

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated August 13, 2014 which denied the appellant's request for a supplement to cover the cost of a new power wheelchair with tilt and custom seating. The ministry found that the following requirements of Section 69 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) were not met:

- the requirement for a direct and imminent life threatening health need was not met [Section 69(a)];
- there is insufficient information provided to show that there are no resources available to the family unit with which to meet that need [Section 69(a)];
- there is insufficient information provided to show that the health supplement is necessary to meet that need [Section 69(b)];
- as required pursuant to Section 69(d)(ii) of the EAPWDR, there is insufficient information provided to show that the requirements in Schedule C, Section 3 have been met, namely that:
 - there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device [Section 3(1)(b)(ii)], and
 - the medical equipment or device is the least expensive appropriate medical equipment or device [Section 3(1)(b)(iii)].

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 62 and 69 and Schedule C, Sections 3

PART E – Summary of Facts

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded pursuant to Section 86(b) of the *Employment and Assistance Regulation*.

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

- 1) Letter dated November 21, 2013 to the ministry in which the appellant's physician at the facility wrote that the appellant suffers from paraplegia plus lack of bladder or bowel control. He requires a new power wheelchair plus protective seating not only for mobility but also for skin, back and leg protection. Without the correct wheelchair and seating he will develop skin breakdown and ulcers which will become life-threatening;
- 2) Letter dated February 17, 2014 to the ministry in which the appellant's physician at the facility wrote that the tilt mechanism of the appellant's wheelchair is not working and requires extensive repairs estimated at \$6,000. He requires the tilt mechanism to take pressure off his buttocks and elevate his feet and legs due to his paraplegia. He is not a ministry client. The social worker had applied to medical services on November 18, 2013 but has not had a reply. The lack of tilt is placing the appellant in a potentially life-threatening situation;
- 3) Seating Assessment Report dated February 24, 2014 in which the occupational therapist (OT) at the facility wrote that:
 - The appellant urgently needs a new wheelchair that allows for power tilt function as his current chair has broken down (power tilt component).
 - The current wheelchair did not meet his seating needs; potential consequences of lack of appropriate seating are serious.
 - The appellant has a small employment-related pension but no assets; he cannot afford the equipment on his own despite the fact that it is essential to his health and engagement in relationships and community life.
 - The appellant requires power mobility to get around the facility and community.
 - He needs tilt function to offset severe edema that has developed in his feet and toes over the past 2 years. This has been a significant problem, especially on the upper sides of both feet and up the lower front of his legs.
 - These sores develop quickly, the most recent episode lasting from May 2012 to the fall of 2013. The sores were marked by large cracks and fissures and required extensive treatment for months necessitating hours of nursing, clinical resource nurse and OT care.
 - These sores are life-threatening if the appellant is not in the correct position with the ability to raise his feet sufficiently above the level of his heart and change his seated position in the chair.
 - The appellant has had severe and disabling back and buttock pain. He is unable to reposition himself in his wheelchair other than through the tilt mechanism.
 - Cushioning has been insufficient under his buttocks and in support of his lower back. He has a wedge and a cushion piled one on top of the other, but both are older and harder foam surfaces instead of the higher-end air cushioning he needs.
 - This resident is relatively young and his mental health deteriorates if he cannot carry out his daily activities.
 - The primary goal for the new device is for the appellant to be able to elevate his legs and change his position independently. Daily activity goals are much as for his current device. He benefits greatly from the ability to get around the community and/or visit friends. He drives the chair for most of the day.

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- The appellant has no movement in his legs or feet and no sensation in the lower limbs. He has low range of motion and strength in all limbs and hand function is limited.
 - He is unable to change position independently in bed and requires two-person assist for bed mobility. All of his transfers are via overhead lift and sling.
 - "Medical diagnoses include: spinal cord injury, stroke, arthritis, chronic pain, severe back pain, neurogenic bowel, schizophrenia which is well controlled and sleep apnea."
 - The appellant's weight is noted at 116 kg., with no other comment provided.
 - Current equipment: the appellant had a power wheelchair for several years. The current tilt mechanism broke down 2 weeks ago and would require extensive (up to \$6,000) which could not be completed due to lack of funding.
 - Once the power tilt mechanism broke down, several free hours of labour had to be put in by the vendor before the chair was useable.
 - The appellant's feet are currently in the lowermost position whenever he is up.
 - The seat angle and the seating surface are inadequate in alleviating back pain and he is sometimes unable to tolerate daily use of the chair. Elevating footrests do not allow for sufficient height for his legs and feet.
 - A Permobil M300 power wheelchair is being recommended with retractable joystick module, power tilt, 21 x 20 inch seat, calf support and wide footrests. Cushion needs to be a ROHO Quadro due to his inability to move himself in the chair and his risk of pressure ulcers.
- 4) Medical Equipment Request and Justification dated March 3, 2014 describing the medical condition as set out in the letters from the appellant's physician and specifying the medical equipment required to meet the need as set out in the OT [occupational therapist] report;
 - 5) Quote dated February 20, 2014 from a medical supply company for the new power wheelchair for the total amount of \$24,368.21;
 - 6) Quote dated February 20, 2014 from a medical supply company for the custom seating as proposed for a new power wheelchair in the total amount of \$2,740.00; and,
 - 7) Request for Reconsideration dated July 18, 2014 with reasons attached as well as 3 pages of handwritten Progress Notes by a psychiatrist and an Appeal of Equipment Funding Request Denial letter dated July 17, 2014 from a physiotherapist.

In the Request for Reconsideration, the advocate, who is the director of resident care for the facility, stated that:

- Manual chair will not meet the appellant's needs and his request should be considered under life-threatening health needs. Previous documents submitted for physical needs. Additional documents attached support risk of decompensation to mental health.
- The appellant requires a power tilt wheelchair with custom seating to maintain mobility within the facility and community.
- The appellant is a complete quadriplegic secondary to decompression surgery for cervical disc herniation following a fall from a chair in April 2010. He is not capable of maneuvering a manual wheelchair.
- Staffing levels in residential care do not support the provision of assistance to residents in manual chairs to transport them to community activities/events, appointments, etc. which are necessary to promote independence and maintain good mental health. The appellant would be isolated and dependent on the availability of care staff to move him about his room and the facility.
- The hospital facility is funded by the Ministry of Health and the staffing model is one care staff

to 6 or 7 residents and (overnight), one care staff to 25 residents.

- The appellant has a long-standing mental health history. He has attempted suicide in the past and reports numerous occasions of suicide ideation. He has diagnoses of schizophrenia and PTSD.

