

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the “Ministry”) February 19, 2013 reconsideration decision denying the Appellant, who has Persons with Disabilities designation, funding for an electric scooter because the Ministry determined that:

- It did not have enough information to determine if the scooter is the least expensive appropriate medical equipment as required by section 3(1) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation;
- The occupational therapist’s assessment did not confirm 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 that regulation; and,
- It is limited by section 3.4(3)(b) of that regulation to providing \$3,500 for a scooter.

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 for the Appellant completed by a medical practitioner on June 27, 2012 describing the Appellant's medical condition as right knee injury, sciatica, hypertension, mobility issues using walker daily, and recommending an electric scooter.

2. Assessment completed by an occupational therapist on August 24, 2012 specifying that the Appellant needs the following medical equipment to meet his needs: "4 wheeled scooter, landcruiser ECL889XLSBN, safety flag, rearview mirror", and providing the following information about the Appellant:

- Lives alone in a 1 bedroom apartment, has Parkinsonian tremor, an unsteady gait, is a smoker and binge drinks.
- Has fallen, has chronic sciatica, is hypertensive.
- ROM [range of motion]: UEs – functional in all major joints; LEs – functional in all major joints; Strength: UEs – good, noted tremor while handwriting; left hand use good, noted tremors on resistance. Appellant stated his right inner thigh muscle was surgically removed.
- Cognition intact, sensations intact to light touch and pinprick.
- ADL/IADL [activities of daily living/independent activities of daily living] – independent.
- Pain present in legs especially when he sits too long; mobility – needs to use a 4 wheel walker to maintain standing and walking balance because pain is always there; cannot walk longer than 10 feet with a walker.
- Height as 6 feet 3 ¼ inches; weight as 241 lbs.
- Had a scooter assessment on July 5, 2012 using a Shoprider, no difficulties noted with maneuvering the scooter, following road directions, turning right or left, hand signaling right or left, using the pedestrian lane to cross the street, using the sidewalk to travel.
- Appellant requests a 4 wheeled scooter because his mobility is compromised by constant pain in his legs and decreasing mobility to walk long distance even with the use of a 4 wheeled walker.
- Hopes to be able to access community services; e.g., visiting his doctor, going to the drugstore, post office, grocer, other health service offices.

The therapist provided the following information about a price quote for a scooter:

- She contacted a contract supplier for a price quote for a 4 wheel scooter suitable for the Appellant's height.
- She requests an exception to the Ministry's limit because the Appellant is a tall person with a tall back height; a short back height in a scooter would be uncomfortable while he travels on the road and will probably contribute to more pain.
- She suggests a 4-wheel Shoprider 889XLSBN to traverse the various terrain/hills around the community and she named the contract supplier.

3. Quote, dated August 24, 2012, from a medical equipment supplier for \$5,055.40 for a 4 wheel Landcruiser scooter.

4. Ministry's December 21, 2012 adjudication decision denying the Appellant's request for funding for the scooter, but indicating that an occupational therapist 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.

5. Appellant's January 31, 2013 request for reconsideration in which he wrote:

- He responded to the adjudicator's suggestion that he can use a wheelchair by stating that the terrain in the town where he lives is very hilly and makes a wheelchair unuseable for his

mobility; even going to his doctor or the hospital is problematic.

- His problems are getting worse; the sciatica in the lower part is now getting more troublesome and the pain in his knees makes walking very hard or he is unable to walk.
- Public transit where he lives is very sparse; the bus that passes his area runs towards town in the morning and two times from town in late afternoons.
- His building even makes it necessary for him to climb a crude ramp to enter and a scooter would make all his trips outside possible.
- The only other means of transportation is by taxi and that would be far more expensive.
- A scooter is the only item that would make it possible to make his many trips to the doctor and to the hospital every month.
- Another problem that has surfaced is that he has a heart murmur.
- He needs the scooter for a more meaningful life.

In his notice of appeal, the Appellant wrote that there are mistakes in the reconsideration decision which need to be corrected. He wrote that it was stated that he did not trial a manual wheelchair. He has tried to use one, but found that it was not practical due to the terrain in his area. The Appellant wrote that he also owns a four wheel walker with a seat but that is also troublesome to use due to the terrain where he needs to go up and down hills. Due to his health and operations to his leg and chest where gangrene was encountered, infected muscles were removed and part of his stomach was removed. The Appellant stated that his balance is greatly affected, he cannot walk 10 feet without his walker and he is getting worse due to sciatica in his legs. He submitted that a scooter is the most practical way to solve his needs.

The Ministry provided no comments about the admissibility of these statements by the Appellant in his notice of Appeal. Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits this information provided by the Appellant as providing details about his medical conditions and his need for the electric scooter and as being in support of the information that was before the Ministry at reconsideration.

The Ministry relied on its reconsideration decision.

The Panel makes the following findings of fact:

1. A doctor recommended an electric scooter for the Appellant.
2. An occupational therapist specified a specific model of electric scooter for the Appellant based on his medical needs and the hilly terrain where he lives.
3. A contract supplier provided a quote for the specified scooter model for \$5,055.40.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably denied the Appellant funding for an electric scooter because it determined that:

- It did not have enough information to determine if the scooter is the least expensive appropriate medical equipment as required by section 3(1) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation;
- The occupational therapist's assessment did not confirm 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 that regulation; and,
- It is limited by section 3.4(3)(b) of that regulation to providing \$3,500 for a scooter.

