

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated February 17, 2014 which denied the appellant's request for a Convoid EZ Rider (the "EZ Rider"). The ministry found that as the appellant is a person with disabilities (PWD), she is eligible to apply to the ministry for health supplements under *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR). However, the ministry was not satisfied that the information provided established that the EZ Rider is an eligible item under EAPWDR section 69 or Schedule C, sections 2, or 3 to 3.12.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 69 and Schedule C, sections 2 and 3 to 3.12.

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration consisted of:

- 1) The appellant's Request for Reconsideration (RFR) dated January 31, 2014 with attached letter from the appellant's mother dated January 30, 2014 (the "Letter") and printout of the EZ Rider description. The Letter states that the EZ Rider is a Convaid Easy Rider Wheelchair and that the appellant's physician's prescription describes the request for medical equipment as a wheelchair. The appellant's mother states that "*we are talking semantics. This piece of equipment is a chair and it is on wheels*". The Letter states that a standard or typical wheelchair is designed to be self-propelled and this would be very dangerous for the appellant as although she has the physical ability to use the self-propulsion she does not have the cognitive or visual ability do that safely. The Letter states that the appellant has used the EZ Rider for many years (15) and it has met the appellant's needs very well as it easily portable, fits in most cars and allows the appellant to be involved in many family and community activities. The Letter states that the appellant requires a mobility device so if this request is denied she will be requesting a standard wheelchair at a much greater cost.
- 2) Letter from the appellant's social worker dated January 30, 2014 (the "Social Worker Letter") stating that the appellant is unable to use a standard wheelchair because she is a severely globally developmentally delayed young lady who has a Autism Spectrum disorder, cortical visual impairments, seizure disorder, oral fixations and mobility issues. The social worker states that the appellant is dependent in all areas of care. The social worker states that the stroller is significantly less expensive than a wheelchair and works better for transporting the appellant and providing her with a place to rest when she becomes fatigued. The social worker states that the stroller is the only safe way to mobilize her to her activities and day programs. The social worker states that although the stroller is not considered an eligible item under section 3.1 to 3.12 of Schedule C of the EAPWDR, it is an item that is similar in its use to a wheelchair which is an eligible item. The intention of providing this equipment is to allow the individual to readily access her community and to provide caregivers with the tools to assist the appellant to attend day programs, school and to access community activities. The social worker states that this item is supported by the appellant's physician, occupational therapist and physiotherapist.
- 3) Letter from the appellant's occupational therapist dated January 24, 2014 (the "Second OT Letter") stating that the appellant requires a Convaid EZ Rider 14 Inch W as she requires a mobility aid for walking distances, to attend swimming lessons, community gym program, library, grocery shopping and other community activities. The occupational therapist indicates that her current EZ Rider is 12 years old and has worn out, she has trialed a 14 and 16 inch EZ Rider and the 14 inch fits her best. The occupational therapist states that the appellant is not asking for a traditional wheelchair because she does not have enough functional sight to be able to safely propel a wheelchair independently. The EZ Rider is easy for family and caregivers to lift in and out of a vehicle, lighter than a traditional wheelchair and costs less than a traditional wheelchair.
- 4) Quotes from a medical equipment provider dated January 24, 2014 for a manual wheelchair and seating system in the amount of \$4,103.73 and the EZ rider in the amount of \$2,111.40.
- 5) Letter from the ministry to the appellant dated December 24, 2013 advising that the ministry determined that the EZ Rider was not an eligible item.
- 6) Ministry Medical equipment and devices decision summary dated December 24, 2013;

- 7) Letter from the appellant's occupational therapist to the ministry dated November 18, 2013 (the "OT Initial Assessment") requesting the EZ Rider with quote from a medical equipment provider for the cost of the EZ Rider in the amount of \$2,111.40.
- 8) Letter from the appellant's family physician dated October 16, 2013 stating that the appellant has gross developmental delay, autism, seizure disorder and visual impairment and that she requires the EZ Rider Wheelchair for transportation.
- 9) At Home Transition PWD form with a fax date of 2013-07-04;
- 10) Ministry Autism and Medical Benefits Applicant Tracker dated July 4, 2013 (the Benefits Tracker);
- 11) Convoid Dealer Information regarding special needs strollers "Are they Strollers or Wheelchairs";

In her Notice of Appeal the appellant states, through her representative, that she believes that the EZ Rider falls within the guidelines of accepted items and is the most appropriate and cost efficient item for the appellant's needs.

