

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) reconsideration decision dated March 5, 2014 which held that the Appellant was not eligible for a scooter as he did not meet the legislative requirements as set out in the Employment and Assistance for Person with Disability Regulation (the “EAPWDR”) Schedule C, sections 3(2)(b) and 3.4(3)(a) and (c).

The Ministry held that the Appellant’s assessment provided by the occupational therapist (“OT”) does not establish that there was a medical need for the scooter or that the scooter is medically essential to achieve or maintain basic mobility.

PART D – Relevant Legislation

EAPWDR section 62 and Schedule C, sections 3(2)(b) and 3.4(3)(a) and (c)

PART E – Summary of Facts

The Ministry was not in attendance at the hearing. After confirming the Ministry was notified, the hearing proceeded under section 8(b) of the Employment and Assistance Regulation.

The evidence before the Ministry at reconsideration was as follows:

1. Medical Equipment Request and Justification form completed by a medical practitioner on July 24, 2013.

The type of medical equipment that is recommended by the medical practitioner was listed as a "scooter (four wheel)."

2. A functional assessment from the OT to the Appellant dated November 5, 2014.

The Appellant was diagnosed with arthritis, IDDM, DDD, prostate CA. The OT states that the Appellant noted that he has a long history of leg and back pain as a result of a back injury.

The OT stated that the client has difficulty standing for more than a few minutes due to "fear of falling" and that the Appellant is able to negotiate short distances inside his apartment. The OT suggested that the Appellant use a 4 wheeled walker but the client prefers to use his cane.

The OT stated that the scooter request is "client driven" and that "typically the normal process is to use a 4 wheel walker but the Appellant chooses not to because he feels it is unsafe. The OT stated that the Appellant can walk approximately over a block before resting and that he intends on using the scooter to attend medical appointments. The OT recommended a pursuit scooter to deal with the ongoing problems identified above.

3. Employment and Assistance Request for Reconsideration form (the "Request").

Section three of the Request completed by the Appellant dated February 20, 2014 stated that the Ministry's decision to deny him the scooter fails to address the real problem and stated that he had "severe back and leg problems for over 20 years..." and it is growing progressively harder to work each year.

The Appellant explained stated that the bottom of his feet "break open" when he walks and while he has medication two people in his building have lost feet from the same condition and one has lost his life.

In the Notice of Appeal dated March 12, 2014, under 'Reasons for Appeal' the Appellant stated that the "Ministry decision is not properly based."

At the hearing, the Appellant provided the following additional oral evidence:

1. the Appellant only saw the OT for 7 minutes and that the assessment is not accurate;
2. the Appellant's doctor confirms that he does need a scooter and the doctor wrote this on a prescription;
3. the Appellant does not know where the prescription or recommendation is but he could get

another one;

4. the Appellant uses his cane to get around to keep the pressure off his feet, as well as for his back problems;
5. the Appellant does not use the handy dart as he believes it would be the same as public transit;
6. the Appellant does not take public transit as he is forced to sit with his legs in the aisle due to his back problem and his legs have been frequently bumped/kicked by other transit users;
7. the Appellant frequently collapses as a result of his back injury. Standing doing dishes, for example, the Appellant's back goes out without notice and he consequently drops to the ground.
8. the Appellant has open sores on his feet that break open with walking on them due to diabetes and this is why his doctor put in a request for a scooter;
9. the Appellant wants to stay off his feet or the sores will get worse;
10. the Appellant is able to walk but the more he walks the more the "holes" open up and he has to stay off his feet to prevent this from happening; and
11. the Appellant is going for nerve testing to determine whether the holes/sores on his feet are a result of his diabetes.

The panel finds that the additional evidence provided by the Appellant relating to the sores on his feet is not in support of the records before the Ministry at reconsideration and was not admissible under section 22(4) of the *Employment and Assistance Act*.

The additional oral evidence clarified his situation and was admissible under section 22(4) of the *Employment and Assistance Act* as it was in support of the records before the Ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue whether the Ministry's decision to deny the Appellant a scooter for failing to meet the legislative requirements as set out in the EAPWDR Schedule C, sections 3(2)(b) and 3.4(3)(a) and (c) is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the Appellant.

Section 62 of the EAPWDR addresses general health supplements and allows the Ministry to provide any health supplement set out in sections 2 (general health supplements) or 3 (medical equipment and devices) of Schedule C providing the recipient meets eligibility requirements in both section 62 and Schedule C of the EAPWDR.

