

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated September 18, 2014, which held that the appellant is not eligible for power tilt seating for a power wheelchair because she failed to meet the following legislative criteria set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR):

- The power tilt seat is the least expensive appropriate medical device (Schedule C, section 3(1)(b)(iii) of the EAPWDR);
- An Occupational Therapist (OT) or Physical Therapist (PT) has confirmed the medical need (Schedule C, section 3(2)(b) of the EAPWDR);
- The power tilt seating for the power wheelchair is medically essential to achieve or maintain basic mobility, and achieve or maintain a person's positioning in a wheelchair (Schedule C, section 3.2 (2) and 3.3 (1) of the EAPWDR respectively); and
- The appellant faces a direct and imminent life threatening need (section 69 (a) of the EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – section 69 and Schedule C

PART E – Summary of Facts

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

1. A quote for a power wheel chair with a power tilt for \$10 680.54 dated February 12, 2014;
2. A quote for a power wheel chair with an adjustable seat set for \$8307.54 dated July 15, 2014;
3. A quote for a power wheel chair with a seat cushion for \$8059.74 dated August 4, 2014;
4. 2 Medical Equipment Request – Tracking Sheets: one with entries from May 26, 2014 to June 3, 2014 and the second with entries from June 9, 2014 to August 11, 2014. The June 3, 2014 entry states that the OT stated to a ministry worker that a power tilt is not justified for the appellant at this time and that she will send in a new quote;
5. A letter signed and dated August 26, 2014 from the appellant's physician which states that the appellant has generalized osteo-arthritis and severe low back pain, and the power tilt feature on the wheelchair helps the appellant rest her lower back and legs. It also states that the tilt position alleviates the appellant's pain in the right thigh/hip. Finally, the physician requests the opinion of another OT;
6. A letter signed and dated August 20, 2014 from a local advocacy agency addressed to the appellant's physician. The letter asks the physician to assist the appellant in securing another OT for re-application for the power tilt;
7. A Client Recommendation signed by the appellant's OT and dated August 19, 2014 which recommends the appellant seek assistance from a local advocacy group;
8. A 2-page letter signed by the appellant's OT and dated March 7, 2014 in which the OT outlines the appellant's medical conditions, how they impact her mobility and a description of the various aides the appellant uses to function on a daily basis. It also states that the appellant is anxious and nervous, and lives in an area where there are very steep curbcuts, and insists on power tilt seating, therefore the OT recommends funding for a power wheelchair with a tilt as the appellant feels safer and relaxed using such a power chair.
9. A Medical Equipment Request and Justification form which is signed and dated by the appellant on July 5, 2013, the appellant's physician on July 5, 2013 and the appellant's OT on March 7, 2014; and
10. A Request for Reconsideration signed and dated by the appellant on August 29, 2014 which states in part that the appellant:
 - raised 5 children and worked hard therefore deserves a good chair with a tilt which will be her only chair for the rest of her life;
 - attends church and does shopping in her chair;
 - had an OT that originally recommended a power tilt but then changed her mind. This change in attitude is unacceptable;
 - would have had to stay at home after her long hospital stay if she was not loaned a wheelchair with a power tilt; and
 - is still in pain and will ask for another appeal.

In the Notice of Appeal, signed and dated September 23, 2014, the appellant states that she disagrees with the ministry's decision because of false statements. The appellant states that:

- she is in a chair for many hours in the day and will need to use a wheel chair for the rest of her life;
- it is false that she has "very limited ability to walk" as walking is not possible;
- if the OT explained her condition correctly, she would not be in this situation;
- the tilt is not necessary for the curbcuts but rather for her arthritis that leaves her crippled;
- the OT recommends that someone help the appellant cross the street but there is no one

available to help do this; and

- she does not want another OT as the local advocacy group suggested because another OT will not give a contrary opinion out of professional courtesy.

On October 3, 2014 the appellant submitted the following new information:

- A letter dated September 26, 2014 from her Orthopedic Surgeon which states that the appellant is taking over-the-counter medication for pain, her incisions have healed, no abnormal motion of her distal femur has been detected, the hardware remains intact, there is little callus, there is suspicion of nonunion, and he ordered a CT scan. The letter also states that the appellant has concerns about her wheelchair and that the doctor supports any modification necessary [to her wheelchair] for her to maintain her independence;
- 3-page printout from the internet with information regarding nonunion; and
- A Medical Imaging Report dated September 26, 2014 which states that the fracture lines in the appellant's femur are still visible with no evidence of interval healing, there is deformity of the right femoral head, vascular calcification, and a total knee arthroplasty.

At the hearing the appellant showed the panel an appointment letter which stated that she is scheduled for a CT scan on October 31, 2014.

