

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated May 8, 2015 which denied the appellant's request for a supplement to cover the cost of repairs to his power wheelchair because:

- the ministry considers that the medical equipment was damaged through misuse, as set out in Section 3(6) of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR); and,
- the eligibility criteria were not met for a life threatening health need under Section 69 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 62, 69, and Schedule C, Sections 3

PART E – Summary of Facts

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

- 1) Undated Service Line & STOB Coding Information sheet;
- 2) Invoice from a wheelchair supply company dated September 14, 2010 for repairs to a TDXSP power chair including tire, joystick knob, motor brush packs, upper arm tube, stem bearings and power chair casters with bearings for the total amount of \$797.40;
- 3) Ministry Medical Equipment Request Tracking Sheet with a note for December 15, 2010 for repairs to a TDXSP approved May 2008 for September 17, 2010 of \$797.40 and October 29, 2010 for \$1,173.30 and current repairs to replace a joystick “seems reasonable to approve” for a total of \$625.73;
- 4) Letter dated December 15, 2010 to the appellant in which the ministry approved repairs to his PWC joystick for a total not to exceed \$625.73;
- 5) Invoice from a wheelchair supply company dated March 21, 2011 for repairs to a TDXSP power chair including stem bearings, caster bearings, caster tire, waterfall arm pad, motor/gearbox assembly left and right for the total amount of \$2,291.17;
- 6) Invoice from a wheelchair supply company dated April 7, 2011 for repairs to a TDXSP power chair including stem bearings, stem bearing spacer, needle bearing, steel drive pulley, weld and prepare for the total amount of \$362.41 with the comment “welding motor shaft to drive pulley is only repair option because there are no parts available; this repair might last one week or ten years”;
- 7) Invoice from a wheelchair supply company dated August 24, 2011 for repairs to a TDXSP power chair including installation of armrest pads, tires, casters, upper armrest, stem bearings, charger parts and motor servicing for the total amount of \$904.94;
- 8) Purchase Authorization dated February 13, 2012 for caster bearings, stem bearings, motor servicing and labour at a cost of \$456.40;
- 9) Invoice from a wheelchair supply company dated March 20, 2012 for repairs to a TDXSP power chair including installation of 2 batteries “special price as per contract” for the total amount of \$450;
- 10) Invoice from a wheelchair supply company dated April 2, 2012 for repairs to a TDXSP power chair including upper armrest assembly, 2 casters, gearbox and motor assembly left side for the total amount of \$1,152.76;
- 11) Invoice from a wheelchair supply company dated June 11, 2012 for repairs to a TDXSP power chair including caster assembly, caster bearings, and installation of an used charger for the total amount of \$635.68;
- 12) Invoice from a wheelchair supply company dated October 2, 2012 for repairs to a TDXSP power chair including installation of tires, caster assemblies, gromitt, stem bearings, caster bearings, motor/gearbox assembly on the right side, cylinder locking gas, motor service on the left side, for the total amount of \$2,212.25;
- 13) Invoice from a wheelchair supply company dated November 28, 2012 for repairs to a TDXSP power chair including installation of a battery charger for the total amount of \$440;
- 14) Invoice from a wheelchair supply company dated January 30, 2013 for repairs to a TDXSP power chair including stem bearings, caster assembly, tires, full length waterfall armrest pad, hand grips, male charger end, full footrest assemblies, sector style foot block and motor service for the total amount of \$1,422.99;
- 15) Invoice from a wheelchair supply company dated March 18, 2013 for repairs to a TDXSP power chair including installation of 2 batteries “special pricing as per above contract” for the total amount of \$450;
- 16) Purchase Authorizations dated March 21, 2013 for 2 batteries for power mobility at a cost of

