

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated June 13, 2014 which denied the appellant's request for a scooter, pursuant to Schedule C of the EAPWDR, because:

- the ministry is not satisfied that the request for a scooter established that a scooter is medically essential to achieve or maintain basic mobility [section 3.4 (3)(c)];
- the information provided did not establish that the appellant's occupational therapist confirmed that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment [section 3.4 (3)(a)]; or that
- the information provided did not establish that the appellant's occupational therapist confirmed a medical need for the scooter [section 3(2)(b)].

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 62.

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Schedule C, Sections 3 and 3.4.

PART E – Summary of Facts

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

- 1) A quote from a medical supply company for a scooter at a cost of \$3271.45;
- 2) A letter dated and signed February 3, 2014 from the appellant's occupational therapist (OT) stating that:
 - the appellant is diagnosed with Left CVA (Cerebrovascular Accident) with right sided weakness (2010), Diabetes Mellitus Type 2, COPD (Chronic Obstructive Pulmonary Disease), Coronary Artery Disease (had heart attack 20 years ago), Chronic Back Pain and Peripheral Neuropathy. She weighs 270 lbs and this is the first time she is requesting funding for a scooter.
 - Her functional status: communication = normal, cognition is 3MS= 93/100, MMSE=28/30, Self Care = use of adaptive aids required, Transfers= independent with use of support surface is required, Mobility = indoor is independent with use of 4-wheeled walker as needed, outdoor is dependent on the use of 4-wheeled walker, Upper Limbs = right is reported as hand and forearm pain/weakness and left is within functional limits, Lower Limbs = right has decreased strength and ROM (range of motion) and left has decreased strength and ROM, client reports of pain in her hips, back and knees. Head and Neck Control = functional, Hand Activity = within functional limits, Balance = within functional limits and Sensation and Skin Care= skin integrity is intact.
 - There is a walking assessment included;
 - In summary the OT states that the appellant has decreased activity, fatigues easily and her walking tolerance is affected by pain in her back, hips, knees and legs. The appellant is requesting a scooter to conserve energy, reduce the risk of falls, manage pain and enable her to perform necessary outdoor activities, such as shopping, and she reports that her medical conditions progressively affect her mobility. The targeted outcomes are that the scooter will assist mobility, manage pain and increase engagement in the community. After trialing 3 different scooter the appellant settled on one for which she has requested funding;
- 3) A Medical Equipment Request and Justification form that indicates the appellant is eligible to access medical equipment under the EAPWDR, there are no other resources available to the appellant, a request for an electric scooter, medical conditions indicated as h/o CVA with residual balance problem, chronic back pain and knee pain and severe peripheral neuropathy;
- 4) A consent to release information to a local advocacy agency;

In her 2-page Request for Reconsideration prepared by an advocate, the appellant states that she requires a motorized scooter to maintain basic mobility. According to the appellant's submission, the OT supports this need by confirming that the appellant is unable to walk outside at all without the use of a walker, she requires continuous assistance from family and friends to access the community, and that she relies on adaptive aids for self-care. According to the appellant's submission, the OT confirms her diagnoses and the appellant adds that her knees buckle on a daily basis with or without the use of her walker. Her mobility has decreased with the use of the walker; she finds it extremely difficult to walk any distance without it and is unable to stand independently for more than 10 minutes. She has fallen numerous times using the walker due to balance issues. With a motorized scooter, the appellant could independently remain mobile for all her activities and the ministry was incorrect in its assessment that the appellant can walk 20 feet with her walker without resting.

In her Notice of Appeal the appellant states that she disagrees with the ministry's decision because she believes her health will get worse without a scooter and her quality of life will be worse, and that the request is just not about accessing the community, it's about her physical health.

Admissibility of New Information

A medical imaging report dated August 8, 2008 provided additional information regarding the appellant's pelvis and left hip, and right and left knees. The ministry did not object to the admissibility of the new evidence. This information provides additional detail with respect to issues addressed in the original application for a medical scooter. Accordingly, the panel has admitted this new information as being 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.

At the hearing, the appellant's advocate stated that the appellant's disabilities are getting worse and that she has no mobility outside of the home as her walker only takes care of indoor mobility. She expressed that the ministry did not have information from the appellant's physician nor was there sufficient information in the OT's report to make a reasonable decision on the appellant's case. According to the appellant, her lungs are progressively worse due to the COPD and both of her lungs have collapsed. She finds it difficult to use the elevator in her building as she has to wait several minutes (sometimes up to 15 minutes) for it to arrive and she cannot stand that long and must sit on her walker chair. She added that the OT reported that she could only use a specific scooter model as she could not control the others due to the grips and her arthritic hands. The appellant stated that this statement from the OT supports the submission at reconsideration which stated that the appellant has arthritic hands. She further states that the difficulties gripping extend to the walker and is, therefore, limited in her use of the walker.

In response to a question, the appellant stated that she only manages in the community with the help of a care-aid worker who attends to the needs of all the residents in her building and from her friend. The care-aid worker helps her once per week by bringing medications to her, and her friend supports her 1-2 times per week by helping get around within the community. When they are not available, she only frequents establishments that provide a scooter for their shoppers.

In response to a question, the appellant stated that she manages to attend doctor's appointments by taking the free shuttle. The bus stop is a 'couple' of blocks away but it takes her 30 minutes to get there with her walker. She also goes to the mall across the street from her home with her walker for shopping or breakfast once a month but it takes her 45 minutes to do so and she must stop to rest 4-5 times. She also stated that at times her hip gives out without warning and she falls, which was stated in her submission at reconsideration.

Finally she stated that she was not certain if the OT submitted any information regarding whether or not she would need a wheelchair 5 years from now. However, the OT stated to her that she needs a scooter.

