

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development (the ministry) dated 10 April 2013 that denied the appellant's request to be provided a scooter because the ministry determined that not all of the criteria set out in sections 3 and 3.4 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation had been met. Specifically, the ministry determined that the following criteria set out in Schedule C of the Regulation had not been met:

- Section 3(2)(b) – the assessment provided by the appellant's occupational therapist did not confirm the medical need for the requested scooter.
- Section 3.4(3)(c) -- the minister was 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), Schedule C, sections 3 and 3.4.

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

1. A Medical Equipment Request and Justification signed by the appellant on 25 July 2012, with a medical practitioner's recommendation for a motorized scooter, and setting out the information to be provided in an assessment to be completed by an occupational, physical or respiratory therapist.
2. An assessment dated 14 January 2013 by a health authority occupational therapist (OT) relating to the appellant's request for a scooter.
3. A price quote from a medical equipment provider for a 4 – wheeled scooter, with a cost of \$3415.50.
4. The appellant's Request for Reconsideration dated 25 March 2013.

A synopsis of the information proved in the OT's assessment follows:

- The appellant lives with his wife. He suffered a traumatic brain injury (TBI) as a young child. He has also been diagnosed with osteoarthritis and degenerative disc disease.
- Current function: the appellant presents with decreased strength and increased tone throughout his left side as a result of his TBI. He presents with decreased strength throughout the left lower extremity.
- Mobility: the appellant ambulates independently without the use of a gait aid. He limps visibly, likely due to weakness and increased tone on his left side. Slight associated reaction in the left arm was noted with increased effort. The appellant reports that his function has declined over the past year. He states that he has been experiencing an increase in low back and knee pain with ambulation, and is no longer able to ambulate outdoors. He reports that approximately one year ago he was able to walk six blocks unaided.
- ADL/IADL function: the appellant reports that he is independent with all transfers and all ADLs. He and his wife share duties within the home (meal preparation, etc), but his wife manages most out of home IADLs at this time (i.e. shopping). His wife works 4-5 days per week, and finds it difficult to manage community IADLs by herself. The appellant reported that even if his wife were to pull right up to the doors of a store, he would not be able to ambulate inside further than 50 m at a time due to knee and low back pain. He reports that he is finding himself more housebound likely due to being unable to get out of the house independently. He is finding his mood is being negatively impacted with this restricted mobility and tendency to stay indoors.
- Identified issues:
 1. The appellant is unable to assist his wife with such community management activities as grocery shopping and picking up medications.
 2. Due to the appellant's declining mobility, he is finding himself increasingly housebound and his increasing amount of time spent inside the home is starting to negatively impact his mood.
 3. Due to his declining mobility, the appellant is finding it more difficult to visit with friends and family who live nearby.
 4. The appellant states that he lives in an area that is not particularly amenable to walking, and would prefer to attempt to get some exercise by walking downtown.
- Targeted outcomes with the provision of a scooter:
 1. The appellant would be able to participate in community-based IADLs such as shopping, banking, picking up prescriptions, and attending appointments.
 2. The appellant would be able to leave his house during the day, thereby improving his

declining mood.

3. He would be able to participate in social activities such as visiting friends and family.

4. He would be able to access the pedestrian-friendly downtown area, and would be more likely to attempt short walks once a scooter had been appropriately secured.

- Scooter trial: the appellant participated in the scooter trial on 02 January 2013 and demonstrated the ability to transfer on and off he is independently, adjust the seat and tiller, manage all controls and drive safely.

In his Request for Reconsideration, the appellant writes:

"1. I get the transit tax once a year.

2. Can not walk very far. Would like to get out of house to go downtown or something.

3. If my wife is at work in the daytime, would like to go [to] leisure center. Scooter would be a big help."

In his Notice of Appeal, the appellant states that he disagrees with the decision because "you don't know what I go through in a day when I would like to get out for fresh air but when my legs are on fire. It is very difficult to walk."

At the hearing, the appellant in his opening statement and in answer to questions gave the following testimony:

- He feels that the OT did not carry out the assessment in a proper manner. The OT did not check out his physical abilities by observing him walking for any distance. She did not ask him about whether he could use a cane or whether a walker would be of any use.
- He cannot use a cane because of weakness and paralysis of his left arm. He feels pain in his feet, legs and back and what he needs is something that would take the weight off his feet. Therefore a walker would not solve his mobility problems.
- He hopes to have knee replacement surgery when he is of age 60-65.