- \$360 and labour to install the batteries for the PWC [power wheel chair] at a cost of \$90;
- 17) Invoice from a wheelchair supply company dated May 27, 2013 for repairs to a TDXSP power chair including "power chair needs reprogramming" for the total amount of \$90;
 - 18) Invoice from a wheelchair supply company dated June 12, 2013 for repairs to a TDXSP power chair including "joystick caught in elevator door and smashed off, urgent request" for the total amount of \$501.47;
 - 19) Invoice from a wheelchair supply company dated August 12, 2013 for repairs to a TDXSP power chair including to "pull tire off and slide out suspension, install motor mount bolts, reinstall suspension and tire" for the total amount of \$93.64;
 - 20) Letter dated September 4, 2013 from the wheelchair supply company in which a senior technician wrote that it is not recommended that the appellant's PWC be repaired as the main battery box frame is wearing, all the walking beams are worn out and will require replacement and the motors are starting to wear and will eventually fail. The appellant "is considered a heavy user and has regular maintenance done (see attached service report)." The recommendation is to not put any more funds into the PWC due to the fact that if the main battery box frame fails the chair will not be drivable and will also not be repairable. The attached service report details "work done" to a TDXSP June 11, 2008 power chair over the period January 5, 2011 through August 15, 2013 for a total cost of \$11,727.04.
 - 21) Prescription dated September 17, 2013 for a PWC and back cushion for the appellant;
 - 22) Medical Equipment Request and Justification (MERJ) dated September 17, 2013 referring to the attached prescription and letter;
 - 23) Letter dated September 18, 2013 to the ministry in which an occupational therapist (OT) requesting funding for a new PWC and seating system for the appellant. His PWC was recently serviced and the technician recommended that the chair not be repaired.
 - 24) Invoice from a wheelchair supply company dated September 18, 2013 for new equipment including at wheelchair transport bracket for \$6,556.55, adjustable rehab seat for \$725.27, sectional rear uprights for \$325.78, footrest and composite footplates for \$211.12 and cushions for \$841.75 and \$707.98, for a total amount of \$9,368.45;
 - 25) Invoice from a wheelchair supply company dated October 7, 2013 for repairs to a TDXSP power chair including installation of 2 batteries "special price as per contract" for the total amount of \$450;
 - 26) Quotation dated April 15, 2015 from a wheelchair supply company for repairs to an HD 1450 power chair including upper (\$58.24) and lower (\$29.06) cables, controller (\$619), and 3 hours of labour at a labour rate of \$90 per hour for a total of \$270, described as: "replace controller, replace cables, repair and replace the wiring to the right motor, replace wiring that is damaged, missing here and there; NOTE: this is not warranty. The client has a pet rabbit that has chewed up various sections of his chair over the Easter weekend. Rather than wait for us to fix, he tried to repair himself. It caused electrical arcing/damage. Client originally thought he could pay, but does not have the funds to do so." The total cost of repairs is \$1,176.30;
 - 27) Letter dated April 16, 2015 to the appellant in which the ministry wrote that repairs to the appellant's PWC have been denied because the chair is currently under warranty and the ministry considers that the medical equipment was damaged through misuse; and,
 - 28) Request for Reconsideration dated April 24, 2015.

In the Request for Reconsideration, in which a social worker wrote in part that:

- The appellant was denied repairs to his wheelchair after his pet chewed through the wiring to the point that the chair is non-functional.
- The chair is inoperable: it cannot power on or be steered or controlled whatsoever.

- They are aware that the chair is still under warranty but the machine was not damaged through misuse.
- The chair was damaged through an unforeseen and unexpected circumstance.
- The wheelchair supply company determined that significant damage was done to the appellant's chair since the circuitry was completely shot and the chair is unable to charge. It may not be able to be repaired.
- Although the cost to repair the chair is \$1,176.30, the chair is so damaged that it may not be fixable. If it cannot be fixed, the appellant would like to have a replacement chair.
- He should have been given a loaner chair with power mobility. The wheelchair supply company does not want to give him a power chair on loan because they feel that they will not get the chair returned because the appellant is on income assistance and living in poverty.
- The appellant cannot afford to purchase a new power chair with his own money and he desperately needs a power chair as soon as possible.
- The appellant is completely and absolutely dependent on his power chair.
- He has necrotizing fasciitis in his left hand to the point that he is unable to use this hand.
- He is unable to steer a wheelchair on his own or self-propel since he does not have legs.
- He is currently using a manual chair and he has to have friends push him to and from the clinic which he attends three times daily.
- Since the appellant has been using a manual chair, his quality of life has decreased on all basic levels.
- The appellant is now reliant on the kindness of others for his mobility. When he had power mobility, he was able to go to the clinic three times daily on his own and he was completely autonomous and independent.
- The appellant's physical condition is made worse by having him propel in a manual chair. All movement becomes increasingly strenuous because he no longer has a power chair.
- All of the appellant's ability to do his ADLs [activities of daily living] are dependent on power mobility. He has to go into the community to acquire his meals and he struggles to do this in a manual wheelchair.
- The appellant has become horribly withdrawn, he has severe lack of motivation and may have situational depression because he lives every day in excruciating pain.

Additional information

In the Notice of Appeal dated May 22, 2015, the appellant's representative expressed disagreement with the ministry's reconsideration decision and wrote:

- The appellant is dependent on power mobility since he is a bilateral amputee.
- They are asking the ministry to pay for repairs to his power chair.
- The appellant is unable to propel himself in a manual chair because his left hand is non-functional.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Letter dated June 8, 2015 in which a medical practitioner wrote that:
 - The appellant has been attending the medical program at the clinic three times daily for the past two years and will likely continue indefinitely;
 - The appellant requires a motorized wheelchair due to severely restricted ambulation and mobility. He has complex pain including bilateral below knee amputation, bilateral hip necrosis, a severe vertebral fracture and nerve impingement.
- 2) Letter dated June 8, 2015 in which the appellant's family physician wrote that:

- The appellant has bilateral below knee amputations.
 - He has attempted but is unable to tolerate orthotics due to severe lumbar vertebra degeneration causing pressure on his spinal cord with pain and loss of strength in his lower limbs.
 - He is unable to push a manual wheelchair due to surgery to his left wrist which has left him with limited range of motion.
 - The appellant is not even marginally adequately mobile without a power wheelchair.
- 3) Letter dated June 9, 2015 from a physician who is a specialist in physical medicine and rehabilitation, stating in part that:
- The appellant is unable to use prosthesis for primary mobility due to low back pain.
 - His primary mobility is wheelchair and power is required due to his wrist deformity.
- 4) Undated letter from a registered nurse, stating in part that:
- The appellant is unable to use his prostheses due to abscesses on both of his stumps.
 - He has a history of necrotizing fasciitis in his left hand, limiting the range of motion and rendering it non-functional and he is unable to self-propel in a manual chair.
 - The appellant's chair has electrical damage and they are arguing for the ministry to repair the chair or, if it is deemed beyond repair, to supply the appellant with another chair.
 - A manual chair will not only decrease his quality of life, but he would not be able to come for treatment at their clinic, which he desperately needs three times daily.
- 5) Undated letter from an outreach nurse, stating in part that:
- The appellant is currently without his motorized wheelchair. Due to his need for the chair, the appellant is able to easily access services such as the clinic, health center and a means to secure food.
 - Without the use of his chair, it has and will continue to impact the appellant's overall quality of life and general wellness.
- 6) Undated letter from an OT, stating in part that:
- The appellant depends on power mobility to complete his basic ADLs and IADLs [instrumental activities of daily living].
 - Secondary to a non-functional left upper extremity, he cannot self-propel a manual wheelchair.
 - Secondary to chronic wounds on his stumps, he cannot wear his prostheses and ambulate independently.
 - Without a power wheelchair, the appellant cannot access the necessary daily medical care he receives at the clinic, care that keeps him healthy and out of hospital.
 - In her professional opinion, a power wheelchair is the only device that meets the appellant's basic mobility needs.

At the hearing, the appellant's representative, a social worker, stated that:

- She has known the appellant for 3 years and he has been going to the clinic for 4 years now, for treatments 3 times per day. She sees him at least once a day.
- The appellant lives in a power wheelchair and cannot use a manual wheelchair.
- The appellant has a history of necrotizing fasciitis and he cannot use his hand to propel a manual wheelchair and has to have someone push him. The appellant showed the panel that his hand and forearm are deformed in shape.
- Approximately 1 ½ years ago, the appellant got prostheses for his legs, which have been amputated at the knees, and he cannot use them because of abscesses on his stumps. He

also has pelvis deterioration and a severe vertebral fracture.

- The appellant is in pain every day.
- All of the appellant's activities of daily living (ADL's), such as cooking, cleaning, and laundry, are accomplished in his power wheelchair.
- He has gotten home care to help with his ADL's.
- The appellant was in a manual wheelchair for a short time, with friends and other people pushing him, and she talked to a representative at the wheelchair supply company about getting a loaner power wheelchair for the appellant. The representative said that they would not provide the appellant with a loaner power wheelchair because they were afraid that he would not return it to them. She feels that the appellant was being discriminated against by the wheelchair supply company because he is on income assistance and lives in poverty.
- She does not trust the representative's credibility and question his ethics because it appears that he has falsified his testimony about damage to the appellant's wheelchair due to a rabbit.
- She was able to secure a loaner power wheelchair for the appellant from a local hospital.
- The wheelchair supply company referred to the appellant as a "heavy" wheelchair user but this does not take into account the challenges of the appellant's living environment and calling this "misuse" does not sit well with her. The appellant lives in one of the poorest neighbourhoods in North America and he uses his power wheelchair through difficult terrain which includes uneven pavement and he has to try to avoid nails and broken glass, causing additional wear.
- If the appellant does not have a power wheelchair, he will not be able to get to the clinic for his opiate-assisted treatments 3 times per day. He has to be independent since, if he cannot get to the clinic, he could have withdrawal symptoms. The quality of his life would deteriorate.
- The appellant has used opiates for over 35 years and theirs is the only clinic in North America that offers this treatment. They require that the clients are orderly and the appellant has been cooperative, he is wonderful to work with, and he has done very well in the program.
- All of the additional letters that they have obtained, from doctors and nurses and an OT, provide support for the appellant's need for power mobility. He cannot live without it. All of the medical professionals agree that the appellant's power wheelchair should be fixed or the appellant should be provided with a new power wheelchair.
- The appellant also has HIV and needs to attend a clinic for testing and treatment for this condition. He needs to go to diagnostic appointments and can only do this with the independence afforded by power mobility.
- The appellant risks mortality if he cannot get to the clinic. He will die if he does not get there for his treatments. The clinic is the gateway for other services in the appellant's life. They are a little community, which is like family, in a difficult neighbourhood. The appellant could also end up depressed if he does not get to the clinic.
- They agree that the appellant's power wheelchair is only 2 years old and that it is still under the warranty provided by the wheelchair supply company.
- What happened to the appellant's wheelchair was a freak accident, they are sorry that it happened, but they need to move forward. The appellant cannot be left with nothing.
- The appellant knew he should not be trying to repair his wheelchair by himself, but he also suffers with an anxiety disorder, was in crisis, and was desperate to fix his chair and get to the clinic. The appellant has an electrician/construction background and he thought he could fix the chair.
- The appellant knew that if he did not get to the clinic on time he could be facing withdrawal symptoms or "dope sickness," which involves tremors and convulsions, vomiting and diarrhea.
- The necessary repairs are estimated to cost \$1,176.30 and paying for these repairs is more

