

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) Reconsideration Decision dated November 22, 2013 which denied the appellant's request for funding for a power wheelchair with tilt and head rest on the basis that the request does not meet the legislative criteria as per Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule 3, Sections:

3(1)(b)(iii) because the medical equipment or device requested is not the least expensive appropriate medical equipment or device;

3(2)(b) because an assessment by the physiotherapist has not confirmed the appellant's medical need for the requested medical equipment or device; and

3.3(1)(a) because the minister is not satisfied that the item is medically essential to achieve or maintain a person's positioning in a wheelchair, specifically a wheelchair seating system.

The ministry had approved funding for a power wheelchair with seating (less head rest) for the appellant on September 12, 2013.

PART D – Relevant Legislation

Employment and Assistance Regulation for Persons with Disabilities Regulation, (EAPWDR).
Section 62 and Schedule C, Section 3.

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of:

- o September 6, 2013, a quote for a power wheelchair with accessories totaling \$9478.73;
- o September 12, 2013, the physiotherapist's notes which began on August 20, 2013 regarding the request for a power wheelchair with tilt and seating for the appellant;
- o September 12, 2013, a letter from the ministry approving the appellant's request for a M300 PS power wheelchair with seating less head rest totaling \$9,028.73;
- o September 24, 2013, a letter from the appellant's physician stating that it would be beneficial for the appellant to have the feature of a head rest on her electric wheel chair; and
- o November 6, 2013, a Request for Reconsideration.

The physiotherapist's notes indicate that the appellant is unable to ambulate and uses tilt to relieve chronic back pain and to relieve pressure on her buttocks. The appellant is noted as able to do weight shifts in the wheelchair, able to transfer on level services and uses a transfer board when moving to and from uneven surfaces. The physiotherapist indicated that the tilt does not appear medically essential and that the request for the tilt is to manage fatigue and back pain. Also, it is noted that the head rest is not required if tilt is not funded.

Oral Testimony

The appellant advised the panel that her advocate was not available to attend. The appellant described her situation as being placed in a regular chair at the kitchen table, indefinitely. She stated that she has throbbing pain in her spine, doesn't go out much, cannot do weight shifts and that she has never transferred to an uneven surface. The appellant stated that she can only pivot with the aid of her walker. She stated that she is currently using a power wheelchair with a tilt that has been loaned to her by a supplier until the appeal hearing is over and that she cannot manage without having the same equipment. The appellant stated that her long time physician had sent the ministry another letter providing more details regarding her need for the tilt on the power wheel chair. In response to a question by the panel, the appellant indicated that she had last seen her physician on December 3, 2013 and that he had confirmed that the letter to the ministry had already been sent. The appellant also indicated that the physiotherapist who noted that the tilt was not medically essential had only seen her 3 days and that her regular physiotherapist knew her better. The appellant also indicated that her regular physiotherapist and her physician had different opinions about her abilities. The appellant added that the stress of this process is negatively affecting her health and she is very concerned that she won't be permitted to use the loaned chair much longer.

The ministry stood by the details in the reconsideration decision and confirmed that as of this date, the appellant's file did not contain the physician's letter as referred to by the appellant in her testimony. In response to a question by the panel, the ministry confirmed that the tilt and head rest are accessories to a wheelchair seating system and not part of the wheelchair seating system.

Admissibility of New Information

In her oral testimony, the appellant provided new information regarding her ability to position herself and the nature and frequency of the assistance she requires. This information provides additional detail with respect to the medical condition of the appellant. The ministry has testified that it was not in receipt of the physician's most recent letter as referred to by the appellant in her testimony. The ministry's testimony directly relates to the issue under appeal. Accordingly, the panel has admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the Employment and Assistance Act.

APPEAL #

Findings of Fact

The appellant is eligible for medical equipment and devices under Section 62 of the EAPWDR.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision which denied the appellant's request for a power wheelchair with tilt and head rest on the basis that the request does not meet the legislative criteria as per Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule 3, Sections:

3(1)(b)(iii) because the medical equipment or device requested is not the least expensive appropriate medical equipment or device;

3(2)(b) because an assessment by the physiotherapist has not confirmed the appellant's medical need for the requested medical equipment or device; and

3.3(1)(a) because the minister is not satisfied that the item is medically essential to achieve or maintain a person's positioning in a wheelchair, specifically a wheelchair seating system.

Relevant Legislation: Schedule C, Section 3 of the EAWPDR

Medical equipment and devices — wheelchairs

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; (b) an upgraded component of a wheelchair; (c) an accessory attached to a wheelchair. (3) 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. (4) A high-performance wheelchair for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

Medical equipment and devices — wheelchair seating systems

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;
- (b) an accessory to a wheelchair seating system.

(2) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is 2 years from the date on which the minister provided the item being replaced.

The appellant's position is that she is eligible for a power wheelchair with tilt and head rest because she has throbbing pain in her spine, doesn't go out much and cannot do weight shifts. She indicated that she has never transferred to an uneven surface. She stated that she is currently using a power wheelchair with a tilt that has been loaned to her by a supplier until the appeal hearing is over and that she cannot manage without having the same equipment. The appellant argues that her physician has confirmed the medical need for a power wheelchair with tilt and head rest.

The ministry's position is that appellant does not meet the legislated criteria because the evidence does not confirm that the appellant has a medical need for the power wheelchair with tilt and head rest and that the physiotherapist has not confirmed that the tilt function and head rest are medically essential and that the power wheelchair that was approved by the ministry will not meet the appellant's medical need for equipment.

Panel's Findings

The panel finds that the ministry reasonably determined that the requested power wheelchair with tilt and head rest is not the least expensive appropriate medical equipment or device pursuant to Schedule C, Section 3(1)(b)(iii) because the physiotherapist has noted that the tilt does not appear medically essential. For the same reason, the panel finds the ministry reasonably determined that the physiotherapist has not confirmed the medical need for the requested medical equipment or device as required under Schedule C, Section 3(2)(b) of the EAPWDR.

Although the physician's report indicates that that it would be beneficial for the appellant to have the feature of a head rest, the evidence does not establish that the tilt and head rest are medically essential to achieve or maintain a person's positioning in a wheelchair as required under Schedule C, Section 3.3(1)(a) of the EAPWDR. Therefore, the panel finds that the ministry has reasonably determined that the legislative requirements as noted were not established.

In applying the legislation to the facts of the case, the panel finds that the ministry's decision was reasonable as the evidence confirms that the appellant does not meet all the requirements of the legislation. Thus, the panel confirms the ministry's decision.