

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated June 28, 2013 which denied the appellant's request for a supplement to cover the cost of a scooter. The ministry found that the following requirements of Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met:

- the assessment by an occupational therapist does not confirm a medical need for the scooter, pursuant to Section 3(2)(b); and,
- the ministry is not satisfied that the scooter is medically essential to achieve or maintain basic mobility, pursuant to Section 3.4(3)(c).

PART D – Relevant Legislation

Employment and Persons with Disabilities Regulation (EAPWDR), Section 62 and Schedule C, Sections 3 and 3.4

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Medical Equipment Request and Justification dated June 6, 2012 which states in part that the appellant's medical condition is that she is a cancer patient with Hx [history] of fibromyalgia, osteoarthritis and GERD and the medical equipment recommended is a motorized wheelchair with a handwritten note dated March 8, 2013 that the section was signed by an MD;
- 2) Quote from a health product company dated March 11, 2013 for a Orthoquad GNX ES950 4 wheeled scooter in the total amount of \$3,415.50;
- 3) Letter dated March 13, 2013 from an occupational therapist (OT) to the ministry which states in part that the appellant lives independently in her community. She has a 22-year history of fibromyalgia, 4-year history with cancer, and then subsequent osteoporosis following cancer treatment. The appellant's physician has encouraged her to pursue power mobility. The appellant has decreased right hip mobility which limits her walking tolerance, standing tolerance, and she has difficulties transitioning from sitting to standing. She has expressed pain with such activities. The appellant has previously attempted to use a neighbour's wheelchair for indoor mobility but reported lack of upper body strength, endurance, and shoulder mobility to propel herself adequately. The OT did not have access to a wheelchair for the assessment. The appellant has driven an automobile for 47 years and is driving a personal vehicle when necessary. The appellant trialed the use of a 4-wheel scooter and demonstrated safe use. The appellant's goal is to use the scooter to maintain her independence with accessing basic daily needs such as obtaining groceries, attending medical appointments, maintaining access to the pharmacy, helping preserve her energy and avoid aggravating her symptoms to enable her to continue to perform ADL's [activities of daily living]/ IADL's [instrumental activities of daily living]/ self-care independently; and,
- 4) Request for Reconsideration- Reasons dated June 13, 2013.

In her Request for Reconsideration, the appellant wrote that about 3 years ago she had a doctor that cared about her but her current doctor does not know about her. The appellant wrote that, for about 30 years she has suffered from back pain, she found out it is 3 upper discs and 2 bottom discs and is waiting for more tests. The appellant wrote that she also has fibromyalgia in her neck and shoulder area. If she stands too long, she suffers and if she does anything like bending she hurts for a week. She had breast cancer and was on a medication that causes osteoporosis. Her hip on the left side is bad and standing too long causes cramping or severe pain. She has pain in her knees and elbow and recently she started having shooting pains in both hands. Her ankles and the tops of both feet swell. The appellant wrote that she hopes she can still drive but it is when she shops or wishes to go out that she thinks "...the scooter will be good." The doctor who first sent in the application was pushing her to get one 4 years ago but she did not want to "look old." She thinks she really needs a scooter. She lives a little out of town and she could use a scooter.

In her Notice of Appeal, the appellant expressed her disagreement with the ministry's reconsideration decision. The appellant wrote that she needs the scooter. As for her car, the warning light is on and she cannot find out what is wrong. When her car goes for good, she will have no transportation. She does not always have fuel. Everyone she knows that has a scooter also has a car.

Prior to the hearing, the appellant submitted the following additional documents:

- 1) Handwritten submission in which the appellant wrote that as of August 22, 2013, her car will be off the road since it did not pass Air Care and it will cost \$585 to fix it. The appellant wrote that she is very ill with bronchitis and something else and she is waiting for the results of further tests. The appellant wrote the her OT knows she needs the scooter; and,
- 2) Letter dated August 16, 2013 from the same OT who wrote the previous assessment to the ministry stating in part that he has no new medical information to submit on the appellant's behalf. The OT explained that