economical than replacing the power wheelchair.

At the hearing, the appellant stated that:

- He has been getting home care for some time but they are helping him with more tasks now, such as bathing.
- Although the ministry wrote in the reconsideration decision that the representative from the wheelchair supply company said “this is the third or fourth time” his rabbit has chewed and damaged the wiring on his power wheelchair, this is not true.
- He got his pet rabbit one week before Easter and the rabbit has not chewed the wires on his wheelchair before. The occurrence on the Easter weekend was the first time. This was his first pet rabbit and he discovered he liked having the companionship and let the rabbit roam free in his small SRO room. His rabbit no longer runs around his room.
- When the representative from the wheelchair supply company told the ministry that he sometimes does repairs and does not tell his supervisor about it, that would be a very quick and simple street-side repair that he would do in a couple of minutes.
- He admits that his relations with the representative from the wheelchair supply company have not been the best and, at one point, the representative refused to provide him with his chair until the supervisor told him to.
- All of the repairs listed by the ministry in the reconsideration decision were to his previous power wheelchair. He received his current power wheelchair in December 2013. His current wheelchair has been in to the shop twice for repairs. Another technician does the repairs in the shop and not the representative that the ministry spoke to.
- His current chair has been repaired somewhere between 12 and 18 times since he received it. Approximately once every couple of months.
- He lives 2 blocks from the clinic.
- When his wheelchair was damaged on the Easter weekend, he thought he might be able to repair it by taking a wire off his old wheelchair and plugging it into his new wheelchair, but it did not work. He was supposed to be to the clinic in 15 minutes and he felt desperate to try to fix his chair.
- He did not notice any “electrical event” when he attempted the repairs to his wheelchair but the technician said that damage had occurred to the control box.

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

- The ministry agrees that the appellant needs a power wheelchair for basic mobility and that he meets the criteria for a power wheelchair and that is why he was issued a power wheelchair and a replacement chair. That is not at issue.
- The issue for the ministry is that the ministry does not pay for repairs when equipment is still covered under a warranty.
- The appellant’s current power wheelchair was issued to him in December 2013 and is covered by a 2-year full warranty by the wheelchair supply company.
- The ministry agrees that the list of repairs as set out in the reconsideration decision apply to the appellant’s previous power wheelchair.
- When a request was made for the ministry to pay for repairs to equipment that should be covered by the warranty, the ministry contacted the wheelchair supply company. The ministry recorded the response by the representative from the wheelchair supply company and they had no reason to doubt the veracity of his comments.

- The representative stated that he had records of repair logs both covered under the warranty, and not covered, for the past couple of years and he said he would fax them to the ministry as soon as possible but warned that it could take a few days to compile as the submission could be 60 or more pages long. The representative has not faxed this information to the ministry to date and she is not aware of any efforts by the ministry to follow up with the representative.
- In response to a question about the usual practice of the ministry in following up with a contracted equipment service provider to advocate for repairs to be completed under the “all-inclusive” warranty, she thought it likely would usually involve a follow-up telephone call to discuss the situation with the provider, as occurred in the appellant’s situation.
- She is not aware of any policy or guidelines that covers the ministry’s interpretation of damage through “misuse”

Admissibility of New Information

The ministry did not object to the admissibility of any of the additional letters provided by the appellant and did not raise an objection to the admissibility of the oral testimony on the appellant’s behalf. The panel considered the information in the letters and the oral testimony, which related to the appellant’s previously diagnosed medical conditions and his need for a power wheelchair, and the panel admits the information in the letters and the oral testimony on behalf of the appellant as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4) of the *Employment and Assistance Act (EAA)*.

