

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated August 29, 2013, which denied the Appellant's request for medical equipment and devices - a scooter. The Ministry found that the legislative criteria set out in EAPWDR Schedule C, sections 3(2)(b) and 3.4(3)(a) and (c) were not met. The Ministry found that an assessment by an occupational therapist or physical therapist confirming the need for the scooter was not provided as required under section 3(2)(b), an assessment was not provided from an occupational therapist confirming that it is unlikely the Appellant will have a need for a wheelchair during the following five years as required under section 3.4(3)(a) and the minister, under section 3.4(3)(c), was not satisfied that the scooter is medically necessary to achieve or maintain basic mobility.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 62

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, Sections 3 and 3.4

PART E – Summary of Facts

Information before the Ministry at Reconsideration included:

1. The Appellant's Request for Reconsideration, stamped as received by the Ministry Aug. 13, 2013, in which the Appellant stated that she has degenerative disk disease, polymiicitis and arthritis which make walking difficult, that she has difficulty breathing and swollen feet and that she has a special needs child.
2. A report from the Appellant's physician dated August 7, 2013, stating that she has disc degenerative disease, arthritis, left hip bursitis, tendonitis and COPD, reporting that the Appellant may possibly need a wheelchair during the next 5 years, that the Appellant is safe accessing the community without a scooter, that the physician does not consider that the Appellant's medical condition will worsen if she does not get a scooter and that in his opinion, the Appellant does not require a scooter for basic mobility.
3. A copy of a Medical Equipment Request and Justification dated April 29, 2013, with a letter dated April 17, 2013 in which an Occupational Therapist (OT) states that the Appellant reports that she is currently independent with respect to household ambulation, that she has no gait aids and a slight limp, that the Appellant states that she is able to walk approximately 200m outside if she pushes herself, but has pain, that the Appellant reports independence in performing activities of daily living and child care and that the Appellant reports that she would like to have a scooter to assist her in accompanying the children and shopping.
4. A note from the Appellant's physician dated December 12, 2012, stating that the Appellant has severe degenerative disc disease in her lower back which impairs her mobility and that she would benefit from a scooter.
5. A quote for a 4 wheeled scooter dated April 16, 2013.
6. A copy of a letter from the Ministry to the Appellant dated June 27, 2013, advising her of the decision to deny her request.
7. A copy of the Ministry's Medical Equipment and Devices Decision Summary dated June 27, 2013.
8. A copy of the Ministry's Medical Equipment Request – Tracking Sheet dated April 29, 2013.
9. A copy of the Appellant's Request for Reconsideration dated August 1, 2013.
10. A copy of a note from the Appellant's physician dated July 12, 2013, stating that the Appellant has chronic degenerative polyarthritis and chronic obstructive lung disease which significantly limit her ability to walk distances longer than a block without having to stop and rest.

At the hearing, the Appellant stated that she is raising three grandchildren, two of whom have special needs. The six year old cannot go to school alone, so she must accompany him. She stated that she forces herself to do things, but suffers physically and has fallen several times. She stated that she has no help at home. The Appellant stated that the physician's report is not accurate - he has not seen her walk, and she could not function without pain medication. In response to a question from the Panel, the Appellant stated that she drives to shop. In response to a question from the Ministry, the Appellant stated that she has not been assessed for any other mobility aids.

The Ministry stated that the decision was based on information from the physician and the OT. The physician stated that the Appellant's condition will not worsen without a scooter and the OT's report does not appear to be an assessment, but a report of information provided by the Appellant.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's decision to deny the Appellant's application for medical equipment and devices – a scooter, because her application does not meet the criteria set out in EAPWDR Schedule C, sections 3(2)(b) and 3.4(3)(a) and (c).

Legislation

EAPWDR

62 Subject to subsections (1.1) and (1.2), the minister may provide any health supplement set out in section 2 [general health supplements] or 3 [medical equipment and devices] of Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who is

- (a) a recipient of disability assistance,
- (b) a person with disabilities who has not reached 65 years of age and who has ceased to be eligible for disability assistance because of
 - (i) employment income earned by the person or the person's spouse, if either the person or the person's spouse
 - (A) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (B) is aged 65 or more and a person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
 - (ii) a pension or other payment under the *Canada Pension Plan (Canada)*, or
 - (iii) money received by the person or the person's spouse under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,
- (c) a person who was a recipient of disability assistance on the day he or she became 65 years of age and a dependant of that person, if the dependant was a dependant of the person on that day and remains a dependant of that person,
- (d) a dependant of a person referred to in paragraph (a) or (b) (iii),
 - (d.1) a dependant of a person referred to in paragraph (b) (i), if any person in the family unit
 - (i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
 - (d.2) a dependant of a person referred to in paragraph (b) (ii),
 - (d.3) a dependant of a person referred to in paragraph (f), if any person in the family unit
 - (i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
- (e) a dependent child of a recipient of hardship assistance,
- (f) a person with disabilities who has ceased to be eligible for disability assistance because of an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or the person's spouse, if

- (i) the person is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
- (ii) the person is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, or
- (g) a person whose family unit ceases to be eligible for disability assistance because of financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*, during the term of the agreement.

Schedule C

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.

The Appellant's position is that she needs a scooter to help with child care, and her physician's report is not accurate with respect to her ability. She stated that she has disc disease and polymyocitis with arthritis that make it difficult to walk long distances.

The Ministry's position is that their decision is based on the physician's and OT's reports, and those reports do not meet the legislative requirements for provision of a scooter. Specifically, the Ministry argued that the application appears not to be based on medical need but access to the community and that the Appellant's physician reported that she is able to walk a block before needing to rest; she may possibly need a wheelchair within the next 5 years; that she is safe accessing the community; that, in his opinion, her condition will not worsen if she does not get a motorized scooter and that in his opinion, she does not require a scooter for basic mobility. The Ministry found that the Appellant's Occupational Therapist (OT) reported that the Appellant is independent with respect to household ambulation; that she is able to walk approximately 200m outside; that she is independent with activities of daily living and child care and that the OT made few observations in the report, instead reiterating the Appellant's self-reports.

The Panel finds that the Ministry reasonably concluded that it has not been established that a scooter is medically essential for the Appellant to achieve or maintain basic mobility, as required by Section 3.4(3)(c) of Schedule C, EAPWDR. The physician's report explicitly states that in his opinion the Appellant does not require a scooter for basic mobility, and the OT's report does not address this issue. With respect to Section 3(2)(b) of Schedule C, EAPWDR, the Panel finds that the Ministry reasonably concluded that an occupational therapist or physical therapist has not confirmed the medical need for a scooter as the OT's report does not contain a recommendation and the physician indicated in his report that the Appellant does not require a scooter for basic mobility. In addition, the Panel finds that the Ministry reasonably concluded that the requirement of Section 3.4(3)(a) of Schedule C, EAPWDR was not met, as the OT did not confirm that it is unlikely that the Appellant will have a medical need for a wheelchair during the following five years; the Appellant's physician stated that she possibly will require a wheelchair during that period.

The Panel finds that the Ministry's decision is reasonably supported by the evidence. The Panel confirms the Ministry's decision