

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry's) reconsideration decision dated June 29, 2015 that denied the appellant's application for an electric scooter. The ministry found that the appellant's request for a scooter did not meet the eligibility criteria in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) schedule C s. 3(2)(b) and 3.4(3)(c). The EAPWDR schedule C s. 3(2)(b) requires that an assessment by an occupational therapist or physical therapist has confirmed the medical need for the device while the EAPWDR schedule C s. 3.4(3)(c) requires that the minister be satisfied that the item is essential to achieve or maintain basic mobility.

## PART D – Relevant Legislation

Employment and Assistance For Persons With Disabilities Regulation (EAPWD) section 62  
Employment and Assistance For Persons With Disabilities Regulation (EAPWD) schedule C sections 3 (2)(b) and 3.4(3)(c)

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- A quote from a medical equipment supply company for a scooter addressed to the appellant dated February 25, 2015 for \$3,055.75.
- An assessment of the appellant from an occupational therapist (OT) dated February 26, 2015. The assessment report reads:
  - The appellant's medical history includes myocardial infarction in 2012 and cataract surgery in 2013.
  - The appellant's medical conditions include diabetes, peripheral neuropathy, and glaucoma.
  - The appellant is legally blind.
  - The appellant has decreased sensation in his feet making ambulation difficult and, at times, unsafe.
  - He reports a great deal of pain in his abdomen and legs.
  - He can walk 15-20 minutes before needing a break.
  - He can complete all his daily living activities independently.
  - He relies on transportation from friends, taxis, and public transit for the disabled.
  - His lack of transportation restricts him from taking part in leisure activities.
  - He has a complete loss of vision in one eye and tunnel vision as well as far sightedness in the other eye.
  - He has difficulty shopping, attending appointments, and banking due to his lack of transportation.
  - He currently has a 4-wheel scooter in need of repair, has used 4-wheel and 3-wheel scooters in the past, and is able to drive a scooter safely and independently.
- A form, Medical Equipment Request & Justification completed by the appellant, and signed by a nurse practitioner on November 13, 2014. The nurse practitioner describes the appellant's medical condition as "difficulty walking, impaired vision" and specifies "scooter" as the type of equipment recommended. The OT signed the form on February 26, 2015 with reference to her attached report.
- A Request for Reconsideration form dated June 15, 2015 completed by the appellant. He writes that his current scooter was borrowed and the owner requested it back. He needs assistance with walking via scooter.

At the hearing the appellant told the panel that in addition to the limitations described by the OT in her Feb. 26, 2015 report, he has chronic bronchitis and COPD however he did not discuss these additional conditions with the OT at the time of his assessment. He added that the ministry would have had information on his medical history in his file from applications he has made in the past. The appellant told the panel that public transit for the disabled in his area is inconvenient so he rarely uses it. He added that due to his medical conditions he has passed-out if he walks too far. He stated he could walk for 20 minutes on a good day before needing to rest and for 10 minutes on a bad day. Regarding the option of a 4-wheeled walker he told the panel he sees it having no benefit for him and therefore he hasn't tested one.

At the hearing the ministry told the panel the ministry assessed the appellant's application for the scooter using the information he submitted and did not review his file for past medical information because ministry adjudicators did not have access to that information. The OT report stated he could

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walk 15-20 minutes before needing a rest and that he is able to complete all of his daily living activities independently. The ministry added that based on the information in the OT report it was determined that he did not require the scooter to achieve or maintain basic mobility.

## PART F – Reasons for Panel Decision

The issue to be decided in this case is the reasonableness of the ministry's reconsideration decision that found the appellant is not eligible for an electric scooter. The ministry found that the appellant's request for a scooter did not meet the eligibility criteria in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) schedule C s. 3(2)(b) and 3.4(3)(c). The EAPWDR schedule C s. 3(2)(b) requires that an assessment by an occupational therapist or physical therapist has confirmed the medical need for the device while the EAPWDR schedule C s. 3.4(3)(c) requires that the minister be satisfied that the item is essential to achieve or maintain basic mobility.