The panel considered the oral testimony of the appellant relating to damage to his power wheelchair by a pet rabbit and, while it was inconsistent with the information before the ministry at reconsideration, the appellant first learned of the details of the conversation between the ministry and the wheelchair supply company and the resulting misuse claimed by the ministry after reconsideration and did not have an opportunity to refute this information at reconsideration. Therefore, the panel admitted the appellant’s oral testimony as relating to the issue of misuse of his power wheelchair and being in support of information and records that were before the ministry at the time of reconsideration, pursuant to Section 22(4) of the *EAA*.

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 his power wheelchair because the ministry considers that the medical equipment was damaged through misuse, as set out in Section 3(6) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and the eligibility criteria were not met for a life threatening health need under Section 69 of the EAPWDR, 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 cost of repairs to his power 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
- 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
 - 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.

The ministry also considered the ministry policy regarding repairs to particular equipment covered by warranty and the policy provides as follows:

Warranty on Wheelchairs, Scooters, and Attached Seating: December 6, 2010

Wheelchairs (power and manual), scooters and attached seating purchased through a contracted equipment service provider by HAB will include a two-year, all-inclusive warranty. Repair costs are not to be provided for equipment that is under warranty.

The warranty includes the following:

- All parts and labour costs associated with repair;
- Adjustments and fittings;
- Any costs associated with wear and tear or maintenance (e.g. covers flat tires, battery replacement for powered device);
- All freight and travel costs.

Clients receiving a new piece of warranted equipment from HAB will be required to sign the Equipment Care and Responsibility Letter at the time of delivery. This letter outlines the client's responsibilities for proper care and maintenance of the equipment. The medical equipment service provider will complete this task and submit the letter directly to HAB.

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 his power wheelchair does not meet all of the applicable criteria of Section 3(4) and (6) of Schedule C of the EAPWDR. The ministry argued that the ministry may not provide for repairs of medical equipment if the ministry considers that the medical equipment was damaged through misuse. The ministry argued that the appellant's power wheelchair was damaged through misuse since the representative from the wheelchair supply company stated that the power wheelchair was previously damaged by the appellant's pet rabbit 3 or 4 times and the ministry expects that reasonable efforts are made to protect and safeguard medical equipment provided by the ministry. The ministry argued that since the appellant's pet rabbit is known to chew the wiring on his wheelchair and he chose not to safeguard his wheelchair by keeping his pet in a contained area, the ministry considers this to be misuse of the equipment.

The ministry also argued that the numerous requests for repairs made to the appellant's wheelchairs over the years demonstrate a pattern of misuse. The ministry argued that the representative from the wheelchair supply company stated that the appellant is "known to be hard" on his power wheelchair and the routine damage he sees in the appellant's wheelchair could only happen if the wheelchair was being misused on a regular basis, and the ministry considered service calls on average of once a month to be an indication of misuse. The ministry argued that according to the ministry policy, power

wheelchairs purchased through a contracted equipment service provider includes a two-year, all-inclusive warranty and repair costs are not to be provided by the ministry for equipment that is under warranty. The ministry referred to the comments by the wheelchair supply company on the quote dated April 16, 2015 that the repairs detailed are not covered by the warranty because the pet rabbit chewed the appellant's wheelchair and, rather than waiting for them to fix it, the appellant tried to repair it himself. The ministry considered that the service provider's refusal to cover a repair request under their all-inclusive warranty is an indication of misuse of the equipment. The ministry argued further that the eligibility criteria were not met for a life threatening health need under Section 69 of the EAPWDR.

Appellant's position

The appellant's position is that he is eligible for repairs to his power wheelchair because he did not misuse the equipment and that he has a life threatening need for power mobility. The appellant argued, through his advocate, that the chair was damaged through an unforeseen and unexpected circumstance since the appellant had recently acquired the pet rabbit and this was the first time that the wires on the chair had been chewed. The appellant argued that the credibility and the ethics of the representative from the wheelchair supply company are in question because it appears that he has falsified statements to the ministry about damage to the appellant's wheelchair due to his rabbit. The appellant argued that he only attempted to repair the wires on his power wheelchair because he thought he could repair it, he had to get to the clinic for a scheduled appointment, he suffers from an anxiety disorder, and he felt desperate to have his power mobility to get to his treatment.

The appellant argued further that the list of repairs sited by the ministry relate to his previous power wheelchair and that the repairs completed to his current chair have occurred approximately every couple of months, and not once a month as described by the ministry, and this does not indicate a "pattern" of misuse. The appellant took issue with the characterization by the representative of the wheelchair supply company that he is "known to be hard" on, and is a "heavy user" of, his power wheelchair because this does not take into account the challenges of the appellant's living environment and the difficult terrain in one of the poorest neighbourhoods in North America that could cause additional wear on the equipment. The appellant argued that the wheelchair supply company was approached about completing the repairs and they refused to perform the repairs under warranty and refused to provide a loaner power wheelchair while the issue of the repairs was resolved because they were they were afraid that the appellant would not return the loaner chair to them. The appellant argued that the wheelchair supply company improperly discriminated against him, because he is on income assistance and lives in poverty, by not completing the repairs and not providing him with a loaner power wheelchair. The appellant also argued that his rights under Section 7 of the *Charter of Rights and Freedoms* have been infringed since he is being deprived of the right to lessen his suffering, being forced to use a manual chair when he cannot propel it on his own.

