

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "ministry")'s reconsideration decision dated May 16, 2013 which denied the appellant's request for a motorized scooter.

The ministry held that the criteria in the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) Schedule C, sections 3(2)(b) and 3.4(3)(a) and (c) had not been met in that the assessment performed by the occupational therapist (OT) or physiotherapist (PT) does not confirm the medical need for the requested scooter, the OT does not confirm that the appellant is unlikely to have a medical need for a wheelchair during the 5 years following the assessment and that the scooter is medically essential to achieve or maintain basic mobility.

PART D – Relevant Legislation

Employment and Assistance Act for Persons with Disabilities Regulation (EAPWDR) Section 62 and Schedule C, Sections 3, 3.2, and 3.4.

PART E – Summary of Facts

At reconsideration, the documents that were before the ministry included the following:

- 1) Quotation from a medical equipment provider dated November 23, 2012 for repair of the appellant's wheelchair in the amount of \$5,566.41.
- 2) Quotation from a medical equipment provider dated January 23, 2013 for a three wheeled Pride Celebrity X Scooter with 2" cane holder at a cost of \$2,871.05.
- 3) Medical Equipment Request and Justification form completed by an OT dated January 28, 2013 (the "Assessment") indicating that the appellant lives alone in a tenth floor studio apartment in a supportive mental health housing building. The appellant has fibromyalgia, osteoarthritis, hypertension and asthma, all complicated by obesity. The OT also reports that investigations are pending to determine whether the appellant has congestive heart failure/COPD. The Assessment indicates that a scooter is being requested and that the appellant has no other resources. The Assessment indicates that the appellant is independent in all personal care and activities of daily living (ADL) and does not have home support services. The Assessment indicates that the appellant walks with a cane or unaided in her apartment and has recently started using a four wheeled walker outdoors, that she is able to manage with her walker when she is feeling well but finds it difficult to access her community when she is in pain and fatigue worsens. The OT states that the appellant would benefit from a scooter to increase her community access and involvement and that a three wheeled scooter is required to allow access to the bus, to maneuver in smaller areas in her apartment building and in the building elevator. The OT indicates that three scooters were trialed and that the appellant was able to use them independently and safely, but that the Pride Celebrity X scooter with captain seating and Delta-style tiller best suits the appellant's needs.
- 4) Medical Equipment Request – Tracking Sheet.
- 5) Letter from the ministry to the appellant dated March 13, 2013 advising that her request for a Shoprider Scooter was denied.
- 6) Health Assistance Branch Medical equipment and devices decision summary (the "Summary") dated March 13, 2013 noting that the appellant is eligible for health supplements, that pre-authorization from the minister was requested and that there are no other resources to pay for the medical equipment. The Summary states that the requested medical equipment is the least expensive appropriate equipment available and that it was prescribed by a medical or nurse practitioner, but that the assessment by an OT or PT has not confirmed the medical need for the equipment. Under the explanation the Summary indicates that although it is reported that the client has limited walking endurance, she is able to walk independently with a cane in apartment and a four wheeled walker outdoors. The Summary indicates that the total cost of the scooter and any accessories is less than \$3,500. The Summary also notes that the minister is not satisfied that a new scooter is medically essential to achieve or maintain basic mobility. Further explanation indicates that the minister is not satisfied that the scooter is medically essentially to achieve or maintain basic mobility as the appellant can mobilize independently with a cane and four wheeled walker. The Summary indicates that it appears

that the reason for the request for a scooter is increased community access and involvement rather than basic mobility. The Summary also notes that it has been greater than 5 years since the ministry last provided the item being replaced.

