

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation ("the ministry") dated 02 December 2013 that denied the appellant's request for a Quickie 646 SE power wheelchair ("Quickie") with power tilt, recline and elevating legrests, Matrix PB backrest, custom Ride cushion and other positioning components. The ministry held that the information provided does not establish that the following criteria set out in section 3 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation were met:

- that there are no resources available to the appellant to pay the cost or to obtain the equipment requested;
- that all the components and accessories requested are the least expensive to meet the appellant's needs; and
- that all the components and accessories requested are medically essential to achieve or maintain basic mobility.

The ministry acknowledged that it was reasonable that the appellant's wheelchair should continue to be configured with power tilt, recline and elevating leg rests.

On 17 September 2013, the ministry had approved a Torque SP power wheelchair ("Torque") with tilt (less certain features). Funding was not provided for a Matrix PB backrest, as the ministry had provided a replacement in March 2012.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C, sections 3, 3.2 and 3.3.

## PART E – Summary of Facts

The ministry did not appear at the hearing. After confirming that the ministry was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration included the following:

1. From the ministry's files: the appellant is designated as a person with disabilities.
2. A Medical Equipment Request and Justification application dated 01 February 2013, completed by the appellant's medical practitioner and also signed by his occupational therapist (OT), on staff of a health authority orthotics, prosthetics and seating centre. Section 1 of the application, to be completed by a ministry worker, does not show "Yes" or "No" tick marks against the questions relating to EAPWDR eligibility or other resources available. The appellant's medical condition is described as spinal cord injury, incomplete C5 injury, wheelchair dependent. Attached is a quote from a supplier for a Quickie (base price \$10,640) with accessories and attachments in the amount of \$30,954.
3. An assessment by the appellant's OT dated 20 February 2013, with recommendations regarding the Quickie configuration (see below and Part F, Reasons for Panel Decision below).
4. A comparison quote from the same supplier dated 18 July 2013 for a different wheelchair, a 3G Storm Arrow (base price \$8,479), with similar configuration to the Quickie quoted above, costing \$27,248.
5. A quote from the same supplier for a Torque (base price \$6,324 after 12% discount) with a tilt only system, costing \$13,472, less certain features marked as "No" by the ministry's OT.
6. A Health Assessment Branch decision summary dated 17 September 2013 denying the appellant's request for a Matrix PB backrest as it had not been 2 years since the minister last replaced the item.
7. A letter dated 17 September from the ministry to the appellant advising him that he had been approved for wheelchair seating (headrest, hip belt) and the Torque (less MPJ, suspension shocks, fender, and battery boxes).
8. A letter from the appellant's medical practitioner regarding the need for a replacement wheelchair. The physician writes: "One of his main issues is that he needs to be able to elevate his feet mechanically. The reason behind this is so that he can privately empty his leg bag. Without this he is not able to use public washroom facilities."
9. The appellant's Request for Reconsideration dated 08 October 2013. The request seeks an adjustment of the power wheelchair approval, as the power base approved by the ministry does not adequately meet the appellant needs. Also requested is reconsideration of the denial of power recline and elevating leg rests. A Ride cushion request was also overlooked.
10. The memo dated 26 November 2013 from the appellant's OT to the ministry in response to questions of clarification sought by the reconsideration officer (see below and Part F below).
11. A copy of the invoice from the wheelchair supplier to ICBC dated 08 November 2006 relating to the appellant's current Quickie, with a total cost of \$29,333.
12. A clarification log entry dated 02 December 2013 by the reconsideration officer reporting on a conversation with the above-referenced supplier concerning the sophistication of the electronics requested to operate the power tilt, recline and elevated leg rests. The supplier referred the reconsideration officer to the manager of a related company. The reconsideration officer e-mailed this other person, but by the time the decision was issued he had not replied.
13. An information package on the Equipment and Assistive Technology Initiative (EATI -- a

federal-provincial initiative funded by the Labour Market Agreement between the Government of Canada and the Province of BC). The information package states that EATI is different from other programs, including providing "Equipment-unique-to-needs: The EATI provides items that are not typically available through other government programs, and provides items that may not typically be considered to be assistive technology. The network identifies the non-medical equipment such as tablet computers, and laptops can meet a person's accessibility needs."

