

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 December 5, 2013 which held that the appellant was not eligible for the cost of repairs to his manual wheelchair because the ministry determined that it was more economical to replace the wheelchair than to repair it pursuant to section 3 of Schedule C of the EAPWDR.

PART D – Relevant Legislation

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

PART E – Summary of Facts

With the consent of both parties the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act (EAA)*.

The documentary evidence before the ministry at reconsideration included the following:

1. The following documents relating to recent repairs to the appellant's manual wheelchair and his scooter:
 - a signed Purchase Authorization form dated August 15, 2012 for expenditures up to \$187.52 for repairs to the arm pad of the appellant's manual wheelchair.
 - an unsigned Purchase Authorization form dated October 31, 2012 for expenditures up to \$128.16 for repairs to the appellant's manual wheelchair.
 - a Service Quotation from the wheelchair provider dated December 3, 2012 specifying a quote of \$80 to lighten the arm pad and adjust the left brake of the appellant's manual wheelchair.
 - an unsigned Purchase Authorization form dated December 17, 2012 for expenditures up to \$80.00 for repairs to the appellant's manual wheelchair.
 - an unsigned Purchase Authorization form dated December 17, 2012 for expenditures up to \$81.00 for repairs to the appellant's manual wheelchair.
 - an unsigned Purchase Authorization form dated January 9, 2013 for expenditures up to \$80.00 for repairs to the appellant's manual wheelchair.
 - a signed Purchase Authorization form dated March 18, 2013 for expenditures up to \$80.00 for repairs to the appellant's manual wheelchair.
 - an unsigned Purchase Authorization form dated January 9, 2013 for expenditures up to \$224.24 for repairs to be performed by the wheelchair provider on behalf of the appellant. The form does not specify whether these repairs are for the appellant's manual wheelchair.
 - a signed Purchase Authorization form dated August 12, 2013 for expenditures up to \$409.50 to install a new gel cell battery for the appellant's 4 wheel scooter.
2. A Service Quotation from the wheelchair provider dated August 21, 2013 specifying a quote of \$60.64 to replace bearings in the front casters of the appellant's manual wheelchair and \$43.60 to replace the light housing on the appellant's 4 wheel scooter.
3. A letter from the ministry dated September 13, 2013 to the appellant which advised that requested repairs to his manual wheelchair and to his 4 wheel scooter would not be funded.
4. The appellant's Request for Reconsideration dated November 26, 2013 to which was attached a submission from the appellant's advocate titled "*Reasons for Request for Reconsideration*" on behalf of the appellant. The advocate based her argument on an estimate of \$5000 for a replacement Quickie 2 manual wheelchair.

Following reconsideration and prior to the hearing, the appellant submitted a 4 page written submission dated January 12, 2014 prepared by the appellant's advocate. This submission went to argument (see Part F below).

The ministry provided a response dated January 15, 2014 that advised that the ministry would not provide a written submission as it is relying upon the reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably denied the appellant's request for the ministry to cover the costs of repairs to his manual wheelchair based upon EAPWDR section 3 of Schedule C because it determined that it was more economical to replace the wheelchair than to repair it. Specifically, the issue is whether the ministry's decision is reasonably supported by the evidence, or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is the following:

From Schedule "C" of the EAPWDR:

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.
- (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.
- (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.

The appellant's submission notes that the ministry authorized the purchase of the appellant's manual wheelchair in 2005. It confirms that the appellant received a letter from the ministry dated July 11, 2013 informing him that no further repairs to his wheelchair would be authorized because repairs costing \$1113.92 had been incurred since June 2012, and this was deemed to be excessive. The same letter informed the appellant that he qualified for a new wheelchair. Subsequent to this letter, the appellant requested that the ministry fund repairs costing \$60.64 to repair the bearings in the front casters of the wheelchair to ensure his safety, as his steering ability is negatively affected in its present state. The appellant states that he contacted the wheelchair provider and was advised that a replacement for his current wheelchair would cost approximately \$5000.

The appellant notes that section 3 of Schedule C of the EAPWDR states that the minister may provide 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.

The appellant states that the request for repairs to his wheelchair was denied by the ministry because the ministry determined that it is more economical to replace the wheelchair than to repair it. The appellant argues that this determination is unreasonable because the repair of \$60.64 is substantially less than the estimated replacement cost of \$5000. The appellant acknowledges that he could be eligible for a new wheelchair but is concerned that the process of requesting such funding is time consuming. Moreover he has tried to access an occupational therapist since he was advised that no further repairs would be authorized on his wheelchair, and he is still awaiting an assessment by an occupational therapist. In the meantime, he continues to use his wheelchair and continues to need the requested repairs to the wheelchair to ensure his safety.