The appellant argued that the necessary repairs to his power wheelchair are estimated to cost \$1,176.30 but the wheelchair supply company determined that the circuitry was completely shot and the chair is unable to charge and it may not be able to be repaired. The appellant argued that all of the medical professionals who wrote additional letters agree that the appellant's power wheelchair should be fixed or the appellant should be provided with a new power wheelchair since he is completely and absolutely dependent on his power chair. The appellant argued that he faces a life threatening need for the power wheelchair as he risks mortality if he cannot get to the clinic for his treatments and the access to the other required services and social community interaction.

*Panel's decision**Section 3(4) and (5) of Schedule C of the EAPWDR- Equipment damaged through misuse*

The subject of this appeal is the reasonableness of the ministry's reconsideration decision which denied the appellant's request for repairs to his power wheelchair. As the appellant had not made a request for replacement of his power wheelchair, the ministry had not denied a request for replacement of his power wheelchair and, although the appellant argued that he may require a new power wheelchair if his current chair is not capable of being fixed, this issue is not the subject of this appeal.

The ministry did not dispute that the power wheelchair is medically essential to maintain the appellant's basic mobility and that all of the eligibility criteria for the power wheelchair had been met as the ministry provided funding for the appellant's current power wheelchair in December 2013. The equipment was supplied by the same wheelchair supply company that is now refusing to perform repairs under the warranty. The appellant does not dispute that his current power wheelchair was damaged as a result of his pet rabbit chewing some of the wiring and that he attempted to repair the damage to be able to get to his scheduled treatment at the medical clinic. The ministry argued that while it appears more economical to repair the power wheelchair, at the estimated cost of \$1,176.30, than to replace it, under Section 3(4) of Schedule C of the EAPWDR, this requirement is also subject to the stipulation in Section 3(6) of Schedule C that the ministry may not provide repairs of medical equipment if the ministry considers that the equipment was damaged through misuse, and the ministry considered that the appellant's power wheelchair had been damaged through misuse.

When asked whether the ministry has any policy or guidelines to assist in interpretation of the word "misuse," the ministry stated that she was not aware of any. Therefore, applying an ordinary, dictionary definition, the panel notes that "misuse" is interpreted as: 'to use (something) in the wrong way or for the wrong purpose, to use incorrectly, or to mistreat or abuse.' In the decision, the ministry gave examples of other activities that have been considered by the ministry in the past to be "misuse" of equipment, which fall more within the "mistreat or abuse" sense of the definition rather than use for a wrong or improper purpose, and include: leaving a power wheelchair out in the rain all day at risk of rusting or shorting out the electrical parts due to moisture, or leaving a power scooter outside with the keys in it in an exposed high-crime area and at risk of being stolen.

The parties agreed that the appellant's current power wheelchair was provided to the appellant in December 2013 by the wheelchair supply company and that it is still covered by the "two-year, all-inclusive warranty" required of all preferred equipment service providers that contract with the ministry. The ministry stated that one ground of finding "misuse" of equipment is that the service provider refused to cover the repair request under the all-inclusive warranty. The service provider's refusal to cover the repairs required to the appellant's power wheelchair is set out in the quotation dated April 15, 2015 as: *"This is not warranty. The client has a pet rabbit that has chewed up various sections of his chair over the Easter weekend. Rather than wait for us to fix, he tried to repair himself. It caused electrical arcing/damage."* Based on this wording, the panel finds that the service provider was prepared to repair the damage to the chair caused by the appellant's pet rabbit, since they complained that the appellant did not wait for them to fix this damage and that he, instead, tried to fix it himself. Indeed, the representative from the wheelchair supply company stated to the ministry that he has repaired damage caused to the wheelchair by the rabbit under the warranty in the past.

The quotation dated April 15, 2015 lists the parts required (upper cable at \$58.24 and lower cable at \$29.06 and an used controller for \$819.00) as well as 3 hours of labour at a labour rate of \$90 per

hour for a total of \$270 to repair the damage; however, the quotation for the cost of repairs does not separate the damage caused by the rabbit, that the service provider wrote in the quotation it is prepared to fix, and the damage as a result of the appellant's actions in attempting to repair the chair himself, which the service provider is presumably refusing to repair under the warranty.