In his Notice of Appeal, dated 12 December 2013, the appellant writes: "Power recline and power elevating leg rests – which are both essential as a basic mobility need for safe transfers and independent toileting. Custom Ride cushion which is essential to maintain skin integrity and prevent pressure ulcers."

In a submission dated 16 December 2013 the ministry provided an annotated quotation from the manager of the company referred to in #12 above. The ministry notes that this information only became available after the reconsideration decision was issued and does not affect the outcome of the decision. The quote appears to be for a 3G Storm base unit with power tilt and recline. No total cost is provided. The manager wrote:

"With respect to your question about medically essential components for basic mobility unfortunately I cannot answer that question as I am not an occupational therapist. In addition, I have never met [the appellant] and I am not aware of his exact condition. What I was providing at the time [i.e. the quote referenced in #2 above] was a replacement unit for [the appellant's] Quickie power chair (I think it was a Quickie). What I can say however is that this particular system would be considered a little more advanced as a result of a power seating options."

#### Background information provided by the OT-A

In her assessment and subsequent memo, the appellant's OT reports as follows:

- The appellant sustained a spinal cord injury in 2005 resulting in C5 quadriplegia. "[The appellant] is a determined individual who is managing to live independently with the assistance from regularly scheduled caregivers. He is a part-time student and volunteer and is determined to improve his vocational skills and employability."
- The appellant's current [same model] Quickie is now showing significant wear and needing more repairs recently. The appellant relies heavily on this power base for outdoor mobility and for work and school. This power base has been an excellent platform for the appellant as it has enabled him to be independent in many areas: outdoor mobility for various leisure pursuits; stamina for mobility during long work and school sessions; and toileting with use of the power elevating leg rests.
- The appellant uses an electric device to assist with emptying of his catheter. This electric device works in tandem with the power elevating feature for catheter emptying, enabling the appellant to be completely independent with toileting during outings.
- The appellant presents with fluctuating tone. He has strong and frequent extensor spasms. These periods of hypertonicity require extra effort to move and results in high fatigue. He also has an asymmetrical posture with right convex scoliosis and right pelvic obliquity.
- He has a previous history of skin breakdown but has had good skin integrity with his current custom Ride cushion. This Ride cushion is now seven years old and the foam is quite

collapsed and no longer providing adequate pressure relief.

- His current backrest provides good lateral trunk support and stability. He also relies heavily on the use of tilt at all times to prevent trunk instability and forward falls. Tilt positioning is also a key for safe transfers as it prevents him from falling out of this chair during transfers when his spasticity is triggered. During transfers, his spasticity results in a "throwback" position which places him at risk of falls. Repositioning is also safer when he is in tilt.
- The Quickie meets the appellant's mobility needs more adequately than the Torque. The Quickie provides greater suspension, crucial to decreasing the appellant's strong spasms. His spasms are triggered by jarring from driving rough terrain and this places him at risk for falling out of his chair. The Torque does not provide adequate suspension and will result in increased spasticity for the appellant.
- The appellant has limited income and has only an adequate amount to pay for his basic living expenses. He does not have extra funds to pay for upgrades, but has applied for EATI assistance and is now waitlisted. EATI has a 4-5 month waitlist before any new applications are processed.
- There are a number of features for the requested Quickie which the OT acknowledges are not medically essential but would increase the appellant's functional independence and safety: LED light kit, airless inserts, chrome/black pneumatic tires, arm pad storage container.

At the hearing, in his presentation and in answer to questions, the appellant provided the following testimony:

