

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated October 7, 2014 which denied the appellant's request for a supplement to cover the cost of repairs to the attendant wheel lock assembly on her manual wheelchair because it is more economical to replace than to repair the medical equipment or device and the requirement in Section 3(3)(a) of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) has not been met.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The appellant submitted a Release of Information providing her representative with authority to make decisions on her behalf. The appellant's representative consented to the attendance of a ministry observer at the hearing for training purposes. The observer did not participate in the hearing.

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

- 1) Medical Equipment Care Analysis and Tracking System dated January 12, 2007 indicating the items requested are a wheelchair with custom seating and that the appellant's diagnoses are developmental delay and Rett's Syndrome;
- 2) Service Quotation dated June 24, 2014 by a home medical equipment supplier for repairs to a manual wheelchair with tilt purchased April 2007, including parts in the amount of \$65.36 and labour of \$80.00, for a total cost of \$145.36;
- 3) Letter dated August 20, 2014 from the ministry to the appellant denying her request for repairs to the attendant wheel lock assembly on her manual wheelchair with tilt;
- 4) Undated communication from an Occupational Therapist in which she wrote that the appellant's wheelchair was supplied with the braking system by the ministry in 2007 and subsequently repaired on more than one occasion and paid for by the ministry. She advised the ministry that it is a serious safety risk for both the appellant and her caregiver for her to be using a wheelchair without functional brakes. The request for the new manual tilt wheelchair was provided to the ministry on July 3, 2014 and she requested that the ministry approve the new manual tilt wheelchair on an urgent basis if the ministry declines to fund the brake repair;
- 5) Letter dated September 17, 2014 from the home medical equipment supplier confirming that the appellant was supplied with a manual wheelchair in April 2007. At that time, the wheelchair was provided with an attendant braking (foot brake) system, not standard wheelchair brakes. Since then, the supplier has provided service to the appellant's wheelchair, and specifically the brakes, on four separate occasions: May 27, 2010 (remote lock assembly & brake cable), November 9, 2010 (wheel lock mounting bracket), February 14, 2012 (brake cable and cable assembly), and March 9, 2013 (brake cables); and,
- 6) Request for Reconsideration dated September 22, 2014.

At the hearing, the appellant's representative provided an invoice dated June 26, 2014 from the home medical equipment supplier for the work as described in the Service Quotation dated June 24, 2014, which was completed on June 26, 2014 in the amount of \$145.36. The invoice includes a statement: "ministry has declined funding for this part as they do not pay for Attendant brakes and cables, etc."

In the Request for Reconsideration, the appellant's representative wrote that:

- The denial letter does not state the legislation showing no legal authority to fund medical equipment or repairs that is meant for attendant use.
- The home medical equipment supplier confirmed that the ministry paid for repairs on four occasions, with the last one being in March 2013.
- The Quote showed that brake cables valued at \$65.36 were replaced, not "attendant wheel locks" as stated by the ministry.
- The only brakes on the appellant's chair are those that have been termed as for "attendant use." She has never been able to use any of the brakes on any of her chairs in her entire life. She has relied on an attendant using her brakes for her.
- The appellant's team deemed the brakes on her chair as the best decision for brakes as her 1 to 1 day support time was centered around her expressed desire to be out walking and the lay

of the land involved hills.

In the Notice of Appeal dated October 16, 2014, the appellant's representative expressed her disagreement with the ministry's reconsideration decision and wrote:

- The wheelchair brakes needed repair and were repaired in June 2014.
- They assessed the appellant around that time and found that she needed a new wheelchair.
- Nevertheless, brakes need to be functioning and she could not have waited until this time.