The ministry's policy indicates that the warranty is "all-inclusive" and covers "all parts and labour costs associated with repair, adjustments and fittings, any costs associated with wear and tear and maintenance (e.g. covers flat tires, battery replacement for powered devices) and all freight and travel costs" and it does not limit "all parts and labour costs associated with repair" to certain types of repair or exclude repairs for damage as a result of actions taken by the appellant in attempting to repair the chair by himself. According to the ministry policy, the medical equipment service provider is to ensure that the client signs an "Equipment Care and Responsibility Letter" at the time of delivery of new equipment and submit the letter to the ministry. This Letter "outlines the client's responsibilities for proper care and maintenance of the equipment," and in the absence of evidence to indicate the details of the appellant's responsibilities and any possible prohibitions under the warranty as well as the particulars of his alleged breaches, the panel finds that it is not clear that the wheelchair supply company properly refused to perform the repairs to the appellant's power wheelchair under the terms of the all-inclusive warranty it agreed to. The ministry stated at the hearing that the only follow-up with the service provider regarding the warranty was the one telephone call placed to a sales representative with the wheelchair supply company. Since there may be other, possibly financial, factors that a service provider takes into consideration when refusing to cover the cost of repairs under a warranty for equipment that it supplied, the panel finds that the ministry was not reasonable to conclude that the service provider's refusal to cover the repair request under the warranty, in the absence of complete particulars from the service provider, is a ground for determining that there has been "misuse" of the equipment by the appellant.

Although it would be a reasonable expectation of a preferred service provider that it supply the appellant with a loaner power wheelchair while he resolved the question of the cost of the repairs to his current power wheelchair with the ministry, the appellant's advocate stated that the wheelchair supply company refused to provide the appellant with a loaner power wheelchair because they were afraid that he would not return it to them and, consequently, she had to secure a loaner power wheelchair for the appellant from a local hospital. The advocate argued that the appellant was improperly discriminated against by the wheelchair supply company in not providing him an item that he was entitled to, and which would be provided to others from a different socio-economic group, because he is on income assistance and lives in poverty. While the appellant may have an argument for discrimination by the wheelchair supply company, the panel does not have jurisdiction to consider human rights issues under the *Human Rights Code*, pursuant to Section 46.3 of the *Administrative Tribunals Act* which applies to the Tribunal. The appellant also made an argument that his rights under Section 7 of the Charter of Rights and Freedoms have been infringed; however, the panel also does not have the jurisdiction to consider constitutional questions, pursuant to Section 44 of the *Administrative Tribunals Act* which applies to the Tribunal.

The ministry considered that the numerous requests for repairs the appellant has made over the years demonstrate a "pattern" of misuse and service calls on average of once a month is an indication of misuse. The parties agreed that the invoices for repairs detailed in the ministry decision related to service of the appellant's previous power wheelchair and, reviewing the particulars of these invoices, the panel finds that repairs had been conducted on average of every 2.3 months and many had been approved by the ministry as "reasonable" repairs at the time. The ministry provided a

replacement power wheelchair to the appellant in December 2013 based on the history of the repairs made to his previous power wheelchair and did not refuse to provide a replacement power wheelchair based on Section 3(6) of Schedule C of the EAPWDR, although it would be entitled to do so if it had determined that the equipment had been damaged at any time due to misuse.

For the appellant's current power wheelchair, the representative from the wheelchair supply company stated to the ministry that for the past couple of years he has seen the appellant about once a month to respond to a request for repairs. The representative stated that he has records of repair logs that he promised to fax to the ministry "as soon as possible" after his conversation with the ministry on May 6, 2015, but these logs had not yet been received by the ministry as of the time of the hearing. Without the details of the repairs alleged to have been completed to the appellant's current power wheelchair since December 2013, it is not possible to determine whether there was damage to the chair caused by the appellant's "misuse", or by using the equipment in the wrong way or for the wrong purpose or by mistreating or abusing it. The panel finds that ministry unreasonably concluded that the appellant's current power wheelchair was damaged through misuse because the history of repairs made to the appellant's previous power wheelchair and the number of repairs made to his current power wheelchair demonstrated a pattern of misuse.

Given that a power wheelchair is typically used for the purpose of providing basic mobility for a person around his community in order to perform his activities of daily living, the panel finds that the ministry was not reasonable in the determination that the appellant's power wheelchair was "misused" by virtue of the statements by a representative of the wheelchair supply company that the appellant is "known to be hard" on, and be a "heavy user" of, his power wheelchair and the 'routine' damage seen in the appellant's wheelchair could only happen if the wheelchair was being misused on a regular basis. When the wheelchair supply company prepared the letter dated September 2, 2013 in support of the appellant's request for the ministry's funding for the wheelchair supply company to supply him with a new power wheelchair, they stated that he is "considered a heavy user and has regular maintenance done" to his chair but they did not suggest at that time that the appellant was misusing the equipment and that he should be denied funding for the new, replacement power wheelchair. As well, the appellant stated that the terrain in his community consists of uneven pavement and other obstacles that cause heavy wear to his equipment as he goes about his many activities, that he attends the clinic 3 times per day plus other medical services and he goes out to obtain his meals. The resulting "routine" damage, without specific evidence of any use of the power wheelchair by the appellant in a way or for a purpose for which it was not intended, or by mistreating or abusing it, cannot be said to fall within an ordinary definition of "misuse."

