

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) decision dated 30 September 2014 determined that the appellant was not eligible for medical equipment, a power recline feature and power elevating leg rests as accessories to the appellant's wheelchair because the items were not the least expensive appropriate devices, there was no medical need for those power devices and they were not medically essential to achieve or maintain basic mobility as the appellant had sufficient devices to enhance her mobility inside her apartment and consequently did not meet the eligibility criteria set at s. 3(1)(b)(iii), 3(2)(b) and 3.2(2) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 62.
EAPWDR, Schedule C, sections 3 and 3.2.

PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under s. 86(b) of the Employment and Assistance Regulation.

The following evidence was before the ministry at the time of reconsideration:

- The appellant is designated by the ministry as a person with disabilities (PWD) in the category of medical services only and eligible for health supplements under s. 62 of the EAPWDR.
- A 5-page request for funding for a power wheelchair with tilt, power elevating leg rests, power recline and rehab seating dated 29 January 2014 by an occupational therapist (OT). The request includes the following:
 - The appellant's mobility is declining.
 - The goal of the request is to provide independent basic mobility indoors and outdoors, reduce pain in sitting, allow the appellant to sleep in it at night and reduce edema in lower legs.
 - The appellant's medical status is described as severe rheumatoid arthritis, COPD, vascular disease and degenerating disc disorder, causing her stiffness and pain in multiple joints, chronic lower back pain, poor balance and poor endurance.
 - Physical Status:
 - Upper extremity function: noticeable arthritic deformities, poor strength and dexterity due to rheumatoid arthritis (RA).
 - Lower extremity function: weakness, pain and stiffness in joints due to arthritis, needs to hold onto bars/poles etc. to stand, chronic lower leg dependent swelling.
 - Balance: needs support to stand.
 - Sitting posture: complains of pain in her tailbone, needs knees at approximately 65 degree angle for comfort while sitting, mild scoliosis in her back, has difficulty repositioning herself due to pain and weakness in arthritic joints, backrest needs to be at 110° for comfort.
 - Functional Status:
 - Mobility: due to her arthritis, she can only walk about 10-20m; in the summer she uses a gutter walker and in the winter a 4-wheeled walker. Due to her poor mobility, she only leaves her home once or twice a month for medical appointments.
 - Equipment recommendation and justification:
 - Power elevating leg rests with centre-mount footplates: The appellant needs elevating leg rests for sitting tolerance. She needs to be able to lower the footrest when maneuvering in her suite. She is unable to manage a manual system due to her arthritic hands and she lives alone. She also needs elevating leg rests to combat her edema – it would be most effective when used in combination with tilt to allow elevation of the legs above heart level.
 - Power recline: The appellant has a history of sleeping in her recliner – she will spend 16-24 hours/day in her power wheelchair and her position of comfort for sitting is about 110-115° at the hip, however this is not functional to engage in activities of daily living such as eating, grooming etc. Power recline will allow her to sit in a position of comfort, and then move forward for functional tasks. As well, tilt and recline features provide the most pressure relief when used in combination. As the appellant is expected to spend 16-24 hours/day in the wheelchair, the

combination of tilt and recline will provide the best pressure reduction.

- A Medical Equipment Request and Justification form completed in 2 parts:
 - Section 1 from a social worker, signed and dated on 24 October 2013, indicated that the appellant was eligible to access medical equipment under the EAPWDR and that there were no other resources available to provide the requested medical equipment.
 - Section 2 from a medical practitioner, a physician, signed and dated on 19 January 2014, described the appellant's medical condition as rheumatoid arthritis, COPD and ischemic heart disease. The physician recommended a power wheelchair, rehab seating, power tilt, power recline and power elevating leg rests.
- A quote from a recognized supplier of the ministry dated 21 January 2014 for a power wheelchair with all the accessories recommended by the physician for an estimated cost of \$23,759.50.
- A quote from a recognized supplier of the ministry dated 4 June 2014 for a power wheelchair and seating for \$9,903.75.
- A letter dated 3 July 2014 from the appellant's OT indicating that a power wheelchair and seating had been approved for an amount of \$9,903.75 while the original request including the accessories was for a total of \$23,759.50. The OT asked whether manual elevating leg rests were approved and requested a letter from the ministry indicating whether any of the items were denied so that she could appeal. She stated: "If the appeal is unsuccessful, [the appellant] may approach charities, who often want proof that an item was denied."
- A 2-page Medical Equipment Request Tracking Sheet between 14 April 2014 and 5 June 2014 by ministry workers indicated the steps followed to determine the eligibility for the wheelchair and accessories. At an entry dated 8 May 2014, it was mentioned that the appellant was "able to walk to bathroom in apartment". As well, it was indicated that the program did not usually fund power-positioning features when client was ambulatory, even for short distances and the OT was advised of this. For 5 June 2014 it was indicated: "As client is able to ambulate short distances program will not fund tilt". The same day a power wheelchair and seating are approved for \$9,903.75.
- On 5 June 2014, a letter from the ministry to the appellant indicated that a power wheelchair and wheelchair seating had been approved for her.
- In response to the ministry's decision, a letter from the OT dated 14 August 2014 requested a power tilt and recline, power recline seat frame, power centre mount elevating legs rests and a headrest system for the appellant's power wheelchair. She indicated that without those accessories, the approved power wheelchair would not be useful for the appellant and she would continue to be bed and chair ridden.
 - Justification for power elevating leg rests: she stated that when regular leg rests were tried, it was too painful for the appellant to tolerate more than a few minutes. Manual elevating leg rests were tried but because of her arthritic condition in her hands, she could not manage them. She could not have the leg rests permanently set at 65° (the position she is comfortable with) because this would increase the overall length of the wheelchair and it wouldn't fit in her elevator.
 - Justification for power recline: while this was not as important as the other feature, it was recommended because the appellant has a history of sleeping in her recliner and would spend 16-24 hours/day in her wheelchair. She reiterated the arguments presented in her 29 January 2014 request.
 - Justification for headrest: if power tilt is approved, the appellant would need a headrest for when it is tilted back – in any event, with or without tilt, she was expected to spend several

