

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry)'s Reconsideration decision dated November 24, 2014 wherein the ministry denied the appellant's request for a scooter after determining that the appellant did not meet the requirements set out in Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*. Specifically, the ministry was not satisfied that the requested scooter is the least expensive appropriate medical equipment or device as required by Schedule C, subsection 3(1)(b)(iii) of the EAPWDR, that the assessment provided by the occupational therapist confirms the medical need for the scooter as required by Schedule C, subsection 3(2)(b) of the EAPWDR and that the scooter is medically essential to achieve or maintain basic mobility as required by Schedule C, subsection 3.4 (3)(c) of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation Schedule C, sections 3 and 3.4

PART E – Summary of Facts

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

- 1) A quote from a medical equipment company totaling \$3,498.88 for a scooter, two batteries and two mirrors, dated July 14, 2014
- 2) Attached to a Medical Equipment Request and Justification Form, signed by the appellant's Occupational Therapist on July 14, 2014, a letter dated July 11, 2014, describing the appellant's physical and functional status. She states that the appellant is independent with self-care, exhibits decreased balance and mobility, has a wide and ataxic gait and has had a number of falls inside his home. She states that he has been using a cane to aid with mobility and is able to walk on even ground for 5-10 minutes before requiring a rest. She explains that the appellant has been relying on family and friends for his transportation needs as his vehicle is unreliable and in need of expensive repair. She concludes by explaining that the appellant has trialed a four wheeled scooter and he was able to safely operate it around his neighbourhood and in her opinion, having a scooter would enable the appellant to conserve his energy, increase his independence, improve his safety and mobility outside and enhance his quality of life.
- 3) A copy of the Medical Equipment Request and Justification Form, dated July 16, 2014, signed by the appellant and his physician who describes the appellant's medical condition as "Traumatic brain injury and moderate gait disturbance."
- 4) A copy of the Application for Special Transportation Subsidy dated March 22, 2014, completed by the appellant and his physician. The appellant checked "No" that he does not currently have a bus pass and explains that he fears being around people using public transportation and becomes anxious in groups or when encountering new individuals. He fears a lack of acceptance and will become agitated, adding that he has no understanding of instructions and has an extremely short term memory. The physician checked "Yes" when asked if the appellant's disability prevents him from using a Bus, Handi Dart or Taxi Saver and that the appellant's disability would be exacerbated by using public transportation. He describes the appellant's disability as a traumatic brain injury causing difficulty with social situations, public places and difficulty with new interactions.
- 5) Section 3 of the Request for Reconsideration, dated November 6, 2014, completed by the appellant's physician explains how the appellant's traumatic brain injury makes walking difficult, he requires rest after 5 minutes and his gait is very unsteady. He states that the appellant struggles with social situations and becomes anxious, making the use of public transportation difficult. He adds that public transportation is quite limited in the appellant's community and he is concerned that the appellant may fall easily in the snow. The physician concludes that he believes the appellant is in medical need of a scooter as he no longer has access to a car.

In his Notice of Appeal the appellant states that he disagrees with the ministry's decision because he has a lot of difficulty walking and falls once and awhile. He states that he is stuck at home without use of the scooter because he cannot use his car or the Handi Dart bus. He concludes that he wants to be able to go out and shop, visit his father and attend doctors' appointments.

As his submission for the written hearing, the appellant provided a letter, dated December 18, 2014 in which he explains that he had a traumatic brain injury many years ago due to a violent incident. He states that he can only walk for approximately 5 minutes before his legs become unstable and give out and he sometimes falls if he cannot grab onto something to support himself. He states that he is able to walk with a cane but his legs still get very tired and the cane is difficult to use on hills, as well, there is a lot of snow in his community which makes getting around even more difficult. He states that he cannot use public transportation because he gets agitated easily in public and confined spaces, making it difficult to control his emotional responses and outbursts. He concludes by stating that he can no longer drive his car because it is old, unsafe and in need of repairs that he cannot afford and that a scooter would greatly improve the quality of his life.

The panel admitted the appellant's written evidence as per section 22(4) EAA as it corroborates and is therefore in support of the information available at the time of reconsideration.

The ministry relied on the information within the reconsideration decision and otherwise submitted no new information.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry reasonably concluded that the appellant is not eligible to receive a scooter because the appellant did not meet the requirements set out in Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*.

