

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry), reconsideration decision dated August 15, 2014 in which the Ministry denied the Appellant's request for a power wheelchair because the Ministry was not satisfied that:

- an assessment by an occupational therapist or physical therapist has confirmed the medical need for the medical equipment or device as required by Schedule C subsection 3(2)(b) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR); and that
- a (power) wheelchair is medically essential to achieve or maintain basic mobility as required by Schedule C section 3.2(2) of the EAPWDR.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C sections 3 and 3.2

## PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision included the following:

1. The Appellant's Request for Reconsideration dated July 30, 2014 in which he stated that due to the continuous re-rupturing of his left thumb and significant weakness in his extremities, relying on his manual wheelchair for his basic needs is getting more difficult. Having to push himself around daily causes extreme fatigue and discomfort, and he will most likely require more surgery on his hand.
2. A letter to the Appellant from his apartment building manager dated July 29, 2014 stating that they have observed the Appellant encountering challenges and obstacles even though the building is designated as wheelchair accessible. Due to the limitations of his current wheelchair his basic life skills are impeded, as is gaining access to key areas of the building as needed to live independently. The apartment manager stated that the Appellant's self-esteem is also affected but there are no plans to modify the building to further support clients who are not in a motorized wheelchair.
3. A letter addressed to whom it may concern from the Appellant's hand surgeon dated July 15, 2014: The surgeon stated that the Appellant has had significant difficulties with his left thumb due to rupture and multiple re-ruptures of the ulnar collateral ligament. His left thumb is unstable "at the MCP joint" causing him great difficulties with wheeling. He may require an additional operation in the future and would not be able to use his left thumb for any wheeling or forceful motion for approximately 6-8 weeks.
4. A justification letter for medical equipment to the Ministry from the Appellant's occupational therapist (OT) dated December 10, 2013. The OT indicated the following:
  - The Appellant has Spina Bifida.
  - In November 2012, he injured his left thumb, underwent surgery, and experienced an unexplained loss of strength and sensation to his lower extremities resulting in impaired mobility and the use of a manual and power wheelchair.
  - During rehabilitation, he injured his left ankle requiring casting until February 2013. He also underwent revision surgery of his left thumb in March 2013 and had his arm and hand casted. Due to immobilization of his left hand and ankle, his participation in rehab was limited and following transitional care he was discharged to an apartment in the community with some personal care assistance. With occupational and physical therapy, he regained his independence and no longer requires any attendant care. He was also attending a rehabilitation centre to work on maximizing function.
  - The Appellant re-injured his left thumb and underwent surgery in December 2013. Prior to this most recent thumb surgery he was using a sliding board and was independent with dressing and all personal care. Despite physiotherapy he was still using wheelchairs for basic mobility (power and manual wheelchairs on loan).
  - The Appellant lives in his own apartment but can also have meals in a common area. He is able to use public transit and with the use of the power wheelchair is able to manage all community tasks independently, and he has returned to part-time work.
  - His neighborhood is very hilly and he has expressed great difficulty managing in the community in a manual wheelchair. His limited upper body strength and shorter arms in proportion to his body makes manual wheeling difficult and inefficient on hilly terrain. He has no cognitive or safety concerns in relation to a power wheelchair.
  - He has nerve pain in his lower extremities and also reports uncomfortable spasticity in his legs which is worsened by vibration. His posture is reasonably symmetrical and he has slightly protracted shoulders and mild rounding of his upper back.
  - Prior to 2012 the Appellant did not use any mobility equipment. He has trialed power \_\_\_\_\_

wheelchairs in his home and community and a community OT recommended a specific model. Wheelchair seating with cushion and backrest were also recommended.

