

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated July 17, 2013 which denied the appellant's request for funding for rental of a power wheelchair as it is not the least expensive appropriate equipment as required by the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) Schedule C, Section 3(1)(b)(iii).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 62 and Schedule C, section 3

PART E – Summary of Facts

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

- 1) The appellant's Request for Reconsideration (RFR) dated June 3, 2013 in which the appellant states that she is facing exceptional circumstances due to delays in submitting a complete request for the purchase of a power wheelchair. The appellant states that her Occupational Therapist (OT) has noted a number of challenges in completing the process for the purchase request for a new power wheelchair. The appellant states that she has quadriplegia from cerebral palsy that a power wheelchair is medically essential to achieve and maintain basic mobility that she has no alternative but to rent a power wheelchair and she cannot afford the monthly rental.
- 2) Email from the appellant to her advocate dated June 12, 2013 with information that she states may be helpful for her reconsideration. In her email the appellant states that her prior wheelchair became unusable about 2 ½ years ago and since then she has used a number of demo and loaner chairs from several different companies in an effort to find what power wheelchair would work best for her needs. The appellant states that she requires a power wheelchair that tilts because of chronic pain and a history of severe pressure sores. The appellant states that approximately 6 weeks ago, she realized that the loaner chair she was in required significant repair and she has been unable to get another loaner chair to use in between demos of new chairs. The appellant states that her ability to trial chair has been limited by her medical issues, a flood in her home one year ago, lack of energy to meet all her obligations, including providing support to her parents, change to a new OT that required additional assessment time, change to a new health unit, and communication challenges between the appellant's previous OT and the ministry.
- 3) Letter from the ministry to the appellant dated May 13, 2013 advising the appellant that her request for funding for the rental cost of a power wheelchair was denied and attaching the ministry's medical equipment and devices decision summary (wheelchairs).
- 4) Ministry adjudicator overview notes dated May 9, 2013 indicating that the appellant was previously provided with a one month power wheelchair rental in July 2012 and in August 2012, that the ministry had previously informed the appellant that she needed to submit a quote for a power wheelchair, and that the ministry will not rent a chair for the appellant.
- 5) Healthcare provider quote dated May 7, 2013 for a power wheelchair rental in the amount of \$940.95.
- 6) Letter from the appellant's OT dated May 3, 2013 stating that the appellant has to rent/borrow a power wheelchair due to the ill repair of her chair while in the process of completing demos for a new power wheelchair base to purchase. The OT states that there have been challenges with obtaining appropriate demos for the appellant and that she is dependent on a power wheelchair for all mobility. The OT states that the appellant requires a power wheelchair with tilt to assist with chronic pain management. The OT reports that the appellant experiences increased anxiety when she is not able to get out of her apartment and attend to her personal medical appointments and care giving responsibilities to her father who is currently in long term care.
- 7) Ministry adjudicator note dated June 25, 2012 noting that the ministry had previously purchased a power wheelchair for the appellant in 2005, that she was requesting a power wheelchair rental for 2 months and that it was reasonable to approve one month power wheelchair rental from June 13-July 12, 2012.
- 8) Letter from the ministry to the appellant dated June 25, 2012 advising that the ministry has approved the appellant's request for funding of a power wheelchair for one month from June 13 – July 12, 2012. In the letter, the ministry states that it is expected that the appellant start trialing power wheelchairs for purchase as soon as possible.
- 9) Healthcare provider purchase authorization dated June 25, 2012 of \$480 for the rental cost of the power

wheelchair from June 13 – July 12, 2012.

10) Fax cover from an OT dated June 18, 2012 recommending a rental of power tilt in space wheelchair as the appellant's wheelchair has not been functional since January 2011, that the appellant has been using a demo wheelchair for one year but the vendor can no longer sustain this arrangement. The OT also states that the appellant has a regular manual wheelchair but requires a tilt in space wheelchair for changing position due to chronic pain and chronic pressure issues due to ischias.

11) Healthcare supplier quote dated June 18, 2012 for the rental cost of a power wheelchair in the amount of \$960 for two months.

12) Letter from a community health centre dated June 16, 2012 stating that the appellant is in urgent need of a tilt power wheelchair.

13) Health supplier quote dated June 11, 2012 for a power wheelchair at a rental cost of \$480 per month.