In the Appeal of Equipment Funding Request Denial letter dated July 17, 2014, the physiotherapist from the health authority added:

- The appellant presents with chronic severe lung and circulation issues. He has bilateral dependent leg edema with lymphedema which means that when his legs are down he is quite prone to edema. Compression stockings have been helpful but are not nearly enough to manage the swelling and skin breakdown issues.
- He remains at very high risk of life-threatening DVT [deep vein thromboses]. It is important to avoid long periods of having his lower legs in a dependent position and he needs the ability to independently and regularly elevate his lower legs at or above the level of his heart. This means that his power chair requires power tilt/recline/leg elevation to adequately achieve this.
- "One might argue that he lives in a care facility with 24-hour care, but it is common knowledge that staff are scarcely available to manually change his position."
- It is unsound to consider a manual chair to meet the appellant's positioning needs. He would do better to stay in his bed and use the power functions available there, as ludicrous as that sounds.
- Postural positioning in sitting affects safe swallowing, digestive and respiratory functions, which are significant health risk factors for the appellant.
- The appellant presents with severe chronic back pain and it is expected that with the required power seat functions, the appellant will be able to manage the pain with less high-risk pain medication.
- The appellant lacks motor control at both arms so is not able to functionally wheel a manual wheelchair even indoors.
- To continue to provide him with power mobility is a paramount goal and the ministry states a goal for individuals with disabilities includes "to gain and maintain meaningful independence and inclusion in the community."
- The power elevating leg rests will allow the appellant to quickly adjust to allow for clearing tight corners and areas.

In the handwritten Progress Notes, the appellant's psychiatrist wrote in part:

- The appellant's medical history includes paranoid schizophrenia and PTSD [post traumatic stress disorder]- both currently stable on medication.
- There is recent concern regarding the appellant's low mood and occasional SI [suicidal ideation].
- Financial issues cause stress due to inability to afford a power wheelchair that is vital to remain active and structured.
- The appellant's psychiatric condition is well managed but there is concern of depression with episodic SI; he clearly needs to stay structured and active and needs access to power wheelchair to maintain psychosocial rehabilitation and to stay positively engaged.

At the hearing, the advocate provided the following additional documents:

- 1) One page of a 4-page Home and Community Care Policy Manual, chapter 6, section F, which sets out a list of "chargeable items," including "purchase or rental of equipment that is for the

exclusive use of the client, such as a walker, wheelchair, crutches, canes or other devices, and maintenance as required;”

- 2) Note dated August 26, 2014 ‘To whom it may concern’ in which a rehab equipment specialist with the medical supply company wrote:
 - The appellant’s Quantum 600 wheelchair is currently in need of substantial repairs that are approximately \$6,000.
 - The tilt and seat frame is worn out, unsafe and needs replacing. Currently the tilt system is non-functioning. This is detrimental to the appellant’s skin integrity and overall health.
 - The base is also nearing the end of its life expectancy. In their experience, the Q600 base needs substantial repairs to the motors, gears boxes and suspension when the chair nears 5 years of use.
 - The appellant is very close to the weight limit of this model of chair, which increases the rate of wear.
 - In their opinion, this power chair is not worth repairing and should be replaced;
- 3) Quote dated September 8, 2014 from a medical supply company setting out a list of parts relating to the appellant’s Q600 power wheelchair and the costs, including:
 - Casters (\$138.32),
 - Motor assembly (\$1,367.02),
 - Armrest padding (\$39.95),
 - Joystick controller (\$748.22)
 - Tilt complete with centre mount with flip up foot (\$3,658.20) and
 - Labour (\$360)
 - For a total cost of \$6,311.71.
 - The Quote includes a comment that “it is the technician’s opinion that the cost of these replacement parts outweigh (sic) the value of the client’s existing chair.
 - “Chair supplied January 10, 2011;”
- 4) Summary of mobility issues dated September 16, 2014 in which the OT from the facility, who provided the Seating Assessment Report, wrote:
 - Regarding the “appropriateness of current chair” that the appellant’s current chair is too small for him and not adjustable for width.
 - The tilt function is not working, the chair needs significant repairs and the chair is not a higher-end model that would outlive its expected lifespan.
 - Recommend replacement of this chair.
 - Regarding “pressure reduction”, the OT wrote that pressure ulcers are a significant, life-threatening reality for the appellant.
 - The appellant alters his position frequently and he requires power tilt function so that he can change his position often enough to prevent and alleviate pressure difficulties.
 - A manual tilt function will worsen rather than help the appellant to prevent ulcers from developing in the future. While staff members can change his tilt positioning, they are unable to do so as frequently as he requires.
 - Regarding “mental health”, the appellant is one of the younger residents at the hospital and it is age-appropriate for him to have people to visit and activities during the day. It is also expected that he have as much control over his circumstances as possible, which includes the independent ability to go outside and the ability to change his position in his chair with the tilt mechanism.
 - The appellant has done well at the hospital mentally and emotionally. His mental health

has stabilized and he has developed a life for himself outside the hospital. He goes out daily for a minimum of 8 hours per day. He drives for short periods within the hospital but mostly goes outdoors. He meets friends and family members.

- When his power chair stopped functioning, the appellant quickly began to show signs of depression. If he is limited to his room or unit on a continual basis, he risks becoming deeply depressed and possibly suicidal. His food/fluid intake will then tend to decrease. This could exacerbate his severe skin integrity problems and lead to a spiraling of pain and depressive symptoms.
- If the appellant had a manual tilt wheelchair, staff members would be unable to assist him around the facility because the chair/resident combination would be too heavy for them to push consistently without risking injury. In addition, staff would be unable to spend as much individual time with the appellant as needed.
- No other individuals are available for assisting with pushing/mobility. Volunteers are not permitted to take residents outside facility grounds. The appellant is financially unable to purchase companion services and friends are not consistently available to assist/push him. Even if available, these people could not consistently push him more than around his unit due to the weight of the chair/resident, especially considering the hills surrounding the hospital.
- A service such as HandyDart could take the appellant to a designated location, but it remains that the appellant requires a person to push and tilt his chair once he has arrived at his destination.
- The appellant requires a power wheelchair with power tilt function for the maintenance of his mental health and physical health.

5) Report on the appellant's risk and history of skin breakdown dated September 15, 2014 in which a clinical resource nurse from the facility wrote:

- The appellant was admitted to the hospital on March 8, 2011.
- The appellant is at extreme risk for skin breakdown related to quadriplegia and resultant immobility.
- Related issues include a history of severe lymphedema (swelling and leaking of fluid to both feet and legs to above knees) that is currently being managed with daily compression using two pairs of prescribed and measured compression stockings during the day and a pair of TED compression stockings during the night.
- Since admission to hospital, the appellant has had extensive treatment to manage his lymphedema and related skin breakdown. He has been seen multiple times at the Foot and Leg Ulcer Clinic between June 2012 and June 2013.
- History of lymphedema management includes the first appointment on May 2, 2012 with the diagnosis of bilateral chronic lymphedema and goal to get into compression stockings ASAP.
- From May 2013 to present, 2 or 3 compression stockings are used to manage edema plus a pair of TED stockings at night. These stockings apply continuous graduated compression (days) and even compression (nights) and require training and time to apply correctly.
- The appellant has also had skin breakdown on his coccyx area on and off since admission.
- Prior to the loss of his electric tilt mechanism in June 2013, the appellant had two episodes in 2011 where his coccyx area became reddened and required regular treatment, increased positioning and monitoring.