- Under Justification, the OT stated that the Appellant's primary goal is to use a power wheelchair to meet his basic mobility needs within his suite, building, and local neighborhood. His secondary goal is to use the power wheelchair outdoors to manage his daily living activities in the surrounding community. He would also use the power wheelchair to maintain independent mobility and use public transit to access his employment. He would use a manual wheelchair at his workplace as there is limited space for a power wheelchair. Partial funding from a community organization has already been secured for a manual wheelchair and an application had been made to fund the remainder of the cost.
- The OT reported that a power wheelchair would also decrease muscle spasms by having good suspension and the Appellant's use of a manual wheelchair is impaired by his limited upper extremity fitness, short arms, and left thumb injury. His left thumb continues to be prone to re-injury and a need for further surgery.

5. A price quote dated December 13, 2013 for a power wheelchair and accessories in the amount of \$9,632.70.

6. A letter to the Appellant from the Ministry and a Medical Equipment and Devices decision summary dated June 25, 2014 denying the Appellant's request for health supplements for a power wheelchair.

7. A fax cover page addressed to the Ministry from a rehabilitation centre dated January 31, 2014. The centre requested that the Ministry authorize funding in the amount of \$9,632.70 for the purchase of a power wheelchair with seating.

8. A Medical Equipment Request and Justification form signed by the Appellant's OT on December 11, 2013: The OT described the Appellant's medical condition as Spina Bifida and recommended a power wheelchair.

9. A letter to the Appellant from the Ministry and a Purchase Authorization dated June 25, 2014 advising the Appellant that his request for wheelchair seating was approved in the amount of \$1,219.50.

10. A Medical Equipment Request tracking sheet for the Appellant containing Ministry file notes from April 14, and June 25, 2014. The note from June indicated that a power wheelchair was denied while wheelchair seating in the amount of \$1,219.50 was approved. The note from April indicated that the Appellant already has an ultralight manual wheelchair as his primary mobility device that was paid for through alternate funding. The note reported that he was coming out of a hand cast and the Ministry would "see how he does propelling manual wheelchair." The April 2014 note also indicated that the Ministry spoke with the Appellant's OT who reported that the Appellant was ambulatory prior to 2012 (with an AFO – ankle foot orthotic), but after surgery he woke up and said that he couldn't move his legs. The OT further reported that "psychiatry has given a diagnosis – Factitious Disorder (aware of what situation client is creating) – attention seeking" and the OT has noted "inconsistencies in skills".

Subsequent to the reconsideration decision, the Appellant filed a Notice of Appeal received by the tribunal on September 2, 2014 to which he attached a letter from his hand surgeon dated July 15, 2014. The surgeon reported the following:

- The Appellant has recurrent difficulties with his left thumb. He was also attacked by his cat approximately one month ago and developed acute pain in and around his left thumb joint. Since then, he has tried splints but these do not allow him to wheel his wheelchair.
- Despite treatment upon clinical examination, the Appellant's thumb joint is still quite tender and he continues to have great difficulty "with flexion extension PIP joint". There is no apparent limitation to "passive flexion or extension" and sensation appears to be relatively preserved to

the tip of his thumb.

- Based on the Appellant's previous x-rays, he appears to have completely disrupted his previous "ulnar collateral ligament reconstruction."
- The Appellant has current instability "at the MCP joint" and has had post-operative problems with previous operations and spent several months in hospital after his last reconstruction (surgery).

The surgeon recommends an "MCP joint fusion" on an outpatient basis with a "significant degree of social planning and follow up". In the meantime, the surgeon is referring the Appellant for placement of a fiberglass cast which was well-tolerated on a previous occasion. Future casting or surgery would then be considered. Surgery would be performed only if the Appellant could "organize his life, such that he would be able to tolerate this as an outpatient, and this may include use of the electric wheelchair".

In his Notice of Appeal, the Appellant also stated that his assessments regarding factitious disorder are incomplete and he was to be admitted as a neuropsychiatry inpatient for an in depth assessment. The panel finds that the statements in the Notice of Appeal and attached letter from the hand surgeon relate to the Appellant's medical conditions which form the basis for his request for a power wheelchair. The panel therefore admits the statements under section 22(4)(b) of the *Employment and Assistance Act* as submissions in support of information and records that were before the Ministry at the time the decision being appealed was made.