- He is classified as medical services only (MSO) with the ministry; he was in receipt of disability assistance until his indexed CPP disability benefits started to exceed the allowable disability rate.
- He provided a spreadsheet showing his income tax returns from 2008 to 2012. In 2012, the most recent year available, his income was approximately \$22,400, including \$11,400 of CPP disability benefits and \$8900 of the employment income. The latter was from part-time work at his college.
- He reviewed the circumstances under which he obtained his current wheelchair. After his injury he spent many weeks at a rehabilitation hospital where staff there helped him trial and test different wheelchairs, seating components and configurations. His current machine, based on the Quickie base unit, was the one finally selected for him. It was paid for by ICBC out of his "Part 7" maximum \$150,000 settlement. The balance of that entitlement has been spent on a van equipped to load his wheelchair (which he cannot drive himself because of his spasticity), a reclining chair and home modifications. His file with ICBC has been closed.
- He completed his EATI application in September or October 2013 and was advised that there was a waitlist of several months before his application would be considered.
- He has had success in the past in securing funding from community resources – e.g. bursaries from charitable organizations. He volunteers with organizations that help people with disabilities and feels he would know of any other sources to fund a replacement wheelchair.
- He is determined to make the most of his life out in the community, upgrading his education to enable him to find suitable employment, working as a volunteer and participating in recreational activities such as sailing and camping.
- He emphasized the importance of obtaining a new custom Ride cushion for skin integrity, as his current version now provides little cushioning. There are many different brands available, but this is the one that was found to work for him. He also stressed the need for the power lift, recline and elevated leg rest features, referring to his physician's letter.

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- He also emphasized his need for a good base unit suspension system. This is important not only for the rough terrain he might encounter in his volunteer work or recreational activities but also on a daily basis: the frequency and amplitude of spasticity is amplified by factors such as cold weather or stress and he needs the good suspension to absorb his spasms.
  - The appellant also reviewed the need for certain safety features requested (see Part F, Reasons for Panel Decision below).

The panel finds that the new information provided by the ministry before the hearing and by the appellant at the hearing is in support of the information before the ministry at the time of the reconsideration decision. The information provided by the appellant provides background relating to his current wheelchair and clarifies the rationale for some of the features requested in a replacement wheelchair. The panel therefore admits the ministry's submission and the appellant's testimony pursuant to Section 22(4)(b) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision that denied the appellant's request for a Quickie 646 SE power wheelchair ("Quickie") with power tilt, recline and elevating leg rests, Matrix PB backrest, custom Ride cushion and other positioning components was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. More specifically, the issue is whether the ministry reasonably determined that the information provided does not establish that the following criteria set out in section 3 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation were met:

- that there are no resources available to the appellant to pay the cost or to obtain the equipment requested;
- that all the components and accessories requested are the least expensive to meet the appellant's needs; and
- that all the components and accessories requested are medically essential to achieve or maintain basic mobility.

The ministry acknowledged that it was reasonable that the appellant's wheelchair should continue to be configured with power tilt, recline and elevating leg rests.

The relevant legislation is from the EAPWDR, 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.
- (3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a 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.

- (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) 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.

#### **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.

#### **No resources available**

The position of the ministry, as set out in the reconsideration decision, is that information was not submitted with the appellant's original application to demonstrate that he has explored other resources available to provide the requested medical equipment. This question was not addressed on the Medical Equipment Request and Justification form submitted by the appellant's OT. It was not until the reconsideration officer raised the issue of alternative funding that the OT advised that the appellant had applied to EATI for assistance and was now waitlisted. The ministry is the payer of last resort, when all other resources have been exhausted, and it is not clear that the appellant has

completely canvassed alternative sources of funding available to him.

The appellant's position is that with an annual income of about \$22,000, and with the costs of living with his disability and tuition he does not have the financial resources to pay for a new power wheelchair. His original wheelchair was paid for by ICBC, but his Part 7 benefits of \$150,000 have long since been exhausted and his file with ICBC is closed. He has applied to EATI, but is waitlisted and there is no certainty that his application will be considered, let alone approved or how long that process will take. He is used to accessing community resources, and has had success in obtaining small grants, such as bursaries. He works as a volunteer with others who are disabled and would know if there were other avenues to explore and cannot think of any.

#### *Panel findings*

The panel notes that Section 1 of the Medical Equipment Request and Justification form is to be completed by a ministry worker, with the basic eligibility and no resources criterion resolved before a great deal of time and effort goes into determining whether the requested item meets the other criteria. As the ministry did not attend the hearing, the panel was unable to ascertain the reasons for why section 1 was not fully completed or why the Torque machine was approved without this criterion being an issue. Given the appellant's own limited financial resources, the uncertainty surrounding his EATI application, and with his ICBC file closed, and considering that the ministry did not attend the hearing and so was not able to provide any suggestions as to what other funding alternatives might be explored, the panel finds that the ministry was not reasonable in determining that this criterion had not been met.