the appellant was not provided with nor assessed with a wheelchair or walker as the physician directed the appellant to pursue a motorized wheelchair and her referral to Occupational Therapy was to provide a scooter assessment. The appellant has advised that she will no longer have use of her motor vehicle as she cannot afford necessary vehicle repairs, tire repairs and recently failed Air Care for insurance renewal. The appellant presently does not have medical equipment or supplies, and her personal supports are deteriorating and have recently become strained resulting in personal stress for her. The appellant has limited ambulation and mobility and these are unlikely to improve. With osteoporosis, the expectation is for progressively worsening symptoms, increased fragility and increased need to minimize or eliminate falls. With respect to fibromyalgia, there is increasing research and support towards promoting independence, ongoing social and community interaction to reduce the cost of care and reliance on health services. The scooter will benefit in both of these areas and thus may be considered medically essential for these reasons. From the assessment of the appellant in March 2013, it is not anticipated that the appellant would be physically able to use a walker or wheelchair to complete her IADL's. Her maximum tolerances with walkers and wheelchairs have not been tested. In the absence of her motor vehicle, and with consideration to her fragile health status, the OT anticipates this will most likely lead to more frequent hospitalizations to access the health services for basic needs, as well as earlier introduction of assisted/ supported living options.

The ministry did not raise an objection to the admissibility of these documents in its submission. The panel admitted the appellant's written submission and the letter from the OT as further evidence of the impact of the appellant's impairments and being in support of the information and records that were before the ministry on reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act (EAA).

The ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of a scooter because:

- the assessment by an OT does not confirm a medical need for the scooter; and,
- the ministry is not satisfied that the scooter is medically essential to achieve or maintain basic mobility, as required by Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Pursuant to Section 62 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the applicant must be a recipient of disability assistance, or be a dependent of a person in receipt of disability assistance in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has not disputed that the requirement of Section 62 has been met in that the appellant has been approved as a recipient of disability assistance.

At issue is whether the appellant's request for a scooter meets the requirements under Schedule C of the EAPWDR, including:

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
- (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:
- (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** (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 or a physical 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. ...

Medical Need

The ministry's position is that the appellant is eligible to receive health supplements under Section 62 of the EAPWDR, but the appellant's request for a supplement to cover the cost of a scooter does not meet all of the applicable criteria of Schedule C of the EAPWDR. Firstly, the ministry argued that the requirements in Section 3(2)(b) have not been met as the assessment by the OT does not confirm the medical need for the medical equipment. The ministry argued that the assessment by the OT reviewed the appellant's attempted use of a neighbour's wheelchair and the appellant's report that she lacked upper body strength but the OT did not assess the use of equipment other than a scooter, such as a manual wheelchair or a 4-wheeled walker, to meet the appellant's mobility needs. The ministry argued that the appellant is currently driving her own vehicle and the information provided does not demonstrate that with the use of either the 4-wheeled walker or a manual wheelchair the appellant would not have sufficient mobility upon her arrival to safely perform activities such as shopping for groceries or accessing community resources.

The appellant's position is that the requirements of the section have been met by the information provided to the ministry by her OT and that she has a longstanding history of back pain, fibromyalgia in her neck and shoulder area, and osteoporosis in her left hip caused by treatments in the past for breast cancer. The OT is of the opinion that the appellant would benefit from a scooter to maintain her independence with accessing basic daily needs such as obtaining groceries, attending medical appointments, maintaining access to the pharmacy, helping preserve her energy and avoid aggravating her symptoms to enable her to continue to perform ADL's [activities of daily living]/ IADL's [instrumental activities of daily living]/ self-care independently. In the letter dated August 16, 2013, the OT argued that based on his assessment of the appellant in March 2013, it is not anticipated that the appellant would be physically able to use a walker or wheelchair to complete her IADL's.

Panel decision

The panel finds that the assessment by the OT does not identify impacts from the appellant's medical conditions that dictate a medical need for a motorized scooter in particular. Whereas the appellant's medical conditions are identified by the OT as a 22-year history of fibromyalgia and osteoporosis subsequent to cancer treatment, in the Medical Equipment Request and Justification form, the medical practitioner referred to a history of fibromyalgia, osteoarthritis and GERD, and the appellant wrote that she has suffered with back pain for 30 years. The OT did not refer to osteoarthritis or back pain in the assessment but, rather, specified the appellant's restrictions as decreased right hip mobility which limits her walking tolerance, standing tolerance, and the appellant has expressed pain and difficulties with transitioning from sitting to standing. The OT indicated that the appellant currently lives independently in her community without the use of equipment to aid her indoor mobility and that she drives her personal vehicle to access the community.