The Appellant did not attend the hearing. The panel confirmed that he was notified of the date, time, and location and the hearing proceeded under section 86(b) of the *Employment and Assistance Act*. At the hearing, the Ministry reviewed its reconsideration decision and did not introduce any new evidence.

The Ministry noted in its reconsideration decision that 8 months have passed between the time of the OT's assessment and the time of the reconsideration, and the OT reported in April 2014 that the Appellant had been diagnosed with factitious disorder "aware of situation person is creating, attention seeking." The Ministry also noted that the Appellant is a recipient of disability assistance who meets basic eligibility for health supplements under the EAPWDR.

The Panel makes the following findings of fact:

1. The Appellant has recurrent, ongoing physical problems with his left thumb and lower extremities that impact his ability to wheel a manual wheelchair.
2. The Appellant has a lightweight manual wheelchair that he uses for primary mobility and at his place of employment. He also uses a power wheelchair on loan from a rehabilitation centre.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision which determined that the Appellant's request for a power wheelchair did not meet the eligibility requirements set out in Schedule C sections 3 and 3.2 of the EAPWDR was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant.

The legislation that applies to the Appellant's request for a power wheelchair is as follows:

### **EAPWDR - General health supplements**

62 (1) Subject to subsections (1.1) and (1.2), the minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who is

(a) a recipient of disability assistance

### **EAPWDR – SCHEDULE C Health Supplements**

#### **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.C. Reg. 197/2012)

(a) the supplements are provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation, and

(b) all of the following requirements are met:

(i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;

(ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;

(iii) the medical equipment or device is the least expensive appropriate medical equipment or device.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister: (B.C. Reg. 197/2012)

(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.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section 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 a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device. (B.C. Reg. 197/2012)

#### **Medical equipment and devices — wheelchairs**

3.2 (1) In this section, "**wheelchair**" does not include a stroller.

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

- (a) a wheelchair;
  - (b) an upgraded component of a wheelchair;
  - (c) an accessory attached to a wheelchair.
- (3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years after the minister provided the item being replaced.
- (4) A high-performance wheelchair for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

### **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.
- (2) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is 2 years from the date on which the minister provided the item being replaced.

#### Appellant's position

The Appellant stated that his hand surgeon's advice indicates he requires a power wheelchair and that the assessments he has had regarding his factitious disorder are incomplete and he was scheduled for an in-depth assessment. His hand surgeon's position (as of July 2014) is that the Appellant's recurrent difficulties with his thumb are not helped by splinting as the splints do not allow him to wheel his manual wheelchair. The surgeon reported that the Appellant would strongly benefit from an electric wheelchair that could be controlled "without strong use of his left hand/thumb". Moreover, if he has further surgery on his hand, he would not be able to use his left thumb for wheeling (his manual chair) for 6-8 weeks.

The Appellant's OT's position (as of December 2013) is that the Appellant is recovering from hand surgery but his "consistent mobility improvement" has been minimal and he experiences chronic pain. He therefore requires a wheelchair for basic mobility. Although he will still need a manual wheelchair for use in his work environment due to space considerations, a power wheelchair is recommended for his primary mobility due to his shorter and weaker upper extremities, left thumb injury causing recurring problems, and a hilly community where manual wheeling is very difficult. Further, the pain and spasticity in his legs are worsened by the vibration of a manual wheelchair.

The Appellant's apartment building manager submitted that a motorized wheelchair is required because the Appellant's manual wheelchair impedes everyday tasks and access to key areas of the building. Further, there are no available building modifications or supports to assist clients who are not in a motorized wheelchair.

### Ministry's position

The Ministry argued that the information provided by the Appellant is insufficient to establish that the assessment performed by his OT which occurred shortly after thumb surgery, confirms a medical need for a *power* wheelchair. In addition, the minister is not satisfied that a *power* wheelchair is medically essential for the Appellant to achieve or maintain basic mobility. The Ministry argued that the information provided does not establish that the Appellant cannot maintain basic mobility indoors with the aid of his existing manual wheelchair. The Ministry argued that he is currently functional with his ultra-lightweight manual wheelchair which the Ministry considers to be his primary mobility device. The Ministry noted that the specialized wheelchair seating that was provided in June 2014 would allow the Appellant to have more access to the wheels resulting in easier wheeling.