hours per day in the wheelchair and would periodically need to rest her head.

- In her request for reconsideration dated 19 August 2014, the appellant indicated that she required the accessories recommended because she could not sit upright any amount of time as a result of pressure on spine and she could not endure pressure on her tailbone for any length of time for pain and discomfort. She was concerned that the wheelchair would not respond to her needs because since surgery, years ago, she hasn't been able to sit without her legs elevated. She required seating in a semi-elevated position.

In her Notice of Appeal dated 8 October 2014, the appellant stated: "I need my legs elevated because if they are straight down it pulls on my back and causes pain. I cannot manage manual elevating leg rests because of my arthritic hands. How can I lower manual leg rests to fit in the elevator and then raise again when I'm out?"

At the hearing, the ministry testified that the appellant might be able to rely on third parties (like home care support or Handi Dart) to elevate and lower her wheelchair's manual leg rests when going to her doctor's appointments but was not certain whether that service could be available in the appellant's region. The ministry could not provide any information as to whether the headrest had been approved for funding or not.

The panel determined the additional oral evidence was admissible under s. 22(4) of the Employment and Assistance Act as it was in support of the records before the minister at reconsideration, providing more information about possible resources to improve the appellant's mobility but the panel finds it cannot give that evidence much weight given its uncertainty.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant was not eligible for a medical equipment, a power recline feature and power elevating leg rests as accessories to the appellant's wheelchair because the items did not meet the eligibility criteria set at s. 3(1)(b)(iii), 3(2)(b) and 3.2(2) of Schedule C of the EAPWDR, was a reasonable application of the legislation or reasonably supported by the evidence.

The ministry acknowledges the appellant meets the conditions set at s. 62 of the EAPWDR. Schedule C of the EAPWDR provides for what specific items the minister may approve. Medical equipment and devices are provided for at s. 3, 3.2 and 3.3. The relevant parts are as follows:

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 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...

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...

3.3 (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...

As mentioned above, the ministry acknowledged that the appellant is eligible for health supplements set out in s. 3 and 3.1 to 3.12 of Schedule C of the EAPWDR.

Of the many devices requested by the appellant, only 2 were determined by the ministry not to be eligible for funding: the power recline feature and the power elevating leg rests to her power wheelchair.

The power recline feature:

The ministry argued that this item was not eligible for funding in the circumstances of the appellant because it was not the least expensive appropriate device, since a powered device is more expensive than a manual device; that the appellant had not established there was a medical need for that device and that there was not enough evidence to satisfy the ministry that the device was medically essential to achieve or maintain basic mobility, in particular because the appellant's main reason to request this item was to use it 16 to 24 hours / day, including sleeping and pain management that are not mobility related. The ministry also argued that in the past, the appellant had been provided with numerous items to facilitate her basic mobility, including a hospital bed, an egg-crate foam overly for her mattress, an over-the-bed trapeze frame for bed mobility, floor-to-ceiling poles in her bathroom and bedroom to assist with transfers, a tub transfer bench, a raised toilet seat with arms, walkers and bilateral lacer wrist splints.

The appellant argued that this device was needed because she would spend 16 to 24 hours / day in her power wheelchair and that her position of comfort for sitting is about 110-115° at the hip but that is not functional for her daily activities like eating, grooming etc. Thus, power recline would allow her to sit in a position of comfort and then move forward for functional tasks. This device would allow her the best pressure reduction.

Least expensive (s. 3(1)(b)(iii), Schedule C, EAPWDR):

The panel notes that the appellant has numerous items at her disposition to manage her basic mobility and that the power recline feature's purpose is mainly to make her more comfortable over long periods of time and to reduce pressure while sitting. Thus, the panel finds the ministry reasonably determined the appellant had not demonstrated this device was the least expensive appropriate device in those circumstances.