Another ground for the ministry finding "misuse" of the equipment by the appellant is that he chose not to safeguard his power wheelchair by keeping his pet rabbit in a contained area, given that the representative from the wheelchair supply company stated to the ministry that "this is the third or fourth time" the appellant's rabbit has chewed and damaged the wiring in his power wheelchair and the appellant should have appreciated that this was a risk. At the hearing, the appellant stated that it is not true that his pet rabbit previously chewed the wiring on his power wheelchair. He stated that he got his pet rabbit one week before Easter, the rabbit had not chewed the wires on his wheelchair before and he did not know there was a risk that the rabbit would chew the wires. The occurrence on the Easter weekend was the first time and he no longer allows his rabbit to roam freely around his room.

Asked why the appellant did not take issue with the version of events as stated by the representative

from the wheelchair supply company upon receipt of the reconsideration decision, the appellant's advocate stated that they decided to wait until the hearing to give this evidence. By not earlier calling into question the credibility of the representative, the ministry has not been provided with an opportunity to test the veracity of the information that it received from the representative. On the other hand, the representative from the wheelchair supply company stated to the ministry on May 6, 2015 that he would fax approximately 60 pages of records of repairs performed over the past two years "as soon as possible", and those records, which may have supported the representative's version of events, were not available at the time of the hearing. However, the wording in the quotation dated April 15, 2015 is documentary evidence that supports the appellant's version of the events since it states that the appellant's pet rabbit "chewed up various sections of the chair over the Easter weekend" and does not refer to any previous damage by the rabbit. Therefore, the panel accepted the appellant's statement that he did not know that there was a risk that his pet rabbit would chew the wires on his power wheelchair. This version of events lends credence to the advocate's argument that the damage to the appellant's chair caused by his pet rabbit was an unforeseen and unexpected circumstance.

However, the appellant admitted that after his pet rabbit chewed the wires over the Easter weekend, he made an effort to repair the wires on his wheelchair and the appellant's advocate stated that the appellant was aware that he should not be attempting to repair the equipment by himself instead of waiting for the wheelchair supply company to perform the repairs. The advocate explained that the appellant thought he could perform the repairs because he has some construction/electrical background and he was in a crisis situation, having an anxiety disorder and needing to get to an appointment at the clinic. As the appellant was aware that he should not attempt repairs on his own, as there was a risk that his attempt would not work and might potentially compound the problem, the panel finds that the ministry reasonably determined that the appellant's wheelchair was damaged by "misuse," or by "mistreating" the equipment, according to the ordinary dictionary definition. The ministry determined that while it appears more economical to repair the power wheelchair than to replace it under Section 3(4) of Schedule C of the EAPWDR, this requirement is also subject to the stipulation in Section 3(6) of Schedule C. The panel finds that the ministry reasonably considered that the appellant's power wheelchair was damaged through misuse according to Section 3(6) of Schedule C of the EAPWDR and he is, therefore, not eligible for a supplement from the ministry to cover the cost of repairs to his power wheelchair.

Section 69 of the EAPWDR- Life threatening health need

The ministry acknowledged that the appellant is a recipient of disability assistance and is, therefore, eligible to receive health supplements pursuant to Section 62 of the EAPWDR. The panel finds that Section 69 of the EAPWDR is intended to provide a remedy for those persons in the family unit who are otherwise not eligible for the health supplement under the regulation. The advocate pointed to the undated letter from an OT in which the OT wrote that without a power wheelchair, the appellant cannot access the necessary daily medical care he receives at the clinic, care that keeps him healthy and out of hospital and that, in her professional opinion, a power wheelchair is the only device that meets the appellant's basic mobility needs. Although the appellant argued that he faces a life threatening need for repairs to the power wheelchair as he risks mortality if he cannot get to the clinic for his treatments, he also admitted that he used a manual wheelchair for a period of time where others pushed him to allow him to access his critical services. The panel finds that the ministry reasonably determined that the appellant's request for a supplement to cover the cost of repairs to his power wheelchair did not meet all of the eligibility criteria for a life threatening health need under Section 69 of the EAPWDR.

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 his power wheelchair because the ministry considers that the medical equipment was damaged through misuse, as set out in Section 3(6) of Schedule C of the EAPWDR and the eligibility criteria were not met for a life threatening health need under Section 69 of the EAPWDR, was a reasonable application of the applicable enactment in the appellant's circumstances. Therefore, the panel confirms the ministry's reconsideration decision.