



### PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated 5 November 2013 in which the Ministry determined that the appellant was not eligible for medical equipment, a manual wheelchair, because the item is not medically essential to achieve or maintain basic mobility as the manual wheelchair has been requested for transportation purposes and it has not been confirmed that the provision of a second mobility device is required to achieve or maintain basic mobility under section 3.2(2)(a) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 62.  
Employment and Assistance for Persons with Disabilities Regulation, Schedule C, sections 3 and 3.2.



## PART E – Summary of Facts

The evidence before the Ministry at reconsideration included:

- A one-page letter dated 9 July 1998 from the ministry to the appellant approving a “Flyer 3 wheeled scooter” for an amount not to exceed \$3,491.00.
- A one-page letter dated 11 December 2006 from the ministry to the appellant approving a “Cobra scooter” for an amount not to exceed \$3,737.00.
- A two-page letter dated 3 September 2009 from the ministry to the appellant approving a “Chinook power wheelchair” for an amount not to exceed \$8,083.60.
- A one-page quote dated 6 July 2009 from a power wheelchair provider for a Chinook Power Wheel Chair and assorted items for a total of \$8,080.13 to be shipped to an occupational therapist (OT) for the appellant and to be billed to the ministry.
- A four-page Medical Equipment Request & Justification dated 16 July 2009 filled by an OT and signed by her as well as signed by a ministry worker and by the appellant. Attached to that form was a three-page letter of support for the request dated 6 July 2009 by the OT, signed by her, and countersigned by the appellant’s family physician indicating that the appellant needed a powered wheelchair since she could not use a “manual wheelchair independently due to the pain in her hands and arms and her limited strength”. As well, the scooter that the appellant had was no longer an appropriate mobility device for her because of the changes in her medical condition and she was not leaving her home anymore or waited for her relatives to take her out. According to the OT, a power wheelchair was “the only solution to increase [the appellant’s] mobility, independence and, as a result, quality of life”.
- A one-page quote dated 30 May 2013 from a wheelchair provider for a manual wheelchair and accessories for a total of \$1,637.76 for the appellant and to be billed to the ministry.
- A two-page Medical Equipment Request and Justification form dated 18 July 2013 for a manual wheelchair filled and signed by an OT and signed by the appellant. Attached to that form, a two-page letter dated 19 July 2013 written and signed by the OT and countersigned by the appellant’s family physician acknowledging having read the letter and agreeing with its recommendations. The letter indicated that the appellant has a complex surgical history including numerous hip surgeries, hip fracture with plate and replacement, neuropathy and depression along with excruciating pain for which she is on medication. The OT stated that the appellant had been using a manual wheelchair on a loan for a few months and that it was “very beneficial to her to be able to go out for appointments and outings with her family and supports because they were able to load it into their vehicles. She was also able to use it independently for short distances and noted an improvement in her strength with the use”. The OT wrote that the appellant will need her own manual wheelchair “to continue to be able to access appointments and her community”. The letter also indicated the appellant had had for three years a powered wheelchair “for long distances” and that she was able to manage “most of the time with a two wheel walker in her suite, however at times the pain is too much to be able to walk and she must use a wheelchair”. Finally the letter mentioned that she relied on her family for her appointments but that they were unable to transport the power wheelchair.
- With her Request for Reconsideration dated 25 October 2013, the appellant stated that her power wheelchair was too large and heavy for a number of things and was surprisingly limiting in her performance of daily living activities (DLA). She stated that her medical condition had deteriorated and that she needed a chair wherever she went but that she could not go to many outings since her power wheelchair was too heavy to put in a vehicle or even to bring over a

[REDACTED]

single step. She stated that she was still using her walker in her apartment but she increasingly needed a chair for doing her chores and the power wheelchair was still too large for her small apartment and that it could even be dangerous in such a confined space. She also mentioned that when she got the manual wheelchair on a loan, she needed assistance to push it but that after some time, she found that the strength in her arms had increased considerably and that she really benefitted from the exercise. She concluded stating that a manual wheelchair would be a great benefit to her, "allowing more independence, the opportunity to get out more and to associate more with others".

With her Notice of Appeal dated 18 November 2013, the appellant indicates that she does have a "companion chair" that is over 20 years old and needs to be replaced but a chair like that would not be practical since she would still need someone to push it. She states that when using the companion chair she is completely dependent on other people to move her and often has to ask strangers to help her going to the washroom in public places. After her last surgery, she spent 4 months in rehab, learning to depend on a manual wheelchair and got one on loan for a few months when she returned home. Her power chair is too large for her small apartment and she concludes by indicating that a manual wheelchair is of vital importance for her so that she might be as independent as possible "as well as keeping some quality and dignity in my life".

At the hearing, the appellant testified that her medical condition changed in 2012 when she was hospitalized for 2 months for a series of surgeries to her knee and hip and then was in rehab for another 4 months thereafter, particularly to build some strength and use a manual wheelchair. She explained that the "transport wheelchair" that she got from her parents is the "companion chair" referred to in her Notice of Appeal and that she should not really use as it is feet propelled and since her surgeries in 2012, she was not supposed to use her feet given her incapacity but she did it nonetheless as it was more practical than the power wheelchair that is too big for her apartment. She also had to use her walker much more than in the past but it is extremely difficult given her incapacity in one leg. She would not want to replace her electric wheelchair with the manual one since she often has to go to a mall that is reachable with that chair but not with a manual wheelchair since it would be too far away.

