

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated February 27, 2015 in which the Ministry denied the Appellant's request for funding for repairs to a power wheelchair that had not been provided by the Ministry. The Ministry determined that the Appellant's request did not meet the criteria for power wheelchair repairs under the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

While the Ministry accepted that the Appellant was eligible to receive health supplements for disability recipients as set out in section 62 of the EAPWDR, it found that the eligibility requirements under five sections of Schedule C were not met:

- Section 3(5): The Ministry was not satisfied that the requirements in EAPWDR sections 3.1 to 3.12 were met and that it is more economical to repair the medical equipment or device than to replace it.
- Section 3(1)(b)(ii): The Ministry was not satisfied that there are no resources available to the Appellant to pay the cost of or obtain the medical equipment or device.
- Section 3(1)(b)(iii): The Ministry was not satisfied that the requested medical equipment or device is the least expensive or appropriate medical equipment or device.
- Section 3(2)(b): The Ministry was not satisfied that the assessment by the Appellant's occupational therapist (OT) establishes a medical need for a power wheelchair in addition to the scooter the Appellant already has; and
- Section 3.2(2): The Ministry was not satisfied that a power wheelchair, in addition to the Appellant's scooter is medically essential to achieve or maintain basic mobility.

APPEAL #

**PART D – Relevant Legislation**

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

## PART E – Summary of Facts

The evidence before the Ministry at reconsideration consisted of:

1. A Workers Compensation Board *Request for Review* form attached to the Notice of Appeal and completed by the Appellant on December 31, 2014 in which he stated that he cannot walk without custom shoes and a knee brace.
2. A Request for Reconsideration signed by the Appellant on February 11, 2015 in which he stated that he can't walk and his place is very small. He requires three surgeries and at least two years of rehabilitation. During this time, he will have the use of only one hand and he will not be able to manage with his scooter. He can manage a motorized wheelchair with one hand. His OT incorrectly stated that he can walk with canes, when in fact he can't walk at all. He broke his pelvis and dislocated his hip and the last time he walked was over two years ago.
3. A prescription for a power wheelchair from the Appellant's physician dated February 6, 2015. The physician stated that the Appellant requires a power wheelchair that he can operate with one hand because he has neuropathic disease and wrist surgery is expected. He relies on electric powered mobility devices to ambulate to manage his affairs. He has fallen seven times in the past year and sustained moderate to severe injuries. He has no canes or assistive devices aside from his scooter and his falls put him at significant risk of further injury. Due to the dysfunction of his upper extremities especially his diseased and injured wrist, he has not used a cane for walking for two years and he reports an inability to use canes effectively.
4. A *Medical Equipment Request and Justification* form signed by the Appellant on January 8, 2015 and completed by his physician on January 13, 2015. The Appellant explained that he can't walk and has to have surgery on his hand. The physician described the Appellant's medical condition as Neurologic Chronic Movement Disorder for which he is taking Parkinson's medications; PTSD related to a motor vehicle accident; and an old scaphoid fracture of the left wrist. The physician recommended a "power wheelchair with stand assist".
5. A Ministry *Medical equipment and devices decision summary* dated January 29, 2015 in which power wheelchair repairs are denied. The Appellant has crossed out "Yes" and written "wrong" and "no" under the questions of whether the family unit has other resources available to pay for or obtain the medical equipment or device requested. The Appellant has also marked "Yes" (while the Ministry marked "No") to the questions of whether the minister is satisfied that the item is medically essential to achieve or maintain basic mobility and whether all criteria have been met. He can't walk at all and needs the wheelchair while he recuperates for two years from three surgeries. He needs the wheelchair inside his residence and he uses his scooter outside.

The Ministry's comments under Repair History and Notes stated that the Appellant received the power wheelchair for free; that it is a 2006 model; and the OT's assessment indicates the Appellant would prefer it for indoor use, and he uses elbow crutches indoors. The Ministry funded a scooter in April 2012 to meet the Appellant's basic mobility requirements. The Appellant added a note stating that "this is wrong". He can't walk even with canes and the last time he walked he broke his pelvis and dislocated his hip.

6. A quotation from a medical supply dealer dated January 12, 2015 for repair to a power wheelchair in the amount of \$954.00. Attached to the quotation was a fax cover sheet with a note to the Ministry from the Appellant's home health care provider dated January 13, 2015. The health care provider stated that the Appellant's power wheelchair was not purchased through the medical supply dealer. The chair was vandalized and the batteries, battery casing, harness, connectors, and shroud were all stolen.