- Following the loss of his electric tilt, the appellant has had more frequent breakdown and required more time in bed to relieve pressure on the areas affected and to manage related pain.
- The appellant manages his own tilt positioning and it gives him the ability to easily improve his circulation and comfort when he needs to, without asking for assistance.
- The appellant's self-positioning more closely approximates what an able-bodied person would do without thinking about it.
- The staff at the hospital could never possibly reposition the appellant to the extent that he does it himself with power tilt.
- He has the ability to follow a plan of care and will manage his own positioning needs if the equipment allows.

The advocate explained that she had referred to the page from the Community Care Policy Manual in her reasons for the appeal filed with the Notice of Appeal, but it was inadvertently omitted at the time. The panel reviewed the documents and admitted them, for the most part, as providing further detail regarding the appellant's health conditions, his resulting needs and the resources available to meet those needs, and being in support of information that was before the ministry on reconsideration, pursuant to Section 22(4) of the *Employment and Assistance Act*.

The panel did not admit the opinions provided by the medical supply company as to whether it is more economical to repair or replace the appellant's wheelchair, found in the Note dated August 26, 2014 and in the Quote dated September 8, 2014, as this is not in support of information or the records that were before the ministry on reconsideration and, therefore, did not meet the test in Section 22(4) of the *Employment and Assistance Act*.

In the Notice of Appeal, the advocate wrote that:

- The social worker submitted an application for funding on November 18, 2013 to the ministry "Medical Services Only" under Life Threatening Needs Request and not to the Ministry of Health.
- The Ministry of Health does not fund resident's medical equipment. Reference a copy of the Ministry of Health Home and Community Policy Sections C and F ("chargeable items").
- The hospital receives its operating grant from the Health Authority, funded by the Ministry of Health, and this does not include funding for personal mobility equipment.
- The appellant does not have resources to purchase a power wheelchair with specific modifications. His monthly income is \$1,494 from CPP and LTD [long-term disability] and his rate for accommodation in residential care is \$1,105 per month, which does not include any personal expenditures, such as transportation, telephone, cable, dental care, wheelchair maintenance, etc.
- The appellant operates a power chair, is independent in the community, and meets up with friends. He has stated "being able to get out of the facility is the only thing that makes me want to get out of bed." He has also stated that if he did not have his independence "what is the point of living?"
- The appellant has a long history of schizophrenia, depression and suicide attempts and is at high risk to decompensate if he loses his ability to be mobile.
- The appellant does not have the resources to purchase private pay 'Paid Companion' services for mobility outside the facility/activities and individuals would not be able to push a resident weighing 240 lbs. in the community.

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- The appellant's Quantum 600 wheelchair is currently in need of repairs, estimated at \$4,000. The tilt and seat frame are worn out and need replacing and the tilt system is non-functioning, which was previously quoted at \$6,000. The base is also nearing the end of its life expectancy.
 - In the medical supplier's experience, the Q600 base needs substantial repairs to the motor, gearboxes and suspension when the chair nears 5 years of use, which is not included in the previous estimate.
 - The appellant is also very close to the weight limit of this model of chair, which increases the rate of wear.

At the hearing, the advocate stated that:

- The appellant was admitted to the hospital in March of 2011 and he has many medical problems.
- He has movement with his right hand but only with gross motor skills; he does not have fine motor skills. When the tilt function was operating in his chair, he could operate it by himself.
- He cannot change position at all on his own, as an able-bodied person does every 5 to 10 minutes.
- The hospital is funded by the Ministry of Health and one staff member must care for 6 residents. The staff member cannot be re-positioning the appellant as often as he requires. There is no one in the facility to move him around the facility.
- The appellant likes to stay up late but has been going to bed earlier to have more time to relieve the pressure. There are less staff on at night and they would not have time to adjust his chair so he goes to bed before shift change.
- If he is immobilized, it will make his mental health issue worse. He likes to get out and visit his family and friends. He is out of the facility for approximately 8 hours per day.
- The appellant's monthly income from CPP is \$1,494 and he is currently paying \$1,213.66 to the facility, and not \$1,105 as stated in the Notice of Appeal.
- The appellant is not eligible for assistance because his pension income exceeds the rate payable from the ministry.
- The tilt function on the appellant's existing wheelchair has not been operating for about a year.
- Asked how skin breakdown is life-threatening, the advocate responded that it starts with skin breakdown and then an ulcer develops and it starts to "go deep." Infection is treated with a course of antibiotics and, if the antibiotics were not effective, the infection could become systemic. If the ulcer becomes deep, infection could enter the blood stream and lead to septicemia before being discovered. With septicemia, the patient would require intensive care and the survival rate for cases of septicemia is "very low."
- The appellant currently has skin breakdowns on his buttocks and his coccyx area.
- The incident described by the clinical resource nurse, which occurred from May 2012 to May 2013, was resolved but it could have possibly resulted in the appellant losing his leg. During that episode, the appellant had pressure ulcers on both sides.
- Asked about the DVT threat, the advocate stated that when there is a lack of mobility, there is pooling of blood, especially when the legs are down. Even when a person is in bed and not moving the risk of clotting becomes real. Blood clots would present in an able-bodied person as redness and soreness in the leg but, with the appellant's paraplegia, the appellant would not notice these symptoms. Blood clots that travel to the heart or the brain are often fatal.
- She cannot say that in a month's time the appellant will be palliative but the request for the new power wheelchair is a preventative measure so this will not happen.

- With all circulation problems and skin problems, they can escalate at any time.
- We also know how the appellant has reacted to depression in the past. He has had suicidal thoughts. He was living in assistive living at one time for his mental health issues.
- Asked about the services that are included with the facility, the advocate stated that 24-hour care, medications, food, laundry, dressings, recreational activities, and music therapy are provided. The "chargeable items", as set out in the Policy, are the things that the residents are responsible to pay for.
- The facility has equipment for the residents to share, including manual wheelchairs, but there are no power wheelchairs.
- The manual wheelchairs have tilt functions. The manual wheelchairs are not customized, would not have specialized seating, and would not allow for operating from the right side. The appellant cannot re-position to the same extent as he could with the tilt in a power wheelchair. The equipment at the facility is older.
- The treatments provided to the appellant, as detailed in the Report by the clinical resource nurse, were provided by the facility, with the exception of the Circaid Compression System. Since May 2013, compression stockings have been used to manage the appellant's edema.
- There has never been a request made to the Ministry of Health for funding of the new power wheelchair. The only request was that made to the ministry, which is the subject of this appeal.
- When the ministry was contacted about the timing of a response to the request, information was requested by the ministry regarding the cost of a manual wheelchair with a tilt function.
- The summary of the psychiatrist's Progress Notes as set out in the reconsideration decision accurately captures the important features of the appellant's psychiatric condition and treatment.