At the hearing, the appellant's representative stated that:

- There are several reasons that she believes that the ministry's reconsideration decision is unreasonable.
- The appellant has only ever had one kind of brakes on her wheelchair and, on June 26, 2014, those brakes were repaired, as set out in the invoice. The brakes were created the way they are so that the chair can be stopped without requiring someone to get in front of the chair.
- As can be seen on the appellant's wheelchair, the cables attached on the back of the chair needed to be replaced and are activated by a lever that sits in a position on the chair in the middle of the appellant's back and approximately at the attendant's hip level. The appellant's caregiver operates the brakes by manipulating the lever with her hand.
- The brakes were originally funded by the ministry when the appellant was provided with the chair and they have been repaired on more than one occasion since then.
- The appellant is not physically capable of using any type of brake on her chair. Any brakes would have to be for the attendant's use.
- The home medical equipment supplier attended at the appellant's care home to repair the brakes since the appellant could not use the chair without brakes. Without the use of her wheelchair, the appellant would have to stay in bed all day as she cannot walk on her own.
- The appellant enjoys being taken out for long walks in her wheelchair.

The ministry did not object to the admissibility of the invoice and the panel admitted it, pursuant to Section 22(4) of the *Employment and Assistance Act*, as providing further detail regarding the requested repairs to the appellant's wheelchair and being in support of information that was before the ministry on reconsideration.

The ministry relied on the reconsideration decision, as summarized at the hearing. The ministry clarified that:

- Although the ministry's original decision denied the repairs on the basis that the ministry does not have the legal authority to fund any repairs to equipment that is meant for attendant use, as these are not specifically included, the reconsideration decision did not deny the repairs on this basis and focused instead on the criteria that it is more economical to replace the wheelchair than to repair it.
- Although the invoice dated June 26, 2014 seems to indicate that the ministry may have verbally denied the repairs at that time, it may be the service provider has independently come to this conclusion as the official denial is set out in the letter dated August 20, 2014.
- Since the ministry discovered on July 3, 2014 that the appellant requested a new manual wheelchair with tilt and a decision on replacement was pending, the ministry was not going to repair an older chair when it was almost about to be replaced.
- On October 24, 2014 a new manual wheelchair, at a cost of about \$6,000, was authorized for the appellant and is on its way to her.

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 repairs to the attendant wheel lock assembly on her manual wheelchair because it is more economical to replace than to repair the medical equipment or device and the requirement in Section 3(3)(a) of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) has not been met, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

Pursuant to Section 62 of the EAPWDR, the applicant must be a recipient of disability assistance or be a person in receipt of disability assistance (or a dependant) in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has not disputed that the requirement of Section 62 has been met in that the appellant is a recipient of disability assistance.

The ministry considered the appellant's request for the costs of repair of her manual wheelchair under Section 3 of Schedule C of the EAPWDR, which provides:

Medical equipment and devices

- 3 (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.12 of this Schedule are the health supplements that may be provided by the minister if
- (a) the supplements are provided to a family unit that is eligible under section 62 [general health supplements] of this regulation, and
 - (b) all of the following requirements are met:
 - (i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;
 - (ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
 - (iii) the medical equipment or device is the least expensive appropriate medical equipment or device.
- (2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:
- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
 - (b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.
- (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.
- (3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if
- (a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and
 - (b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.
- (4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.
- (5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if
- (a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and
 - (b) it is more economical to repair the medical equipment or device than to replace it.

- (6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

Ministry's position

The ministry's position is that as a recipient of disability assistance the appellant is eligible to receive health supplements under Section 62 [Section 67 was quoted in error] of the EAPWDR, but the appellant's request for a supplement to cover the cost of repairs to her manual wheelchair does not meet all of the applicable criteria of Section 3 of Schedule C of the EAPWDR. The ministry stated that a review of the repairs and replacements for the appellant's existing wheelchair over the course of 12 years shows that the wheelchair has deteriorated and requires replacement. In the reconsideration decision, the ministry stated that the appellant had requested a new manual wheelchair with tilt and the ministry was waiting for a new quote before making a decision on this request. At the hearing, the ministry stated that the appellant's request for a new manual wheelchair with tilt at an approximate cost of \$6,000 was approved on October 24, 2014 and the appellant will be provided with a new manual wheelchair. The ministry stated that it is more economical to replace than to repair the medical equipment or device previously provided by the ministry and the requirement in Section 3(3)(a) of Schedule C of the EAPWDR has not been met.

