

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated June 27, 2013 which denied the appellant's request for a supplement to cover the cost of a Scooter.

The ministry found that the requirement in Section 3(1)(b)(iii) Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) was not met as the ministry was not satisfied that the scooter is the least expensive appropriate medical equipment or device.

### PART D – Relevant Legislation

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

## 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) Quote from a health product company dated March 21, 2013 for a 1700DT Four-Wheel scooter and cane holder for the total amount of \$3,504.60;
- 2) Letter dated April 4, 2013 from an occupational therapist (OT) 'To Whom It May Concern', which states in part that the appellant was referred by his general practitioner for a functional assessment to address accessibility and mobility needs. The appellant lives alone and is experiencing difficulties with basic mobility, unable to navigate mid distances outdoors and access his immediate community to complete his IADL [instrumental activities of daily living]. The scooter will enable safe and independent outdoor mobility. The appellant's medical issues as assessed by his OT are osteoarthritis affecting his mid and low spine, RA [rheumatoid arthritis] affecting hips and knees, left knee surgery, recurrent gout on left hallux, plantar fasciitis, overweight, bilateral eye cataracts Sx [symptoms], and severe bilateral pitting edema on lower legs. The appellant's functional status includes that he is able to ambulate short distances using a cane on his right side less than 50 meters with slow progression, with slight shuffling and open wide foot base for support. The appellant states that after approximately 30 meters, he experiences extreme "shutting" pain in his legs and feet and he is afraid of falls. He is becoming sedentary and socially isolated. He is unable to negotiate outdoor distances safely due to decreased tolerance and unreliable balance over uneven terrain. He uses a cane or walker to ambulate at tolerance, trying to maintain his functional mobility but the gradual increased pain makes him stop, fearing collapse due to pain. He estimates his tolerance to 30 to 50 meters maximum. He is minimizing his outings and relying more on the support of his family to complete all IADL. The appellant cannot negotiate distances to the supermarket, doctor's office and bank. These are at close walking distance and Handy Dart services are not appropriate for this distance. He has a valid driver's license but chooses not to drive because his "legs do not respond fast enough to drive safely." The appellant's son assists with occasional transportation for banking and grocery shopping, as able. He has very limited social interaction, almost house bound;
- 3) Medical Equipment Request and Justification signed by the medical practitioner on September 7, 2012 which states in part that the appellant's medical conditions are osteoarthritis (chronic lower back pain, knee and hip), psoriasis, and (illegible), and the medical equipment recommended is a mobility scooter; and,
- 4) Request for Reconsideration- Reasons dated June 25, 2013.

In his Request for Reconsideration, the appellant wrote that he has had gout in both feet for 20 years, arthritis in both feet for 15 years, osteoarthritis in both feet for 15 years, and plantar fasciitis in both feet for 10 years. The appellant wrote that the osteoarthritis is progressive and is in both knees for 15 years and right hip for 2 years. He also has arthritis and degenerative discs in his back for 10 years and a frozen left shoulder for 15 years. He lives every waking minute in extreme pain. He cannot walk to the end of his driveway and back and his quality of life is practically non-existent. His son works 12 to 13 hours per day and he simply does not have the time to look after the appellant's every need. His daughter also works full-time and lives in another community. He has no laundry facilities and if he runs out of anything he has no way of going to get it. A walker does not help at all as he has tried it and, with his back and shoulder problems, a manual wheelchair is impossible.

In his Notice of Appeal dated Jul 5, 2013, the appellant wrote that he disagrees with the ministry's reconsideration decision because he believes it is an unfair decision. He has no means of being able to get to the basic needs in life, i.e. shopping, laundry, etc. He has tried, and just moving about the house is very painful. He has four kinds of diseases in each foot, osteoarthritis in both knees, osteoarthritis in his right hip, a chronic, arthritic and degenerative disc problem in his back and a frozen left shoulder. "Getting doctor update."