Prior to the hearing the appellant submitted a written submission which included the following:

- 1) Letter from the appellant's physiotherapist dated March 13, 2014 stating that the appellant has limited mobility skills, requires one to one assistance, walks limited distances with supervision/assistance and requires the EZ Rider. The physiotherapist indicates that a previous therapist had ordered a Convoid Cruiser but it does not meet the appellant's needs as it is too big and will be returned to the medical equipment and recycling and loan service from where it was borrowed. The physiotherapist states that the appellant uses the EZ Rider, which she describes as a wheelchair, for daily transportation, but it is 9 years old and can no longer be repaired. The physiotherapy states that an assessment of the appellant's mobility needs has been completed and the EZ Rider allows the appellant to assist with transferring in/out, and provides appropriate support and positioning. The appellant is not able to, nor will ever be able to self-propel a wheelchair and for safety reasons the wheels need to be out of reach. The EZ Rider can be transported in any vehicle, allowing immediate and extended family, caregivers and community program staff to transport the appellant;
- 2) Letter from the appellant's occupational therapist dated March 14, 2014 (the "Third OT Letter") stating that after doing some research it was determined that when the adult funding program was set up, only traditional wheelchairs were included for cost containment and to limit applications for mobility devices from occasional user. The occupational therapist states that the appellant is not an occasional user and requires a wheelchair to participate in activities in the community and school. She can ambulate in her house, classroom and parts of her school but for going further than 1 block she requires the EZ Rider. The occupational therapist states that the appellant is cortically visually impaired and requires a wheelchair propelled by others. She states that the EZ Rider is considerably less expensive than a traditional wheelchair, meets both the appellant's and the family's needs, is light and folds easily to go in a vehicle, and can be fastened down for rides on public transit;
- 3) Document with definitions of stroller and wheelchair; and

4) Two pages of pictures of various strollers and wheelchairs.

At the hearing the appellant's representative provided oral evidence that the appellant was able to walk until age 7 and the family used an umbrella stroller to take her on outings. In Grade 1, the appellant obtained her first EZ Rider Cruiser and although it is labeled a wheelchair the family continued to use the word stroller to describe it as it as a normalizing word. The appellant's representative states that the appellant requires the EZ Rider because she cannot self-propel for safety reasons.

The ministry did not object to the appellant's new evidence.

The panel has admitted the oral testimony and documents into evidence as it is 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*. In particular, the new information relates to the appellant's mobility requirements and provides further information regarding the EZ Rider that is being requested.

The ministry did not submit any new evidence and relied on the reconsideration decision.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision denying the appellant's request for funding for the EZ Rider on the basis that it is not an eligible item under EAPWDR section 69 or Schedule C, sections 2 or 3 to 3.12 of Schedule C of the EAPWDR was reasonable.

The relevant legislation is as follows:

EAPWDR Schedule C, section 3, 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:

(B.C. Reg. 197/2012)

- (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.

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;

Eligibility for the EZ Rider as a wheelchair – EAPWDR Schedule C, section 3.2

Position of the Parties

The ministry's position is that the appellant is not eligible to receive the EZ Rider under EAPWDR Schedule C, section 3.2 as the legislation explicitly sets out that a "wheelchair" does not include a "stroller". The ministry states that section 3.2(2) further defines that for the purposes of section 3, the health supplements that can be provided if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility is a wheelchair, an upgraded component of a wheelchair or an accessory attached to a wheelchair. The ministry's position is that the OT Initial Assessment and Second OT Letter do not refer to the requested items as a wheelchair but as a "Convoid EZ Rider 14 inch" and a "Cruiser", which is not a wheelchair. The ministry also notes that what is requested is a replacement for the stroller that was previously provided by the At Home Program in 2008. The reconsideration decision also states that the Social Worker Letter refers to the requested item as a stroller not a wheelchair and the social worker acknowledges that the stroller is not considered an eligible item under section 3.1 to 3.12 of Schedule C of the EAPWDR.