- 7) Letter from the appellant's case manager dated April 26, 2013 (Case Manager Letter) advising that the appellant had recently fallen and broke her arm requiring surgery. The Case Manager Letter states that the application for a scooter was submitted after a denial for funding to repair the appellant's wheelchair that she has been using for the past 10 years. The case manager states that an OT confirmed that the appellant was able to walk for short distances with the support of a cane and four wheeled walker but without any motorized vehicle the appellant has had repeated falls in recent months leading to severe bruising, abrasions, and a fractured wrist, broken in 3 places. The case manager states that the appellant's case should be reviewed again because basic mobility and safety are now an issue and the scooter is required for basic mobility, not just for increased community access and involvement. The case manager states that she has asked the OT who completed the first assessment to reassess and update the original assessment, taking into consideration recent events. The case manager also states that the OT team at the mental health team was beginning an assessment to look at the appellant's basic functional ability. The case manager states that the appellant has suffered with fibromyalgia, osteoarthritis, hypertension and asthma, all of which are complicated by obesity and lack of access to community could greatly impact the appellant's overall health and wellbeing. Without access to community the appellant is unable to address these illnesses effectively, unable to attend fitness programs or even to access shops to help maintain good diet. The case manager reports that this has been effectively managed in the past but the loss of motorized transport has greatly affected the appellant's mood and she has been unable to visit her partner and other family members, unable to attend Church, and various other community events.
- 8) Request for Reconsideration dated April 26, 2013 (RFR) in which the appellant states that without a motorized scooter she has had a number of falls resulting in cuts, bruises and most recently a fractured wrist which required surgery and the placement of pins in her arm to ensure healing. The RFR indicates that the appellant feels unsafe using on the cane and four wheel walker and only have extremely limited distances she can travel without motorized mobility.

Admissibility of New Information

In her Notice of Appeal dated May 27, 2013, the appellant states that up to date assessments are pending to show the medical need for the scooter. The appellant also states that home circumstances have changed and she is less independent and requires home help for activities of daily living (ADL) and constant use of a four wheeled walker.

Following the Notice of Appeal and prior to the hearing, the appellant provided a written submission (the "Submission") stating that she has been unable to complete an updated assessment as she fractured her arm after a fall but that once her injuries are healed she can hopefully complete the assessment. The appellant states that although the prior assessment confirmed the medical need for the equipment, a further assessment is needed as she has been experiencing increased falls over the last six months resulting in cuts, bruises and most recently, her fractured arm. The appellant

states that the falls occurred when she was weak, fatigued, losing balance and tripping while walking with her cane and her four wheeled walker and were not due to environmental factors such as wet floors or weather. The appellant states that she is currently mobile only with the four wheeled walker and no longer uses the cane as she is too unstable on her feet and that even with the walker she has become weak and fallen.

The appellant states that the four wheeled walker is not adequate for her basic mobility. The appellant also reports that when using her walker she becomes fatigued and short of breath and she is waiting to complete an ECG to confirm whether she has congestive heart failure. The appellant states that since the original assessment, her circumstances have changed and she is no longer independent with ADL, and has home help twice weekly to assist her with bathing and some light house work. The appellant also states that the application for a scooter was made after her wheelchair of 11 years became unsafe to use. She reports that she obtained a quote to repair her wheelchair, at a cost of \$5,566.41 but was told that she could not get it fixed. The appellant also states that the scooter was requested to replace a device that was previously provided by the minister so the appellant is requesting an appeal. The appellant also states that she has provided the name of her family physician and her mental health worker if the tribunal wants to contact them.

The appellant also provided a Release of Information dated June 13, 2013 (the "Release") with the names of her family physician and mental health worker.

The panel has admitted the written testimony, the Submission and the Release into evidence as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the written testimony and Submission provide further information regarding the appellant's level of mobility, independent functioning and issue of whether home support services are required, all of which were issues before the ministry at the time of reconsideration.

The ministry relied on the reconsideration decision and did not provide any further submissions.

Based on the evidence, the panel's finding of facts are as follows:

- The appellant has used a wheelchair for the past 11 years until it broke down;
- The appellant submitted a quote for the repair of her wheelchair but the ministry advised that they would not pay for the wheelchair repairs;
- The appellant has been using a cane and four wheeled walker;
- The appellant recently fell and fractured her wrist, requiring surgery; and
- The appellant has home support services twice per week.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision to deny the appellant's request for a scooter on the basis that she did not meet the eligibility requirements set out in the EAPWDR Schedule C, sections 3(2)(b), 3.4(3)(a) and (c) was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Section 62 and Schedule C, Sections 3(1) to 3(6) and 3.4 of the EAPWDR sets out the criteria that must be met for a request for a replacement scooter to be approved. The ministry may provide funding for a scooter if the legislated criteria are met. This appeal is only dealing with whether the ministry's reconsideration decision was reasonable with respect to their determination that:

- there is no information in the form of an assessment by an OT or PT that confirms the medical need for the requested scooter;
- the OT did not confirm that the appellant is unlikely to have a medical need for a wheelchair during the 5 years following the Assessment; and
- that the requested scooter is not medically essential to achieve or maintain basic mobility.