#### *Least expensive appropriate wheelchair and medically essential for basic mobility*

The panel will consider these two criteria together as they overlap and as the ministry dealt with them together.

The position of the ministry is that the information provided does not establish that all the components and accessories requested are the least expensive appropriate or that they are medically essential to achieve or maintain basic mobility. The reconsideration decision includes an Appendix C which contains a list of features recommended by the appellant's OT, amounts and instances when it appears less costly alternatives could be explored.

The reconsideration decision refers to the approximate \$2000 price difference between the requested Quickie base unit and the Torque, but notes that the OT has reported that the Quickie would meet the appellant's mobility needs more adequately, as it provides greater suspension which is crucial to decreasing his strong spasms.

The ministry states that the OT has recommended that the new wheelchair have power tilt, power recline and power elevating leg rests and has submitted evidence that the appellant's current wheelchair came with these features. The ministry states that it seems reasonable that his new wheelchair should continue to have this configuration.

The ministry notes that there are a number of recommendations for the controls and electronics that will be required to operate a power tilt, recline and elevating leg rests. The ministry notes that all



these functions operate on the current wheelchair with a P & G controller and that therefore this less sophisticated electronic system may be adequate.

The decision reviews a number of other features requested, including a swing-away joystick mounting, center platform foot plates, a custom Ride cushion and lateral thigh supports, without taking exception to any of these.

The ministry also noted that there are remaining upcharges requested by the appellant, but these are problematic as the costs vary with each quote.

As noted above, Appendix C to the reconsideration decision provides comments against some of the configuration components. These are related to the electronics items to operate the power systems and to a padded seatbelt: ("alternatives not explored"). No comment is provided against the Quickie base unit. A separate table lists items not recommended by the appellant's OT (client preferences), including certain safety items as well as front and back wheel pneumatic tires.

The appellant's position is that he will be "living in" his replacement wheelchair 14 hours a day for the next 5 to 7 years. Therefore comfort, safety and mobility for his daily living, including work and volunteering, are paramount. His current wheelchair was configured after extensive trialing at a rehabilitation hospital to suit his particular circumstances. It has worked well for him for the past 7 years, but now needs to be replaced – even the ministry will not pay for any repairs to it because of its condition. He would prefer the recommended Quickie for the reasons explained by his OT. He also requires the power tilt, recline and elevated leg rest features for the reasons documented by his physician and his OT, and appreciates the ministry's recognition of this. As to the electronic controls for these power features, he is unfamiliar with the unit recommended by his OT (or the supplier), and his attitude is "whatever works."

Regarding the safety features he has requested, the LED lights are necessary to make him visible at night to motorists, as crossing streets at night downtown is dangerous in a wheelchair. The four point transit package is required for him to be able to secure his wheelchair properly in a bus or in the back of his van – jury rigging a strap around the axle does not meet ICBC or other regulatory standards. The swing away removable hardware for his hip support is necessary for him to be able to remove the hip support to slide in and out of the chair. The requested arm pad storage container is for his keys and medications. He has no idea why the pneumatic tires for his front and rear wheels are listed under client preferences, as all wheelchairs must obviously have wheels and tires and there is nothing special about the tires requested. Chrome or other finish is not an issue for him. His current, recently replaced, Matrix PB might fit on a new Quickie, but that cannot be determined until he actually has the opportunity to have that tried. He expressed frustration at having to go through this process with so many intermediaries, including his OT and suppliers.

#### *Panel findings*

With respect to the "least cost appropriate" criterion, the panel considers the primary consideration must be whether the requested item is "appropriate." As the appellant points out, he will be "living in" his new wheelchair some 14 hours per day for the next 5 to 7 years. The wheelchair, with its components and accessories, must be configured to his particular physical, physiological and medical circumstances and be suitable for his daily living, including working, volunteering and going to school.

In the panel's view, a request must meet the appropriateness test before cost considerations become a factor.

As to the "medically essential" criterion, the panel considers safety to be an important consideration. A person in a wheelchair is in a particularly vulnerable position, particularly this appellant who is strapped to his wheelchair around his waist and his legs. Whether out on the street or in a vehicle, anything that could cause the wheelchair to roll-over or up-end could result in serious damage to the physical health of the person in the wheelchair, with medical consequences.