The ministry states that the manufacturer of the EZ Rider has a vested interest in referring to the item as a wheelchair because many health plans do not provide funding for strollers. The ministry states that although the appellant's RFR states that the issue is one of semantics, it is the information set out in the manufacturer's website that has created the "exercise in semantics". The ministry's position, as set out in the reconsideration decision, is that the difference between a stroller and a wheelchair is obvious as a stroller is not designed for self-propulsion whereas a wheelchair is designed for both self-propulsion and propulsion by another person. The ministry's position is that the EZ Rider is a stroller, not a wheelchair, and is not an eligible item under EAPWDR Schedule 3.2

The appellant's representative stated that the issue seems to be one of semantics as there is no definition of "wheelchair" or "stroller" in the legislation and the ministry is using this to exclude the EZ Rider so that they do not have to fund the appellant's mobility device. The appellant's position is that rather than focusing on the word "stroller", the ministry ought to look at the reason for the use of the mobility device and consider all of the evidence provided by the occupational therapist, social worker, and physiotherapist to recognize that the EZ Rider is medically essential to achieve or maintain the appellant's basic mobility and ought to be considered a wheelchair not a stroller. The appellant's representative pointed out that the appellant's current EZ Rider label states that it is a wheelchair. She also stated that the Benefits Tracker indicates that on December 2, 2013 the ministry provided a medical equipment provider with payment for wheelchair repairs to the appellant's current EZ Rider, which supports the appellant's position that the requested item is a wheelchair not a stroller.

The appellant states that while the ministry maintains that the difference between a wheelchair and a stroller is obvious as a stroller is not designed for self-propulsion and a wheelchair is designed for both self-propulsion and propulsion by another person, the appellant is not safe to self-propel so she requires an item that can be propelled by another person for safety reasons. The appellant states that the definition of wheelchair as provided from the internet states that it is a "*chair with wheels that is used by people who cannot walk because they are disabled, sick, or injured*" whereas the definition of a stroller is "*a chair on wheels, typically folding, in which a baby or young child can be pushed along*". The appellant's representative states that the appellant's EZ Rider meets the definition of wheelchair and that the ambiguity in the legislation which does not provide any specific definitions for wheelchair or stroller should be resolved in favor of the appellant. The appellant's representative also pointed out of the pictures provided of various strollers and wheelchairs the EZ Rider looked most like the ones on the wheelchair pages, not the stroller page.

Panel Decision

The panel finds that although the occupational therapist and the social worker referred to the EZ Rider as a stroller, the appellant's current EZ Rider is clearly labeled as a wheelchair and the manufacturer's information describes the requested item as an EZ Rider Wheelchair. The manufacturer's information states that "*Convaid's lightweight, folding wheelchairs are often referred to as special needs stroller, adaptive strollers or medical strollers*" and that "[a]lthough they're technically wheelchairs, our products are just as portable and easy to use as any stroller". The information describes the products as "*stroller-style wheelchairs*" and they offer four types of "*Convaid Stroller-Style Wheelchairs*" which include the Cruiser, Metro, EZ Rider and Rodeo. The manufacturer's information also states that "*Convaid's stroller-style wheelchairs offer the comprehensive positioning, comfort, and safety that kids and adults with special needs require*".

While the social worker states that the EZ Rider is not an eligible item under EAPWDR sections 3.1 to 3.12 of Schedule C, she states that it is an item that is similar in its use to a wheelchair which is an eligible item with the same intention of allowing the appellant to readily access her community. The social worker's description of the EZ Rider would seem to support the ministry's position that the item does not fall within the legislation. However, the requested EZ Rider is described and marketed as a wheelchair by the manufacturer and the label on the EZ Rider indicates it is a wheelchair. The OT Initial Assessment, requests the EZ Rider and does not describe the EZ Rider as either a stroller or wheelchair. The Second OT Letter does not describe the EZ rider as a stroller but states that the reason the appellant is requiring the EZ Rider and not asking for a traditional wheelchair is because she is used to and comfortable in the Cruiser. The panel notes that the occupational therapist initially describes the requested item as the EZ Rider then also describes it as a Cruiser. However, the panel finds that whether the occupational therapist refers to the requested item as the EZ Rider or Cruiser does not make any difference as it is clear from the all letters and quotes that it is the EZ Rider that is being requested.

The OT Initial Assessment and Second OT Letter provide some support for the ministry's position that the EZ Rider may not be a traditional wheelchair. However, the panel notes that the Benefits Tracker, the ministry's documents which describes the autism and medical benefits paid on behalf of the appellant contains several descriptions of the appellant's mobility device. The entry of July 24, 2000 lists the Convaid Cruiser as a stroller but the entry of December 2, 2003 notes that wheelchair repairs were paid to the appellant's mobility device so there is evidence that on at least one prior occasion the ministry itself considers the appellant's mobility device to be a wheelchair.

The Third OT Letter states that after doing some research it was determined that when the adult funding program was set up, only traditional wheelchairs were included, for purposes of cost containment and to limit applications for mobility devices from occasional users. The occupational therapist states that the appellant is not an occasional user and that the EZ Rider, which she refers to as a Cruiser, meets the appellant's needs and is considerably less expensive than a traditional wheelchair.