The concluding paragraph of the appellant's submission generates some confusion because it refers to requested repairs to his scooter. Indeed, the ministry's letter to the appellant of September 13, 2013 did deny a request for funding for repairs to the appellant's scooter. Nonetheless, the panel noted that the appellant's submission had made no previous mention of repairs to the scooter and concluded that the appellant was instead referring to repairs to the manual wheelchair.

The ministry's reconsideration decision also generates confusion. In the initial statement of facts, the ministry states that on May 28, 2012 the appellant submitted a request for a power wheelchair and

goes on to state that the ministry denied his request on July 11, 2013. Further, the opening sentence of the reconsideration decision states that the ministry has denied the appellant's request for repairs to his power wheelchair. But the panel observed that the reconsideration decision contains no further reference to a power wheelchair and instead makes repeated reference to the appellant's manual wheelchair and 4 wheel scooter. Accordingly, the panel concluded that the ministry's reconsideration decision addressed the request for repairs to the appellant's manual wheelchair.

The ministry notes that the appellant has been designated as a person with disabilities and therefore is eligible for medical equipment under section 62 of the EAPWDR. The ministry refers to section 3 of Schedule C of the EAPWDR, under which the minister may provide a replacement of medical equipment if it is damaged, worn out or not functioning, but two conditions must be met. First, it is more economical to replace the medical equipment previously supplied by the minister than to repair it and second, that the applicable period of time set out in the schedule has passed. The ministry notes that the required period of time for the replacement of a wheelchair is 5 years. Accordingly, the second condition is met.

The ministry states that repairs to the appellant's wheelchair have cost \$1113.92 since June 2012 and that the ministry has determined that the cost of further repairs is not economically feasible. The ministry sent the appellant a Medical Equipment and Justification form on July 11, 2013 in order to start the process of applying for a new manual wheelchair. The ministry notes that there is a processing wait time to gain approval for a new wheelchair but states that it is unclear to the ministry why the appellant has not been able to arrange an assessment by an occupational or physical therapist over the past 5 months.

The ministry notes that the appellant has a 4 wheel scooter for his basic mobility. Consequently, the ministry expects that it may fund a back-up wheelchair that would not be outfitted in the same manner as a manual wheelchair that is the primary source of mobility. Accordingly, the ministry expects that a backup manual wheelchair will be more economical to purchase than continually repairing the wheelchair purchased for the appellant in 2005.

Panel findings

The panel observes that the expected cost of replacement for the appellant's manual wheelchair is unclear. The appellant based his estimate of the replacement cost upon a model similar to the one purchased in 2005. The appellant states that the wheelchair provider gave him an estimate of approximately \$5000 for a replacement wheelchair but no documentation was provided to substantiate the estimate. The ministry indicated that it expected that a replacement for the manual would be a back-up wheelchair that would not be outfitted in the same manner as one used as the primary source of mobility. This suggests a less expensive replacement but no estimate of replacement cost is provided by the ministry.

The panel also notes that the appellant has based his argument upon the estimated cost of the repair currently required. Section 3(3) of Schedule C of the EAPWDR states that the minister "... may provide ..." a replacement of medical equipment. Accordingly, the legislation provides a measure of discretion to the ministry in the determination of whether repairing the medical equipment is more economical than replacing it. The ministry is not directed to base its decision upon the estimated costs of repairs that are required immediately but instead may base its decision upon the history of

previous repairs and potential future costs.

In summary, the appellant and the ministry have presented different expectations regarding a replacement wheelchair, and neither party has provided the panel with documented evidence of the cost of a replacement wheelchair. Moreover, the appellant has based his estimate of the cost of repairs upon only the repairs that are required at present. But the legislation does not specify how the ministry is to determine its estimate of the cost of repairs and provides the ministry with some discretion in this determination, including taking into account both the history of past repairs and potential future costs. Further, the appellant has provided no information to dispute the ministry's contention that his scooter is his primary means of mobility and that pending a replacement wheelchair he will be most likely to use the scooter the majority of the time. Consequently, the panel concludes that the appellant has failed to demonstrate that the ministry's reconsideration decision was an unreasonable application of the legislation.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for the cost of repairs to his manual wheelchair was a reasonable application of the legislation in the circumstances of the appellant.

The panel therefore confirms the ministry's decision.