At the hearing, the OT from the facility stated that:

- She has worked closely with the appellant for some time and has seen many repairs performed to the appellant's existing wheelchair. About 2 years ago, there were repairs made to the footrest. About 5 months ago, there was an issue with the motor. The wheelchair is currently operating but it does not have the tilt function.
- Asked how the repairs to the motor of the appellant's wheelchair were funded, the OT responded that about a year ago the medical supply company put in "free" time to get the chair operating again. The appellant has had use of the power wheelchair since then.
- The medical supply company has said that the base of the chair is nearing the end of its life expectancy. The type of the appellant's existing wheelchair is "not the highest end" and will not last past its life expectancy.
- The seating on the appellant's current wheelchair is very tight and this is causing skin breakdown.
- Currently, the appellant's feet are down all the time. With the tilt function, the appellant can transfer his weight all the time.
- While the appellant's wheelchair was being repaired, he used a manual wheelchair with a tilt function provided by the facility for about 2 weeks. An attendant with the facility had to change his position for him. There were not able to do 1/5th of what the appellant can do for himself.
- The attendant pushed the appellant in the manual wheelchair around his unit and he was in his room most of the time.
- His pressure ulcers caused more pain and there was a lowering of his mood, which can result in changes to his eating and sleeping patterns.

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- When the appellant's mobility is lost, the incidence of depression starts to increase. It is like a "downward spiral" waiting to happen.
 - With the loss of the tilt function, the appellant has had to spend more time in bed and lying on his side to relieve the pressure areas, especially on his buttocks. The hospital bed has a tilt function that the appellant can operate with his left hand. During the night, the facility staff will reposition his body about 4 times.
 - Since the tilt function ceased, the appellant's skin integrity is getting worse.
 - The staff members are unable to assist the appellant to get around the facility without risk of their injury. There is no one else to help him because volunteers cannot go off the grounds and the appellant has no resources to pay for a companion service. Although the appellant has friends, they would not be available on a consistent basis and there are many hills around the facility that make it difficult to push a manual chair. Even with HandyDart, the person still needs a way to get to his or her activities.
 - Asked about how "imminent" the appellant's health issues are, the OT responded that there are different gradations. He is not currently palliative but there is a strong possibility of a problem developing.
 - Asked about whether new seating could be added to the appellant's existing wheelchair, the OT replied that it could be added.
 - Asked how the OT knows that the power wheelchair is the "least expensive" alternative, the OT responded that they find that there is not much difference in the quotes provided by the various local suppliers.

At the hearing, the appellant stated:

- He really likes his wheelchair. He goes out to visit with his friends in his wheelchair and he looks forward to going where he wants to go.
- He would be devastated and depressed if he did not have his wheelchair. Taking away his wheelchair would be like him losing his legs.
- He has had some problems with the gears recently. The chair will jump forward and then stop. The medical supply company told him it was a wiring issue.
- He cannot afford to pay for any repairs to the wheelchair.
- He thinks he has had his current wheelchair for about 5 years. He got the chair when he was at a rehabilitation centre, possibly through the EATI [equipment and assistive technology initiative] program, since he thought he would be going back to work. He got his existing wheelchair from the same medical supply company who provided the quote for a new chair.
- Since he can no longer tilt in his chair to take the pressure off, he is in a lot of pain and is on pain killers. Sometimes he will push himself up out of the chair just to take some of the pressure off.
- He was traumatized by witnessing his brother's death by his own hand.
- Since he has been at the hospital, his life has been stable. It is "wonderful" to have his electric wheelchair. Most days he goes out for several hours, comes back to the facility for a while, and then goes back out into the surrounding community.
- He loves his electric wheelchair and he would be lost without it. He needs it really badly.

The ministry relied on its reconsideration decision.

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 supplement to cover the cost of a new power wheelchair with tilt and custom seating as the request did not meet the requirements of Section 69 of the EAPWDR and the additional requirements of Section 3 of Schedule C of the EAPWDR, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Pursuant to Section 62 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), in order to receive general health supplements or medical equipment and devices as set out in Schedule C, the applicant must be a recipient of disability assistance, or be a dependent of a person in receipt of disability assistance in a variety of scenarios.

Section 69 sets out that if the family unit is not otherwise eligible for the health supplement under the EAPWDR, the request can be considered under Section 69. In this case, it is not disputed that the requirement of Section 62 has not been met in that the appellant is not a recipient of disability assistance and he is not a dependent of a person in receipt of disability assistance.

At issue is whether the appellant's request for a new power wheelchair with tilt and custom seating meets the requirements under Section 69 of the EAPWDR, which provides as follows:

Health supplement for persons facing direct and imminent life threatening health need

69 The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [general health supplements] and 3 [medical equipment and devices] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
- (b) the health supplement is necessary to meet that need,
- (c) the person's family unit is receiving premium assistance under the Medicare Protection Act, and
- (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
 - (i) paragraph (a) or (f) of section (2) (1);
 - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

Section 3 of Schedule C of the EAPWDR sets out additional criteria that must be met for medical equipment and devices, as follows:

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 3.11 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, 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. ...

Section 69(a) and (b) of the EAPWDR- Direct and Imminent Life Threatening Need

Ministry's position

The ministry's position is that there is no evidence of a direct and imminent life-threatening need for a new power wheelchair with tilt and custom seating. The ministry argued that the ministry definition of "life-threatening health need" refers to an immediate need for medical equipment in situations where, verified by a medical or nurse practitioner, without the specific supplement the person's life is at risk. The ministry argued that the initial application process began on February 17, 2014 and the appellant has managed with his existing power wheelchair for several months without an acute episode of skin breakdown or leg ulcers. The ministry pointed out that the last reported episode ended in the fall of 2013 and no recurrences of skin breakdown or ulcers are reported in the latest information from the hospital in July 2014. The ministry pointed out that the OT notes the importance of avoiding long periods where the appellant's legs are in a dependent position and the ministry argued that there are other preventative measures available, including intermittent rests in his hospital bed or reclining chair where power functions allow for elevation of his legs to relieve swelling and potential for DVT. The ministry argued that the facility's lack of staffing to reposition the appellant is not an acceptable factor in creating situations that might lead to a life-threatening need by a patient. The ministry argued that the Progress Notes from the psychiatrist recommend that the appellant stay structured and active and that he needs access to a power wheelchair to maintain psychosocial rehabilitation and to stay positively engaged but wheelchairs and custom seating are provided by the ministry for purposes of basic mobility and not to address a mental health need to socialize and engage in outdoor activities.