Schedule C section 3 of the EAPWDR addresses health supplements relating to medical equipment and devices. Specifically section 3(2)(b) provides that a recipient must provide to the Ministry either an assessment by an OT and/or a physical therapist confirming the medical need for the medical equipment or device.

Section 3.4(2)(a) includes a scooter for the purpose of section 3 of the Schedule if all the requirements of section (3) are met. Section 3.4(3)(a) requires an assessment by an occupational therapist confirming that it is unlikely that the recipient will have a medical need for a wheelchair during the 5 years following the assessment.

Section 3.4(3)(c) requires that the Ministry is satisfied that the item is medically essential to achieve or maintain basic mobility.

The Ministry argues that the criteria as set out in the EAPWDR Schedule C, sections 3(2)(b) and 3.4(3)(a) and (c) have not been met. In determining that the Appellant did not meet the legislative requirements, the Ministry relied on the OT assessment which the Ministry held did not establish a *medical need* for a scooter and that the scooter was *medically essential* to achieve or maintain basic mobility. The Ministry stated the following:

Your OT reports that it is your goal to use a scooter to attend medical appointments, etc. The ministry finds the information provided demonstrates that your OT recommended the use of a 4 wheel walker however you choose not to use it.

The Ministry did acknowledge that the Appellant experiences limitations as a result of his "conditions" but that these conditions did not create a medical need for the scooter. The Ministry determined that the need for the scooter was for transportation purposes rather than a result of medical need or necessity.

The appellant argued that the OT examined him for a total of seven minutes and that the assessment was not accurate. The Appellant submitted that he has had severe back problems since 1989 and it is getting progressively worse each year. The Appellant argued that his back pain and the possibility of collapsing as a result of his back issues warrants a scooter.

The legislation clearly stipulates that in order for the Appellant to be eligible for a scooter the OT assessment must confirm the medical need for a scooter and that it is unlikely that Appellant will have a medical need for a wheelchair five years following the assessment. There is also a requirement that the Ministry is satisfied that the scooter is medically essential to achieve or maintain basic

mobility.

The Ministry argued that the OT assessment did not establish a medical need for a scooter or that the scooter is medically essential to achieve or maintain basic mobility. On review of the OT assessment there is very little support to confirm the Appellant has an injury that warrants a medical need for the scooter or that the use of a scooter is medically essential to achieve or maintain basic mobility.

The OT made two recommendations in her assessment regarding the Appellant's physical condition. She first suggested that the Appellant use a 4 wheeled walker for long distances so he can periodically rest, but noted that the client preferred to use his cane to get around.

The OT ultimately recommended the pursuit scooter as a means to address the Appellant conditions but made it clear in her report that the "[s]cooter request is client driven" and that "typically the normal process is using a 4WW" but the OT notes that the client chooses not to use the four wheeled walker as the Appellant believes it to be "unsafe."

The Appellant gave oral evidence that he uses his cane to get around and to keep the pressure off his back and legs. The Appellant acknowledged that he could still walk but he needed to stay off his feet due to an unrelated condition.

The Appellant noted that while he uses his cane to assist him walking he has an aversion to the public transit system as he is forced to sit with his legs in the aisle and this often leads to other transit users bumping into his legs. The Appellant similarly believed the local handy dart would be similar to the public transit and opts not to use this service.

The Appellant did give evidence that his back can give out at any minute which would cause him to collapse without any notice but beyond the OT reporting that the Appellant had a fear falling there is no actual report of similar occurrences or the frequency of these incidents.

There is no doubt the Appellant suffers with chronic pain resulting from a variety of conditions – all of which make it difficult for him to get around on a daily basis. The information that was provided by the OT in her assessment, however, does not support that the Appellant has condition that would make a scooter medically essential to achieve basic mobility, particularly when the Appellant acknowledged he is able to get around on his own with the aid of his cane.

The Panel therefore finds the Ministry's determination that the Appellant was not eligible for a scooter having found the Appellant's assessment provided by the OT did not establish that there was a medical need for the scooter or that the scooter was medically essential to achieve or maintain basic mobility pursuant to Schedule C, section 3(2)(b) and 3.4(3)(a)(b) of EAPWDR was a reasonable application of the applicable legislation in the circumstances of the Appellant and confirms the decision.