The Ministry found that the other criteria for a replacement scooter had been met.

The relevant sections of Schedule C, EAPWDR the legislation at issue are as follows:

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 3.12 of this Schedule are the health supplements that may be provided by the minister if (B.C. Reg. 197/2012)

(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 or section 3.12, 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:

(B.C. Reg. 197/2012)

(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.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section 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 a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(B.C. Reg. 197/2012)

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if

- (a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and
- (b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed. (B.C. Reg. 197/2012)

(4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.

(5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if

- (a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and (B.C. Reg. 197/2012)
- (b) it is more economical to repair the medical equipment or device than to replace it.

(6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

(B.C. Reg. 61/2010)

Medical equipment and devices – scooters

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 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.

(4) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years after the minister provided the item being replaced.

(5) A scooter intended primarily for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

Section 3(2)(b) – assessment by an OT or PT confirming the medical need

The ministry's position is that the Assessment performed by the OT does not confirm the medical need for the scooter as it indicates that the appellant is independent in all personal care and ADL tasks and does not have home support services. The OT reports that in her apartment the appellant walks with a cane or unaided and had recently started using a 4-wheeled walker outdoors and that either public transit or HandiDart is available to transport the appellant to appointments, shopping, church and family gatherings. The minister is not satisfied that the OT confirms the medical need for the requested scooter and that the appellant meets the criteria of EAPWDR Schedule C, section 3(2)(b).

The appellant's position is that she used a wheelchair for 11 years and has applied for a scooter because the ministry would not fund the cost of the repairs needed to her wheelchair. The appellant states that her medical condition has worsened and that without any motorized vehicle, using only her cane and walker, she has had repeated falls leading to severe bruising, abrasions, and most recently a fractured wrist. The appellant also states that since the original assessment her circumstances have changed and she is no longer independent with ADL and has home help twice weekly to assist her with bathing and some light house work. The appellant's position is that the scooter is medically essential and is not being requested just to improve her access to the community.

EAPWDR Schedule C section 3(2)(b) requires that an applicant must provide an assessment by an OT or PT confirming the medical need for the scooter. In the Assessment, the OT reports that the

appellant is very independent and would like to remain active in her community. The OT reports that the appellant is independent in all personal care and ADL tasks and does not have home support services. The OT reports that the appellant is able to manage with her walker when feeling well but finds it difficult to access the community when pain and fatigue worsen. However, the OT does not provide any information on the frequency or duration of the appellant's exacerbations or how remedial measures such as analgesic affect the appellant's functioning. While the OT reports that the appellant would benefit from a scooter to increase her community access and involvement, the panel finds that the OT assessment does not indicate that the scooter is required for a medical need.

The panel notes that the appellant's condition appears to have worsened since the Assessment and that she may now have a medical need for the scooter. However, the legislation clearly requires that there must be an assessment from an OT or PT confirming the medical need. The case manager states that she has asked the OT to reassess and update the Assessment taking into consideration the recent events such as the appellant's repeated falls and it may be that an updated assessment provides the information that the ministry requires. However, as the Assessment does not confirm the medical need for the scooter, the panel finds that the ministry's reconsideration decision that determined that the appellant did not meet the requirements of EAPWDR Schedule C, section 3(2)(b) was reasonable.

Section 3.4(3)(a) – OT assessment confirming wheelchair need in the next five years

The ministry's position is that the information in the Assessment and the RFR does not confirm that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment. On the Summary, the adjudicator has indicated that 3.4(3)(a) is not applicable, but in the reconsideration decision the ministry states that the Assessment does not confirm that it is unlikely that the appellant will have a medical need for a wheelchair in the 5 years following the assessment.