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

- 1) Written submission in which the appellant wrote that in terms of a trial of a wheeled walker he has used a shopping cart which is "is far more effective for a person in [his] condition" as he can put his full upper body weight on the cart and puts his full upper body weight on the cart but he can still only walk around for a short while before the pain is intolerable. With respect to trial of a manual wheelchair, he has severe arthritic problems in his left shoulder and a chronic back problem. The mere thought of trying to propel a manual wheelchair makes him cringe in pain. He only finds it difficult to keep his balance in icy conditions and he usually falls rather than risking serious damage to his knees in trying to correct the loss of balance. His problem is that he cannot walk more than a few yards without severe, unbearable pain; and,
- 2) Undated letter from the appellant's daughter stating in part that her father is in great need of a scooter. She watches him struggle just to walk to the end of his driveway, never mind how hard it is for him to go up the street to the grocery store for food. He is getting worse as time goes on and his request has been turned down 3 times. If he could get around on his own, he would much rather do that since he does not ask for help unless he absolutely has to. She cleans the appellant's house as he cannot even stand too long even to do the dishes or stand in the shower.

The panel notes that although the appellant's Notice of Appeal stated that he was getting a "doctor update", there was no further evidence from a doctor submitted on the appeal. The ministry did not raise an objection to the admissibility of the appellant's written submission or the letter from his daughter. The panel admitted both documents pursuant to Section 22(4) of the Employment and Assistance Act, as providing further information regarding the appellant's mobility and being in support of the information and records before the ministry on reconsideration.

The ministry relied on its reconsideration decision.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which denied the appellant's request for a supplement to cover the cost of a scooter because the ministry was not satisfied that the scooter is the least expensive appropriate medical equipment or device, 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 dependant 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 1700DT Four-Wheel 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 a respiratory therapist, 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. ...

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 1700DT Four-Wheel scooter does not meet all of the applicable criteria of Schedule C of the EAPWDR. In particular, the ministry argued that the requirement in Section 3(1)(b)(iii) has not been met as the ministry is not satisfied that the scooter is the least expensive appropriate medical equipment or device. The ministry argued that the information provided does not establish that either a four-wheeled walker with a padded seat or a manual wheelchair with appropriate seating has been trialed or fully considered to meet the appellant's mobility needs. The ministry argued that information is not provided to demonstrate that the appellant is not able to access public transit or HandyDART service or that these services in combination with either a four-wheeled walker with a padded seat or a manual wheelchair would enable the appellant to reach destinations and have sufficient mobility upon his arrival to safely perform activities such as attending appointments, shopping for groceries, and accessing community resources.

The appellant argues that the requirements of the section have been met by the information provided to the ministry by his OT. The appellant argued that he has four kinds of diseases in each foot (gout, arthritis, osteoarthritis, and plantar fasciitis), osteoarthritis in both knees, osteoarthritis in his right hip, a chronic, arthritic and degenerative disc problem in his back and a frozen left shoulder. The appellant argued that he lives every waking minute in extreme pain, he cannot walk more than a few yards without severe, unbearable pain, and his quality of life is practically non-existent. The appellant argued that his son works 12 to 13 hours per day, and his daughter also works full-time and lives in another community so they do not have time to look after the appellant's needs. The appellant argued that he has no means of being able to get to the basic needs in life, i.e. shopping, laundry, etc. The appellant argued that in terms of a trial of a wheeled walker he has used a shopping cart and puts his full upper body weight on the cart but he can only walk around for a short while before the pain is intolerable. With respect to trial of a manual wheelchair, he has severe arthritic problems in his left shoulder and a chronic back problem and the mere thought of trying to propel a manual wheelchair makes him cringe in pain.