7. A four page letter to the Ministry from the Appellant's OT dated January 21, 2015. The OT stated that the Appellant has "Parkinson since 2010, DM, Obesity, Anxiety, Depression, PTSD, HT, Old right hip fracture 2012, old injury to left leg (run over by a truck and resulting in paralysis) and left wrist (pending surgery and may not be able to use the left hand for 2 months post-op) 9 years ago with WCB claim." The OT reported that the Appellant is only able to walk holding onto furniture and leaning on the wall. He uses elbow clutches for a few steps while his scooter is parked outside the bathroom. The Appellant mostly uses his scooter, or a power wheelchair (which he got for free). It is easier for him to use the power wheelchair indoors, but now he must use his scooter indoors as his wheelchair is in need of repairs.

The OT further reported that the Appellant is on the waiting list for wrist surgery and after the surgery he may not be able to use his left hand for two months. It is easier for him to use the power wheelchair indoors, as opposed to his scooter when he is not able to use his left hand after the surgery. The OT recommended a power wheelchair to fulfill the Appellant's mobility need.

Under *Functional Status*, the OT reported that the Appellant is independent with using his scooter indoors and outdoors but prefers to use the power wheelchair indoors and the scooter outdoors. He is able to walk a few steps while holding onto furniture and the wall and using elbow clutches. He is at risk of falling when transferring and performing self-care. Under *Physical Status*, the OT reported that the Appellant's upper and lower limbs are functional but with decreased strength and pain, and his hands are functional but with left wrist pain.

8. A prescription from the Appellant's physician dated February 6, 2015 describing the Appellant's PTSD symptoms from a disabling work injury that happened "years ago". The Appellant's symptoms include "worsened gait stability" and he requires psychological therapy and SSRI medication to reduce his symptoms.

9. A collection of documents from 2012 that indicate the Ministry approved the Appellant's requests for knee-ankle-foot orthosis, wrist-hand orthotic, and a motorized scooter. The Ministry's file notes and an OT's assessment from 2012 stated that the Appellant requires two canes when walking and he was moving to an accessible apartment which would accommodate a scooter.

#### *Appellant's additional submissions*

Subsequent to the reconsideration decision, the Appellant provided the following information:

In his Notice of Appeal dated March 3, 2015 the Appellant stated that he will be having surgery and will only have the use of his left hand. He has to have three surgeries and two years of recuperation. His apartment is too small to drive his scooter with his one hand, so he needs his power wheelchair

for getting around. He cannot walk at all. In a one-page submission attached to his appeal notice the Appellant stated that he uses his scooter so that he can get out, but his apartment is so small and he was given a free power wheelchair so he can get around the apartment and bathroom. The WCB document stated that he can't walk without a custom shoe and knee brace.

The Appellant added that someone vandalized the wheelchair when it was outside and he was out on his scooter, and the chair needs approval for \$965 repairs. The Appellant gets out of bed and into either the chair or the scooter. He is going for surgery on his left hand and will have to use his right hand only, even though he is left handed.

2. In a one page letter to the tribunal from the Appellant's physician dated March 19, 2015, the physician stated that the Appellant has neuropathic and anatomical disease of the left lower extremity and joint disease in the left upper extremity resulting from his complex, past injuries. Multiple surgeries to his wrist and hand are expected in the hope of maintaining the Appellant's ability to care for himself. He has not been able to ambulate normally since his accident and due to the disease burden on his upper and lower limbs, cane and walker usage is not as effective as it would be in patients with only lower extremity disease.

The physician reported that the Appellant's current scooter requires two-handed operation and does not fit into his small, cramped apartment. He needs a power wheelchair that he can operate with one hand for the duration of his post-op recovery time. Due to the expectation of multiple procedures with convalescent time between each operation and long wait times, it is expected that the power wheelchair will be needed for a few years at least.

3. At the hearing, the Appellant stated that the OT's information that the Appellant can walk with canes is incorrect because he hasn't used canes in a long time and he can't walk without "grabbing and falling down, or falling down period." He also clarified that although his physician's letter of March 19, 2015 stated that he needs two hands to operate his scooter, he can actually operate his scooter with one hand but he can't use his scooter in tight spaces inside his 475 square foot apartment. The wheelchair "turns on a dime" while the scooter will turn, but requires a lot of maneuvering.

In response to questions from the panel, regarding how the Appellant is getting around now with his wheelchair in need of repair, the Appellant explained that he uses his scooter but since he can't get his scooter through the bedroom door he rides it up to the bedroom, then transfers to an office chair and slides around on it.

In response to questions from the panel regarding alternative sources of funding to repair his wheelchair, the Appellant stated that he hasn't sought out sources of funding such as the charitable organization that provided him with a wheelchair after a previous surgery. He said that "they took the wheelchair back and they don't give them out anymore." He said that his doctor can request a wheelchair after his next surgery but he is not sure if he can get one. He has been on the wait list for surgery for three years.

Regarding the orthotic leg and wrist devices that the Ministry previously provided (in 2012), the Appellant stated that the leg device was stolen from a beach, and that he still has the device for his wrist.