The appellant advised that she wanted to introduce new evidence before the panel in the form of a letter dated 3 December 2013 from a psychiatrist who had her in her care since 2008 for depression and who indicated that the appellant was unable to walk on her own but needed a wheelchair. She stated that her electric wheelchair was of limited help as was too heavy and big, "even for her to move in her own apartment" and indicated a manual wheelchair "would help her to be more independent and mobile" and "that would greatly improve her mood". The ministry objected to the admissibility of this letter as they had not been informed in advance of its existence but did not seek an adjournment.

The panel determined that the additional oral and documentary evidence was admissible under s. 22(4) of the Employment and Assistance Act as it was in support of the records before the ministry at reconsideration and clarified the situation of the appellant to this day. However, the panel finds that minimal if any weight can be given to the psychiatrist's letter as it does not directly address the issue of basic mobility for the appellant but rather deals with a mental health issue that is incidental to the physical condition of the appellant and that has no impact on mobility.



## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant was not eligible for medical equipment, a manual wheelchair, because the item is not medically essential to achieve or maintain basic mobility as the manual wheelchair has been requested for transportation purposes and it has not been confirmed that the provision of a second mobility device is required to achieve or maintain basic mobility under section 3.2(2)(a) of Schedule C of the EAPWDR, was a reasonable application of the legislation or reasonably supported by the evidence.

Medical equipment and devices are dealt with in section 3 of Schedule C of the EAPWDR:

**3 (1)** Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.11 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, 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...

And, specifically for wheelchairs, section 3.2 applies:

**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.

The ministry argued that the appellant already had a power wheelchair since 2009 that was deemed to address the appellant's basic mobility along with another transport wheelchair that had been provided by her parents. At the time when the powered wheelchair was approved, both the appellant's OT and physician indicated she could not use a manual wheelchair independently and



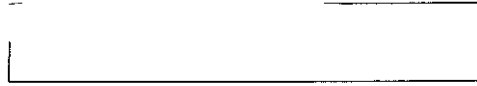
that she needed a powered wheelchair to address her basic mobility needs, in particular going on errands outside the home and taking into account she also had a transport wheelchair that could be used as well as a walker. The ministry further stated that she had the ability to use handyDART transport in her community that is equipped to accommodate her electric wheelchair and that this equipment provided basic mobility performing day to day activities in her home and community and thus, the appellant's request boiled down to a request not for basic mobility but rather for transportation purposes. The ministry took the position that the new request did not provide any medical evidence that her condition had changed since 2009 when the evidence was to the effect that she could not use a manual wheelchair.

The appellant argued that her life would be significantly improved if she had a manual wheelchair, along with the electric wheelchair. She stated that the power wheelchair was too large and cumbersome for her apartment to be of any use and could even be dangerous if she inadvertently pushed a button and that she had to use a type of equipment, a walker or the companion chair, that was not adapted to her condition and that might even worsen it. With a manual wheelchair she could go much more easily in the community and meet people and her parents or other people would be able to put it in any vehicle and that would allow her much more flexibility to move around. She argued that her medical condition had on the one hand deteriorated as a result of surgeries but, on the other hand, her strength had increased to the point where after rehab she was able to use a manual wheelchair, something she was not able to do in 2009. Her quality of life would be greatly improved, allowing her more independence and a better ability to associate with other people.

The panel notes that the ministry in its decision relied greatly on a letter dated "July 8, 2008" by the OT while the evidence includes a letter that is actually dated 6 July 2009, along with a Medical Equipment Request & Justification dated 16 July 2009 and the panel finds the ministry actually referred to that letter since no letter dated "July 8, 2008" is part of the record. The panel also notes that in its reconsideration decision, the ministry indicated that in the documentation the appellant had provided there was no mention of the transport wheelchair purchased by her parents; this issue was addressed in the appellant's Notice of Appeal where she mentioned this "companion chair" was over 20 years old, worn out and needed to be replaced which she confirmed at the hearing. Thus the panel finds this issue was addressed for the purpose of the appeal.

The panel finds it was unreasonable for the ministry to determine that it was not aware the appellant had a change in her medical condition that would allow her to use a manual wheelchair. In fact, the evidence by the OT and the appellant's physician was precisely to the effect that her medical condition had changed and that she had been able to use a manual wheelchair "for the past 4 months and it was very beneficial to her" and that she was able to use it "for short distances and noted an improvement in her strength with the use". This was also confirmed in the appellant's statement that the ministry did not take into account and considering the evidence as a whole, the panel finds there was ample evidence to show the appellant's medical condition had changed and she could now use a manual wheelchair.

Yet, the evidence before the ministry at reconsideration and the new evidence at the hearing did not address the medical need for a manual wheelchair for basic mobility. The panel considers that "transportation" is part of mobility and day to day activities, the ministry erroneously isolated "transportation" from mobility while, at the same time recognized and found that the appellant needed



a powered wheelchair as a means of transportation to do her own shopping, banking, errands and join a mental health support group. However, the panel finds it was reasonable for the ministry to determine that the appellant's basic mobility had been addressed with the equipment she already had as she was able to perform her day to day activities in her home and community. While it is clear it would improve the appellant's quality of life, no evidence was presented to show that since 2009 her situation had changed to the extent that a manual wheelchair was now medically essential to achieve or maintain her basic mobility and therefore the panel finds the ministry reasonably determined that the conditions of s. 3.2(2) of Schedule C of the EAPWDR had not been met.

For those reasons, the panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.