The ministry argues that the fact that the manufacturer's information includes identification of the requested equipment as a "wheelchair" reflects characterization for insurance purposes. In particular, the ministry notes that the manufacturer states that "*Convaid's lightweight, folding wheelchairs are often referred to as special needs strollers, adaptive strollers or medical strollers*".

However, due to the technicalities of health care coverage, we cannot refer to them as such – health insurance policies generally do not cover the purchase of a “stroller” even if it’s actually a wheelchair. Therefore, all our special needs stroller-style products are referred to throughout our website and in our product information as wheelchairs.”

While the ministry’s position is that the manufacturer is classifying their strollers as wheelchairs so that they can be funded by various insurance plans the panel finds that the manufacturer’s information clearly indicates that their equipment are technically wheelchairs but are often referred to as special needs strollers, adaptive strollers or medical strollers. The manufacturer’s explanation indicates that their equipment is often referred to as special needs strollers but that they cannot be classified as such because they are considered wheelchairs. If the manufacturer’s information specified that the EZ Rider was technically a stroller but was being classified as a wheelchair in order to meet health insurers requirements for coverage then the ministry’s position would have more weight but the manufacturer indicates that the EZ Rider is a technically a lightweight, folding wheelchair that is also referred to as a stroller. The panel finds that the manufacturer’s explanation for the various descriptions of their medical equipment does not change the true character of the EZ Rider which is that it is a lightweight, folding wheelchair.

The ministry’s position is that there is a significant difference between a stroller and a wheelchair in that a wheelchair can be self-propelled while a stroller cannot. The panel notes that there is some support for this position as the evidence of the occupational therapist and the social worker state that the appellant’s needs are best met with the EZ Rider as the appellant cannot manipulate a wheelchair. The panel further notes that the appellant’s request for the EZ Rider acknowledges that the request is not for a traditional wheelchair because the appellant cannot self-propel due to safety reasons.

The legislation clearly distinguishes between wheelchairs and strollers and the term “wheelchair” cannot be so broadly interpreted that the legislative exclusion of “strollers” is rendered meaningless. At the same time however, while the ministry relies on the definition that a wheelchair must have a self-propelled aspect, that definition is not found in the legislation and the ministry does not provide any basis for why that definition of a wheelchair should be considered more authoritative than the definition provided from the appellant which is found in the Merriam Webster Encyclopedia that a wheelchair is “*a chair with wheels that is used by people who cannot walk because they are disabled, sick or injured*”. The panel further notes that Webster’s English Dictionary defines wheelchair as “*chair with large wheels for invalids*”.

While the EZ Rider may not meet the description of a traditional wheelchair or the one definition of wheelchair that the ministry relies on, the panel notes that the legislation does not provide a definition of “*wheelchair*”, “*stroller*” or any further description of what is a “*traditional wheelchair*” as compared to a “*lightweight folding wheelchair*” or any other type of “*alternative or specialized wheelchair*”. In addition, the EZ Rider pictures indicate that the appellant’s mobility device looks like a wheelchair as opposed to a stroller and falls within the definition of “wheelchair” as provided by the appellant (i.e. *a chair with wheels that is used by people who cannot walk because they are disabled, sick or injured*) more than the definition of stroller (*a chair on wheels, typically folding, in which a baby or young child can be pushed along*).

The panel finds that the difference between the EZ Rider and a common definition of a stroller is that the EZ Rider is specialized for a mobility impaired person and is medically essential for the appellant to maintain basic mobility. While the ministry's main argument is that the difference between a wheelchair and stroller is "obvious" in that a wheelchair is designed for both self-propulsion and propulsion by another person that definition is not obvious and it is not provided in the applicable legislation. Given appellant's evidence that her existing chair is labeled as a wheelchair and the manufacturer's definition that the EZ Rider is a specialized, collapsible wheelchair, the definition of a wheelchair is broad enough to include the EZ Rider. The panel finds that the ministry's position that the difference between a wheel chair and stroller is "obvious" based on the whether it can be self-propelled or not, is not reasonable.

The panel finds that the evidence of the occupational therapist, social worker and the appellant's representative all confirm that the EZ Rider is not a traditional wheelchair but as the legislation does not specify that the funding must be for a traditional wheelchair as opposed to a lightweight, folding wheelchair such as the EZ Rider, the panel finds that the ambiguity in the legislation must be resolved in favor of the appellant and that the ministry's reliance on their definitions of wheelchair is not a reasonable application of the legislation in the circumstances of the appellant.

