

PART C – Decision under Appeal

This is an appeal of the reconsideration decision of the Ministry of Social Development and Social Innovation (“ministry”) dated March 6, 2014, in which the ministry denied the appellant’s request for a Myron folding manual wheelchair (the “Wheelchair”) on the basis it did not meet the criteria set out in the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”). The ministry determined that the appellant’s request for the Wheelchair did not meet the legislative criteria for the following reasons: the ministry was not satisfied that the Wheelchair was medically essential to achieve or maintain the appellant’s basic mobility, as required by section 3.2(2)(a) of Schedule C of the EAPWDR; the ministry was not satisfied that the Wheelchair is the least expensive appropriate medical equipment or device, as required by section 3(1)(b)(iii) of Schedule C of the EAPWDR; and the ministry was not satisfied that there are no resources available to the appellant to pay the cost of the Wheelchair, as required by section 3(1)(b)(ii) of Schedule C of the EAPWDR.

PART D – Relevant Legislation

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

PART E – Summary of Facts

With the consent of the parties, the appeal hearing was conducted in writing in accordance with section 22(3)(b) of the *Employment and Assistance Act*.

The information before the ministry at reconsideration consisted of the following:

- The appellant's request for reconsideration dated February 17, 2014;
- A copy of a letter dated February 17, 2014 prepared by a physiotherapist and an occupational therapist describing the appellant's requirements for a wheelchair;
- A copy of a two-page sales quotation from a wheelchair provider dated August 26, 2013 describing the Wheelchair and indicating that its cost is \$2,496.60;
- A one-page copy of an email dated August 26, 2013 from an individual at the wheelchair provider to the appellant's physiotherapist, attaching the sales quotation for the Wheelchair, with the message, "you are correct patriots [wheelchairs] are still available but only if you buy five at a time and we are not interested in doing that right now. I have quoted for a Myon wheelchair as it is less than the Breezy 600 [wheelchair]"; and
- A copy of a 2-page ministry medical equipment request and justification form signed and dated by the appellant on August 22, 2013, and completed and signed by a physiotherapist on August 13, 2013 and by a medical practitioner on September 4, 2013. On this form, it is noted that the appellant had a stroke and suffers from right hemiplegia/hemiparesis. It states that the appellant "can walk short distances using quad cane but relies on a [wheelchair] for longer distance locomotion ... spends most of his day in his [wheelchair]."

In his request for reconsideration, the appellant (through his representative) has written that as a result of a stroke and subsequent seizures, he has right side weakness and immobility, and given the severity of his stroke, he is now living in an extended care facility. He writes that he "basically lives" in his wheelchair and his "only mobility is when he is participating in the walking program 2X week with physio providing close supervision." He says that "given the hours in his chair it is imperative it provides proper support and fit to prevent future skin breakdown, pressure sores, musculoskeletal injuries and frustration hindering participation in life."

In the letter dated February 17, 2014, the physiotherapist and occupational therapist have written that the rehab staff at the residential care facility recently assessed the appellant as "being unsafe for independent ambulation." They write that the appellant can only walk very short distances when he is supervised and has supports in place, such as "a quad walker or parallel bars with a wheelchair behind him for safety." They write, "for daily mobility needs, the Rehab team has assessed [the appellant] and (sic) requiring the use of a wheelchair for all *independent* mobility" (emphasis in original letter). The therapists describe that the appellant had a loaner wheelchair, but had to return it and that the wheelchairs available at the residential care facility are not suitable for the appellant as these wheelchairs don't provide the "appropriate postural and musculoskeletal support to enable proper usage." The therapists describe in the letter the reasons why the requested Wheelchair is appropriate for the appellant's needs (for example, it will help prevent injury and will be key to "maintaining his motivation for engaging in daily activities" at the facility).

With his written submission, the appellant attached a one-page letter dated April 6, 2014 from the

community advisor at the residential care facility where he lives. In this letter, the advisor provided clarification of the appellant's use of a wheelchair at the facility and information about the facility's financial resources. In its written submissions on appeal dated April 9, 2014, the ministry did not object to the admission of the April 6, 2014 letter from the advisor at the appellant's residential care facility. The panel admits the letter of April 6, 2014 as written testimony in support of the information and records before the ministry when the decision under appeal was made under section 22(4)(b) of the *Employment and Assistance Act*.

In its reconsideration decision, the ministry confirms that the appellant is a designated person with disabilities in receipt of disability assistance and meets the criteria under section 62 of the EAPWDR.

