

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "Ministry") reconsideration decision dated August 7, 2013 which held that the Appellant was denied funding for a manual wheelchair and wheelchair seating for failing to meet the legislative requirements stipulated in the *Employment and Assistance for Persons With Disability Regulation* ("EAPWDR") Schedule C, sections 3(2)(b), 3.2(2)(a) and 3.3(1).

### PART D – Relevant Legislation

EAPWDR, section 62 and schedule C sections 3, 3.2, 3.3.

## PART E – Summary of Facts

The evidence before the Ministry at reconsideration was as follows:

1. The Ministry's Medical Equipment Request and Justification form (the "Form") dated November 8, 2012 which stated that the Appellant needed a wheel chair as a result of chronic back ache due to a degenerative disc disease. The Form was signed by a medical practitioner.
2. Quotation dated March 25, 2013 for a manual wheelchair in the total amount of \$1,462.50 and wheelchair seating in the total amount of \$367.08.
3. Letter dated April 17, 2013 from the occupational therapist (the "OT") to the Medical Equipment Program (the "Report") stating the following:
  - the Appellant requested funding for a manual wheelchair and that he has a history of degenerative disc disease for two incidents that occurred approximately 14 years ago and 3 years ago.
  - the Appellant stated he needed a manual wheelchair for outdoor mobility and community access;
  - the Appellant indicated that he could only walk a block before his back, hips and knees started to hurt;
  - the Appellant reported pain in his arm and pain in his lower limbs with increased mobilization;
  - the Appellant indicated he was housebound and could not mobilize far. He could mobilize for a block and then his back and legs started to hurt; and
  - the Appellant said he could access the community if he had a manual wheelchair.
4. Medical Equipment Request Tracking Sheet dated April 23, 2013 written by the OT (the "Tracking Sheet"). The Tracking Sheet stated, among other things, that the "client reported having disc disease... and that to improve mobility "the client stated that he needs a MWC." The Tracking Sheet noted that the Appellant can walk a block before his back, hips and knees start to hurt and that a wheelchair would allow his friends to "wheel him around and take him on trips..."
5. Letter dated June 11, 2013 from the Ministry to the Appellant denying the Appellant's request for the wheelchair and wheelchair seat.
6. Fax cover page dated July 2, 2013 from the Advocate to the Ministry requesting an extension request with the following document attached:
  - Consent for Authority to Act and Release of Information dated July 2, 2013 signed by the Appellant giving the Advocate the authority to act on behalf of the Appellant.
7. Fax cover page dated August 7, 2013 from the Appellant's advocate (the "Advocate") to the Ministry with the following documents attached:
  - Employment and Assistance Request for Reconsideration dated July 2, 2013 denying

the Appellant a wheelchair and wheelchair seating.

- Letter from the Advocate dated August 7, 2013 reiterating the reasons for denial of the wheelchair and listing the applicable legislation (the "Advocate Letter").

The Advocate under the 'Submissions' section of the Report submitted that the OT identified the medical conditions of the Appellant and that the OT stated that the Appellant was "only able to walk one block before he experiences pain in his back, hips and knees" and that this relates to the "medical need" of the wheelchair.

The Advocate further submitted that the medical practitioner described in the Form the Appellants condition as "Chronic Backache due to Degenerative Disc Disease' and the medical practitioner recommended a wheel chair for the Appellant."

The Advocate stated that the Report identified the Appellant is "limited to walking one block" and that the Appellant is virtually "housebound" and not able to "mobilize far" preventing him from accessing "shops, banks and community services".

The Advocate also made note of a prescription dated August 7, 2013 which stated that the Appellant is in need of a wheelchair.

8. Prescription from a medical practitioner dated August 7, 2013 stating that the Appellant is suffering from a medical condition and requires a wheel chair for basic mobility (the "Prescription").

The Appellant provided the following additional documentary evidence:

9. Fax cover page dated September 11, 2013 written on behalf of the Advocate to the Employment and Assistance Appeal Tribunal (the "Tribunal") with attached submissions:

- Letter from the Advocate dated September 11, 2013 which identified the issue and reviewed the reasons for denial and applicable legislation (the "Advocate Letter 2").

The Advocate reviewed and summarized the issue and the reasons for denial and also included the applicable legislation and policy guidelines when determining what was medically essential to achieve or maintain basic mobility and how it is to be applied to specific scenarios.

The Advocate reviewed the documents provided by the Appellant that included the Report.

