

PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision dated February 18, 2013, finding the Appellant does not qualify to have a motorized scooter paid for by the Ministry as she does not meet the following legislative criteria set out in Schedule C to the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR):

- (1) section 3(2)(b): the Appellant has not provided to the ministry an assessment from an occupational therapist or physical therapist confirming the medical need for the scooter; and
- (2) section 3.4(3)(c): the minister is not satisfied that the scooter is medically essential for the Appellant to achieve or maintain basic mobility.

PART D – Relevant Legislation

The relevant legislation is sections 3(2)(b) and 3.4(3)(c) of Schedule C to the EAPWDR.

PART E – Summary of Facts

The Appellant is in receipt of disability assistance. She is a single woman who lives alone in her mother's basement. She suffers from COPD, arthritis in both ankles and obesity. She has had a number of falls in recent years which have resulted in broken ankles and other injuries. She uses oxygen at night.

The Appellant attended the offices of her OT on October 08, 2012, and received a report which stated, among other things, the following:

"[The Appellant] manages [sic] her ADL's independently."

"[The Appellant] was observed to be able to walk with a cane approximately 40 ft on a flat surface, then needed to stop due to fatigue and shortness of breath."

"[The Appellant] needs a scooter to be able to maintain independence and IADL's including managing to do her groceries, errands, attend Dr.'s appointments and attend programs ..."

"She would have limited outings without a scooter and cannot propel a manual wheelchair for the described activities given the COPD."

"I predict that the scooter would meet [the Appellant's] mobility needs for the next 5-7 years."

The Appellant had obtained a quote on September 13, 2012 for an appropriate scooter. She submitted this quote and the OT report to the Ministry for approval. The Ministry denied the application on the basis that the request did not meet certain of the legislated criteria.

The Appellant was subsequently assessed by her physician on January 30, 2013. His comments in a referral letter, which was submitted to the ministry for the reconsideration decision, include the following:

"This lady has prominent multiple level degenerative disc disease with moderate central spine stenosis. This results in significant neuralgia of both legs and weakness of the right leg that results in unpredictable falls."

"She has trialed a 4 wheel walker but this has been unhelpful for her and in spite of that she has had falls."

"I would strongly recommend that the Ministry reverse it's [sic] decision with regard to a scooter for this lady. I believe it would have a profound improvement in her overall well-being and mobility and would reduce the chance of her having further fractures as a result of unpredictable falls."

The ministry confirmed the original decision on the same basis and stating that as the OT report did not explicitly state that a scooter was indicated, the ministry considered that a walker with a padded seat should be trialed before a scooter would be approved.

PART F – Reasons for Panel Decision

The decision under appeal is the Ministry's reconsideration decision finding the Appellant does not qualify to have a scooter paid for by the Ministry as she does not meet certain of the legislative criteria set out in the EAPWDR.

The relevant legislation is sections 3(2)(b) and 3.4(3)(c) of Schedule C to the EAPWDR:

Medical equipment and devices

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- (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:

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- (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 . . .

- (3) The following are the requirements in relation to an item referred to in subsection (2) of this section:

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

The Appellant's position is that it is clear from the report of her OT and physician taken together that there is a medical need for a scooter and that a scooter is essential to the Appellant to maintain her basic mobility such that the legislative criteria are met. The Appellant reiterated that she has broken her ankles a number of times recently due to her inability to walk any significant distance before fatigue and shortness of breath set in. She also pointed to the physician's report which does expressly state that a scooter is both medically necessary (to avoid further falls due to neuralgia of the legs) and required for the Appellant to maintain basic mobility.

The ministry's position is that, in accordance with the legislation, it is not satisfied on the basis of the evidence before it that there is a medical need for a scooter nor that a scooter is essential to the Appellant to maintain her basic mobility as there is no evidence that walker with a padded seat will not satisfy the Appellant's needs. At the hearing it was argued that as there is an apparent discrepancy between the OT report and the physician's referral letter as to whether a scooter is required to meet a medical need and to maintain basic mobility, it is required under the legislation to consider the OT's report.

(The panel notes that although the ministry did in its reconsideration decision cite the criterion in section 3.4(3)(a) of the EAPWDR as having not been met, it did not argue this point at the hearing.)

Was the ministry reasonable in finding that there is no medical need for the scooter because a walker with a padded seat had not been trialed? The panel considers that the OT report taken alone, but

certainly in conjunction with the physician's letter, establishes that there is a medical need for the scooter. Under section 3(2) there is no discretion for the ministry to second-guess the medical professional's opinion and recommendation. Although the OT's report may not expressly state that there is a medical need for a scooter: (1) to interpret the report otherwise is not reasonable, and (2) taking into account the physician's letter, there is an express statement that there is a medical need for the scooter due to neuralgia in the legs and the danger of future falls. Therefore the panel finds that the ministry was not reasonable when it found that there was no medical need for a scooter.

Was the ministry reasonable in not being satisfied on the basis of the evidence before it that a scooter is medically essential to maintain basic mobility? Much here turns on the meaning of the term "basic mobility". The Appellant can apparently travel about 40ft with a walker before needing to rest. A walker with a padded seat, argues the ministry, would therefore suffice as she could walk 40ft and then rest. In contrast, the OT's report and the physician's letter state that a scooter is indicated, but they do not use the term "for basic mobility" and also appear not to have considered a walker with a padded seat.

The panel considers that the legislation does not allow the ministry to substitute its opinion for that of medical professionals who have conducted assessments of the individual in question. The OT's report and the physician's letter taken together establish that a scooter is required in order for the Appellant to avoid further injury and to attend medical appointments. To require the medical professionals to specifically use the term "basic mobility" or consider every alternative in their reports is not reasonable. It is not reasonable to conclude that the positive statements that without the scooter the Appellant stands in danger of further injury and that the Appellant needs the scooter to attend medical appointments do not meet the legislative criteria. On the basis of all the evidence before the ministry at the time of the reconsideration decision, the panel finds that it was not reasonable for the ministry to not be satisfied that a scooter is medically essential to maintain basic mobility.

Accordingly, the Panel finds that the Ministry's decision is not reasonably supported by the evidence and that the appeal should be allowed. The ministry's decision is rescinded.