

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) January 26, 2015 reconsideration decision denying the Appellant her request to be reimbursed the purchase costs for a Broda Elite Tilt Recliner because the Appellant did not meet all of the requirements for a medical equipment supplement in Schedule C section 3 of the Employment and Assistance for Persons with Disabilities Regulation. Specifically, the Appellant did not establish that:

- She received the pre-authorization of the Ministry for the medical equipment requested as required by section 3(1)(b)(i);
- There were no resources available to her family unit to pay the cost of or obtain the medical equipment as required by section 3(1)(b)(ii); and,
- The medical equipment is the least expensive appropriate medical equipment as required by section 3(1)(b)(iii).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) Section 62 and Schedule C Section 3.

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

For its reconsideration decision, the Ministry had the following evidence:

1. Information from Ministry records that:

- The Appellant has been receiving disability assistance since June 2002 and has received pre-authorization for several supplements, including monthly nutritional supplements, a hearing aid and batteries, medical supplies, medical transportation and a clothing allowance.
- On March 18, 2014, the Appellant was admitted into a licensed continuing care facility operated by a public health authority.
- The Ministry received no request from the Appellant for pre-authorization to buy the Broda Elite Tilt Recliner or any wheelchair.

2. An equipment invoice dated March 29, 2014 for a Broda Elite Tilt Recliner (hereafter “Broda Recliner”) in the amount of \$3,276.95 with a notation “Paid in Full”.

3. A Medical Equipment Request and Justification form signed by the Appellant on July 30, 2014, with the section to be completed by a Medical or Nurse Practitioner completed on July 30, 2014 by a registered occupational therapist (“OTD”) noting the Appellant’s medical conditions. In an attachment, OTD provided information about the Appellant’s functional status, the help she needs with daily living activities and the reasons the Appellant bought the tilt reclining chair; that is, to maintain good posture and provide the opportunity to change position without needing to transfer; the need for easy cleaning due to chronic diarrhea; and, the need for thick padding due to risk of seizures.

4. A fact sheet about the long-term care facility where the Appellant now lives.

5. A fact sheet about the Broda Recliner that the Appellant bought.

6. The Appellant’s January 8, 2015 request for reconsideration with a letter dated December 24, 2014 from another occupational therapist (“OTB”) who is on staff at the current care facility. In that letter, OTB submitted the following arguments supporting the Appellant’s request for reimbursement:

- The Appellant reported that she was not aware of the need to obtain pre-authorization for the Broda Recliner and she had no medical health practitioner, such as an occupational therapist or physical therapist assisting her in navigating the Ministry process.
- In the opinion of this occupational therapist, this type of Broda seating device is considered a mobility device because the resident is able to self-propel using its large rear wheels. It is therefore not a mobility device that the residential care facility could have provided to and purchased for the Appellant.
- The Broda Recliner was prescribed by the Appellant’s family physician on February 5, 2014.
- This situation has been a significant financial burden on the friend who loaned the Appellant the funds to purchase the Broda Recliner.

OTB included copies of the equipment invoice and the medical prescription dated February 5, 2014.

In her notice of appeal, the Appellant submitted that when she bought the Broda Recliner, she was living at a different long-term care residence in another town where there was no occupational therapist. She had no idea she could have obtained funds for the Broda Recliner. When she lived at the other residence, she needed a wheelchair and so she bought the Broda Recliner. After she moved to her current residence, an occupational therapist told her this equipment could have been funded. The Appellant wrote that she also purchased her own power wheelchair (the trade in) which

she also did not know could be funded and she did not know to ask in the first place.

For this appeal, the Appellant submitted a statement dated February 16, 2015, with additional information and her arguments supporting her position. Her arguments are summarized in Part F – Reasons of this decision. The additional information is summarized as follows:

- When she bought the Broda Recliner she was no longer physically able to use the basic manual wheelchair provided by the care facility where she lived at the time. This was due to medical concerns such as seizures, pain symptoms and decreased muscle function.
- While living at that previous care facility, she bought a power wheelchair which eventually also was not suitable for her because of safety concerns with her cognition and driving abilities. She also required more support because she was having seizures and needed a padded wheelchair for safety.
- At that previous care facility, a Broda geriatric chair was loaned to her, but removed when another resident needed it. Therefore, because she was unable to mobilize and unable to walk on her own she immediately purchased the Broda Recliner, solving her concerns about her safety and mobility.
- The information in OTB's letter about receiving the funds to purchase the Broda Recliner through a friend was a mistake. She paid for the Broda Recliner from her trust fund; however, it is her understanding that someone receiving disability assistance should not have to use a trust fund to purchase medically recommended mobility devices. She cited a Ministry booklet about trusts that states in part "a person will not be disqualified from receiving disability assistance just because the person has a trust. The amount the person can spend on disability costs from a trust is meant to pay for things that are not covered by the Ministry or for fees for services that are covered but which exceed the maximum allowable amount."
- A case worker at her current residence suggested that the Ministry could fund the Broda Recliner and therefore she asked OTD to help her get the documents to request funding.

Pursuant to section 22(4) of the *Employment and Assistance Act*, The Panel admits the information in the Appellant's notice of appeal and in her appeal submission because it is consistent with and supports the evidence the Ministry had at reconsideration.

The Ministry did not provide any submissions for this appeal. Therefore, the Panel will consider the Ministry's reconsideration decision to be its position in this appeal.

The Panel makes the following findings of fact.