The Advocate also reviewed the Form and noted that the medical practitioner indicated the Appellant had a "Chronic Backache due to Degenerative Disc Disease" and recommended the wheelchair. The Advocate also referred to the Report noting again that the Report stated that the Appellant can only walk one block and has limited mobility.

- Medical Imaging Report (the "MRI Report") exam date April 28, 2013 showing in the 'Summary' section that the Appellant had 1) a moderately severe compression; 2) moderate circumferential disc bulge causing moderate compression upon the thecal sac; and 3) degenerative disc disease with posterior osteophyte formation and facet degeneration.
- Letter dated September 1, 2013 from the Appellant to the Tribunal (the "Appellant Letter"). The Appellant listed his reasons for requesting a wheelchair which included:

The Appellant suffers from degenerative disc disorder and that cannot walk more than a block and he experiences pain in both shins.

The Appellant explained that he needed the wheelchair for basic shopping, banking and to get outside. The Appellant pointed out these amenities are more than a block from his house contrary to what the Ministry suggested.

The panel finds that the Advocate Letter 2, MRI and Appellant's Letter are admissible under section 22(4) of the EAA as it was in support of the records before the Ministry at reconsideration. The additional evidence is relevant and provides clarity that supports the Appellant's argument that he has a medical need for the wheelchair and wheelchair seating system pursuant to Schedule C, section 3(2), 3.2 and 3.3 of the EAPWDR .

## PART F – Reasons for Panel Decision

The issue whether the Ministry's decision to deny the Appellant funding for a manual wheelchair and wheelchair seating system for failing to meet the legislative requirements stipulated in the *Employment and Assistance for Persons With Disability Regulation* ("EAPWDR") Schedule C, sections 3(2)(b), 3.2(2)(a) and 3.3(1) is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstance of the Appellant.

The legislation provides that a recipient of disability assistance may be provided a health supplement if, among other things, the recipient provides to the Ministry a prescription of a practitioner and/or an assessment by an occupational therapist ("OT") confirming the medical need for the medical equipment. Schedule C, section 3(2)(b) EAPWDR states the following:

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.

A wheelchair is considered a health supplement for the purposes of the legislation if the Ministry is satisfied the wheelchair is "medically essential to achieve or maintain basic mobility" pursuant to section 3.2(2)(a) of the EAPWDR. Section 3.2 subsections (1) and (2)(a) state the following:

- 3.2 (1) In this section, "wheelchair" does not include a stroller.
- (2) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:
- (a) a wheelchair;

A wheelchair seating system is also considered a health supplement for the purposes of the legislation if the wheelchair seating system is "medically essential to achieve or maintain a person's positioning in a wheelchair." Section 3.3(1)(a) states the following:

- 3.3 (1) The following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain a person's positioning in a wheelchair:
- (a) a wheelchair seating system;

The Ministry argues that the criterion in the EAPWDR Schedule C, sections 3(2)(b), section 3.2(2)(a) and 3.3(1) have not been satisfied and the recipient is not entitled to funding for a wheelchair and wheelchair seating system.

### ***Did the Report confirm that the Appellant has a medical need for the wheelchair?***

Schedule C, section 3(2)(a)(b) state that a recipient may be provided with a health supplement of

which a wheelchair is included if, among other criteria that have already been met by the Appellant, the Appellant additionally provides to the Ministry a a) prescription; and/or b) a report from an OT "confirming the medical need for the medical equipment."

The Ministry argued that there was not sufficient evidence detailed in the Report provided to confirm there was a medical need for a wheelchair. The Ministry submitted that instead of confirming the Appellant's need for the wheelchair, the Report showed that the Appellant was "independently able to perform activities of daily living" such as maneuvering indoors without the need or use of assistive devices.

The Ministry acknowledged that while the Report suggested the Appellant can only walk one block without pain, the Ministry concluded that the Appellant did not provide evidence to support that the Appellant could not continue after a "rest period" or that remedial measures such as "analgesics" and taking alternative modes of transportation such as handydart, public transit and the taxi saver program would not offer a solution.

The Appellant argued that the Report did confirm his medical need for a wheelchair and reiterated that the Report supported that he was only able to walk one block before he had pain in his "back, hips and knees" and indicated that as a result the Appellant was "housebound" and not able to access the community or "mobilize far."

The Appellant stated that being able to only walk one block does not "provide a person with basic mobility to access the community." The Appellant indicated that a number of essential community services were located beyond a block of the Appellant's residence and that he was not able to access them as he was unable to go any great distances on foot.