The Ministry noted that the Appellant has a psychiatric diagnosis of factitious disorder and that his OT noted "inconsistencies in skills." The Ministry argued that it cannot provide medical equipment on the basis of an "anticipated need" due to the possibility of further thumb rupture and future surgery, and if such did occur, the Appellant has access to a power wheelchair as a loaner from his rehabilitation centre.

The Ministry argued that there is insufficient evidence to support the need for a power wheelchair on the basis of hilly terrain in the Appellant's neighbourhood, or to enable him to perform daily living activities as he is able to access public transit. The Ministry argued that there is insufficient information to establish that the Appellant requires a power wheelchair for basic mobility outdoors.

The Ministry further argued that there is no information on the frequency and duration of the periods in which the Appellant's physical functioning is most severely impacted. The Ministry cannot therefore determine that a power wheelchair is medically essential to achieve or maintain basic mobility. At the hearing, the Ministry added that there are conflicting statements from the Appellant's doctor and OT regarding the need for a power wheelchair, and the Ministry can only go by what is submitted by the client.

### Panel's decision

#### **EAPWDR Schedule C subsection 3(2)(b): *assessment by occupational therapist confirming the medical need for the equipment or device***

The panel notes that this section applies to a number of medical devices, i.e., "medical equipment or devices referred to in sections 3.1 to 3.8" of Schedule C. These devices include wheelchairs as covered under section 3.2. In order to be eligible for a wheelchair as well as the other devices that are covered by subsection 3(2)(b), an OT's assessment must confirm the medical need for the equipment or device.

The panel notes that the following information from the OT's assessment (December 2013) addresses the medical need for a *power* wheelchair. While the OT discussed the need for both a "wheelchair" and a "power wheelchair", the panel's focus for the purpose of this subsection is on whether the Ministry reasonably determined that a medical need for a *power* wheelchair was not confirmed by the OT's assessment.

- In the Medical Equipment Request and Justification form, the OT recommended a “power wheelchair” and references her Justification Letter dated December 10, 2013.
- In her Justification letter under History, the OT indicated that while the Appellant was recovering from hand surgery, he was using both a power wheelchair and a manual wheelchair (on loan) for basic mobility due to minimal improvement in “consistent mobility.”
- Also under History, the OT stated that manual wheeling is difficult for the Appellant in his hilly neighbourhood due to his limited upper body strength and short arms.
- The OT further reported that the Appellant’s lower extremity nerve pain is worsened by vibration (from his manual wheelchair).
- In her Justification letter under Justification (point #2), the OT stated that a power wheelchair is necessary for outdoor use because the Appellant’s limited upper extremity fitness, short arms, and left thumb injury impairs his use of a manual wheelchair.
- She also stated in her Justification letter (point # 5) that a power wheelchair would serve the purpose of decreasing muscle spasms by having good suspension.

The panel notes that the OT’s assessment was followed by two medical reports from the Appellant’s hand surgeon (letters dated July 14<sup>th</sup> and 15<sup>th</sup>, 2014) that address the medical need for a power wheelchair, and strengthen the weight that the panel places on the OT’s 8 month old post-operative assessment. The surgeon described the Appellant’s thumb problems in detail and prescribed a power wheelchair as it can be controlled “without strong use of his left hand/thumb.” The surgeon also indicated that the Appellant would not be able to wheel a manual wheelchair for 6-8 weeks if he has future surgery to fuse his thumb joint.

