to the Appellant lasted 20 minutes, would be able to give an opinion as to whether or not the Appellant will have a medical need for a wheelchair in 5 years. Moreover, the occupational therapist's assessment in this case is clear – the Appellant cannot use a manual wheelchair for more than 20 feet due to pain and she cannot use it outdoors due to pain. In addition, the Appellant's doctor described her medical condition underlying the need for the motorized scooter as "degenerative disc disease", which in plain language means that condition will get worse. The Panel also notes that the Appellant provided evidence about how much her functionality has worsened in about one year. The Panel finds that with a confirmed worsening medical condition and an occupational therapist's assessment about her inability to use a wheelchair, it is highly unlikely that the Appellant will be able to use a wheelchair within 5 years. Therefore, the evidence establishes that the Appellant has substantially met the requirements of section 3.4(3)(a) and the Panel finds that the Ministry's conclusion was not reasonable.

Conclusion

After considering all of the evidence and the applicable legislation, the Panel finds that the Ministry's reconsideration decision was not reasonably supported by the evidence and therefore, the Panel overturns that decision. The appellant is successful on her appeal.