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.

Least Expensive Appropriate Medical Equipment

The Appellant's position is that the requested scooter is the only appropriate medical equipment suitable for his circumstances; that is, his medical conditions, his difficulties walking and the hilly terrain where he lives. This is confirmed by the assessments from his doctor and the occupational therapist, both of whom recommended an electric scooter for him.

The Ministry's position is that it did not have enough information to determine if the requested scooter is the least expensive appropriate medical equipment or device. The Ministry suggested that the occupational therapist also should have assessed the suitability of a 3 or 4 wheeled walker with seating capabilities or a manual wheelchair.

The Panel's Findings

The Panel finds that the evidence from the occupational therapist and the Appellant establishes that he cannot walk more than 10 feet using his present walker, which has 4 wheels and seating. The Appellant's doctor described one of the Appellant's medical conditions as "mobility issues using walker daily". The doctor and the occupational therapist specifically recommended an electric scooter as the medical equipment required by the Appellant to meet his needs. The occupational therapist also suggested a specific model of electric scooter because she stated that it will traverse the various terrain/ hills in the Appellant's community. The Appellant described how the 4 wheeled walker with seating that he currently uses is not suitable for outdoor mobility because the community where he lives is hilly. He has to go up and down hills to go to his doctor, shopping and other services. He also stated that he tried to use a manual wheelchair but it was not practical due to hilly terrain in the area. In addition, the occupational therapist also considered the Appellant's height and back height in making her recommendation, stating that a short back scooter would be uncomfortable while the Appellant travels on the road and will probably contribute to more pain.

The Panel notes that there is nothing in the Ministry's medical equipment request form requiring more than one quote and the occupational therapist referred to the provider of the quote as a "contract supplier". The Panel also notes that there is nothing in the regulations stipulating that an applicant must try every available form of medical equipment. In this case, the Panel finds that the evidence establishes that the Appellant's 4 wheeled walker with seating and a manual wheelchair would not be appropriate for his mobility needs in the community where he lives. When the combined evidence from the doctor, the occupational therapist and the Appellant is considered, the Panel finds that it was not reasonable for the Ministry to determine that the requested scooter was not the least expensive appropriate medical equipment in the Appellant's circumstances.

Medical Need for a Wheelchair During 5 years after Occupational Therapist Assessment

The Appellant's position is that he needs this scooter to be mobile within his community. He cannot use his wheeled walker or a wheelchair for mobility. As confirmed by his doctor and the occupational therapist, he needs an electric 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 makes no reference to this 5 year assessment requirement. It is also not clear to the Panel on what basis an occupational therapist after one assessment would be able to give an assessment as to whether or not the Appellant will have a medical need for a wheelchair in 5 years. In addition, in its December 21, 2012 adjudication decision, the Ministry indicated "yes" on its form in answer to the question "has an occupational therapist 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". Therefore, the Panel finds that in December 21, 2012, the Ministry had evidence that an occupational therapist confirmed this requirement in section 3.4(3)(a) and it was not reasonable for the Ministry to later determine that section 3.4(3)(a) was not met.

Cost of the Scooter

The Appellant's position is that because of his specific medical and physical needs, as confirmed by his doctor and the occupational therapist, the requested scooter specified by the therapist is the most appropriate for his mobility needs. That scooter from a contract supplier costs \$5,055.40.

The Ministry's position is that it is limited by legislation to providing \$3,500 towards the cost of the scooter.

The Panel's Findings

Section 3.4(3) of Schedule C in the EAPWDR provides two different maximum amounts that the Ministry may pay for scooters and any accessories; that is, \$3,500 or \$4,500 for a bariatric scooter, with the latter applying only if section 3.4(3.1) is met. The Panel notes that in this case the Ministry only considered the \$3,500 limit and not the \$4,500 limit in the Appellant's circumstances. However, the Panel finds that there is no evidence that the occupational therapist provided an assessment that the Appellant's body weight exceeds the weight capacity of a conventional scooter as required by section 3.4(3.1). Therefore, that section of the regulations does not apply in the Appellant's circumstances, only the \$3,500 limit in section 3.4(3). Also, in the reconsideration decision the Ministry stated that it is limited to providing \$3,500 towards the cost of a scooter, suggesting that it can fund up to that amount for a scooter. The Panel notes, however, that section 3.4(3) states that the total cost of a scooter may not exceed \$3,500. Based on the evidence that the requested scooter would cost more than \$5,000, the majority of the Panel finds that in the Appellant's circumstances the Ministry reasonably determined that the requirements in section 3.4(3) have not been met.

Conclusion

After considering all of the evidence and the applicable legislation, the Panel finds that the Ministry's reconsideration decision denying the Appellant funding for the scooter was reasonably supported by the evidence and was a reasonable application of the applicable regulations. Therefore, the Panel confirms that decision.