The Ministry did not have any objections to admitting the above noted information and the panel finds that the statements in the Notice of Appeal, physician's letter of March 19, 2015, and testimony at the hearing summarize the Appellant's medical conditions and the need for surgery to his hand, and thereby corroborate the information the Ministry had at the reconsideration. The additional information further clarifies how the Appellant is getting around indoors and outdoors with and without a power wheelchair, substantiating the information the Ministry had at the reconsideration. The panel therefore admits it under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made.

#### *Ministry's submissions*

The Ministry relied on its reconsideration summary and did not provide any additional evidence at the hearing. In its reconsideration record, the Ministry noted that when it provided the scooter in 2012, the Appellant reported that he would be using it for community mobility as well as inside his home. The scooter was provided based on an assessment by an OT. The assessment indicated that the model of scooter the Appellant received is suitable for both indoors and outdoors. The Ministry noted in its reconsideration decision and at the hearing that it doesn't provide funding for more than one power mobility device. The Ministry explained at the hearing that it assessed the Appellant's request for wheelchair repairs in terms of both his current need for the wheelchair and anticipated need following surgery to his wrist.

The Panel makes the following findings of fact:

1. The Appellant currently uses a scooter and a sliding office chair for mobility indoors. He experiences falls when he walks a few steps.
2. The Appellant used a power wheelchair for maneuvering in tight spaces inside his residence.
3. The Appellant will have restricted use of one of his hands while recuperating from future surgery which he is on the wait list for.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision which denied the Appellant funding for repairs to his power wheelchair because his request did not meet the eligibility requirements set out in sections 3 and 3.2 of Schedule C 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 repairs to his power wheelchair sets out the following eligibility criteria:

### **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.

**(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.

## 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.

The panel will address the eligibility criteria the Ministry found were not met:

***Section 3(5) of Schedule C: 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 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 and it is more economical to repair the medical equipment than to replace it.***

### *Appellant's position*

The Appellant argued that this section was met because the requirements of sections 3.1 to 3.12 as applicable are fulfilled in that he requires the power wheelchair to achieve or maintain basic mobility under section 3.2 of the Schedule. At the hearing, he further argued that as his wheelchair is a \$6,000 model, it is cost effective to fund the \$954 repair.

### *Ministry's position*

The Ministry argued that the requirements of sections 3.1 to 3.12, as applicable were not met and therefore, funding for either repairs or replacement will not be provided.

### *Panel's decision*

The panel finds that the Ministry reasonably determined that the criteria in section 3(5) of EAPWDR Schedule C were not met. Section 3(5)(a) sets out that the criteria in sections 3.1 to 3.12 must be met. The panel notes that only section 3.2 applies to wheelchairs, and this section states that the minister must be satisfied that the wheelchair is required to achieve or maintain basic mobility. The panel finds that the Ministry was reasonable in determining that a wheelchair was not required for the Appellant's basic mobility and the rationale for this finding is set out below under the heading for section 3.2(2) of Schedule C.



With regard to the requirement in section 3(5)(b) that it must be more economical to repair the medical equipment than to replace it, the panel notes that this requirement is in addition to section 3(5)(a). Since the panel finds that the Ministry reasonably determined that the Appellant's request for funding wheelchair repairs does not meet the criteria in section 3(5)(a), it was therefore reasonable for the Ministry to not provide funding to either repair or replace the Appellant's wheelchair.

**Section 3(1)(b)(ii) of Schedule C: there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device**

*Appellant's position*

The Appellant argued that he cannot obtain a power wheelchair from the charitable organization identified by the Ministry because the organization no longer loans this item. He also isn't sure that his doctor can get him a power wheelchair following his surgery. A family member would like to assist him with getting his power wheelchair repaired but can't afford to and the Appellant does not have the resources to fund the repairs. Once he pays his bills there is not much money left and he has to take money out of his food budget to pay for things.

*Ministry's position*

The Ministry argued that a power wheelchair can be obtained from a charitable organization's equipment loan program if the Appellant needs one during a post-operative period.

*Panel's decision*

The panel finds that the Ministry reasonably determined that the *no resources available* criterion as set out in section 3(1)(b)(ii) of EAPWDR Schedule C was not met. The Appellant stated that the charitable organization identified by the Ministry no longer provides power wheelchairs and that it took back the wheelchair it had given him in the past. However, he provided no letter or information from the organization regarding equipment loans, and no evidence that he researched or contacted other organizations or sources.

**Section 3(1)(b)(iii) of Schedule C: the medical equipment or device is the least expensive appropriate medical equipment or device**

*Appellant's position*

The Appellant argued that the power wheelchair facilitated his mobility indoors because he could ride it into rooms. When he has surgery on his wrist he will require the wheelchair because he won't be able to use one of his hands to operate his scooter.