The appellant's wife also gave evidence:

- Some days when she is working, the appellant can't go outside and cannot get off the couch, getting moody and irritable.
- Because of the appellant's TBI, his body and mind can sometimes go in different directions. As a result he has a tendency to stumble on surfaces that are not perfectly smooth or flat.
- She presented a bank screen shot showing a deposit from the ministry in the amount of \$790.56. The ministry representative confirmed that the appellant was in receipt of the special transportation subsidy given annually to those eligible for a bus pass supplement that provide confirmation by a medical practitioner that they are not medically able to use public transit.

The ministry stood by its position at reconsideration.

The panel finds the testimony of the appellant and his wife at the hearing is in support of information that was before the ministry at reconsideration, as it clarifies some of the appellant's mobility issues related to his request. The information provided by the ministry regarding the special transportation subsidy clarifies the appellant's reference in his Request for Reconsideration regarding "the transit tax." The panel therefore admits this new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.



PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant was not eligible for a scooter under the provisions of the EAPWDR, Schedule C. Specifically, the issue is whether the following determinations were reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant:

- Section 3(2)(b) – the assessment provided by the appellant's occupational therapist did not confirm the medical need for the requested scooter.
- Section 3.4(3)(c) -- the minister was not satisfied that the scooter is medically essential to achieve or maintain basic mobility.

The relevant legislation is from the EAPWDR, Schedule C:

Medical equipment and devices

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.

Medical equipment and devices – scooters

3.4 (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;
- (c) the minister is satisfied that the item is medically essential to achieve or maintain basic mobility.

OT confirming the medical need for a scooter

The ministry found that the information provided did not establish that a cane or a four-wheeled walker with a padded seat was trialed or fully considered to meet the appellant's mobility needs. In addition, there is no indication that any equipment other than the scooter was considered. The ministry also noted the OT's comment that with a scooter the appellant would be able to access the pedestrian-friendly downtown area, and would be more likely to attempt short walks once a scooter

had been appropriately secured, as demonstrating that the appellant is able to ambulate independently for short periods. The ministry noted the appellant's reference to the "transit tax" in his Request for Reconsideration and took that to mean that the appellant was able to use public transit, and further noted that no information is provided as to why he would not have sufficient mobility upon arrival at his destination with the use of a cane or four-wheeled walker. The ministry's view was that it appears that the scooter is more for transportation rather than a medical need. The ministry therefore determined that it was not satisfied that the information provided in the OT's assessment confirms the medical need for the requested scooter.

The position of the appellant is that, despite its shortcomings, the OT's assessment confirms the medical need for a scooter. The report states that he is no longer able to ambulate outdoors and participate with his wife with outside the home activities of daily living such as shopping. The OT also stated that he reported that even if his wife were to pull right up to the doors of the store, he would not be able to ambulate inside further than 50 m at a time due to knee and low back pain.

It is unfortunate that the appellant in his Request for Reconsideration mistakenly referred to the special transportation subsidy provided by the ministry as the "transit tax," leading the ministry to the conclusion that he was able to use public transit, an error acknowledged by the ministry representative at the hearing: the ministry's file shows that, as a recipient of the special transportation subsidy, a medical practitioner had confirmed that he was medically unable to use public transit. Nevertheless, the panel notes that the OT's statement that he is no longer able to ambulate outdoors or that he would not be able to ambulate inside further than 50 m at a time is based on what the appellant had reported to her, and not by actual observation. Taking this into account, as well as the absence of any analysis regarding alternative assistive devices for mobility such as a cane or a four-wheeled walker, the panel finds that the ministry reasonably determined that the OT's assessment did not confirm the medical need for the requested scooter.

Whether the minister is satisfied that a scooter is medically essential to achieve or maintain basic mobility.

The position of the ministry is that, as it had not been able to establish that the assessment performed by the OT has confirmed the medical need for the scooter, the ministry is not satisfied that the scooter is medically essential to achieve or maintain basic mobility.

The position of the appellant is that the additional evidence he has provided, particularly with respect to his inability to use a cane, why a four wheeled-walker would not solve his mobility problems, and that a medical practitioner has confirmed that he is medically unable to use public transit, should serve to satisfy the ministry that the scooter is medically essential for him to achieve basic mobility.

The panel notes that the determination of whether a scooter is medically essential to achieve or maintain basic mobility is at the discretion of the minister, taking into account all the evidence including that of the appellant. In this context, the panel finds it reasonable that the ministry take as a starting point the independent and professional assessment of an occupational or physical therapist. As the panel has found that the ministry reasonably determined that the OT's assessment did not confirm the medical need for the requested scooter, the panel finds that the ministry reasonably determined that the information provided did not establish that the scooter is medically essential to achieve or maintain basic mobility.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for the requested scooter was reasonably supported by the evidence and therefore confirms the ministry's decision.