No resources available

The ministry acknowledged that the appellant does not personally have adequate financial resources to purchase a new power wheelchair with tilt and custom seating at a total cost of \$27,108.21. The ministry argued, however, that the ministry is the payer of last resort and requires evidence that all other available resources have been explored first. The ministry argued that the appellant is a patient in a hospital facility funded by the Ministry of Health and the residents' needs for medical equipment must be met through the facility. The ministry pointed out that the social worker applied to the Ministry of Health for funding on November 18, 2013 and no reply was received by February 2014 and this resource is still a possibility.

Appellant's position

The appellant's position is that there is sufficient evidence of a direct and imminent life-threatening need for a new power wheelchair with tilt and custom seating. The advocate argued that the appellant requires the tilt function with custom seating because of his skin breakdown and the need to adjust his position every few minutes. The inability to adjust the position of his legs independently places the appellant in imminent risk of life threatening skin breakdown issues and ulcers. The skin breakdowns and ulcers are easily infected and, because of the depth of the wound, can quickly lead

to septicemia; the survival rate for cases of septicemia is "very low." The advocate argued that since the loss of the tilt function on the appellant's existing power wheelchair in June 2013, the appellant's skin integrity is getting worse. The advocate argued that the appellant also requires the tilt function with custom seating to take pressure off his buttocks and to elevate his feet and legs due to his paraplegia. The lack of the tilt is placing the appellant in a potentially life-threatening situation. The inability to elevate legs results in the collection of blood in the legs and the development of blood clots. These clots would normally present as redness and soreness in the leg. However, due to the existing edema in the leg and his paraplegia, the appellant would not notice these symptoms. Blood clots reaching the heart or brain are often fatal.

The advocate argued that the appellant requires the power wheelchair for mobility since the appellant currently spends about 8 hours a day outside of the care facility, visiting with friends and family or just having coffee. The appellant has stated "Being able to get out of the facility is the only thing that makes me want to get out of bed" and, if he didn't have his independence "what is the point of living?" Given the appellant's background, it is reasonable to assume that isolating the appellant from social interaction outside of the care facility will create a life-threatening risk of suicide.

The advocate argued that a new power wheelchair with tilt and custom seating is necessary to meet the appellant's life-threatening need. While a shared wheelchair with manual tilt is available in the facility, it is inadequate for the appellant's needs. A wheelchair needs to be customized to the specific user if they are going to use it extensively. In addition, the unit was used for two weeks while the appellant's wheelchair was inoperable. During this time the appellant's mood deteriorated noticeably. The advocate argued that a manual tilt function will worsen, rather than help, the appellant prevent ulcers from developing in the future. The appellant needs to change positions at approximately the same frequency as a non-disabled person would; staff is unable to do so as frequently as is required. Transferring the appellant between his chair and his bed requires use of an overhead sling. Once in bed, the appellant can control the tilt mechanism. However, repositioning requires a two-person assist approximately every two hours. The strain on personnel will result in a higher risk to the patient. Requiring an otherwise independent person to spend long periods in bed just to use the automated devices the bed provides reduces the appellant's quality of life. Care facility staff and volunteers are not allowed to take, or accompany, a client offsite. Therefore, relying on staff to perform the tilt and repositioning functions would restrict the appellant to the facility and would not meet the requirement to maintain the psychological rehabilitation and positive engagement required to prevent his depression and suicidal ideations.

No resources available

The appellant's position is that there are no other resources available to the appellant to meet his direct and imminent life-threatening health need. The advocate argued that the appellant does not have sufficient resources to pay the cost of the new power wheelchair with tilt and custom seating, which is a total of \$27,108.21. The advocate argued that the ministry is mistaken; the care facility does not provide medical devices. Per the Ministry of Health's Home and Community Policy, Section 6F, "purchase or rental of equipment that is for the exclusive use of the client, such as a walker, wheelchair, crutches, canes or other devices, and maintenance as required" falls under the category "Chargeable Items May Include", indicating that the client is responsible for the cost. The advocate advised that there is no separate request to the Ministry of Health. The advocate clarified that the appellant made the November 2013 request to the ministry and the letter from the ministry dated July 9, 2014 is the denial.

Panel's decision

Section 69 sets out that if the family unit is not otherwise eligible for the health supplement under the EAPWDR, the request for a health supplement can be considered under Section 69. In this case, the appellant has not disputed that he has not met the requirement of Section 62 in that the appellant is not a recipient of disability assistance and he is not a dependent of a person in receipt of disability assistance and, therefore, is not otherwise eligible for the requested health supplement under the EAPWDR. Section 69 of the EAPWDR requires that the ministry must be satisfied that the person faces a direct and imminent life threatening need, that there are no resources available to the person with which to meet that need, and that the requested health supplement is necessary to meet that need.

Direct and imminent life threatening need

The panel finds that the ministry proposed a reasonable definition of a direct and imminent "life-threatening health need" as an *immediate* need for medical equipment in situations where, verified by a medical or nurse practitioner, without the specific equipment requested the person's life is at risk. The life threatening health need must be both 'imminent,' and 'direct,' and the ordinary dictionary definitions of direct is "without intervening factors" and the definition of imminent is "likely to occur at any moment" and "impending." The advocate argued that one of the appellant's serious medical conditions is skin breakdown and ulcers which will become life-threatening and for which he requires constant re-positioning. When asked at the hearing to describe how skin breakdown is life-threatening, the advocate responded that it starts with skin breakdown and then an ulcer develops and it starts to "go deep." If the ulcer becomes deep, infection could enter the blood stream and lead to septicemia before being discovered. There is a possibility of infection, which would require a course of antibiotics and, if the antibiotics were not effective, the infection could become systemic and possibly lead to septicemia. With septicemia, the patient would require intensive care and the survival rate for cases of septicemia is "very low." The advocate stated that the appellant currently has skin breakdowns on his buttocks and his coccyx area.

While the appellant physician at the facility wrote in November 21, 2013 that "without the correct wheelchair and seating he will develop skin breakdown and ulcers which will become life-threatening", and again on February 17, 2014 wrote that "the lack of tilt is placing the appellant in a potentially life-threatening situation," the ministry reasonably pointed out that 6 months had passed at the time of the reconsideration decision and there was no updated information provided from the appellant's physician to indicate an acute episode of skin breakdown or leg ulcers. There was no evidence provided from a medical or nurse practitioner that the appellant had developed an infection over this period that required a course of antibiotics, or that there was any current risk of impending septicemia. The clinical resource nurse wrote, in the report dated September 15, 2014, that the appellant has been without his electric tilt mechanism on his chair since June 2013, or well over a year, and there was no evidence of the appellant being in a state of medical emergency due to skin breakdown or the beginning of the chain of events which could lead to septicemia at any time over this period. After reviewing the physician's letters, the advocates' statements, and the management of the appellant's condition since the initial application, the panel finds that the ministry reasonably concluded that the appellant does not currently face an "imminent" life-threatening need due to skin breakdown since the evidence shows that, while *possible*, a life-threatening need is not "*likely* to occur at any moment."