Appellant's position

The appellant's position is that the appellant's manual wheelchair was provided by the ministry and set up with "attendant" brakes because the appellant has never been able to use the brakes on her own. The appellant argued, through her representative, that these brakes needed repair and were repaired in June 2014 as they need to be functioning in order for the appellant to safely use the chair and the appellant will be bedridden without the use of her wheelchair. The appellant argued that the home medical equipment supplier confirmed that the ministry paid for repairs to the brakes on four occasions, with the last repair being performed in March 2013. The appellant argued that she could not have waited for a new wheelchair to be provided several months after her request.

Panel's decision

The subject of this appeal is the reasonableness of the ministry's reconsideration decision which denied the appellant's request for repairs to her manual wheelchair. The appellant's request for replacement of her wheelchair is not the subject of this appeal. Section 3(3) of Schedule C applies to a request for replacement of medical equipment previously provided by the ministry that is damaged, worn out or not functioning and the panel finds that this is not the applicable sub-section of Section 3 for the appellant's request for repairs to her manual wheelchair. Rather, Section 3(4) of Schedule C of the EAPWDR applies to a request for repairs of medical equipment previously provided by the ministry and requires that it is more economical to repair the medical equipment or device than to replace it.

The ministry did not dispute that the appellant's wheelchair was previously provided by the ministry and the panel finds that the letter dated September 17, 2014 from the home medical equipment supplier confirmed that the appellant was supplied with a manual wheelchair in April 2007. Although the ministry stated that a review of repairs and replacements for the appellant's existing wheelchair over the course of 12 years shows that it has deteriorated and requires replacement, the panel finds that, given that the appellant's wheelchair was supplied in 2007, the wheelchair is 7 years old and there was no evidence provided of the costs expended by the ministry for repairs to the wheelchair over these years. At the time of the reconsideration decision, the ministry also did not have

information about the cost to replace the appellant's wheelchair as the ministry stated that the quote had not yet been received and was being waited for. While the ministry stated at the hearing that the new wheelchair had an approximate cost of \$6,000, there was no further information provided at the hearing regarding the costs of the repairs completed since 2007. In the letter dated September 17, 2014, the home medical equipment supplier confirmed that at the time that the appellant was provided with a manual wheelchair, the wheelchair was supplied with an attendant braking system, not standard wheelchair brakes and, since then, the supplier has repaired the brakes of the appellant's wheelchair on four separate occasions: May 27, 2010 (remote lock assembly & brake cable), November 9, 2010 (wheel lock mounting bracket), February 14, 2012 (brake cable and cable assembly), and March 9, 2013 (brake cables); however, the costs of these repairs are not specified.

The Service Quotation dated June 24, 2014 for the requested repairs to the appellant's manual wheelchair includes parts in the amount of \$65.36 and labour of \$80.00, for a total cost of \$145.36. In order to determine whether it is more economical to repair the wheelchair at a cost of \$145.36 than to replace the wheelchair, the panel finds that information is required about the cumulative cost of repairs performed on the wheelchair over the years, the reasonable life expectancy of the wheelchair, and the relative cost to replace the wheelchair, in order to determine whether the repairs will provide good value in relation to the amount of funds expended. As the only comparative information available is that provided by the ministry at the hearing that the estimated cost of the replacement wheelchair is \$6,000, the panel finds that the ministry's determination that it is more economical to replace the wheelchair for \$6,000 rather than to repair the wheelchair for \$145.36 is not reasonably supported by the evidence.

Conclusion

In conclusion, the panel finds that the ministry's decision, which denied the appellant's request for a supplement to cover the cost of repairs to the attendant wheel lock assembly on her manual wheelchair because the requirement in Section 3(3)(a) of Schedule C of the EAPWDR has not been met, was not reasonably supported by the evidence and was not a reasonable application of the applicable enactment in the appellant's circumstances. Therefore, the panel rescinds the ministry's reconsideration decision and it is overturned in favour of the appellant.