



**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social development and Social Innovation's (the Ministry) Reconsideration Decision dated January 31, 2014, which denied the Appellant's request for a replacement scooter. The Ministry held that the Appellant's request did not meet the eligibility requirements under the EAPWDR, Schedule C, ss 3(3)(a) and (b) and 3.4(4); specifically, that information was not provided to demonstrate that the scooter for which a replacement was requested was damaged, worn out, not functioning or unsafe to operate, and that it was more economical to replace than to repair it and it was less than five years since the Ministry provided the Appellant with a scooter.

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 12; Schedule C, sections 3, 3.4

## PART E – Summary of Facts

At the hearing the Appellant requested an adjournment for the purpose of having the Ministry appear in person, rather than by telephone. The Ministry did not agree, explaining that their policy is not to attend hearings in person when the appellant is under third-party access. The Panel advised the Appellant that we do not have the power to compel a party to attend in person, and attendance by telephone is considered attendance at an oral hearing, therefore the request for an adjournment was denied. The Panel did not approve the Appellant's request for an adjournment, and the Appellant left the hearing. The hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

Information before the Ministry at reconsideration included:

- A report from an Occupational Therapist (OT) dated October 29, 2012, stating that the Appellant has a history of hyperthyroidism, rheumatoid arthritis, hypercholesterolemia, diabetes and bipolar disorder, and stating that the Appellant told the OT that her previous scooter was not performing safely, therefore she is requesting funding for a replacement.
- A copy of an estimate for a scooter in the amount of \$3,538.89.
- A copy of a Medical Equipment Request and Justification, dated October 29, 2012.
- A copy of a letter from the Ministry to the Appellant dated September 6, 2012, stating the information required to apply for a scooter.
- A copy of a letter from an OT to the Ministry dated December 5, 2012, requesting that the application be processed quickly.
- A copy of the Ministry's Medical equipment and devices decision summary dated January 4, 2013, denying the Appellant's request.
- A copy of a letter from the Ministry to the Appellant dated January 4, 2013, advising her of their decision.
- A copy of a purchase authorization from the Ministry dated May 3, 2012 for batteries for a scooter, with a copy of an estimate.
- A copy of an estimate for brake repairs to a scooter dated March 4, 2012.
- A purchase authorization for service/battery test dated January 16, 2012.
- A copy of a purchase authorization for repair of a drive shaft on a scooter dated October 26, 2011, with a quotation form a service provider.
- A copy of a purchase authorization for a service call dated September 9, 2011.
- A copy of an estimate for a repair assessment dated September 21, 2011.
- A copy of a letter from the Ministry to the Appellant dated September 17, 2011, authorizing scooter repairs, with estimate.
- A copy of a letter from the Ministry to the appellant dated August 12, 2011, advising her of approval for scooter repairs, with estimates.
- A copy of a purchase authorization dated July 25, 2011 for tires for a scooter, with estimate.
- A copy of a letter from the Ministry to the Appellant dated June 1, 2011, authorizing scooter repair – batteries, with estimate.
- A copy of a letter from the Ministry to the Appellant dated January 27, 2011, advising that the technician previously providing warranty service will no longer do so, and that it has been confirmed that the Appellant's scooter is safe to operate and requires no further repairs or maintenance to provide for her basic mobility needs.
- A copy of a letter from the Ministry to the Appellant dated December 9, 2010 stating that the service provider has advised the Ministry that they feel there are serious issues of misuse and intentional neglect with regard to the Appellant's scooter, and that it has been documented that someone else other than the Appellant has been using the equipment, stating that if misuse continues, neither the service provider nor the Ministry will provide funding to repair the scooter.

- A copy of a letter from the Ministry to the Appellant dated December 1, 2009 advising her that the Ministry approved her request for a scooter.
- The Appellant's Request for Reconsideration, dated January 13, 2013.
- The Ministry's Reconsideration Decision, dated January 30, 2013.
- A copy of the Ministry's letter to the Appellant dated January 30, 2013, advising her that the request for reconsideration confirmed the Ministry's decision denying her request for a replacement scooter.
- A copy of the Appellant's Notice of Appeal to the Tribunal dated February 4, 2013,.
- A copy of an Employment and Assistance Appeal Tribunal Decision dated March 5, 2013, confirming the Ministry's reconsideration decision of January 30, 2013.
- A copy of a letter to the Appellant from the Ministry dated July 10, 2013, denying the Appellant's request for batteries for a loaner scooter which was not funded by the Ministry.
- A copy of a handwritten note to the Ministry from the Appellant dated July 3, 2013, requesting batteries for a scooter.
- A copy of the Appellant's Request for Reconsideration, dated July 23, 2013.
- A copy of a Medical Equipment Request and Justification, dated July 12, 2013, requesting a replacement scooter.
- A copy of a letter from an OT dated September 18, 2013, stating that the Appellant has a history of hyperthyroidism, rheumatoid arthritis, hypercholesterolemia, diabetes and bipolar disorder, and that the Appellant's previous scooter was not operational and was given away.
- A copy of the Ministry's Medical equipment and devices decision summary dated December 12, 2013, denying the Appellant's request.
- A copy of a letter from the Ministry to the Appellant dated December 12, 2013, advising her of their decision.
- A copy of the Ministry's Medical equipment and devices decision summary dated January 4, 2014, denying the Appellant's request.
- A copy of a letter from the Ministry to the Appellant dated January 4, 2014, advising her of their decision.
- A copy of the Appellant's Request for Reconsideration dated January 17, 2014, with attachment.

The Appellant, in her Notice of Appeal, stated that she has had two scooters in the past and that she has medical and physical difficulties without a scooter. A scooter would allow her to enjoy some quality of life without pain. In her Request for Reconsideration, the Appellant stated that she requires a scooter due to her medical condition, that she has been in constant pain and cannot go out for therapy. She stated that it is urgent for her health.