1. The Appellant has been receiving disability assistance since 2002 and has received supplements from the Ministry.
2. The Appellant bought the Broda Recliner on March 29, 2014.
3. The Appellant submitted her equipment request and justification to the Ministry in July 2014.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably denied the Appellant her request to be reimbursed for the purchase costs for a Broda Elite Tile Recliner, because the Appellant did not meet all of the requirements for a supplement in Schedule C section 3 of the EAPWDR and specifically because the Appellant did not establish that:

- She received the pre-authorization of the Ministry for the medical equipment requested;
- There were no resources available to her family unit to pay the cost of or obtain the medical equipment; and,
- The medical equipment is the least expensive appropriate medical equipment.

Applicable Legislation

The following provisions in the EAPWDR apply to the Appellant's circumstances in this appeal.

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.

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

(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.

The Panel's Findings and Decisions

Under section 62(1) of the EAPWDR, the Ministry may provide any health supplement in Schedule C, including a supplement for medical equipment, if all of the requirements in Schedule C section 3(1) are met. The Panel will consider the parties' positions under each of the requirements in that legislation.

EAPWDR Schedule C section 3(1)(b)(i)

The Ministry's position is that the Appellant did not meet this requirement for preauthorization. In its reconsideration decision, the Ministry wrote that it reviewed its records and established that the Appellant did not contact the Ministry before she purchased the Broda Recliner. The Ministry noted that the Appellant has been receiving disability assistance since June 2002 and has received pre-authorization for several supplements. Therefore, the Ministry determined that it is reasonable to assume that the Appellant is aware of the necessity for pre-authorization.

The Ministry also noted that the Medical Equipment and Devices Policy (included in the record) provides an exception to this preauthorization requirement. The Ministry stated that the policy allows the Ministry to provide reimbursement for medical equipment purchases without prior approval in cases of life-threatening emergency. The Ministry found that the Appellant submitted no information that she was facing such an emergency when she bought the equipment.

The Appellant's position is that when she bought the Broda Recliner she did not know that such medical equipment could be funded by the Ministry. She submitted that just because she was ignorant of the fact that she could have obtained funding is no reason for the funding to be denied.

The Panel's Findings

The Panel finds that there is no dispute that the Appellant did not submit a request to the Ministry for funding for the Broda Recliner before she bought it, even though she had received supplements from the Ministry in the past. The Panel also notes that there is no exception to this legislated requirement, except for the policy the Ministry cited allowing it to provide reimbursement when there is a life-threatening emergency. The Appellant submitted no information about any such emergency. Therefore, the Panel finds that the Ministry reasonably concluded that the Appellant did not meet the requirements in Schedule C section 3(1)(b)(i).

EAPWDR Schedule C section 3(1)(b)(ii)

The Ministry's position is that the Appellant did not establish that she did not have the resources to pay for or obtain this medical equipment. The Ministry noted that the March 29, 2014 invoice indicates that the sale of a power chair was applied against the purchase price of the Broda Recliner. The Ministry stated that it did not provide that power chair that was sold and its source of funding is unknown. Also, OTD reported that the Appellant paid for the Broda Recliner out of her own pocket, although OTB reported that the Appellant indicated this was a significant financial burden on the friend who provided the money for the purchase. The Ministry found that there was no confirmation of any of this payment information.

The Appellant submitted that the information that a friend loaned her the funds for the Broda Recliner was a mistake. She paid for this equipment from her trust fund. The Appellant submitted that, based on the Ministry's publication about trust funds, it was her understanding that someone receiving disability assistance should not have to use a trust fund to purchase medically recommended mobility devices. She also submitted that she purchased the power wheelchair that was traded in because she did not know that such items could be funded.

The Panel Findings

It is not entirely clear from the evidence in the record and from the Appellant's submissions just how the Broda Recliner and how the trade-in power wheelchair were funded. The Panel will accept the Appellant's most recent submission that she used her trust funds to pay for the Broda Recliner. However, the Panel notes that the Ministry publication about trust funds does not say that such funds should not be used by a person receiving disability assistance to pay for medical equipment. What it does say is that the amount the person can spend on disability costs from a trust is meant to pay for things that are not covered by the Ministry. In other words, if the Ministry does not cover the costs of the Broda Recliner or some other medical equipment, then the Appellant can use her trust funds and not be disqualified from receiving disability assistance.

The Panel finds that based on the Broda Recliner invoice showing paid in full and on the Appellant's admissions about buying that and her trade in wheelchair, the Ministry reasonably determined that the Appellant did not establish that she did not have the resources to pay for the Broda Recliner. Therefore she did not meet the requirement in EAPWDR Schedule C section 3(1)(b)(ii).

EAPWDR Schedule C section 3(1)(b)(iii)

The Ministry's position is that it could not determine whether the Broda Recliner is the least expensive appropriate device because the assessments of the Appellant's requirements were made by both occupational therapists after the equipment was purchased. Also, those assessments and the Appellant's July 2014 request did not address this requirement.

The Appellant's position is that because of her specific functional limitations and medical conditions she needs this Broda Recliner with all the features.

The Panel's Findings

The Panel finds that there is no dispute that the occupational therapists' assessments and equipment specifications were made after the Appellant bought the Broda Recliner. Also, there is no evidence that this Broda Recliner is the least expensive appropriate medical equipment. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant did not meet the requirement in EAPWDR Schedule C section 3(1)(b)(iii).

Conclusion

Having considered all of the evidence, the Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the legislation in the Appellant's circumstances. The Panel, therefore, confirms the Ministry's reconsideration decision.