Medical need (s. (3)(2)(b), Schedule C, EAPWDR):

While the panel notes the appellant's physician recommended power recline for her wheelchair, there is no indication in his report as to why it is medically needed. The OT's report refers to a number of studies showing that lower pressure on seating interface is between 110° and 150° of recline but there is no indication in her report that this item is needed for medical reasons and, further, the OT admits in a later report (14 August 2014) that this item "is not as important as the other two features". The panel finds the ministry reasonably determined the evidence was insufficient to demonstrate a medical need for that device.

Medically essential for basic mobility (s. 3.2(2), Schedule C, EAPWDR):

The panel notes the evidence demonstrating that this device is medically "essential" to achieve or maintain basic mobility is lacking. There is no doubt that this device would enhance the appellant's comfort but there is no evidence that it is "essential" for her basic mobility – it actually does not affect the appellant's mobility at all since she can move around and perform her daily activities with her

actual devices and the power recline feature only affects indirectly her mobility, i.e. for transitioning between 110-115° and sitting upright. As mentioned above, the physician recommended that device without indicating whether it was medically essential for her basic mobility. Consequently, the panel finds the ministry reasonably determined the device was not medically essential to achieve or maintain the appellant's basic mobility.

The power elevating leg rests to the appellant's power wheelchair:

Like for the power recline feature, the ministry argued that this device was not eligible for funding as it was not the least expensive (the ministry had approved the manual leg rests that are less expensive), there was no medical need nor were they medically essential for her basic mobility. The ministry did not dispute her power wheelchair needed leg rests in the circumstances of the appellant as it funded the manual leg rests but argued that the power leg rests were not eligible for funding mainly because there was a less expensive alternative. The ministry finally argued that she could get help to lower and raise her leg rests when she needs to take the elevator as she would in all likelihood have the assistance of a third party, thus not needing power elevating leg rests.

The appellant argued that she needed power elevated leg rests because her knees need to be at about 65° to be able to sit any length of time but she also needed to lower the footrest when moving in or outside of her suite as the elevated leg rests are too large to allow her wheelchair to circulate in her suite and to fit in the elevator where she lives. She argued that she tried manual elevated leg rests but because of severe RA in her hands, she could not manage them.

Least expensive (s. 3(1)(b)(iii), Schedule C, EAPWDR):

While it is obvious that power leg rests are more expensive than manual ones, the panel must also address whether the less expensive device is appropriate in the circumstances of the appellant. The panel notes the evidence shows that the appellant cannot manage manual leg rests because of having RA in her hands. As an alternative, the ministry suggests that she could use help from third parties managing the leg rests when she takes the elevator to go to a doctor's appointment; the panel finds this alternative is not realistic given that the appellant would need to have a third party constantly with her to raise and lower her leg rests when she wants to move around in her suite as well. Also, there was no evidence that such help would be available when the appellant needs them since she lives alone. Thus, the panel comes to the conclusion that manual leg rests are unlikely to be useful for the appellant and that it was unreasonable for the ministry to determine that she was not eligible for funding for power elevating leg rests, since according to the evidence before the panel, her wheelchair without power leg rests would be basically useless most of the time.

Medical need (s. (3)(2)(b), Schedule C, EAPWDR):

The panel notes the appellant's physician confirmed RA and recommended power elevating leg rests. The panel also notes that the appellant tried manual leg rests but was unable to manage them because of her RA, a medical condition. This was confirmed by the OT who described how the RA caused the appellant to be unable to manage the manual leg rests because of the arthritic condition in her hands. Thus, the panel finds the ministry unreasonably determined the appellant had not established a medical need for power elevating leg rests.

Medically essential for basic mobility (s. 3.2(2), Schedule C, EAPWDR):

There is no issue that the appellant needs a power wheelchair to move around as the ministry recognized and funded the device. However, the evidence shows the appellant cannot raise or lower manual leg rests because of her RA and its impact on her ability to use her hands. Therefore, the issue is whether this situation would have an impact on her basic mobility. The ministry argued that she has other devices at her disposal to move around her suite, like walkers and transfer equipment but did not offer any evidence as to how those devices would be able to replace the power wheelchair that the ministry funded. The panel finds the alternative devices suggested by the ministry cannot replace a power wheelchair as it would reduce the appellant's mobility significantly, forcing her to constantly transfer between the wheelchair and the devices each time she wants to move around her suite. Thus, the panel finds the power leg rests are essential for the appellant's basic mobility since without them the evidence shows the appellant could not use her wheelchair to move around her suite or take the elevator to get out of her building because of her medical condition. Consequently, the panel finds the ministry unreasonably determined the power elevated leg rests were not medically essential to achieve or maintain the appellant's basic mobility.

Conclusion:

The panel finds that the ministry's reconsideration decision regarding the power recline feature for the appellant's power wheelchair was reasonably supported by the evidence and confirms that decision.

The panel further finds that the ministry's reconsideration decision regarding the power leg rests was not supported by the evidence and therefore rescinds that decision. Therefore, the ministry's decision regarding the power leg rests is overturned in favour of the appellant.