

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”), reconsideration decision dated December 2, 2013 wherein the ministry determined that the appellant’s request for a scooter did not meet the eligibility requirements set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). In particular, the minister was not satisfied that the:

1. item requested is the least expensive appropriate medical equipment to meet the needs of the appellant, as required by the EAPWDR, Schedule C, subsection 3(1)(b)(iii);
2. information provided by the occupational therapist (OT) confirms that the request for a new scooter is based on a medical need, as required by the EAPWDR, Schedule C, subsection 3(2)(b); and
3. item requested is medically essential to achieve or maintain basic mobility, as required by the EAPWDR, Schedule C, subsection 3.4(3)(c);

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

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

1. A letter dated July 31, 2013 from a Community Occupational Therapist addressed to the ministry, which among other matters states that: (a) the appellant has been diagnosed with two medical conditions, including a lung condition and arthritis in his hips and knees; (b) he is having greater difficulty walking 2 blocks and accessing community resources independently; (c) he must rest many times when he walks even 2 blocks and if walking up a hill has to rest even more; (d) he feels exhausted and has difficulty breathing after ambulating outside short distances; (e) his walking is impaired due to arthritis in his hip and knees; (f) as such, he is becoming housebound and unable to get out to community resources; (g) he is becoming dependent on others to help him pick-up groceries, attend medical appointments, and he will not be able to use public transit; (h) the appellant should obtain a scooter to manage his medical conditions when mobilizing about community; (i) this will enable him to conserve energy, manage pain in joints, prevent undue stress to his joints and manage fatigue due to his medical conditions; (j) the appellant is safe to drive a scooter and will require a reclining backrest to accommodate his hip position; (k) he can transfer independently on/off a scooter and requires a scooter to access community resources and maintain his independence; (l) the appellant has tried two scooters with a backrest and an A3 (three wheeled) basic Pride scooter worked well for the appellant for moving in/out of his small apartment, the elevator and hallways of his building; (m) a Pride 3 wheel scooter will provide mobility to access community resources including the bus; and (n) a quote from a medical equipment supplier as well as Medical Equipment Justification Form are attached;
2. A quote from a medical equipment supplier dated July 30, 2013, which indicates the price of a Pride scooter with backrest to be \$3049.20;
3. A Medical Equipment Justification Form dated July 31, 2013 signed by the Community Occupational Therapist, which refers to the letter justifying medical equipment and the quote (i.e. items 1 and 2 above);
4. A Medical Equipment Request and Justification dated July 9, 2013 signed by a medical practitioner that recommends a "scooter" for the appellant because of the appellant's two medical conditions;
5. A letter dated September 24, 2013 from the appellant to the ministry that states, among other matters that: (a) his request for scooter for a disabled person has been pending since August 6, 2013; (b) the ministry should not deny requests for medical benefits by simply refusing to answer requests, as that is in conflict with the disabilities act and regulations; and (c) requests an answer from the ministry;
6. A letter dated November 19, 2013 from a medical practitioner that states that: (a) the appellant has several medical conditions that significantly limit his mobility; (b) he is unable to carry groceries due to pain and shortness of breath; and (c) as recommended by his Occupational Therapist, a scooter is the best solution to keeping the appellant mobile and independent in the community, and prevent further deterioration of his health;