On examination of the Report, the panel agrees with the Ministry that there is insufficient information or evidence to confirm or support that the Appellant has a medical need for the wheelchair. The Report does not provide any information to support or confirm the seriousness of the medical condition and whether or not a wheelchair is medically **required** or if some other alternative would suffice, such as a cane, walker or handydart for example.

It was generally noted in the Report the Appellant has a history of degenerative disc disease and there was mention under 'Physical Status' that the Appellant reported "pain and weakness" in his left arm and that he "[r]eports pain with increased mobilization." While what the Appellant reported to the OT is clear, beyond that the Report does not provide sufficient information that would otherwise suggest that the Appellant has a medical need for the wheelchair.

The Report did not provide any clinical test results, for example, or other pertinent information beyond what the Appellant informed the OT. The Report seemingly was not written to relay the professional opinion of the OT, but moreso to parrot what the Appellant determined his condition to be and what he believed was medically required.

The Appellant did submit an MRI Report that he argued confirmed his medical need for the wheelchair, however, the law is clear and states that a recipient is to provide a prescription and/or a report from an OT that confirms the medical need for the medical equipment. The Report again does not adequately provide confirmation of a medical condition that would warrant the need for a

wheelchair.

The panel therefore agrees with the Ministry and finds the Ministry was reasonable in the finding that the Appellant was ineligible for funding for a manual wheelchair and wheelchair seating for failing to meet the legislative requirements of Schedule C, section 3(2)(b).

***Is the wheelchair medically essential to maintain or achieve basic mobility?***

Schedule C, 3.2(2)(a) of the EAPWDR addresses whether or not a wheelchair is considered a health supplement for the purposes of the legislation. A wheelchair may be considered a health supplement and funded by the Ministry if the Ministry is satisfied the wheelchair is “medically essential to achieve or maintain basic mobility.”

The Ministry argued that the wheelchair was not essential to maintain basic mobility as the appellant is able to walk a block independently and stated that there was no information to suggest that he could not continue after a “rest period” or that using “medication to control pain” would not be sufficient. The Ministry noted that the Appellant is not currently using other assistive devices such as a cane, crutch or walker to assist in his daily activities.

The Appellant argued that the wheelchair is essential to achieve basic mobility. In the Advocate Letter 2, the Advocate stated that the Report noted that the Appellant is limited to a block radius before the Appellant experiences pain and that consequently the Appellant is housebound due to his inability to “mobilize far.”

The Advocate further argued that a medical practitioner also verified the need for the wheelchair in the Form itself and stated that the Appellant suffers from “Chronic Backache due to Degenerative Disc Disease” and that the medical practitioner recommends a wheelchair for the Appellant.

The panel agrees with the Ministry that there is not sufficient information to support that the a wheelchair is essential to achieve basic mobility. As previously noted, the Report does not provide information that would support a serious injury that necessitates a wheelchair to achieve basic mobility.

The Appellant did submit additional documents of which the MRI was included. The MRI noted the Appellant has a moderately severe compression, moderate circumferential L 4-5 bulge causing moderate compression upon the thecal sac and ultimately a degenerative disc disease but without an accompanying letter from a physician translating the document, the results for our purpose are inconclusive as they offer little in support illustrating the Appellant’s physical limitations.

The panel therefore finds the Ministry was reasonable in the finding that the Appellant was ineligible for funding for a manual wheelchair and wheelchair seating for failing to meet the legislative requirements of Schedule C, section 3(2)(b).

***Is the wheelchair seating system medically essential to achieve or maintain a person’s positioning in a wheelchair?***

Schedule C, section 3.2(2)(a) states that a wheelchair seating system is also considered a health supplement for the purposes of the legislation if the wheelchair seating system is medically essential

to achieve positioning in a wheelchair.

The Ministry argued that the Appellant is "independently mobile" with "no difficulty positioning" and therefore fails to meet the legislative requirements for funding for a wheelchair seating system.

There was ample evidence provided to show that the Appellant is capable of moving around on his own and is capable of at least walking a block without discomfort. The Appellant also acknowledged that the purpose for the request for the wheelchair is for distances as he claimed he is not able to do without experiencing pain. The Appellant is likewise able to mobilize without the aid of any devices within close proximity of his home.

It is therefore reasonable to conclude that a wheelchair seating system is not medically essential for the Appellant to achieve positioning in a wheelchair.

The panel therefore finds the Ministry's determination that the Appellant has been denied funding for a wheelchair and wheelchair seating system for failing to satisfy the requirements of the EAWPDR Schedule C, sections 3, 3.2 and 3.3 was a reasonable application of the applicable enactment in the circumstances of the Appellant and confirms the decision.