In his submission on his notice of appeal, the appellant repeated some of the information that was set out in the February 17, 2014 letter from the therapists, writing that the quad platform walker or parallel bars (referred to in the February 17, 2014 letter) "are used only during therapeutic walking program 2 times per week with maximal assist." The appellant says that he is "wheelchair dependent" and is using a transfer wheelchair provided by the residential care facility but that "it is for short term transfer use by other residents." The appellant also writes that the requested Wheelchair "is one of the least expensive."

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant's request for a specific folding wheelchair was reasonable based on the evidence or a reasonable application of the legislation in the appellant's circumstances. The ministry denied the appellant's request for the Wheelchair on the basis it was not satisfied that the Wheelchair was medically essential to achieve or maintain the appellant's basic mobility (criterion set out in section 3.2(2)(a) of Schedule C of the EAPWDR), that the Wheelchair is the least expensive appropriate medical equipment or device (criterion set out in section 3(1)(b)(iii) of Schedule C of the EAPWDR), and that there are no resources available to the appellant to pay the cost of the Wheelchair (criterion set out in section 3(1)(b)(ii) of Schedule C of the EAPWDR).

Legislation

The following are the relevant provisions of the legislation (the EAPWDR) applicable to the appellant's request for the Wheelchair.

62. General health supplements

(1) Subject to subsections (1.1) and (1.2), the minister may provide any health supplement set out in section 2 [*general health supplements*] ... 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,

...

Schedule C – Health Supplements

3. Medical equipment and devices

(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.

Subsection 3(2.1) applies to medical equipment or devices referred to in section 3.9 – breathing devices. Subsection 3(3) sets out the requirements for replacement of medical equipment previously provided by the minister under this section, subsection 3(4) sets out the requirements for the repair of medical equipment previously provided by the minister, and subsection 3(5) sets out the requirements for repairs of medical equipment not previously provided by the minister. These sections are not relevant to the appellant's requested Wheelchair.

3.2 Medical equipment and devices – wheelchairs

(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.

Submissions

The appellant is a designated person with disabilities in receipt of disability assistance and he meets the requirement set out in section 62(1)(a) of the EAPWDR.

In his written submissions, the appellant argues that he requires the Wheelchair because he is wheelchair dependent. In her April 6, 2014 letter, the community advisor at the appellant's care facility reiterates that the appellant is wheelchair dependent, stating that he "basically lives in his wheelchair from morning to night" and that his only walking is "with a platform walker and one person assist during the exercise program." The appellant also submits that the requested Wheelchair "is one of the least expensive" wheelchairs. The information provided in the sales quotation of August 26, 2013 indicates that the Wheelchair costs \$2,496.60 and in the April 6, 2014 letter, the community advisor writes that the requested Wheelchair "is a fairly basic chair – not a high end chair."

The appellant writes that he is using a transfer wheelchair provided by his care facility, but that it is for short-term transfer use and is also used by other residents and this information is repeated in the April 6, 2014 letter from the community advisor who repeats that the appellant is currently using a "basic facility transfer chair." The community advisor states in her letter that the care facility is funded by a provincial health authority and writes that "it would be impossible financially for a facility to provide a permanent wheelchair for residents and a survey of other facilities confirmed this never happens. [The appellant] does not have an extended health care plan and his parents are also on a limited income." The community advisor writes that someone contacted a charitable organization about funding the appellant's requested Wheelchair, but that "they fund only community projects and not smaller individual needs."

In the reconsideration decision, the ministry determined that the requested Wheelchair did not meet the criterion set out in subsection 3.2(2)(a) of Schedule C of the EAPWDR because the minister was not satisfied the Wheelchair was medically essential to achieve or maintain the appellant's basic mobility. The ministry based its decision on the information that the appellant has "a quad walker or parallel bars that allow [him] to ambulate short distances" and that the appellant's father confirmed the appellant was using a wheelchair from his residential care facility. The reconsideration decision states, "As it seems you are able to ambulate short distances and participate in a walking program twice a week in your facility using various transportation aids ... the ministry is not satisfied that you require a new manual wheelchair to achieve or maintain your basic mobility."