The Ministry stated that the Appellant's scooter cannot be replaced until the statutory five years has passed, in December, 2014, as stated in EAPWDR, Schedule C, section 3(3). The Ministry referred to the Reconsideration Decision, which states that although the Appellant's request meets the requirements of section 3.4(3)(a) of Schedule C, EAPWDR, the request does not meet the requirements of sections 3(3)(a) and (b) and subsection 3.4(4). The Ministry stated in the Reconsideration Decision that there is an exception in policy which allows the ministry to provide an item before the expiration of the legislated time period for replacement has occurred when the item is required due to changes in a person's medical condition or growth. The Ministry, in the Reconsideration Decision, stated that the Appellant's need for a replacement scooter did not arise due to changes in her medical condition or growth, but due to the fact that she gave her scooter away, and information was not provided to demonstrate that the scooter given away was damaged, worn out, not functioning or unsafe to operate.

The Panel makes the following findings of fact:

- The Ministry provided a scooter to the Appellant in December, 2009.
- The Appellant gave the scooter away in 2012.

## PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's decision which denied the Appellant's request for a replacement scooter. The Ministry held that the Appellant's request did not meet the eligibility requirements under the EAPWDR, Schedule C, ss 3(3)(a) and (b) and 3.4(4); specifically, that information was not provided to demonstrate that the scooter for which a replacement was requested was damaged, worn out, not functioning or unsafe to operate, and that it was more economical to replace than to repair it and it was less than five years since the Ministry provided the Appellant with a scooter.

### Legislation

EAPWDR

### General health supplements

- 62 (1) Subject to subsections (1.1) and (1.2), the minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who is
- (a) a recipient of disability assistance,
  - (b) a person with disabilities who has not reached 65 years of age and who has ceased to be eligible for disability assistance because of
    - (i) employment income earned by the person or the person's spouse, if either the person or the person's spouse
      - (A) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
      - (B) is aged 65 or more and a person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
    - (ii) a pension or other payment under the *Canada Pension Plan (Canada)*, or
    - (iii) money received by the person or the person's spouse under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,
  - (c) a person who was a recipient of disability assistance on the day he or she became 65 years of age and a dependant of that person, if the dependant was a dependant of the person on that day and remains a dependant of that person,
  - (d) a dependant of a person referred to in paragraph (a) or (b) (iii),
    - (d.1) a dependant of a person referred to in paragraph (b) (i), if any person in the family unit
      - (i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
      - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
    - (d.2) a dependant of a person referred to in paragraph (b) (ii),
    - (d.3) a dependant of a person referred to in paragraph (f), if any person in the family unit
      - (i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
      - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's

- allowance or the federal guaranteed income supplement,
- (e) a dependent child of a recipient of hardship assistance,
  - (f) a person with disabilities who has ceased to be eligible for disability assistance because of an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or the person's spouse, if
    - (i) the person is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
    - (ii) the person is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, or
  - (g) a person whose family unit ceases to be eligible for disability assistance because of financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*, during the term of the agreement.

## 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.
- (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 — scooters**

**3.4 (1)** In this section, "**scooter**" does not include a scooter with 2 wheels.

- (2) Subject to subsection (5) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (3) of this section are met:
- (a) a scooter;
  - (b) an upgraded component of a scooter;
  - (c) an accessory attached to a scooter.
- (3) The following are the requirements in relation to an item referred to in subsection (2) of this section:
- (a) an assessment by an occupational therapist or a physical therapist has confirmed that it is unlikely that the person for whom the scooter has been prescribed will have a medical need for a wheelchair during the 5 years following the assessment;
  - (b) the total cost of the scooter and any accessories attached to the scooter does not exceed \$3 500 or, if subsection (3.1) applies, \$4 500;
  - (c) the minister is satisfied that the item is medically essential to achieve or maintain basic mobility.
- (3.1) The maximum amount of \$4 500 under subsection (3) (b) applies if an assessment by an occupational therapist or a physical therapist has confirmed that the person for whom the scooter has been prescribed has a body weight that exceeds the weight capacity of a conventional scooter but can be accommodated by a bariatric scooter.

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- (4) 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.
  - (5) A scooter intended primarily for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

The Appellant's position is that her previous scooter was unsafe and she urgently requires a replacement.

The Ministry's position is that the Appellant gave her scooter away and there is no information to demonstrate that it was damaged, worn out, not functioning or unsafe to operate, therefore the Appellant must wait until the expiration of the legislated time period for replacement before her request will be considered.

With respect to the Ministry's exception in policy, allowing for provision of an item before the expiration of the legislated time period, the Panel finds that the Ministry reasonably determined that there was no evidence that the Appellant's need for a replacement scooter occurred due to changes in her medical condition or growth, as required under the conditions of that policy.

With respect to the Ministry's determination that the Appellant's request did not meet the criteria stated in section 3(3)(a) of Schedule C, EAPWDR, whether it is more economical to replace than to repair the medical equipment or device, the Panel notes that the Ministry was advised by a qualified technician in January, 2011 that the scooter was safe to operate and required no further repairs. Subsequently, the Ministry authorized repairs and battery replacement, with no indication that the scooter could not be repaired. The Panel finds that the Ministry reasonably concluded that section 3(3)(a) of Schedule C, EAPWDR had not been met. With respect to the provision of section 3(3)(b) of Schedule C, EAPWDR, the Panel finds that the period of time set out in the Schedule, five years after the minister provided the scooter as set out in section 3.4 of Schedule C, EAPWDR, had not been met, and the Ministry reasonably determined that that period will expire in December, 2014.

The Panel therefore confirms the Ministry's decision as reasonably supported by the evidence.