### EAPWD section 62

#### 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,
- (b) a person with disabilities who has not reached 65 years of age and who has ceased to be eligible for disability assistance because of
  - (i) employment income earned by the person or the person's spouse, if either the person or the person's spouse
    - (A) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
    - (B) is aged 65 or more and a person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
  - (ii) a pension or other payment under the *Canada Pension Plan* (Canada),
  - (iii) money received by the person or the person's spouse under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry, or
  - (iv) money or value received by the person or the person's spouse that is maintenance under a maintenance order, maintenance agreement or other agreement, if either the person or the person's spouse
    - (A) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
    - (B) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
  - (c) a person who was a recipient of disability assistance on the day he or she became 65 years of age and a dependant of that person, if the dependant was a dependant of the person on that day and remains a dependant of that person,
  - (d) a dependant of a person referred to in paragraph (a) or (b) (iii),
    - (d.1) a dependant of a person referred to in paragraph (b) (i) or (iv), if any person in the family unit
      - (i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
      - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
    - (d.2) a dependant of a person referred to in paragraph (b) (ii),
    - (d.3) a dependant of a person referred to in paragraph (f), if any person in the family unit
      - (i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
      - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
  - (e) a dependent child of a recipient of hardship assistance,
  - (f) a person with disabilities who has ceased to be eligible for disability assistance because of an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or the person's spouse, if
    - (i) the person is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
    - (ii) the person is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, or
  - (g) a person whose family unit ceases to be eligible for disability assistance because of financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*, during

the term of the agreement.

### EAPWD schedule C section 3 (2)(b)

#### Medical equipment and devices

3 (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.12 of this Schedule are the health supplements that may be provided by the minister if

(a) the supplements are provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation, and

(b) all of the following requirements are met:

(i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;

(ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;

(iii) the medical equipment or device is the least expensive appropriate medical equipment or device.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

(a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;

**(b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.**

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

(a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;

(b) an assessment by a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if

(a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and

(b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

(4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.

(5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if

(a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and

(b) it is more economical to repair the medical equipment or device than to replace it.

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

### EAPWD schedule C section 3.4(3)(c)

#### Medical equipment and devices — scooters

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

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

(a) a scooter;

(b) an upgraded component of a scooter;

(c) an accessory attached to a scooter.

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

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

(b) the total cost of the scooter and any accessories attached to the scooter does not exceed \$3 500 or, if

subsection (3.1) applies, \$4 500;

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

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

(4) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years after the minister provided the item being replaced.

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

The appellant's position is that he has "a real, honest medical issue" and he requires an electric scooter to maintain basic mobility. Further, the report from the OT did not include information about his COPD or chronic bronchitis but these should be taken into consideration

The ministry's position is that the appellant's OT has not confirmed the medical need for a scooter and that the appellant does not require the scooter to achieve or maintain basic mobility. The ministry argued that walking in conjunction with transportation would be sufficient for the appellant to complete his daily living activities as information was not provided to demonstrate that the appellant cannot walk or access public transit for the disabled, or use another type of equipment such as a four-wheel walker. Further, the extra-curricular or leisure activities noted by the OT are not listed in the EAPWDR as medically essential.

Regarding the criterion of EAPWDR schedule C section 3(2)(b), requiring an OT to confirm that the device is medically needed, the panel considered the February 26, 2015 report describing the appellant's mobility restrictions. The report states the appellant can walk 15-20 minutes before needing a break, he can complete all of his daily living activities independently and relies on transportation from friends, taxis, and public transit for the disabled. At the hearing the appellant confirmed he is able to walk between 10 to 20 minutes before he needs to rest. The panel considered the appellant's argument that he lives 5km from town and the transit schedule is not convenient for more frequent trips; however, as noted by the ministry he does have access to public transit for the disabled. The panel finds it was reasonable for the ministry to assess the appellant's application based on the information submitted. The panel finds that the ministry therefore reasonably determined that an OT has not confirmed that the scooter is medically needed pursuant to section 3(2)(b).

Regarding the criterion of, EAPWDR schedule C section 3.4(3)(c), requiring that the minister be satisfied that the item is essential to achieve or maintain basic mobility, the panel considered the evidence in the OT report. As noted in the previous paragraph, the OT report states the appellant can walk 15-20 minutes before needing a break, he can complete all of his daily living activities independently and relies on transportation from friends, taxis, and public transit for the disabled. At the hearing the appellant confirmed he is able to walk between 10 to 20 minutes before he needs to rest. While the appellant may benefit from the convenience of an electric scooter, the panel finds the ministry was reasonable in its determination that the appellant does not require the scooter to achieve or maintain basic mobility pursuant to section 3.4(3)(c)

The panel finds that the ministry's reconsideration decision was a reasonable application of the legislation in the circumstances of the appellant and therefore confirms the decision.