Based on the totality of the evidence, the panel finds that the ministry's decision to classify the EZ Rider as a stroller as opposed to a wheelchair was not reasonable.

The panel notes that the ministry also considered the appellant's eligibility for the EZ Rider under several other sections of the legislation so although the panel finds that the ministry's decision in regarding EAPWDR Schedule C, section 3.2 was not reasonable and rescinds the reconsideration decision, the panel will also consider the other aspects of the reconsideration decision.

Eligibility for the EZ Rider as a medical supply – EAPWDR Schedule C, section 2(1)(a)

EAPWDR Schedule C, section 2(1)(a) sets out that the ministry may provide either disposable or reusable medical or surgical supplies if they are required for one of the following purposes: wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care, or limb circulation care. Section 2(1)(a.1) sets out that lancets, needles and syringes, ventilator supplies required for the essential operation or sterilization of a ventilator or tracheostomy supplies are also eligible medical supplies. Section 2(1)(a.2) provides for consumable medical supplies.

The ministry's position is that the EZ Rider does not fall into any of the categories listed as a medical supply. The appellant did not take the position that the EZ Rider met the criteria to be considered as a medical supply under EAPWDR Schedule C, section 2(1)(a). Therefore, the panel finds that the ministry's decision that the EZ Rider is not one of the eligible items set out in EAPWDR sections 2(1)(a) as a medical supply was reasonable.

Eligibility for the EZ Rider as other medical equipment and devices – EAPWDR sections 3.1, 3.3 to 3.12

EAPWDR sections 3.1 and 3.3 to 3.12 provide for medical equipment and devices for the following items:

- 3.1 – cane, crutch, walker and accessories
- 3.3 – wheelchair seating systems
- 3.4 – scooters
- 3.5 – bathing and toileting aids
- 3.6 – hospital bed
- 3.7 – pressure relief mattresses
- 3.8 – floor or ceiling lift devices
- 3.9 – positive airway pressure devices
- 3.10 – orthoses
- 3.11 – hearing instruments
- 3.12 – non-conventional glucose meters

The ministry's position is that the EZ Rider does not fall into one of these categories. The appellant did not disagree that the EZ Rider did not meet the criteria of any of the other medical equipment and devices set out in 3.1 or 3.3 to 3.12. Therefore, the panel finds that the ministry's decision that the EZ Rider is not one of the eligible items set out in EAPWDR sections 3.1 or 3.3 to 3.12 was reasonable.

Eligibility under EAPWDR Schedule C, sections 2(1)(c), 2(2), 2(2.1), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9

EAPWDR Schedule C, sections 2(1)(c), 2(2), 2(2.1), 2.2, 4, 4.1, 5, 6, 7, 8 and 9 provide for various other health supplements including therapies such as acupuncture, chiropractic treatment, massage therapy, physical therapy, optical supplements, eye examinations, supplements, dental supplements, crown and bridgework supplements, emergency dental supplements, diet supplements, monthly nutritional supplements, natal supplement and infant formula.

The ministry's position is that the EZ Rider does not fall into any of the categories listed in any of these other sections of EAPWDR Schedule C. The appellant did not disagree that the EZ Rider did not meet the criteria to be considered under any of these sections of Schedule C.

The panel finds that the ministry's decision that the EZ Rider is not one of the eligible items set out in EAPWDR sections 2(1)(c), 2(2), 2(2.1), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9 was reasonable.

Health Supplements for Persons Facing Life Threatening Health Need – EAPWDR section 69

EAPWDR states that the minister may provide a health supplement set out in Schedule C sections 2(1)(a) to (f) [general health supplements] and section 3 [medical equipment and devices] which includes medical equipment if the person faces a direct and imminent life threatening health need and there are no resources to the person's family unit to meet that need. The ministry's position is that the medical evidence does not establish that the appellant faces a direct and imminent life-threatening health need and that the EZ Rider is not a health supplement set out in EAPWDR Schedule C, sections 2(1)(a) and (f) or section 3. Accordingly the ministry's position is that the appellant is not eligible for the EZ Rider under EAPWDR section 69.

The appellant did not take the position that she faces a direct and imminent life threatening health need and the panel finds that the medical evidence does not establish that the appellant faces a direct and imminent life-threatening health need. Accordingly, the panel finds that the ministry's decision that the appellant was not eligible for the EZ Rider under EAPWDR section 69 was reasonable.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for the EZ Rider on the basis that it is not a wheelchair and is not an eligible item as defined in EAPWDR Schedule C section 3.2 is not reasonable.

Therefore, the panel rescinds the ministry's reconsideration decision.