*Ministry's position*

The Ministry argued that it provided the Appellant with a scooter as his primary source of mobility both indoors and outdoors, and an additional power mobility device is therefore not the least expensive, appropriate medical equipment to meet his needs. It also provided him with leg and wrist

orthotics and though it acknowledges that he may have difficulty with transfers indoors, the scooter it provided was clearly assessed as suitable for both his indoor and outdoor needs.

*Panel's decision*

The panel finds that the Ministry reasonably determined that a power wheelchair is not the least expensive appropriate medical equipment under section 3(1)(b)(iii) of EAPWDR Schedule C. The Ministry's documentation from 2012 confirms the entire process of assessing the Appellant for a scooter and providing him with the least expensive appropriate model that met his needs both indoors and outdoors. Although the Appellant outlined his difficulties maneuvering the scooter in his small apartment, he is currently using the scooter indoors (as his power wheelchair is broken). He has not yet had surgery on his wrist and he still uses the wrist orthotic. Though the scooter may not be ideal given his small space, there is no confirmation that his scooter is not an appropriate device for his current needs.

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

*Appellant's position*

The Appellant argued that the OT confirmed the medical need for the power wheelchair. The OT summarized longstanding medical conditions that affect the Appellant's leg and wrist, and reported upcoming surgeries that will restrict the Appellant from using one of his hands.

*Ministry's position*

The Ministry argued that while the OT indicated that the Appellant may require the use of a power wheelchair for a two month post-operative period following surgery to his wrist, the OT's information does not establish that the Appellant has a medical need for the wheelchair either at the present time or on an ongoing basis.

*Panel's decision*

The panel finds that the Ministry reasonably determined that the assessment by the OT does not confirm a medical need for a power wheelchair. The OT's evidence was that the Appellant "prefers" a power wheelchair for indoor use because it is easier for him to use a power wheelchair indoors. This is consistent with the Appellant's evidence that the power wheelchair "turns on a dime" for entry through doorways into rooms. The evidence indicates the power wheelchair is a preference and a convenience, and not that a power wheelchair is medically necessary taking into account the Appellant's conditions and symptoms.

The OT further stated that the Appellant can currently, independently operate his scooter both indoors and outdoors. This suggests that although inconvenient indoors, the Appellant is using a scooter to address his medical need. While the OT reported that the Appellant may require a power wheelchair following surgery, he is still on the waiting list for surgery and despite his wrist pain his hands are reportedly functional and he is able to operate his scooter at the present time.

**Section 3.2(2) of Schedule C: Wheelchairs 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.**

*Appellant's position*

The Appellant argued that the wheelchair is medically essential for his basic mobility because he can't walk without falling and he can't maneuver his scooter through doorways in his small apartment.

*Ministry's position*

The Ministry argued that the Appellant has basic mobility with the scooter it provided in April 2012. His OT's statements do not establish that a power wheelchair (in working order), in addition to the scooter, is medically essential to achieve or maintain basic mobility.

*Panel's decision*

The panel finds that the Ministry reasonably determined that the wheelchair is not medically essential to achieve or maintain basic mobility under section 3.2(2) of EAPWDR Schedule C. The evidence provided by the Appellant, his physician, and his OT indicate that he currently uses a scooter to maintain his basic mobility.

The Appellant's evidence was that he uses a scooter for mobility outdoors, and that he uses his scooter indoors but it does not fit through doorways. Now that his wheelchair is broken and unusable, he has to slide onto an office chair to get through the door of the bedroom.

In the prescription for the power wheelchair and supporting letter of March 19, 2015, the Appellant's physician stated that the Appellant's scooter is his only assistive device although the scooter does not fit into the Appellant's small apartment. The OT reported that the Appellant is independent using his scooter indoors and outdoors. The Ministry noted in its reconsideration record that it provided the Appellant with the scooter because a scooter is what was recommended (by an OT) for basic mobility both indoors and outdoors in consideration of the Appellant's medical conditions.

The foregoing evidence indicates that although the Appellant has difficulty maneuvering his scooter in his small space, he continues to use it both indoors and outdoors for basic mobility. Although he may have difficulty operating the scooter following surgery on his wrist, at the present time his medical conditions do not preclude him from using his scooter to maintain basic mobility. The panel finds that the Ministry reasonably determined that the information provided does not confirm that a power wheelchair is medically essential to achieve or maintain basic mobility as required in section 3.2(2) of EAPWDR Schedule C.

*Conclusion*

The panel finds that the Ministry reasonably determined that the Appellant is not eligible for funding to repair his power wheelchair pursuant to sections 3 and 3.2 of EAPWDR Schedule C. The panel confirms the Ministry's reconsideration decision as being reasonably supported by the evidence.