In its reconsideration decision, the ministry also determined that the requested Wheelchair did not meet the requirements of subsections 3(1)(b)(ii) and (iii) of Schedule C of the EAPWDR because the ministry was not satisfied that the requested Wheelchair is the least expensive appropriate medical equipment or device (as required by subs. 3(1)(b)(iii)), or that there are no resources available to the appellant to pay the cost of or obtain the requested Wheelchair (as required by subs. 3(1)(b)(ii)). The ministry referred to the information provided in the cost estimate that the cost of the Wheelchair is \$2,496.60 and that the wheelchair provider indicated the requested Wheelchair "is less expensive than the Breezy 600" wheelchair. The reconsideration decision also notes the ministry's medical equipment and devices policy which sets out that for publicly subsidized residential care facilities (the client's residence), "clients living in facilities funded by the Ministry of Health are not eligible for medical equipment from the ministry. These needs must be met through the facility. Facility staff should be contacted to determine the funding source." The reconsideration decision states that, "no information is provided if other government programs or funding sources were contacted to access medical equipment or funding through them."

Panel Decision

Under section 3(1)(b) of Schedule C of the EAPWDR, the minister may provide the medical equipment and devices listed in sections 3.1 through 3.12, if the minister is satisfied that all of the following requirements are met: the family unit has received the pre-authorization of the minister for the medical equipment or device requested; there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device; and the medical equipment or device is the least expensive appropriate medical equipment or device. In addition to the requirements set out in subsection 3(1)(b), subsection 3(2) of Schedule C of the EAPWDR provides that the request must meet the requirements set out in sections 3.1 to 3.8 – meaning the appellant's request must meet the requirements of section 3.2. The panel stresses that the legislation requires that the minister must be satisfied that all of the requirements of subs. 3(1)(b)(i) through (iii) and subs. 3.2 of Schedule C of the EAPWDR must be met before the requested medical equipment will be provided.

The ministry found that the appellant did not meet the requirement of subsection 3.2(2) of Schedule C of the EAPWDR – that is, that the requested Wheelchair is "medically essential to achieve or maintain basic mobility." The ministry's reconsideration decision referred to the information in the February 17, 2014 letter from the appellant's physiotherapist and occupational therapist, stating that the appellant could walk use parallel bars and a quad walker during his twice-weekly exercise sessions at the facility. The panel notes that in this same letter of February 17, 2014, the appellant's physiotherapist and occupational therapist also expressly state that the appellant requires "the use of a wheelchair for all independent mobility" and that the appellant has a wheelchair "behind him for safety" when he is

walking with the quad walker or parallel bars. The panel notes the appellant's submissions that he is wheelchair dependent – both in his submissions on reconsideration and on appeal. Accordingly, the panel finds that the ministry's determination that the appellant has not met the requirement set out in subsection 3.2(2) of Schedule C of the EAPWDR [that the requested Wheelchair is medically essential to achieve or maintain the appellant's basic mobility] is not reasonable based on the evidence.

The ministry found that the appellant did not meet the requirements of subsection 3(1)(b)(ii) and (iii) of Schedule C of the EAPWDR as it was not satisfied that there were no resources available to the appellant, a resident of a care facility, to pay the cost of or obtain the requested Wheelchair and that the requested Wheelchair is the least expensive appropriate medical equipment or device. The ministry referred to its policy that clients living in facilities funded by the Ministry of Health are not eligible for medical equipment from the ministry and that no information was provided if other government programs or funding sources were contacted to access medical equipment or funding through them. The ministry also noted the cost estimate provided for the requested Wheelchair indicates its cost is \$2,496.60 but that this information did not satisfy the ministry that the requested Wheelchair is the least expensive appropriate wheelchair.

The panel noted that the information presented indicates the estimated cost for the requested Wheelchair, but does not include cost estimates for other comparable wheelchairs or if, in fact, there are other comparable wheelchairs available for purchase for the appellant. Without evidence of other options and the associate costs, it is not possible to know if the requested Wheelchair is the least expensive. The panel finds reasonable the ministry's determination that the appellant had not satisfied the requirement of subsection 3(1)(b)(iii) that the requested Wheelchair is the least expensive appropriate equipment.

The appellant's evidence as set out in the April 6, 2014 letter from the community advisor at his care facility confirms that the care facility is funded by a provincial health authority and that it is impossible financially for the facility to provide him a permanent wheelchair and that a survey of other facilities confirmed "this never happens." The community advisor also indicates in this letter that a charitable organization was contacted about funding the requested Wheelchair, but it does not fund individual needs, such as the requested Wheelchair. The panel notes there is no indication whether other charitable organizations or any government programs were contacted regarding funding the appellant's requested Wheelchair or if loaner wheelchairs are further available to him. The panel finds reasonable the ministry's determination that the appellant had not satisfied the requirement of subsection 3(1)(b)(ii) that there are no resources available to him to pay the cost of or obtain the requested Wheelchair.

Therefore, the panel confirms the ministry's decision to deny the appellant's request for the Wheelchair as the legislative requirements set out in Schedule C of the EAPWDR were not met.