14) Letter from the ministry to the appellant dated October 21, 2010 advising that the appellant's request for customized seating and hardware in the amount of \$3,370.43 was approved.

15) Letter from the ministry to the appellant dated April 4, 2006 advising that the appellant's request for a power wheelchair with tilt in the amount of \$12,671.34 was approved.

16) Letter from the ministry to the appellant dated December 15, 2004 advising that the appellant's request for a power wheelchair was denied.

In her Notice of Appeal dated July 25, 2013 the appellant states that she needs a power wheelchair due to her medical circumstances and she has no other resources to pay for the rental.

Admissibility of New Information

At the hearing the appellant submitted the following documents:

- Four Sales Receipts dated May 4, 2013 (\$380); May 28, 2013 (\$300); June 14, 2013 (\$550); and July 18, 2013 (\$550) for rental costs of a scooter and rental costs of a power wheelchair from May 4 through August 12, 2013.
- Letter prepared by the appellant's advocate dated July 4, 2013 and signed by the appellant's physician on August 8, 2013 stating that a power wheelchair is medically essential for the appellant to achieve and maintain basic mobility.
- Invoice dated August 12, 2013 in the amount of \$185 for the cost of repairs to the rental/loaner power wheelchair.
- Email from the appellant's OT dated August 14, 2013 stating that she has emailed the appellant and the wheelchair vendor to clarify the next steps required to move forward with the appellant's request for a long term wheelchair. The OT advises the wheelchair vendor was sick, that the vendor had advised that there were limitations with the demo wheelchair and that she needed answers as to whether the appellant was comfortable with a demo on another power wheelchair model.
- Appellant's notes of the timeline for acquisition of power wheelchair summarizing her circumstances from November 2011 to present with respect to her medical and personal challenges, attempts to demo power wheelchairs and delays in moving forward with her request for a power wheelchair.

The panel has admitted the invoice, sales receipts, letter, email and appellant's notes into evidence as it is 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 new information relates to the appellant's medical condition and personal circumstances surrounding her request for a wheelchair rental and efforts to move forward with the forms required to request a power wheelchair.

At the hearing, the appellant's advocate states that this is an unusual situation as the ministry prefers to provide funds for the purchase of a power wheelchair, which is also what the appellant wants, but due to her special circumstances and unexpected delays in the process to provide a request for a new power wheelchair the appellant requires funding for rental of a power wheelchair. The advocate stated that the appellant is working with the appropriate health professional to get her application for funding for the power wheelchair and that due to the delays, the appellant has been paying for the wheelchair rental from her trust, which is depleting her trust much more quickly than anticipated. The advocate also stated that the trust funds are not typically used to pay for power wheelchair rental costs. The appellant's advocate explained that due to the appellant's complex medical needs, finding the appropriate power wheelchair is not an easy task and takes a longer time to fit.

The appellant stated that her timeline notes provide details as to the reasons for the delays, but at present, she is waiting for a response from the power wheelchair vendor and needs to find the appropriate power wheelchair that will be suitable for her basic mobility. The appellant explained that she has been having difficulties with finding a power wheelchair that is suitable as she needs one with foot pedals as close to 90 degrees as possible to be comfortable but many power wheelchairs with foot pedals block the front tire. The appellant states that various other issues have slowed down her application process including chronic pain, stage 4 pressure sores resulting in her being bedridden for one month, a flood in her home requiring her to live in a motel for one month and various family obligations. In particular, the appellant stated that it took some time to determine that a front wheel drive wheelchair was not suitable so the trialing process had to begin again seeking rear wheel drive wheelchairs. The appellant stated that she has done the best she can in her circumstances.

The ministry did not submit any new evidence and relied on the reconsideration decision. The ministry representative stated that while the ministry sympathizes with the appellant's circumstances, the ministry did recognize that she was facing unusual circumstances, which is why the ministry approved the one month rental of the power wheelchair. However, the ministry representative stated that when the rental was approved the appellant was advised that there would not be any further rentals provided, that she was told that she was expected to demo new wheelchairs so that she could submit her request for a new wheelchair.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision denying the appellant funding for a power wheelchair rental as it is not the least expensive appropriate equipment as required by the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) Schedule C, Section 3(1)(b)(iii) was reasonable.

EAPWDR Schedule C, section 3, Medical equipment and devices, states as follows:

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

(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.

