



PART C – Decision under Appeal

The decision under appeal is the November 12, 2013 reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”) refusing the appellant’s request for a supplement in the form of a power wheel chair. The ministry held that the appellant had not satisfied two legislative criteria.

- Firstly, the ministry found that an assessment by an occupational therapist (“OT”) or physical therapist had not confirmed the medical need for the power wheel chair, as required by Schedule C section 3(2)(b) of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”).
- Secondly, the ministry found that it could not determine that the power wheelchair is medically essential to achieve or maintain basic mobility, as required by Schedule C section 3.2(2) of the EAPWDR. *(The panel notes that in its decision the ministry twice referred erroneously to section 3.4(3)(a), but from the context it is clear that the ministry intended to refer to section 3.2(2).)*

PART D – Relevant Legislation

EAPWDR Schedule C sections 3(2)(b) and 3.2(2).

PART E – Summary of Facts

With the consent of both parties, the appeal hearing was conducted in writing in accordance with section 22(3)(b) of the *Employment and Assistance Act* ("EAR")

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

- An assessment of the appellant performed by an OT, dated May 6, 2013, with an attached quote for a Permobil M300 power wheelchair and enhanced seating in the amount of \$8,400.48. The assessment was endorsed by the appellant's physician on May 23, 2013 with the statement "By signing my name below, I acknowledge that I have read the preceding letter and agree with the recommendations contained therein."
- A letter from the appellant's physician dated October 29, 2013, stating "This letter is to confirm that I am [the appellant's] family physician and that she is significantly disabled and would benefit from a motorized wheelchair."
- The appellant's handwritten reconsideration submission.

In his assessment, the OT stated that:

- the appellant suffers from diabetes, depression and chronic urinary/renal disorder, and that she was recently diagnosed with liver disease/failure. He noted the latter is expected to be a chronic condition and the appellant will likely be on a wait list for a transplant.
- the appellant was able to walk without aids in her suite at her assisted living residence, and that she used her four wheel walker to access areas outside her suite and the dining room. He noted that "She is not able to manage walking distances outside the facility safely."
- according to the appellant, there are days when she is unable to manage any significant distance outside her suite because of pain, shortness of breath, and abdominal swelling. He indicated that the appellant is in need of power mobility "for longer distances and distances outside her suite when she is unable to walk comfortably."
- the appellant's condition is expected to progress and this will likely result in increased reliance on power mobility in the future.
- the appellant anticipates using the power wheelchair most often outdoors.

The OT assessed the appellant for her ability to use a power wheelchair, and concluded that she could do so safely. The OT recommended the Permobil M300 with modified seating.

In her reconsideration submission, the appellant made the following statements:

- she did not fully understand why she was denied.
- she has diabetic nerve pain in her legs and feet which makes it painful for her to walk.
- she can walk a quarter mile but then is so tired that she has to sit down on her walker before returning home for fear that she will not be able to make it to her destination and back again.
- when she goes out for air she usually needs another resident to help her back inside. She then often has to sit on a chair to wait for staff to help her because the walker becomes too heavy to push.
- when her chronic abdominal pain is too great she has to walk bent over while leaning on her walker.
- If she were to receive a motorized wheelchair she would not need to worry about the pain caused by walking, which would greatly improve the quality of her life.

- recent high potassium levels cause severe cramping when she walks.

Admissibility of New Information

In her Notice of Appeal dated November 15, 2013, the appellant wrote that the pain and cramping she has on a routine basis is very disabling and prevents her from getting out and having any quality of life. She stated that a wheelchair would help her manage pain, including diabetic nerve pain in her legs.

In a letter dated December 5, 2013, (the "December 5 Letter") the appellant's physician wrote that "[The appellant] has multiple medical problems and is significantly disabled. One of her major issues is peripheral neuropathy as a result of her diabetes. As such she has very poor sensation in her legs and does not know where her feet are when she walks. She has had multiple falls as a result and is in danger of serious injury. She is able to use a walker but still has trouble knowing where her feet are and, again, it makes it difficult with mobility."

The information in the Notice of Appeal is consistent with the previous information provided by the appellant. The information in the December 5 Letter regarding peripheral neuropathy causing the appellant to not know where her feet are was not before the ministry at the time of reconsideration. If this information reflected a change in the appellant's condition that arose after reconsideration, it would not be admissible into evidence as it would not meet the statutory test of being "oral or written testimony in support of the information and records" that were before the ministry at the time of reconsideration as set out in section 22(4) of the *Employment and Assistance Act*. However, there is no evidence before the panel to indicate that this is a new condition, and it is linked to her diabetes which was a condition that was before the ministry.