Admissibility of New Information

The ministry did not object to the admission of the new information.

The panel found that the preceding new information presented by the appellant was in support of the information before the ministry at the time of reconsideration. All 3 pieces of information that were submitted speak to the medical condition of the appellant which thereby substantiates her argument that she needs the power tilt seating for pain relief. Accordingly, the panel did admit this new information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

At the hearing the appellant stated the following:

- her OT initially recommended a power tilt for her power chair but then withdrew her support;
- she never felt comfortable with the OT that was assigned to her as the OT was negative about the application for a power wheelchair, and she should have asked for another OT, right away;
- she needs the power tilt chair because her body is full of arthritis and she cannot afford a power tilt with her \$16000 annual income;
- the OT focused on the steep curbcuts and the fact that the intersection she has to cross is dangerous but did not focus on the fact that the power chair tilt device helps relieve pain in her legs and back;
- she loves the area she lives in and does not want to move because of accessibility issues;
- the power tilt helps her body rest;
- there was false information given by the OT. In actuality, her right knee surgery took place in 1983 and her left knee surgery was in 1990;
- she used a walker, that she purchased on her own, before but could no longer manage a walker as her arms and legs were too weak;
- her daughter purchased a manual wheel chair for her but she can no longer use it outside of her home because her arms and shoulders are weak from arthritis and calcification;

- her son purchased a pole to help with mobility in the bedroom and made modification to her kitchen and bathroom so that she could function in her home without risking injury. All of this was done without any cost to the ministry;
- she manages her money well and meets her needs through her income. She has reached out to the ministry because she cannot afford the power tilt and needs it;
- she is very appreciative of the help she receives from the local health authority as care-aids visit her home 3 times per day but it is likely that she will only require one wheelchair for the rest of her life so she wants one that meets all of her needs;
- her doctors support her independence and need for the power tilt;
- the tilt allows her to lean back in the chair which relieves pressure from her femur which is helpful in easing the pain in her leg as the incision from surgery has healed but she has nonunion;
- she is willing to allow the ministry to deduct the \$2620.00 (the cost of the power tilt) in increments from her assistance to make-up the cost of the tilt; and
- she asks for compassion from the ministry as her medical conditions are destroying her.

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

- in her letter, the OT focuses on the inability to navigate steep curbs and the appellant's comfort level in using a power chair with a power tilt option but did not establish that there is a life threatening need for the power tilt;
- the ministry can only follow the legislation and cannot base decision on compassion though it empathizes with the appellant's circumstances;
- the appellant would need a physician's prescription plus a recommendation from either an OT or physical therapist to meet the criteria of Schedule C section 3(2);
- the tilt is not necessary to meet the need of basic mobility;
- the tilt does not necessarily provide her added protection when crossing a street as anyone's life could be in danger when crossing a busy intersection; and
- the appellant is able to apply for a power tilt for her power wheel chair that the ministry has approved when her medical condition(s) change and she meets the legislative criteria.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision which held that the appellant is not eligible for power tilt seating for a power wheelchair because she failed to meet the legislative criteria set out in the EAPWDR was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant failed to meet the criteria listed in section 69 and Schedule C sections 3(1)(b)(iii), 3(2)(b), and 3.2 (2) and 3.3 (1) of the EAPWDR?

The relevant legislation is as follows:

Schedule C of the EAPWDR

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

(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 — wheelchairs

3.2

(2) Subject to subsection (4) of this section, the following items are health supplements **for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:**

- (a) a wheelchair;
- (b) an upgraded component of a wheelchair;
- (c) an accessory attached to a wheelchair.

Medical equipment and devices — wheelchair seating systems

3.3 (1) The following items are health supplements **for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain a person's positioning in a wheelchair:**

- (a) a wheelchair seating system;
- (b) an accessory to a wheelchair seating system

The EAPWDR

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).

The Appellant's Position

The appellant's position is that the OT changed her mind and the ministry's entire decision rests on one person's opinion, who was not supportive. She argues that her health has deteriorated to the point where she requires a power wheelchair for mobility and a power tilt seating to relieve pain in her back and legs. Without the power tilt feature on her wheelchair she will be in a lot of pain. She also argues that she cannot afford the power tilt on her income but has saved the ministry many other expenses by purchasing items necessary for her mobility on her own or with the help of her children.

The Ministry's Position

The ministry's position is that while the appellant has the support of her doctor, she is also required to have the support of her OT or a physical therapist to meet the legislative criteria. The ministry argues that the evidence presented has not established that the power tilt seating is medically essential to achieve or maintain basic mobility or that it meets a life threatening need.

The Panel's Decision

In the reconsideration decision, the ministry found that the appellant is ineligible for a power tilt seating on her power wheelchair because she did not meet the criteria set out in Schedule C, sections 3(1)(b)(iii), 3(2)(b), and 3.2 (2) and 3.3 (1), and section 69 of the EAPWDR.