The ministry's position is that the appellant has the person with disabilities (PWD) designation and as she was receiving disability assistance before transitioning to Medical Services Only (MSO) she is eligible to receive health supplements under EAPWDR section 62 if eligible for those supplements under EAPWDR Schedule C, section 3. The ministry's position is that the information provided by the appellant and the OT does not confirm that the rental of a power wheelchair is the least expensive appropriate equipment as is required by EAPWDR Schedule C, section 3(1)(b)(iii). The ministry's position is that the appellant had a power wheelchair that became unusable about 2 ½ years ago and that her physician supplied a prescription for a new power wheelchair in June 2012. The ministry states that it recognized that the appellant has complex medical needs and on May 13, 2013 provided a one month rental of a power wheelchair but advised the appellant that no further rentals would be provided. The ministry's position is that it would be reasonable to assume that sometime during the last two years the appellant would have had the ability to undergo an OT assessment and request a new power wheelchair from the ministry.

The appellant's position is that since her power wheelchair became unusable 2 ½ years ago, she has had numerous difficulties in navigating the process to submit the request for a new wheelchair. The appellant states that she has done everything she can but there were delays due to her own medical conditions (severe pressure sores requiring that she be bedridden for one month), a flood in her home, problems with one OT requiring that she attend with a new OT and start the assessment process again, difficulties in obtaining the appropriate demo wheelchairs to trial, difficulties with the rental wheelchair requiring repairs and a period where she was unable to deal with the assessment process due to her medical condition.

The appellant's position is that although the ministry states that the least expensive appropriate medical equipment or device is the purchase of a power wheelchair rather than a rental of a power wheelchair, the legislation does not preclude the ministry from funding the rental of a wheelchair in unusual circumstances when the appellant is in process of getting application for funding of power wheelchair purchase.

The appellant's position is that she requires a power wheelchair for mobility and that another organization paid for her rental wheelchair

from September 2012 until 3 months ago but that organization is no longer able to assist her with the rental cost. The appellant's position is that although she has been using her trust to pay for the rental cost, the trust is not meant for that purpose and the funds are being depleted very rapidly and she has no resources to continue to pay for the cost of the power wheelchair rental. The appellant's position is that although the ministry has paid for one month, she needs a bit longer to complete the application process. The appellant states that the rental is not permanent and there is an end in sight.

Panel Decision

The panel acknowledges that the appellant has complex medical needs and that she has faced some unusual circumstances in the last 2 ½ years since her power wheelchair became unusable. The panel also acknowledges that some of the unusual circumstances are out of the appellant's control and that she has no control over when the OT can complete her assessment or when the wheelchair vendor can provide the appropriate power wheelchair for her to trial. The panel also acknowledges the information provided by the advocate that because of the appellant's complex medical needs it can take longer than normal to find the appropriate power wheelchair.

At the same time however, the panel notes that when the ministry provided funding for the power wheelchair rental in June 2012, the ministry was very clear to the appellant that she was expected to trial power wheelchairs for purchase as soon as possible and that the ministry would not pay for rental of equipment during the trial period. While the email from the OT indicates that the wheelchair vendor was sick, there is still no timeline to indicate when the trial of the appropriate power wheelchair might take place and when the request for the power wheelchair will be submitted to the ministry. While the appellant states that there is an end in sight to the rental, the information provided does not establish when that end might be.

EAPWDR Schedule C, section 3(b)(iii) requires that the medical equipment or device is the least expensive appropriate medical equipment or device. The panel notes that at a cost of \$480 per month for rental of a power wheelchair, the rental costs could escalate very quickly. For example, if the appellant had been paying the rental cost from July 2012 to present, a period of 13 months, at a cost of \$480 per month that would be \$6,240 which is over half the cost of her previous wheelchair purchased in 2006. At present, there is no information to indicate when the appellant's request for a new power wheelchair for purchase will be submitted. It could be one month but it could be another six months or more. Accordingly, the panel finds that the ministry's determination that the rental of a power wheelchair is not the least expensive appropriate medical equipment or device as required by EAPWD Schedule C, section 3(b)(iii) was reasonable.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for funding for rental of a power wheelchair was reasonably supported by the evidence and a reasonable application of the applicable legislation in the circumstances of the appellant. In particular, the panel finds that the ministry's reconsideration decision which found that the appellant did not meet EAPWDR Schedule C, section 3(b)(iii) was reasonable.

Therefore, the panel confirms the ministry's reconsideration decision.