Turning to the ministry's response to the requested wheelchair, the panel notes that the decision as written refers to "all the components and accessories requested." It is unclear to the panel whether the Quickie base unit is included as a "component," as no comments were offered against this item in Appendix C of the decision and this could not be verified with the ministry as it did not attend the hearing. If in fact the Quickie base unit is considered a "component," and the ministry determined it did not meet one or both criteria, the panel would find such a determination unreasonable. Considering the appellant's spasticity, the panel considers this unit to meet the "appropriate" test and the "medically essential for basic mobility" criterion, for the reasons provided by the appellant's OT and cited by the ministry in its decision. While the Torque base unit may be less expensive, the OT's evidence is that this unit "does not provide adequate suspension and will result in increased spasticity for [the appellant]." While this sentence is from a paragraph that also mentioned "rough terrain," the appellant at the hearing stated that an equally important consideration is the need for a suspension system that will absorb his spasms and not amplify them. In the panel's view, the Torque base unit does not meet the "appropriate" test. Without an appropriate base unit with which to make a cost comparison, the panel considers it reasonable to rely on the independent professional expertise of the appellant's OT in identifying a cost-effective base unit: she is on staff at a health authority centre which specializes in assistive equipment.

The ministry has acknowledged that the appellant's replacement wheelchair should continue to have the power tilt, recline and elevated leg rest features. The ministry has also noted in its decision, and listed in Appendix C without comment, the need for a swing-away joystick, mounted center platform foot plates, a custom Ride cushion and lateral thigh supports. The panel understands this to mean that the ministry found that these components met the "least cost appropriate" and "medically essential for basic mobility" criteria. The main concern appears to be the electronics package to operate the power systems. The panel has no expertise in this area, or evidence before it, to come to any determination other than, as the appellant has stated, further consideration is required on "whatever works" within the parameters of the two criteria.

As to the items listed by the appellant's OT as "not medically essential" and by the ministry under "client preferences" in Appendix C of the reconsideration decision, the panels considers two of them, on the basis of the appellant's testimony, to be reasonable safety features – the four point transit package and the LED light kit. Despite the OT's categorization of these as "not medically essential," injury due to the absence of such safety features could have serious medical consequences. The panel considers operating the wheelchair when it's dark outside or travelling in the wheelchair on the bus as "basic mobility." The panel would therefore consider it unreasonable not to find these safety features meeting the "appropriate" test and the "medically essential for basic mobility" criterion.

The need for the swing away removable hardware for the hip support has been adequately explained

by the appellant: without it, on/off transfers would be impossible for him, rendering the wheelchair inoperable for basic mobility.

The panel finds the ministry was reasonable in questioning whether the arm pad storage container met either of the criteria at issue here, and wonders whether his existing container could be transferred to a new wheelchair.

The panel does not understand whether or why tires for the wheelchair are at issue. The panel notes that the quote from the supplier received after reconsideration seems to list every possible wheelchair option or accessory. No options are listed for wheels or tires. The panel does not have any information to assess whether the wheels/tires listed by the appellant's OT are standard equipment or something special and, except to note that wheels/tires are essential and finish (black or chrome or whatever) is not an issue for the appellant. The panel therefore cannot make a determination as to whether the ministry was reasonable in questioning the tires listed by the OT.

While the ministry is justified in questioning whether the electronic systems for the power features listed by the OT met the criteria, the panel finds that the ministry was unreasonable in its determination that the Quickie base unit, the three power features and most other accessories did not meet the "least expensive appropriate" and "medically essential" criteria and use this as a launching pad for moving forward with the final determination of a replacement wheelchair configuration.

#### Conclusion

Based on the foregoing, the panel finds that the ministry's decision to deny the appellant's request for a replacement wheelchair, based on the Quickie base unit, the three power features and most other requested accessories, because it did not meet the "no resources available," "least cost appropriate" and "medically essential for basic mobility" criteria, was not reasonably supported by the evidence. The panel therefore rescinds the ministry's decision in favour of the appellant, subject to further consultations between the parties on the final configuration of the replacement wheelchair.