Schedule C, section 3(1)(b)(iii) of the EAPWDR requires that the medical equipment or device is the least expensive appropriate medical equipment or device. The ministry argues that the evidence does not demonstrate that the power tilt seating on a power wheelchair is the least expensive option to alleviate the pain in back and legs. In her request for reconsideration, notice of appeal and at the hearing, the appellant did not directly address this issue. The panel finds ministry reasonably determined that the information presented to the ministry at the time of reconsideration does not establish that the power tilt seating on a power wheelchair is the least expensive option to alleviate the appellant's back and leg pain and therefore the appellant has not met the criteria set out in Schedule C, section 3(1)(b)(iii) of the EAPWDR.

Schedule C, section 3(2)(b) of the EAPWDR requires an assessment from an OT or physical therapist to confirm that the medical need for the medical equipment, in this case the power tilt seating for a wheelchair. The ministry argues that the evidence demonstrates that the appellant's OT has recanted the initial endorsement confirming such a need therefore the appellant does not meet the legislative requirements. The appellant argues that the OT did support the need for the power tilt seating then changed her mind and this change in attitude is unacceptable, if she were to find another OT that does support the need for a power tilt, the OT will not contradict the original OT out of professional courtesy, and the ministry is wrongly basing its decision on the opinion of one person while ignoring the fact that her doctors support the need for the power tilt seating. The panel finds that Schedule C, section 3(2) states that a recipient must provide to the minister either a prescription from a medical practitioner or nurse practitioner, or confirmation from an OT or physical therapist regarding the need of the medical device, or both as requested by the ministry. The medical equipment request and justification form requires confirmation from both the medical or nurse practitioner and occupational or physical therapist. The panel also finds that the OT did recant her

support for the power tilt seating for the power wheelchair. As a result, the panel finds that the ministry reasonably determined that the appellant has not met the criteria set out in Schedule C, section 3(2)(b) of the EAPWDR.

Schedule C, sections 3.2 (2) and 3.3 (1) of the EAPWDR set out that an upgrade component of a wheelchair, accessory attached to a wheelchair, a wheelchair seating system or an accessory to a wheelchair seating system can be provided by the ministry if the item is medically essential to achieve or maintain basic mobility and positioning respectively. The ministry argues that the evidence does not demonstrate that the power tilt seating system is medically essential to achieve or maintain basic mobility and positioning. The appellant argues that the power tilt seating alleviates her back and leg pain thereby allowing her to be mobile. She argues that without the power tilt seating she would not have been able to leave her home after her long hospital stay. The panel finds that the two letters from the appellant's physicians dated August 26, 2014 and September 26, 2014 support the power tilt seating for her wheelchair so that the appellant can maintain independence and alleviate back and leg pain, and the letter dated March 7, 2014 from the OT states that the appellant feels more safe and relaxed with the power tilt seating, but the two physicians and the OT do not demonstrate in their letters that the need for the power tilt seating is to achieve or maintain basic mobility or positioning. As a result, the panel finds that the ministry reasonably determined that the appellant has not met the criteria set out in Schedule C, sections 3.2 (2) and 3.3 (1) of the EAPWDR.

Section 69 of the EAPWDR sets out that if a recipient does not meet the legislative criteria, the ministry may provide medical equipment or devices if it is satisfied that the recipient faces a direct and imminent life threatening need. The ministry argues that the evidence does not demonstrate that the appellant would face a direct and imminent life threatening need if she is not provided with the power tilt seating for her power wheelchair, and that anyone can be at risk when crossing busy intersections. The appellant argues that she must use a power wheelchair to go shopping and to church, and that the power tilt seating allows her to safely cross busy intersections. Without the power tilt seating her life is in direct and imminent danger. The panel finds that the wording in section 69 of the EAPWDR is very specific, that the danger to life must be both direct and imminent, and the evidence presented by the appellant, her physicians, and OT does not speak to direct and imminent danger to life. Furthermore, though crossing a busy intersection in a wheelchair may leave one vulnerable it is unlikely that the power tilt seating on a power wheelchair will be sufficient to protect against injury. As a result, the panel finds that the ministry reasonably determined that the appellant has not met the criteria set out in section 69 of the EAPWDR.

Conclusion:

The panel finds that the ministry reasonably concluded that the evidence establishes that the appellant did not fully meet the legislative criteria to be eligible for a power tilt seating on her power wheelchair. The panel therefore finds that the ministry's decision to deny the appellant a power tilt seating for her wheelchair was a reasonable application of the legislation and supported by the evidence. The panel confirms the ministry's reconsideration decision.