In the letter dated August 16, 2013, the OT indicated that from his assessment of the appellant in March 2013, it is not anticipated that the appellant would be physically able to use a walker or wheelchair to complete her IADL's. The OT did not elaborate regarding his assessment of the appellant's restrictions, and indicated in his original assessment that the appellant previously attempted to use a neighbour's wheelchair for indoor mobility but she reported lack of upper body strength, endurance, and shoulder mobility to propel herself adequately. The OT acknowledged in his letter, however, that he did not assess the appellant's maximum tolerances with walkers and wheelchairs. The OT explained that the appellant was not provided with nor assessed with a wheelchair or walker as the physician directed the appellant to pursue a motorized wheelchair and her referral to Occupational Therapy was to provide a scooter assessment. The panel finds that the assessment by the OT does not consider a scooter in relation to other types of equipment available to address the appellant's

restrictions to functioning in order to show that the scooter addresses particular restrictions that cannot be met by other equipment. Therefore, the panel finds that the ministry's determination that the assessment by the OT has not confirmed the medical need for the scooter, pursuant to Section 3(2)(b) of Schedule C of the EAPWDR, was reasonable.

Medically essential to achieve or maintain basic mobility

The ministry's position is that the requirements in Section 3.4(3)(c) have not been met as the ministry is not satisfied that the scooter is medically essential to achieve or maintain basic mobility. The ministry argued that at the present time the appellant is able to walk independently or possibly use a 4-wheeled walker or manual wheelchair in combination with transportation by driving her personal vehicle in order for the appellant to achieve or maintain her basic mobility. The ministry argued that the need indicated for a scooter is for transportation rather than being medically essential.

The appellant argued that the requirements of the section have been met by the information provided to the ministry by her OT and physician, that she has limited options available to her for equipment as a result of her lack of upper body strength, endurance, and shoulder mobility and since she no longer has access to her personal vehicle for transportation, a scooter is required to achieve her basic mobility.

Panel decision

The panel finds that the evidence shows that the appellant has a need for equipment to assist in performing her daily living activities due to her decreased right hip mobility, which limits her walking and standing tolerance, and her difficulties transitioning from sitting to standing. In the August 16, 2013 letter, the OT indicated that the appellant has limited ambulation and mobility and these are unlikely to improve. However, in terms of identifying a scooter as medically essential to achieve or maintain basic mobility, the panel finds that an assessment of a variety of types of equipment is relevant and necessary to this analysis, in order to specify the equipment features that address the appellant's particular restrictions and provides for "basic" mobility along the range of various levels of mobility (with 'no mobility' at one extreme and 'perfect mobility' at the other).

The OT indicated that the appellant presently does not use any medical equipment or supplies. There is no discussion of the potential use of a cane and, as set out above, while the OT reported that it is not anticipated that the appellant would be physically able to use a walker or wheelchair to complete her IADL's, the OT did not elaborate and he acknowledged that the appellant's maximum tolerances with walkers and wheelchairs have not been tested. In his August 16, 2013 letter, the OT suggested that the scooter may be considered medically essential because it will benefit in terms of the prognosis with osteoporosis for progressively worsening symptoms, increased fragility and increased need to minimize or eliminate falls and with fibromyalgia, by promoting independence, ongoing social and community interaction to reduce the cost of care and reliance on health services. However, the panel finds that under Section 3.4(3)(c) of the EAPWDR, the ministry must be satisfied that the scooter is medically essential based on the appellant's current condition and not on the basis of a forecast for the future.

The appellant provided an update that her car is "off the road" since it did not pass Air Care and it will cost \$585 to fix. While there is a financial restriction to using her personal vehicle to access the community, there was no evidence presented that the appellant can no longer driver her personal vehicle due to medical restrictions and no discussion by the OT of the feasibility of public transportation as an alternative. In the OT's original assessment, he indicated that the appellant's goal is to use the scooter to maintain her independence with accessing basic daily needs such as obtaining groceries, attending medical appointments, maintaining access to the pharmacy, helping preserve her energy and avoid aggravating her symptoms to enable her to continue to perform ADL's independently. In her Request for Reconsideration, the appellant wrote that she hopes she can still drive but it is when she shops or wishes to go out that she thinks "...the scooter will be good." The appellant also wrote that she lives "a little out of town" and she could use a scooter. The panel finds that the ministry reasonably concluded that the need indicated for a scooter is more for transportation

rather than being medically essential to achieve basic mobility. The panel finds that the ministry's determination that the evidence does not establish that the scooter is medically essential to achieve or maintain basic mobility, pursuant to Section 3.4(3)(c) of Schedule C of the EAPWDR, was reasonable.

Conclusion

In conclusion, the panel finds that the ministry's decision to deny the request for a scooter as not meeting the legislated criteria of Schedule C, Sections 3(2)(b) and 3.4(3)(c) of the EAPWDR, was reasonably supported by the evidence and confirms the decision.