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7. An annotated map drawn by the appellant that states, among other matters, that (a) everything in his life (i.e. from the area where he resides) requires an uphill walk; and (b) the buses are 2-3 blocks away, and are painful to get to;
  8. A patient appointment information form indicating that the appellant has an appointment for a medical test on December 13, 2013;
  9. A note from the community health department dated May 24, 2005, which states that the appellant needs custom made orthotic shoes;
  10. A Request for Reconsideration dated November 21, 2013 signed by the appellant, which includes a submission containing extracts from "Wikipedia" describing the medical conditions of the appellant in detail. Among other things, it states that:(a) the applicant was seen by a podiatrist in 2005 and received orthopedic foot-beds from the ministry; (b) scooter is required at this point to lessen pain caused by uphill walking; (c) without the scooter some medical conditions will worsen; (d) a scooter is required to assist with outside shopping and appointments without having to sit every block due to breathing problems; (e) the appellant has long term depression; (f) use of a scooter outdoors will dramatically reduce agitation and avoid the need for a wheel chair for the next five years; (f) the appellant's pain can be debilitating and could prevent him from doing activities; and (g) one of the appellant's medical conditions usually gets worse over time and is the fourth leading cause of death;
  11. A medical equipment and devices decision summary attached to the Request for Reconsideration dated November 4, 2013 completed by the Health Assistance Branch.

Subsequent to the reconsideration decision, the appellant filed a Notice of Appeal dated December 13, 2013, which states, among other matters that: (a) the appellant had trialed two scooters and a 3 wheeled scooter was recommended over a 4 wheeled scooter, as it was easier for the appellant to steer; (b) the ministry requires an occupational therapist to do an assessment and, if he/she "rules out a cane and walker, they do not do it recklessly", but help the person find the best way for the present; (c) the ministry cannot ignore the assessment of the occupational therapist; (d) the appellant cannot walk 2 blocks without pain in his hip and shortness of breath; cannot (should not) carry weight or walk up slopes, particularly with the orthopedic foot-beds provided by the ministry. As these statements relate to the appellant's occupational therapist's assessment and recommendation for the scooter as well as the appellant's physical limitations, the panel admits the statements in the Notice of Appeal as written submissions in support of information that was before the ministry at the time of reconsideration decision under section 22(4)(b) of the Employment Assistance Act.

The ministry did not participate in the teleconference hearing. The panel confirmed that the ministry was notified of the hearing and the hearing proceeded under section 86(b) of the Employment Assistance Act.

At the hearing of the appeal, the appellant referred to a reconsideration decision of the ministry dated August 18, 2010 (which was not before the ministry at the time of the reconsideration decision dated December 2, 2012, but was submitted to the Tribunal by the appellant on December 18, 2013) and stated that in August 2010 the ministry had contacted his medical practitioner to obtain additional

information/clarifications that were needed in the context of the 2010 reconsideration decision. The appellant stated that the ministry is obliged to seek such additional information, but did not do so in respect of the December 2013 reconsideration decision. The appellant has a cane and a walker as well as crutches, which he occasionally uses, both inside as well as outside of his apartment, but both his medical practitioner and the occupational therapist ruled these out as effective remedies for his medical condition because he has difficulty holding on to these items due to his sciatica. The appellant has serious medical conditions and his major problem is walking uphill. He has lived at his current apartment for a long period of time and the surrounding neighborhood that he needs to access is all uphill from where he lives. He further stated that he: (a) feels exhausted and has difficulty walking due to his medical conditions for which he has already received a medical device (orthotics) funded by the ministry; (b) gets out of breath after walking short distances and there are no places (benches) for him to sit upon after such short distances; (c) has difficulty getting on to even on a small bus that has three steps to climb; (d) needs to rest for a few days in his apartment before he can get out; (e) the medical practitioner and the occupational therapist have advised him not to walk uphill carrying weights due to his current medical condition; (f) it is difficult for anyone to predict with any degree of certainty as to whether he will or will not require a wheelchair within the next 5 years; and (g) he trialed two scooters; one was with three wheels and the other was with four wheels; (h) it was easier for the appellant to use the three-wheeled scooter in his small apartment and, as such, it was recommended for him by the occupational therapist; (i) the three wheel scooter is cheaper than four wheel scooter.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision dated December 2, 2013, which determined that the appellant's request for a scooter did not meet the eligibility requirements set out in EAPWDR as the minister was not satisfied that the:

1. item requested is the least expensive appropriate medical equipment to meet the needs of the appellant, as set out in the EAPWDR, Schedule C, subsection 3(1)(b)(iii);
2. information provided by the OT does not confirm that the request for a new scooter is based on a medical need, as set out in the EAPWDR, Schedule C, subsection 3(2)(b); and
3. item requested is medically essential to achieve or maintain basic mobility, as set out in the EAPWDR, Schedule C, subsection 3.4(3)(c);

The relevant applicable legislation is as follows:

### Employment and Assistance for Persons with Disability Regulation

#### General health supplements

62 (1) 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  (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(a) a recipient of disability assistance,

(c) a person who was a recipient of disability assistance on the day he or she became 65

(2) A person referred to in subsection (1) (b) or (f) and his or her dependants and a person referred to in subsection (1) (c) cease to be eligible for any supplement under this division if the person's family unit takes up residence outside British Columbia. (B.C. Reg. 170/2008)

### SCHEDULE C Health Supplements

#### 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 (B.C. Reg. 197/2012)

(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:  (B.C. Reg. 197/2012)

(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.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section 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. (B.C. Reg. 197/2012)

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if

(a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and

(b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed. (B.C. Reg. 197/2012)

(4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.

(5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if

(a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and (B.C. Reg. 197/2012)

(b) it is more economical to repair the medical equipment or device than to replace it.

(6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

(B.C. Reg. 61/2010)

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.C. Reg. 197/2012)

(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; (B.C. Reg. 197/2012) (c) the minister is satisfied that the item is medically essential to achieve or maintain basic mobility.

(3.1) The maximum amount of \$4 500 under subsection (3) (b) applies if an assessment by an occupational therapist or a physical therapist has confirmed that the person for whom the scooter has been prescribed has a body weight that exceeds the weight capacity of a conventional scooter but can be accommodated by a bariatric scooter. (B.C. Reg. 197/2012)

(4) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years after the minister provided the item being replaced.

(5) A scooter intended primarily for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

(B.C. Reg. 61/2010)

The appellant's position is that he has several medical conditions that affect his mobility. As a result of these medical conditions he feels exhausted and gets out of breath after walking short distances and there are no places (benches) for him to sit upon after such short distances; he has difficulty getting on to even on a small bus that has three steps to climb; he needs to rest for a few days in his apartment before he can get out; his medical practitioner and occupational therapist have advised him not to walk uphill carrying weights due to his current medical condition; the neighborhood in which he has lived for many years is surrounded by streets that are mostly uphill; he therefore has a medical need for a scooter; he has trialed two scooters; one was with three wheels and the other with four wheels; it is easier for the appellant to use the three-wheeled scooter in his small apartment and, as such, it was recommended for him by the occupational therapist; and that a three wheel scooter is logically cheaper than a four wheel scooter.

As stated in Section E, the ministry did not participate in the teleconference hearing. However, based on the reconsideration decision, the panel notes that the ministry's position is that it is not known whether the scooter recommended for the appellant is the least inexpensive appropriate medical equipment for the appellant as required under section 3(1)(b)(ii) of the Schedule C of the EAPWDR; the information from the appellant's physician and occupational therapist does not confirm that the request for the scooter is based on medical need as required under section 3(2)(b) of Schedule C of EAPWDR; and the ministry is not satisfied that the scooter is medically essential for the appellant to

achieve or maintain his basic mobility as required under section 3.4(3)(c) of the Schedule C of the EAPWDR.

Sections 3 and 3.4 of Schedule C of the EAPWDR prescribe various criteria that the appellant must meet to be approved for a new scooter requested by him. Amongst them, the following three specific requirements are the subject of this appeal, all of which must be met by the appellant to be eligible for the new scooter requested by him. The panel discusses each of these three requirements in detail below.