For the foregoing reasons, the panel has accepted the information in the Notice of Appeal and the December 5 Letter as evidence in accordance with section 22(4) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision and proffered no new evidence.



PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's decision to deny the appellant's request for a supplement in the form of a power wheelchair on the bases that the OT has not confirmed the medical need for a power wheelchair as required by EAPWDR Schedule C, section 3(2)(b), and that the wheelchair is not medically essential to achieve or maintain basic mobility as required by EAPWDR Schedule C, section 3.2(2).

The relevant legislation is as follows:

EAPWDR, Schedule C

Medical equipment and devices

3 (2) For medical equipment or devices referred to in sections 3.1 to 3.8, 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 – wheelchairs

3.2 (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;
- (b) an upgraded component of a wheelchair;
- (c) an accessory attached to a wheelchair.

The appellant's position is that both her physician and her OT have recommended that she needs a power wheelchair. She says the evidence confirms that walking (particularly outside her residence) causes pain, fatigue, and discomfort, and that she is at risk of injury due to falls. She argues that if she could manage independently she could not be living in her assisted living facility.

The ministry's position, as set out in its reconsideration decision, is that the evidence is insufficient to establish that the OT's assessment confirms the medical need for a power wheelchair, or that a power wheelchair is medically essential to achieve or maintain basic mobility.

Panel Decision

The panel notes that the appellant had applied for two supplements: the power wheelchair and a wheelchair seating system as identified in section 3.3 of Schedule C of the EAPWDR. The ministry referenced the wheelchair seating system in its reconsideration decision, but did not expressly make a decision on this supplement. Neither party advanced any argument to the panel with respect to the wheelchair seating system. Accordingly, the panel has confined its decision to dealing solely with the power wheelchair.

Section 3(2)(b) – confirming medical need

The evidence of the OT in his assessment indicates that the appellant is able to walk without aids within her suite, and that she can walk to other areas of the facility with the use of her walker. The OT noted the appellant's statement that there are some days when she feels too much discomfort to be able to walk any significant distance outside her suite. There is no evidence to indicate how often those days occur.

With respect to mobility outside the facility, the OT stated that the appellant is not able to manage walking distances outside the facility safely. The appellant's evidence, however, indicates that she can walk a quarter mile before having to rest, after which she returns to her residence. The December 5 Letter raises the issue of loss of sensation with the associated risk of falls and injury. Since none of the appellant, the physician, or the OT appeared to believe the risk of falling was sufficiently great to raise it either at first instance or at reconsideration, the panel has decided it can give little weight to the December 5 Letter.

On balance, the evidence indicates that the appellant manages her mobility inside her suite without any aids, and that outside her suite but within the facility she can usually manage with her walker, though there are some days of unspecified frequency when using the walker causes discomfort. The appellant is able to walk up to a quarter mile outside the facility, and then back again. Based on this evidence, the panel finds that the ministry reasonably concluded that the OT's assessment does not confirm a medical need for the power wheelchair.

Section 3.3(2) – medically essential to achieve or maintain basic mobility

Section 3.2(2) of EAPWDR Schedule C requires the ministry to be "satisfied" that the wheelchair is "medically essential" to achieve or maintain basic mobility. The plain meaning of the word "essential" is that a thing is "of the essence" or necessary, and can't reasonably be done without. The term "basic mobility" is not defined in the legislation. Given the context within which the term is used, the panel concludes that it is the degree of mobility necessary for one to be able to manage daily living activities.

Based on the evidence as discussed earlier in these reasons, the panel concludes that the power wheelchair is not needed for basic mobility within the facility. There is no evidence before the panel to demonstrate that the appellant's degree of mobility outside the facility is insufficient to enable her to attend to her basic needs. For the reasons given above, the panel has given little weight to the December 5 Letter. Accordingly, the panel finds it was reasonable for the ministry to conclude that the power wheelchair is not medically essential to achieve or maintain basic mobility.

Conclusion

The panel acknowledges that the appellant's mobility is impacted by her medical conditions. However, for the foregoing reasons the panel concludes that the ministry's decision was a reasonable application of the legislation in the circumstances of the appellant and therefore confirms the ministry's decision.