The appellant's position is that her request for a scooter came after her wheelchair of 11 years became unsafe for use. She had provided the quote for the wheelchair of \$5,566.41 but was advised that the ministry would not fund the wheelchair repairs. The appellant's position is that she is unsafe using only the cane and four wheeled walker and only has extremely limited distances that she can travel without motorized mobility. In the Submission the appellant states that when using her walker she becomes fatigued and suffers from weakness and shortness of breath, with physical activity, whether that is short or long in duration. The appellant states that she is currently waiting to complete an ECG to confirm whether she also has congestive heart failure. The appellant states that she likely will have a medical need for a wheelchair in the coming 5 years.

EAPWDR Schedule C section 3.4(3)(a) requires that in order for the ministry to provide funding for a scooter an assessment by an OT must confirm that it is unlikely that the appellant for whom the scooter has been prescribed will have a medical need for a wheelchair during the 5 years following the assessment. In this case the OT has indicated that the appellant would benefit from a scooter, has trialed a scooter and was able to manage it safely but the OT does not provide any opinion as to whether the appellant will require a wheelchair in the 5 years following the Assessment.

As the appellant has been using a wheelchair for the past 11 years until it became unsafe to use and as the appellant states, in the Submission, that she believes she will likely have a need for a

wheelchair in the coming 5 years, the panel finds it difficult to see how the appellant would not have a medical need for a wheelchair during the 5 years following the Assessment.

It appears to the panel that the appellant has misunderstood this criteria as she states that she will have a medical need for a wheelchair in 5 years which would mean that she would not meet the criteria of EAPWDR Schedule C, section 3.4(3)(a).

Most importantly however, as the Assessment does not confirm that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment the panel finds that the ministry's determination that EAPWDR Schedule C, section 3.4(3)(a) was not met was reasonable.

Section 3.4(3)(c) - whether the scooter is medically essential to achieve or maintain basic mobility

The ministry's position is that the Assessment states that the appellant is independent with personal care, ADL, does not have home support, and walks with a cane or unaided in her apartment. The ministry's position is that as public transit is available fairly close to her residence and she has a yearly bus pass, a scooter is not medically essential to achieve or maintain basic mobility. The ministry also states that HandiDart service is available in her community and as the appellant is a PWD recipient she can avail herself of the taxi saver program at 50% off the regular fares. The ministry notes that while the OT reports that pain and fatigue are the limiting factors affecting the appellant's mobility issues, she has days where she is able to manage mobility with her walker and other times when pain and fatigue limit her abilities. However, the ministry states that the OT has not provided any information on how frequently the pain and fatigue limits the appellant's abilities.

The appellant's position is that since the Assessment her health has worsened and she has had numerous falls including a more recent fall with a fractured wrist and that she requires the scooter to achieve and maintain basic mobility. In the Submission the appellant states that her recent falls are happening even with the use of a cane or walker because her health has worsened, and there were not any environmental factors that influenced her falls such as wet floors or weather. The appellant states that she is now using her four wheeled walker all the time, including in her apartment, and that she is not using her cane any longer as she is too unstable on her feet. The appellant reports that when using her walker she can become fatigued, suffer from weakness and become short of breath and that occurs with any physical activity, short or long in duration. She also states that she now has home support twice weekly to help with bathing and light housework.

The case manager states that due to the appellant's health conditions that are complicated by obesity, the appellant is unable to address these illnesses effectively without access to the community. The case manager states that with the appellant's recent accidents and injuries, her request for a scooter should be reviewed as basic mobility and safety are now an issue.

The panel accepts the evidence of the appellant and the case manager and finds that the appellant's condition has worsened between the time of the Assessment in January 2013 and the appellant's RFR in April 2013. Taking into account the appellant's decreased mobility in her apartment, repeated falls, recent wrist fracture and home support requirements, the panel finds that the requested scooter is medically essential to achieve or maintain basic mobility. Accordingly, the panel finds that the

ministry's decision that the appellant does not meet the criteria of EAPWDR Schedule C section 3.4(3)(c) is not reasonable.

Conclusion

Although the panel finds that the ministry's reconsideration decision was unreasonable with respect to EAPWDR Schedule C section 3.4(3)(c), the appellant has not met the criteria of EAPWDR section 3(2)(b) and 3.4(3)(a) as there is no OT or PT assessment confirming the medical need for the scooter and no OT assessment confirming that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment. Therefore, the panel confirms the Ministry's decision.