#### *Panel decision*

In the Medical Equipment Request and Justification, the medical practitioner described the appellant's medical conditions as osteoarthritis (chronic lower back pain, knee and hip) and psoriasis and recommended a mobility scooter for medical equipment. In terms of identifying a scooter as the least expensive appropriate medical equipment, 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 might address the appellant's particular restrictions and provides for the most cost effective option to allow for basic mobility. In the letter dated April 4, 2013, the OT provides a list of the appellant's medical conditions as osteoarthritis affecting his mid and low spine, RA [rheumatoid arthritis] affecting hips and knees, left knee surgery, recurrent gout on left hallux, plantar fasciitis, overweight, bilateral eye cataracts Sx [symptoms], and severe bilateral pitting edema on lower legs. Although the appellant stated in his written submission that he has severe arthritic problems in his left shoulder and, in his Request for Reconsideration, that he has had a frozen left shoulder for 15 years, this has not been confirmed as a medical condition with a description of the resulting restrictions by either the appellant's medical practitioner or his OT.

In the April 4, 2013 report, the OT stated that the appellant currently uses a cane "on his right side" and is able to ambulate short indoor distances of less than 50 meters with slow progression. The OT reported that the appellant is "...unable to negotiate outdoor distances safely due to decreased tolerance and unreliable balance over uneven terrain." The appellant, on the other hand, stated in his written submission that he only finds it difficult to keep his balance in icy conditions. The OT goes on to report that the appellant "...uses a cane or a

walker to ambulate at tolerance", but the gradual increased pain makes him stop, fearing collapse due to pain. In his Request for Reconsideration, the appellant indicated that he has tried a walker but it "doesn't help at all." In his written submission, however, the appellant stated that in terms of a trial of a wheeled walker he has used a shopping cart which the appellant states "is far more effective for a person in [his] condition" as he can put his full upper body weight on the cart, but he can still only walk around for a short while before the pain is intolerable. As the OT did not make further mention of the walker in her report, the panel finds that there is conflicting information as to whether the appellant has used or trialed a walker specifically, or if the reference is instead to the appellant's use of a shopping cart. The panel finds that the ministry reasonably concluded that there is insufficient information to establish that the appellant has trialed a 4-wheeled walker for his mobility needs.

In the OT's report of April 4, 2013, the appellant's potential use of a manual wheelchair as equipment for his mobility needs is not discussed. The OT referred to discussing with the appellant the benefits of the use of a power wheelchair vs. a scooter and that, with his commitment to continue walking at tolerance, the appellant decided on the trial of a scooter for basic outdoor mobility. The appellant stated that the condition of his back and shoulder make a manual wheelchair "impossible" and that "the mere thought of ...trying to propel a manual wheelchair makes [him] cringe in pain." However, as mentioned previously, neither the medical practitioner nor the OT referred to restrictions with use of the appellant's shoulder. The panel finds that the ministry reasonably concluded that there is insufficient information to establish that the appellant has trialed a manual wheelchair for his mobility needs.

The OT stated that the community resources, such as the supermarket, doctor's office and bank, are at a close walking distance to the appellant and that "...HandyDART services are not appropriate for this distance transportation." The panel finds that the ministry reasonably concluded that there is insufficient information to establish that HandyDART services, or other forms of public transportation, are not available to the appellant to provide access to community resources at least some of the time, when his family is not able. The appellant stated that his son and daughter both work full-time and his daughter lives in another community, so that they are not able to look after his every need. However, the OT reports that the appellant's son assists with occasional transportation for banking and grocery shopping as he is able. The OT reported that the appellant has a valid driver's license but chooses not to drive because his "legs do not respond fast enough to drive safely."

#### *Conclusion*

In conclusion, the panel finds that the ministry reasonably determined that there is insufficient information to show that there has been an assessment of a variety of types of equipment in order to conclude that the scooter is the least expensive of the potential "appropriate" options in addressing the appellant's particular restrictions and to allow for the appellant's basic mobility. The appellant's request included a quote from a health product company dated March 21, 2013 for a 1700DT Four-Wheel scooter and cane holder for the total amount of \$3,504.60, but there was no information provided to establish the cost of other potentially less expensive equipment options. The panel finds that the ministry's decision to deny the request for a scooter as not meeting the legislated criteria Sections 3(1)(b)(iii) of Schedule C of the EAPWDR in being the least expensive appropriate medical equipment, was reasonably supported by the evidence and confirms the ministry decision.