The first requirement is whether the appellant has met the criterion prescribed under section 3(1)(b)(iii), which requires that the medical equipment or device requested to be the "*least expensive*" appropriate medical equipment. The panel notes from the occupational therapist's assessment dated July 31, 2013 that the appellant trialed only two scooters. There is no information in this assessment or elsewhere in the record or information before the minister at the time of the reconsideration decision that confirms that the occupational therapist had considered and/or ruled out the suitability or otherwise of other options such as a four wheel walker and/or a wheelchair to address the appellant's medical conditions and resulting restrictions to mobility. Furthermore, there is only one price quote on record i.e. in the amount of \$3049.20 for the Pride Victory model scooter. However, the relevant section requires that the requested item must be the "*least expensive*", thereby implying that there should be at least one or more additional quotes in order to compare prices and determine that the proposed scooter is the "*least expensive appropriate*" item in the circumstances of the appellant. Therefore, the panel finds the ministry reasonably determined that the criterion prescribed section 3(1)(b)(iii) has not been met.

The second requirement is whether, the appellant has met the criterion prescribed under section 3(2)(a) and (b), which requires that the appellant must provide to the ministry one or both of (a) the prescription of a medical practitioner or nurse practitioner for the medical equipment or device and (b) an assessment by an occupational therapist (OT) or physical therapist (PT) confirming the medical need for the medical equipment or device. With regard to the prescription from a medical practitioner, as required under section 3(2)(a), the panel notes that the ministry acknowledges in the reconsideration decision that the appellant's medical practitioner has requested a scooter; therefore, the requirement of a prescription from a medical practitioner is not an issue in this appeal.

With regard to the assessment of an occupational therapist confirming the medical need for the scooter, as required under section 3(2)(b), the panel notes that:

- the appellant's physician's letter dated September 17, 2013 confirms that the appellant has several conditions affecting his mobility; he is unable to carry groceries due to his medical condition and that a scooter is the best solution to prevent further deterioration of his health. Furthermore, in the Medical Equipment Request and Justification Form dated July 9, 2013, the same physician has "*recommended*" a scooter for the appellant in order to address the appellant's lung and mobility conditions; and
- in the assessment dated July 31, 2013 the occupational therapist has confirmed under the heading "*Physical Status and Functional Status*" that the appellant is having difficulty walking two blocks; if he walks up a hill, he has to rest more often; he feels exhausted and has difficulty breathing after ambulating short distances; and his walking is impaired due to his



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other medical conditions. Under the heading "Recommendations", the occupational therapist has confirmed that a scooter will help the appellant conserve energy, manage pain and manage fatigue related to his medical condition. Based on this evidence, the panel finds that an occupational therapist has confirmed the medical need for the equipment requested by the appellant. Therefore, the panel finds that the ministry unreasonably determined that the occupational therapist has not confirmed that the request for a new scooter is based on medical need, as required under subsection 3(2)(b).

The third requirement is whether, the appellant has met the criterion prescribed under section 3.4(3)(c), which requires that the medical equipment or device requested by the appellant (the new scooter) is "*medically essential to achieve or maintain basic functionality*". As more particularly described in the two immediately preceding paragraphs, the panel finds that both the prescription from the medical practitioner and the assessment by the occupational therapist demonstrate that the item requested by the appellant is medically essential to achieve or maintain the basic mobility of the appellant. The preceding conclusion of the panel that the ministry unreasonably determined that there is no "*medical need*" for the scooter is reinforced by the evidence of the appellant at the hearing regarding his physical limitations that are due to his medical condition, described in Section E above. Therefore, the panel finds that the ministry unreasonably determined that the equipment requested by the appellant is not "*medically essential*" to achieve or maintain his basic functionality, as required under subsection 3.4(3)(c).

Based on the foregoing findings, the panel finds that the ministry reasonably determined that the appellant has not met at least one of the three criteria described above, all of which are essential requirements under sections 3 and 3.4 of Schedule C of the EAPWDR, in order for the appellant to be eligible for the medical equipment requested by him. Therefore the panel finds that ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the relevant enactment in the circumstances of the appellant. The panel confirms the reconsideration decision of the ministry.