Specifically, the ministry was not satisfied that the requested scooter is the least expensive appropriate medical equipment or device as required by Schedule C, subsection 3(1)(b)(iii) of the EAPWDR, that the assessment provided by the occupational therapist confirms the medical need for the scooter as required by Schedule C, subsection 3(2)(b) of the EAPWDR and that the scooter is medically essential to achieve or maintain basic mobility as required by Schedule C, subsection 3.4(3)(c) of the EAPWDR.

In arriving at its reconsideration decision, the ministry relied upon the following legislation:

Employment and Assistance for Persons with Disabilities Regulation:

Schedule C

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)

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or 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. (B.C. Reg. 197/2012)

(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.C. Reg. 197/2012)

(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.

Medical equipment and devices - scooters

3.4 (1) In this section, "scooter" does not include a scooter with 2 wheels.

(2) Subject to subsection (5) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (3) of this section are met:

(a) a scooter;

(b) an upgraded component of a scooter;

(c) an accessory attached to a scooter.

(3) The following are the requirements in relation to an item referred to in subsection (2) of this section:

(a) an assessment by an occupational therapist or a physical therapist has confirmed that it is unlikely that the person for whom the scooter has been prescribed will have a medical need for a wheelchair during the 5 years following the assessment; (B.C. Reg. 197/2012)

(b) the total cost of the scooter and any accessories attached to the scooter does not exceed \$3 500 or, if subsection (3.1) applies, \$4 500; (B.C. Reg. 197/2012)

(c) the minister is satisfied that the item is medically essential to achieve or maintain basic mobility.

(3.1) The maximum amount of \$4 500 under subsection (3) (b) applies if an assessment by an occupational therapist or a physical therapist has confirmed that the person for whom the scooter has been prescribed has a body weight that exceeds the weight capacity of a conventional scooter but can be accommodated by a bariatric scooter. (B.C. Reg. 197/2012)

(4) 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.

(5) A scooter intended primarily for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

(B.C. Reg. 61/2010)

As noted above, the appellant's position is that as a result of a traumatic brain injury many years ago that he can only walk for approximately 5 minutes before his legs become unstable and he sometimes falls. He can no longer drive his car because it is old, unsafe and in need of repairs and is

unable to use public transit because he becomes easily agitated in public and confined spaces, therefore a scooter would greatly improve the quality of his life.

The ministry's position, as set out in the reconsideration decision, was that there is no evidence to demonstrate that the requested scooter is the least expensive appropriate medical equipment or device as required by Schedule C, subsection 3(1)(b)(iii) of the EAPWDR, that the assessment provided by the occupational therapist confirms the medical need for the scooter as required by Schedule C, subsection 3(2)(b) of the EAPWDR and that the scooter is medically essential to achieve or maintain basic mobility as required by Schedule C, subsection 3.4 (3)(c) of the EAPWDR.

The panel finds the ministry reasonably determined that there is no evidence provided to determine that the requested scooter is the least expensive appropriate medical equipment or device to assist with the appellant's mobility issues. The information from the medical practitioner and occupational therapist indicate that the appellant is able to walk 5 to 10 minutes on even ground but does not provide evidence to support how the current use of the appellant's cane is insufficient or how a walker would not be appropriate. Additionally, the panel finds that there is no evidence to indicate that when the appellant previously had use of his car, he was unable to ambulate once he reached his destinations. The panel finds the ministry reasonably determined that although the occupational therapist has recommended that a scooter would improve the appellant's quality of life and provide other benefits, the evidence provided respecting the appellant's ability to ambulate does not confirm a medical need for a scooter. With regard to the scooter being medically essential to achieve or maintain basic mobility, the panel finds that although the scooter may improve mobility for the appellant, the ministry reasonably determined that the evidence does not support that the scooter is necessary to perform his day-to-day activities in his home and/or within the community.

Accordingly, the panel finds that the ministry reasonably determined that the appellant did not meet the legislated requirements for a scooter at this time, as required by Schedule C, subsection 3(1)(b)(iii), subsection 3(2)(b) and subsection 3.4(3)(c) of the EAPWDR.

Conclusion

In conclusion, the panel finds that the ministry's decision to deny the appellant's request for a scooter, because the appellant did not meet the requirements set out in Schedule C, section 3 and subsection 3.4 of the EAPWDR, was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel thus confirms the ministry's decision.