The advocate argued that one of the appellant's serious medical conditions is circulatory problems, including edema and the risk of DVT due to paraplegia, for which he requires the ability to elevate his

feet and legs above the level of his heart. Although the appellant's physician wrote in his February 17, 2014 letter that the appellant "requires the tilt mechanism to take pressure off his buttocks and elevate his feet and legs due to his paraplegia," the physician did not refer to a risk of DVT. On July 17, 2014 a physiotherapist provided an Appeal of Equipment Funding Request Denial letter in which she wrote that the appellant "has bilateral dependent leg edema with lymphedema which means that when his legs are down he is quite prone to edema. Compression stockings have been helpful but are not nearly enough to manage the swelling and skin breakdown issues. He remains at very high risk of life-threatening DVT's." The physiotherapist concluded that "what is important is avoiding long periods of having his lower legs in a dependent position and he needs the ability to independently and regularly elevate his lower legs at or above the level of his heart." Asked at the hearing about the DVT threat, the advocate stated that when there is a lack of mobility, there is pooling of blood, especially when the legs are down. The risk of blood clots becomes real and would present in an able-bodied person as redness and soreness in the leg but, with the appellant's paraplegia, the appellant would not notice these symptoms. The advocate stated that blood clots that travel to the heart or the brain are often fatal.

In the report dated September 15, 2014, the clinical resource nurse wrote that the appellant has a history of severe lymphedema that is currently being managed with daily compression using compression stockings. At the hearing, the OT stated that the compression stockings are not sufficient on their own and, with the loss of the tilt function, the appellant has had to spend more time in bed and lying on his side to relieve the pressure areas; the hospital bed has a tilt function that the appellant can operate with his left hand and, during the night, the facility staff reposition him about 4 times. The panel finds that the evidence demonstrates that the appellant's circulatory problems are currently being managed with compression stockings along with elevation of his feet and legs using the power features of his hospital bed combined with repositioning by facility staff. Asked at the hearing about how "imminent" the appellant's health issues are, the OT responded that there are different gradations and while he is not currently palliative, there is a 'strong possibility' of a problem developing. The appellant has been without his electric tilt mechanism on his chair since June 2013, or well over a year, and there was no evidence of the appellant having experienced a blood clot or DVT or being in a state of medical emergency due to circulatory problems at any time over this period. The panel finds that the ministry reasonably concluded that the appellant does not currently face an "imminent" life-threatening need due to circulatory problems, including edema, and while a life-threatening need due to DVT is a possibility it has not been shown to be "*likely* to occur at any moment".

The advocate argued that one of the appellant's serious medical conditions is his psychiatric condition for which he is being treated by a psychiatrist. In the handwritten Progress Notes, the appellant's psychiatrist wrote in part that the appellant's medical history includes paranoid schizophrenia and PTSD. The psychiatrist provided his opinion that the appellant's psychiatric condition is well-managed but there is concern of depression with episodic SI; he clearly needs to stay structured and active and needs access to power wheelchair to maintain psychosocial rehabilitation and to stay positively engaged. While the psychiatrist stated that the appellant needs to stay structured and active, he did not specify that the appellant needs to have the ability to leave the facility for 8 hours each day, or some lesser time, or whether he might engage in recreational and social activities within the facility and achieve the same goal. Asked at the hearing about the repairs to the appellant's wheelchair, the OT responded that about a year ago the medical supply company put in free time to get the chair operating again and the appellant has had use of the power wheelchair for mobility since then. In her report dated September 16, 2014, the OT wrote that the

appellant has done well at the hospital mentally and emotionally; his mental health has stabilized and he has developed a life for himself outside the hospital. He goes out daily for a minimum of 8 hours per day and meets friends and family members. The panel finds that the appellant has use of a power wheelchair providing him with mobility and the ministry reasonably concluded that the appellant does not currently face either a "direct" or an "imminent" life-threatening need due to his psychiatric condition.

New power wheelchair with tilt and custom seating necessary to meet that need

The panel finds that the ministry was reasonable in concluding there is insufficient evidence to show that the requested new power wheelchair with tilt and custom seating is necessary to meet a direct and imminent life-threatening need. The panel finds that the ministry reasonably determined that other preventative measures are available and, indeed, have been taken. The panel finds that the evidence demonstrates that all of the appellant's identified medical conditions have been managed since the tilt function on his existing power wheelchair stopped functioning over a year ago and that he does not currently face a direct and imminent life-threatening need, as detailed above.

The clinical resource nurse wrote in the report dated September 15, 2014 that the appellant was seen multiple times at the Foot and Leg Ulcer Clinic between June 2012 and June 2013 and the advocate stated at the hearing that during this incident the appellant had pressure ulcers on both sides of his legs and, although they were successfully treated at the time, his condition could have possibly resulted in the appellant losing his leg. The panel finds that the tilt function on the appellant's existing power wheelchair and tilt mechanism were functioning during this period of June 2012 to June 2013 when the appellant's condition deteriorated and the features of a power wheelchair with the tilt function were, therefore, ineffective in preventing the development of ulcers. As the ministry pointed out, there are other preventative measures available which have been effective in treating and preventing an exacerbation of medical conditions, including the use of compression stockings, the use of antibiotics to fight infection, and intermittent rests in the appellant's hospital bed where power functions allow for elevation of his legs to relieve swelling and potential for DVT. In the Appeal of Equipment Funding Request Denial letter dated July 17, 2014, the physiotherapist wrote: "One might argue that he lives in a care facility with 24-hour care, but it is common knowledge that staff are (sic) scarcely available to manually change his position." The panel finds that the ministry reasonably determined that it is untenable for the 24-hour care facility to argue that it is the facility's lack of sufficient staffing which could cause the appellant to face a life-threatening situation.

No resources available

The majority view of the panel is that the ministry was not reasonable in concluding that there is insufficient evidence to show that there are no resources available to the appellant with which to meet that need. The ministry decision gives two reasons for their conclusion: that an application for funding had been made to the Ministry of Health and, because it had not been denied, could still provide a source of funds; and, that the facility in which the appellant lives was responsible for providing any needed mobility device. There had never been an application made to the Ministry of Health. As shown by the evidence provided, the only application made was the one upon which this appeal is based, the denial of which was the reason for the Reconsideration Decision under appeal. According to the Home and Community Care Policy Manual, chapter 6, section F, "chargeable items", personal mobility devices are the responsibility of the individual, not the facility. Unfortunately, only one page of the 4-page policy was provided so the panel could not review the content in context. However, the advocate (and care facility director) assured the panel that this section defines the items that the care facility will not provide and which are the responsibility of the individual. Given

that the ministry's conclusion was based on two erroneous assumptions, and the ministry's acknowledgement that the appellant did not have the resources required himself, the majority finds that the ministry was not reasonable in determining that the criteria was not satisfied and that the determination was not supported by the evidence.