At the hearing the ministry relied on its reconsideration decision and added:

- The OT's report was largely based on the appellant's self-reports not on his observations or

- assessments, and a self-assessment does not establish a medical need;
- The OT's assessment does not conclude a medical need for the scooter;
 - A scooter appears to be necessary for independence not for basic mobility therefore the ministry is not satisfied that the scooter is medically essential to achieve or maintain basic mobility;
 - Schedule C, 3(1)(b)(iii) – the medical equipment or device is the least expensive appropriate medical equipment or device- has not been met;
 - The OT has not confirmed that it is unlikely that the appellant will need a wheelchair in the next 5 years and that, according to the legislation, this must be specified by the OT;
 - The Request for Reconsideration presents new information regarding the appellant's arthritis that has not been confirmed by her physician and therefore cannot be accepted;
 - Basic mobility, which includes both outdoor and indoor mobility as they are required to achieve daily living activities, is achieved with the aid of the appellant's walker that the ministry has already purchased for her;
 - There is no information to confirm that the appellant cannot achieve basic mobility with the use of public transit, handy-dart services and/or her walker;
 - According to the website of the shopping mall the appellant frequents, there are wheelchairs available for use for those that need them;
 - The OT confirms that mobility indoors is not an issue as the appellant has independent mobility indoors and uses a walker when needed, and mobility outdoors is achieved via the walker; and
 - The OT's report confirms that the appellant's balance, hand activity and head and neck control are all within functional limits.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a scooter because it could not be established that the scooter is or medically essential to achieve or maintain basic mobility and the OT has not confirmed that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant legislation requires the following:

Schedule C, section 3 and 3.4 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) stipulates the eligibility requirements as:

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.**

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.

(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:

The appellant's position is that she has a number of medical conditions (such as COPD, arthritis in hip and hand) that when combined limit her mobility. If it were not for her friends and care-aid worker she would not be able to achieve her daily living activities. She contends that she is unable to walk with her walker for even several minutes without stopping to rest and that she cannot stand for any

length of time without pain in her back and knees. Walking also poses a problem because of the lack of endurance due to COPD. She also states that her knees buckle without warning and she is at risk to fall. She argues that the OT's statement in his February 3, 2014 letter regarding the difficulty she has gripping the controls of various scooter models confirms that she has arthritic hands and is therefore limited in her use of the walker she currently has. If the ministry had her physician's reports, it would clearly see that she is not able to function without a scooter. The ministry has based its decision on inadequate information. The appellant argues the OT's report is largely based her self-reports because he did not assess her out in the community and that he only sees her when she is able to come to him. He does not see her on the days she is unable to be mobile or when her condition is worse due to the combined effect of her medical conditions.

The Ministry's Position:

The ministry's position is that it is not satisfied that the OT's assessment confirms the scooter is a medical need or medically essential to achieve or maintain basic mobility, and the information provided by the OT did not confirm that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment.

The Panel's Decision:

Schedule C section 3.4 (3) (a) and (c), states that an "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" and "the minister is satisfied that the item is medically essential to achieve or maintain basic mobility".

In regards to the requirement of the confirmation by the OT that it is unlikely that the appellant will need a wheelchair during the 5 years following the assessment, it is the panel's opinion that neither the February 3, 2014 assessment from the OT, the Medical Equipment Request and Justification, or any other document before the ministry at the time of reconsideration or any document provided at the hearing, confirms that it is unlikely that the appellant will require a wheelchair during the 5 years following the assessment. When asked, the appellant also could not confirm that this was the OT's opinion. Therefore, the panel finds that the ministry was reasonable in finding that the OT has not confirmed that it is unlikely that the appellant will need a wheelchair during the 5 years following the assessment as required by section 3.4(3) (a) of Schedule C of the EAPWDR.

In regards to the whether or not the scooter is medically essential to achieve or maintain basic mobility, the panel acknowledges that the appellant has difficulties accessing the community for various daily living activities such as attending doctor's appointments or shopping, without the use of a walker or assistance from her friends. The panel also acknowledges, as the appellant points out, that the OT's assessment is insufficient as he did not observe the appellant walking to the shopping mall or observe her on days her mobility is compromised due to the combined effect of her medical conditions. The appellant states that she can use her walker to access public transit, the handy-dart service, and the shopping mall but that it takes her longer and she must rest. She states that her balance is off and that her knees buckle without warning. However, the panel notes that this information is not confirmed by the OT. Rather, the OT states that her balance is "within functional limits" and he does not confirm that the appellant's knees buckle. The panel further notes that the OT's assessment does not establish that the scooter is required to achieve or maintain basic mobility. Rather, the OT's assessment states that, in regards to mobility, the appellant is independent indoors and dependent on her walker outdoors. The OT also states that the appellant is requesting the scooter to "...help her conserve energy, reduce the risk of falls, manage her pain and enable her to

do the necessary outdoor activities...". The OT does not state that this is his professional opinion or that the appellant needs the scooter to achieve or maintain basic mobility. The appellant also noted in her submissions that the medical information provided by the OT was insufficient in this regard. Therefore, the panel finds that, based on all the available evidence, the ministry reasonably determined that the request for a scooter was not shown to be medically essential to achieve or maintain basic mobility as required by section 3.4 (3)(c), Schedule C of the EAPWDR, nor did the OT confirm that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following his assessment as required by section 3.4 (3) (a), Schedule C of the EAPWDR, nor does the evidence confirm that there is a medical need for the scooter as required by section 3(2)(b), Schedule C of the EAPWDR.

Conclusion:

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's reconsideration decision is reasonably supported by the evidence. The panel therefore confirms the ministry's decision.