With regard to the Ministry’s argument that the OT’s assessment does not confirm the medical need for a power wheelchair because the Appellant can maintain basic mobility with his lightweight manual wheelchair (including performing daily living activities and accessing public transit), the panel finds that the Ministry has overlooked some of the other medical-need information that was provided by the OT (as summarized in bullet form above). For example, the Ministry, in its reconsideration decision does not refute the OT’s evidence that the Appellant’s nerve pain is worsened by the vibration of the manual wheelchair; that a power wheelchair would decrease the Appellant’s muscle spasms; and that manual wheeling is difficult for the Appellant due his upper extremity limitations and left thumb problem.

While the Ministry stated that the seating items that were approved for the Appellant’s manual wheelchair should allow him better positioning and easier access to the wheels, there is no assessment from the OT regarding these suggested benefits. In fact, the recent information from the surgeon indicates that the Appellant’s left thumb “is unstable at the MCP joint and this causes him great difficulties with wheeling.”

The panel notes the Ministry’s position that there are inconsistencies in the OT’s information. For example, the OT reported that the Appellant is mobile in the community and independent in his daily living activities (though this is easier with his loaner power wheelchair). At the same time, she stated that he requires a power wheelchair to address his medical problems. Nevertheless, the test in Schedule C subsection 3(2)(b) is one of “medical need” as confirmed by the OT’s assessment which indicates that the Appellant has a medical need for a power wheelchair for several reasons including his nerve pain and muscle spasms in addition to his thumb problems. The panel further notes that



subsection 3(2)(b) does not lend the Ministry any discretion to rely on only specific parts of the OT's assessment when making its decision.

.With regard to the Ministry's argument that it cannot provide medical equipment based on an anticipated need (the possibility of future surgery for example), the panel notes that the evidence of both the OT and the Appellant's hand surgeon is that his thumb problem is chronic and recurrent (the Appellant has had splinting, casting, or surgery with each re-rupture of his left thumb). Furthermore, the Appellant's lower extremity pain and spasticity have continued ever since his post-surgery leg paralysis in 2012. The panel therefore finds that the facts support a current "medical need" for the equipment or device (power wheelchair).

Given the foregoing analysis, the panel finds that the Ministry unreasonably determined that the assessment by the OT did not confirm a medical need for a power wheelchair. However, the Appellant's request must satisfy all of the criteria in Schedule C of the EAPWDR including section 3.2(2) described below.

**EAPWDR Schedule C section 3.2(2): *the minister is satisfied that the item is medically essential to achieve or maintain basic mobility***

The panel notes that section 3.2(2) pertains exclusively to wheelchairs. Further, the criterion in section 3.2(2) must be met regardless of whether the criterion in subsection 3(2)(b) as discussed above is satisfied. The criterion in section 3.2(2) also provides the Ministry with discretion as the Ministry must be "satisfied" that a power wheelchair is medically essential to achieve or maintain basic mobility.

With regard to the Ministry's argument that it was not satisfied that the information provided confirmed that a power wheelchair is medically essential for basic mobility, the Ministry noted that the Appellant's manual wheelchair is his "primary mobility device", and that no information was provided regarding how frequently or for what duration the Appellant's mobility is impacted to the extent that he cannot use his manual wheelchair. The OT's evidence was that the Appellant had both a manual and a power wheelchair on loan from his rehabilitation centre and was using both depending on the situation. While it is more convenient for the Appellant to use a power wheelchair for getting around in his hilly neighbourhood and to access public transit, the information from the OT and the hand surgeon did not indicate that the Appellant could not use a manual wheelchair to access his community. The OT reported that the Appellant needs a manual wheelchair "for basic mobility" at his place of employment due to the space configuration. The Ministry reasoned that if the Appellant is using a manual wheelchair for basic mobility at work, a power wheelchair cannot be medically essential for basic mobility. Given the evidence, the panel finds that the Ministry reasonably determined that a power wheelchair is not medically essential to achieve or maintain basic mobility.

**Conclusion**

Given that the criteria for wheelchairs in EAPWDR Schedule C section 3.2(2) was not met to the Ministry's satisfaction, the panel finds that the Ministry reasonably determined that the Appellant is not eligible for a power wheelchair on the basis of the information that was provided. The panel confirms the Ministry's reconsideration decision as being reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the Appellant.