Dissenting view

The dissenting view is that the ministry reasonably concluded there is insufficient evidence to show that there are no resources available to the appellant with which to meet a direct and imminent life-threatening need. The ministry acknowledged that the appellant does not personally have adequate financial resources to purchase a new power wheelchair with tilt and custom seating at a total cost of \$27,108.21. The dissenting view finds that the ministry reasonably interpreted "resources available" in the Section to include a supply of money as well as access to other equipment or services that are available to meet a need, and that there must be sufficient evidence provided by the appellant that all other available resources have been explored. While the ministry stated that an application was made to the Ministry of Health for funding on November 18, 2013 and this resource is still a possibility because it had not yet been denied, the advocate clarified at the hearing that there has never been a request made to the Ministry of Health for funding. The dissenting view finds that the ministry reasonably concluded that the appellant is not a ministry client but is, rather, a resident and patient in a hospital facility and reliant on the Ministry of Health to meet his needs for basic medical equipment.

At the hearing, the advocate pointed to one page of a 4-page Home and Community Care Policy Manual, chapter 6, section F, which sets out a list of "chargeable items," including "purchase or rental of equipment that is for the exclusive use of the client, such as a walker, wheelchair, crutches, canes or other devices, and maintenance as required" and explained that these items are the financial responsibility of the residents. The advocate stated that the facility has equipment for the residents to share, including manual wheelchairs with tilt functions, but the manual wheelchairs are not customized, would not have specialized seating, and would not allow for independent operating of the tilt function by the appellant. The advocate stated that the appellant cannot re-position to the same extent as he could with the tilt function in a power wheelchair.

In the Appeal of Equipment Funding Request Denial letter dated July 17, 2014, the physiotherapist wrote that it is unsound to consider a manual chair to meet the appellant's positioning needs and "he would do better to stay in his bed and use the power functions available there, as ludicrous as that sounds." At the hearing, the OT stated that, with the loss of the tilt function over the past year, the appellant has had to spend more time in his hospital bed and lying on his side to relieve the pressure areas, that the hospital bed has a tilt function that the appellant can operate with his left hand and, during the night, the facility staff reposition him about 4 times. As previously detailed, the dissenting view is that the evidence demonstrates that the appellant's circulatory problems are currently being managed with compression stockings and elevation of his feet and legs using the power features of his hospital bed combined with repositioning by facility staff.

The ministry pointed out in the reconsideration decision that although a request was made to the facility for more information about the appellant's current wheelchair, including a quote of the necessary repairs, the information was not forthcoming from the appellant or his advocates. The dissenting view finds that there is no evidence of the appellant or his advocate having explored the resource of funding for repairs to be made to the power wheelchair and, specifically, the tilt function. In the Quote dated September 8, 2014 from the medical supply company, the list of parts required includes a tilt complete with centre mount with flip up foot at a cost of \$3,658.20. At the hearing, the

[REDACTED]

appellant stated that he cannot afford to pay for any repairs to his wheelchair and the advocate clarified at the hearing that the appellant's monthly income from CPP is \$1,494 and he is currently paying \$1,213.66 to the facility, which only leaves approximately \$280 per month to cover personal expenditures. Asked how the repairs to the motor of the appellant's wheelchair were previously funded, the OT responded that about a year ago the medical supply company put in "free" time to get the chair operating again. There is no evidence of a request having been made by the appellant or his advocates to the medical supply company to donate some additional free time to get the tilt mechanism on the appellant's wheelchair operating.

The dissenting view notes that sub-sections 3(4) and (5) of Schedule C of the EAPWDR allows the ministry to provide a supplement to cover the cost of repairs of medical equipment, whether it was previously provided by the ministry or not, as long as the requirements in those sub-sections are met. There is also no evidence of a request having been made by the appellant or his advocates to the ministry or any other community resource to access funding for the necessary repairs to the tilt function or the appellant's power wheelchair. In fact, the advocate confirmed at the hearing that the only request made on behalf of the appellant was that made to the ministry for a new power wheelchair with tilt and custom seating, which is the subject of this appeal. The dissenting view is that the ministry reasonably concluded there is insufficient evidence to show that there are no resources available to the appellant with which to meet his need.

Section 3(1)(b)(ii) of Schedule C of the EAPWDR- No resources available

Ministry's position

The ministry's position is that the appellant's request for a supplement to cover the cost of a new power wheelchair with tilt and custom seating does not meet all of the applicable criteria of Section 3 of Schedule C of the EAPWDR. The ministry stated that the requirements in Section 3(1)(b)(ii) have not been met as there is insufficient information to show that there are no resources to the family unit to pay the cost or obtain the medical equipment or device. The ministry's argument is the same as that set out under a review of the criteria in Section 69(a) of the EAPWDR, as set out above.

Appellant's position

The appellant's position is that the requirements in Section 3(1)(b)(ii) have been met as there is sufficient information to show that there are no resources to the family unit to pay the cost or obtain the medical equipment or device. The appellant's argument is the same as that set out under a review of the criteria in Section 69(a) of the EAPWDR, as set out above.

Panel's decision

Section 3(1) of Schedule C of the EAPWDR states that the medical equipment and devices described in sections 3.1 to 3.12 of the Schedule are the health supplements that may be provided if all of the requirements are met, including sufficient evidence to establish that there are no resources available to the family unit to pay the cost of or to obtain the medical equipment or device [Section 3(1)(b)(ii)]. The majority view of the panel is that the ministry was unreasonable in concluding that there is insufficient evidence to show that there are no resources available to the appellant with which to meet that need, as set out under a review of the criteria in Section 69(a) of the EAPWDR, above.

Dissenting view

The dissenting view is the ministry was reasonable in concluding that there is insufficient evidence provided by the appellant to show that there are no resources to the family unit to *pay the cost or*

[REDACTED]

obtain the medical equipment or device. The dissenting view notes the distinction in wording between Section 69(a) of the EAPWDR and Section 3(1)(b)(ii) of Schedule C of the EAPWDR regarding resources available *to meet a need* in contrast to the resources available to pay the cost of or obtain *the medical equipment* specifically requested by the appellant. The ministry acknowledged, and it is not disputed, that the appellant does not personally have adequate financial resources to purchase a new power wheelchair with tilt and custom seating at a total cost of \$27,108.21. In the Quote dated September 8, 2014, the medical supply company reported that the appellant's chair was "supplied January 10, 2011," and the information from the clinical resource nurse at the facility is that the tilt mechanism stopped functioning in June 2013, or a little over 2 years later. There was no information provided by the appellant or his advocates to show that there is no applicable warranty from the medical supply company or the manufacturer to cover the cost of repairs to the tilt mechanism. There was also no information provided by the appellant or his advocates to show that he had explored other resources in the community as alternate ways to obtain a new power wheelchair with tilt and custom seating or possibly a used power wheelchair with a functioning tilt mechanism. At the hearing, the appellant stated that he got his existing power wheelchair when he was at a rehabilitation centre, possibly through the EATI program. There was no information provided by the appellant or his advocates to show that he had explored funding for a replacement power wheelchair through this or any other community program.

Section 3(1)(b)(iii) of Schedule C of the EAPWDR- Least Expensive appropriate medical equipment or device

Ministry's position

The ministry's position is that the appellant's request for a supplement to cover the cost of a new power wheelchair with tilt and custom seating does not meet all of the applicable criteria of Section 3 of Schedule C of the EAPWDR. The ministry argued that the requirements in Section 3(1)(b) of Schedule C have not been met as the a new power wheelchair with tilt and custom seating is not shown to be the least expensive appropriate medical equipment or device. The ministry points out in the decision that the appellant's current power wheelchair that is "a few years old" was assessed to require \$6,000 in repairs to the tilt function and the vendor made adequate repairs to make the chair useable. The ministry requested more information about the appellant's current wheelchair, including a quote of the necessary repairs, and the information was not forthcoming. The ministry argued that it is possible that repairs to the existing power wheelchair and possibly a new cushion would suffice and be the least expensive appropriate medical equipment or device.

Appellant's position

The appellant's position is that the requirements of the section have been met by the information provided by the OT and the physiotherapist and the requested new power wheelchair with tilt and custom seating is the least expensive appropriate medical equipment or device. The advocate argued that the power wheelchair with tilt and custom seating is the only appropriate medical equipment since it is the only option that meets all of the appellant's needs. The advocate pointed out that the appellant is unable to effectively utilize a manual wheelchair for mobility because the appellant lacks motor control at both arms so is not able to functionally wheel a manual wheelchair even indoors. The advocate argued that staffing levels in residential care do not support the provision of assistance to residents in manual chairs to transport them to community activities/events, appointments, etc. which are necessary to promote independence and maintain good mental health. In the Summary of mobility issues dated September 16, 2014, the OT wrote that no other individuals are available for assisting with pushing/mobility since volunteers are not permitted to take residents

outside facility grounds, the appellant is financially unable to purchase companion services, and friends are not consistently available to assist/push him. Even if available, these people could not consistently push the appellant more than around his unit due to the weight of the chair/resident, especially considering the hills surrounding the hospital. The OT also wrote that a service such as HandyDart could take the appellant to a designated location, but it remains that the appellant would require a person to push and tilt a manual wheelchair once he has arrived at his destination. In the Seating Assessment Report dated February 24, 2014, the OT wrote that the current wheelchair did not meet the appellant's seating needs and she clarified in the Summary of mobility issues dated September 16, 2014 that the appellant's current chair is too small for him and not adjustable for width, the chair needs significant repairs, and the chair is not a higher-end model that would outlive its expected lifespan.

Panel decision

The requirement in Section 3(1)(b) of Schedule C of the EAPWDR is that the requested new power wheelchair with tilt and custom seating is the least expensive appropriate medical equipment or device and the panel finds that an assessment of all the types of equipment appropriate to the appellant's medical condition and the associated cost is relevant and necessary to this analysis. The panel finds that, as part of this analysis, the OT considered the need for a new power wheelchair with tilt and custom seating in relation to some types of equipment available, but did not consider the relative costs of the other options. For example, the option of the manual wheelchair with tilt along with "companion services" to push the appellant in the manual chair and to assist with use of the tilt mechanism was dismissed by the OT because the appellant "is financially unable to purchase companion services," but no information of the cost of this combination is discussed. While the advocate wrote in the Notice of Appeal that paid companion services would not be able to push a resident weighing 240 lbs., there is no information provided to show that services to assist heavier patients do not exist, or the cost of this service in combination with HandyDart transportation. Asked at the hearing about whether new seating could be added to the appellant's existing wheelchair, the OT agreed that it could be added, but the cost of adaptations to the appellant's existing wheelchair, including added or improved cushioning, was also not discussed in the OT's reports.

While the cost of repairs to the appellant's wheelchair was itemized in the Quote from the medical supply company, the OT dismissed this option since she stated that the chair needs significant repairs and the chair is not a higher-end model that would outlive its expected lifespan. At the hearing, the OT stated that the medical supply company has said that the base of the chair is nearing the end of its life expectancy; however, in the Note dated August 26, 2014, a rehab equipment specialist with the medical supply company wrote that in their experience, the base of a Quantum 600 wheelchair needs substantial repairs to the motors, gearboxes and suspension when the chair nears 5 years of use. In the Quote dated September 8, 2014, the medical supply company confirmed that the appellant's chair was "supplied January 10, 2011" which would make it approximately 3 ½ years old.

With the Medical Equipment Request and Justification dated March 3, 2014, two Quotes dated February 20, 2014 were provided from the medical supply company for the new power wheelchair in the amount of \$24,368.21 and the custom seating in the amount of \$2,740.00, for a total cost of \$27,108.21. Asked at the hearing how the OT knows that the recommended power wheelchair is the "least expensive" alternative, the OT responded that they find that there is not much difference in the quotes provided by the various local suppliers. However, the OT did not explore the option of a used power wheelchair with tilt and custom seating or provide estimated costing for this alternative. The

panel finds that the OT has not provided information in her assessment about the cost of the other possible appropriate equipment options, namely: a used power wheelchair with tilt and custom seating, adaptations to the seating and repairs of the existing power wheelchair and tilt mechanism, or the manual wheelchair together with specialized companion services and HandyDart and intermittent use of the elevation features in the appellant's hospital bed. Therefore, the panel finds that the ministry's conclusion that the new power wheelchair with tilt and custom seating is not shown to be the least expensive appropriate medical equipment or device, pursuant to Section 3 (1)(b) of Schedule C of the EAPWDR, was reasonable.

Conclusion

Section 69 of the EAPWDR stipulates that all of the requirements of the section, as well as the applicable sections of Section 3 of Schedule C, must be met in order for the person to be eligible for a requested health supplement. While there are differing views of the panel on whether the ministry was reasonable in concluding that the requirements of Section 69(a) of the EAPWDR and Section 3(1)(b)(ii) of Schedule C of the EAPWDR were not met, the panel was unanimous in finding that the ministry was reasonable in determining that the requirements of Section 69 (b) of the EAPWDR and Section 3(1)(b)(iii) of Schedule C of the EAPWDR were not met.

Therefore, the panel finds that the ministry's reconsideration decision, which denied the appellant's request for a new power wheelchair with tilt and custom seating as all of the legislative requirements were not met, was a reasonable application of the applicable enactment in the appellant's circumstances and confirms the decision.