

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated 27 July 2015 determined the appellant was not eligible for new batteries and scooter repairs because, the scooter having not previously been provided by the minister, it was not satisfied the scooter was medically essential to achieve or maintain the appellant's basic mobility under section 3.4(3)(a) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and an occupational therapist does not confirm the medical need for the scooter under s. 3(2)(b) of Schedule C of the EAPWDR.

PART D – Relevant Legislation

EAPWDR section 62.
EAPWDR, Schedule C, sections 3 and 3.4.

PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- The appellant was a recipient of disability assistance and eligible to receive health supplements provided under s. 62 and Schedule C of the EAPWDR.
- An invoice dated 4 May 2015 from a medical equipment provider for batteries for a scooter in the amount of \$320. The appellant submitted her request for reimbursement of this item to the ministry on 8 May 2015.
- Another invoice from the same medical equipment provider dated 12 June 2015 for scooter tires in the amount of just over \$300. The appellant submitted her request for reimbursement of this item to the ministry on 14 June 2015.
- A 1-page letter dated 5 May 2011 from the ministry informing the appellant's request for funding from the Equipment and Assistive Technology Initiative (EATI) for a specific scooter not to exceed an amount of approximately \$3,000.00 and to be supplied by the same medical equipment provider was approved.
- A 1-page letter dated 14 June 2015 from an Occupational Therapist (OT) indicating that the appellant had received funding from the EATI for her scooter in 2011 and that the program had been discontinued. She indicated that the appellant had visited the medical equipment provider to have her scooter batteries replaced, believing that the ministry would cover these items. She requested the ministry to cover the costs of the batteries and the replacement of 4 bald tires. The OT also indicated she had advised the appellant that the ministry did not fund repairs etc on equipment that was not provided by the ministry and that the appellant "should have been clearer as to whom her funding agent was with the equipment provider technician".
- A 1-page letter dated 14 July 2015 from an outreach worker on behalf of the appellant indicated that her scooter was originally approved by the EATI program in 2011 based on a medical report completed by a physician. The following documents were attached:
 - A prescription from a medical practitioner (a general practitioner - GP) dated 20 November 2009 indicated: "Request 'scooter' not able to walk safely for significant distances (i.e. > 200m)".
 - Another prescription from the same GP dated 5 February 2010 indicated that the appellant suffered from depression – "south" exposure is recommended.
 - A 3-page medical report on a Human Resources Development Canada form, undated and not signed but apparently completed by a medical practitioner and indicating that the appellant's last visit was in August 2003. The diagnoses were: cerebral palsy, myofascial pain and chronic knee pain. It stated that the appellant had "worked productively... spasticity due to underlying cerebral palsy and associate chronic ... pain ... and forearm muscle – she is unfortunately no longer able to work". There is no indication in the report that the appellant needed a scooter for her mobility. According to the ministry record, the appellant indicated that this report was completed for her original request in 2010 – 2011.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant was not eligible for new batteries and scooter repairs because, the scooter having not been previously provided by the minister, it was not satisfied it was not medically essential to achieve or maintain basic mobility under section 3.4(3)(a) of Schedule C of the EAPWDR and an occupational therapist does not confirm the medical need for the scooter under s. 3(2)(b) of Schedule C of the EAPWDR, was either a reasonable application of the legislation or reasonably supported by the evidence.

S. 62 of the EAPWDR provides the authority to the minister to provide health supplements or medical equipment and devices:

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 (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)
(a) a recipient of disability assistance,...

Medical equipment and devices are dealt with in section 3 of Schedule C of the EAPWDR:

3 (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.11 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, 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...

(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.

And, specifically for scooters, section 3.4 applies:

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:

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- (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...

Position of the parties:

The ministry argued that the legislative requirements were not met because there was no recent medical assessment applying at the time of the repairs confirming the medical need for a scooter and that in any event no medical report, recent or past, confirmed that the scooter was medically essential to achieve or maintain basic mobility. The ministry in its submission for the appeal also argued that the appellant did not receive pre-authorization from the ministry before the expense was made and that the appellant did not demonstrate that there were no resources available to her to pay for the costs of those items since she did pay at the time of the repairs.

The appellant argued in her Notice of Appeal that she had a medical need for a scooter for basic mobility, that she is on a waiting list for another assessment from an OT and that she is not financially able to pay for those repairs. From the outreach worker's letter and documents, she argued that the fact that the scooter was approved based on a medical report in 2010 or 2011 is evidence that support a medical need for a scooter and that the ministry should cover the expenses associated to it.

Panel decision:

A number of issues arise from that decision and to meet the legislative requirements, the appellant must meet *all* of them – in other words, not meeting anyone of those requirements would suffice for the ministry to deny the benefit.

Medical need for a scooter:

The panel notes that the evidence shows the appellant's scooter was provided as a result of a specific program in 2011 that has since ended but it is not clear whether the ministry was involved in that program or not. Yet, if we look at the documents included in the appeal record, there is no evidence, recent or past, demonstrating that the scooter is medically essential to achieve or maintain basic mobility (s. 3.4 (3)(c), Schedule C of the EAPWDR) and that an assessment by an OT confirmed that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment (s. 3.4 (3)(a), Schedule C of the EAPWDR). The only evidence provided is to the effect that the appellant "requests a scooter – not able to walk safely for significant distance (i.e. > 200m)" by a physician in November 2009 and a medical report that indicated that the

appellant's last visit to the medical practitioner was in August 2003.

Further, in this case where the evidence indicates that the scooter was not provided by the ministry but as a result of another program, there is a requirement under s. 3 (5) and (2)(b) Schedule C of the EAPWDR that at the request of the minister, the appellant present an assessment by an OT made at the time of the repairs that confirms the medical need for the medical equipment or device. In her letter, the OT did not provide any assessment as to the medical need for the scooter but explained the need for the repairs and that she explained to the appellant that historically the ministry did not fund repairs on equipment the ministry did not fund. No recent evidence of the medical need of the scooter was presented. The panel finds the ministry reasonably determined there was no evidence of the medical need for a scooter at the time of the repairs to the appellant's device.

Pre-authorization by the minister:

The evidence also shows that the requirement for a pre-authorization by the minister for the repairs (s. 3 (1)(b)(i) Schedule C, EAPWDR) was not met since the invoices were dated at the time the services were provided and that was a few days before the appellant requested the ministry's authorization, leaving the ministry with no possibility to provide "pre-authorization". The panel finds the ministry reasonably determined this requirement was not met.

Resources available to the appellant:

Finally, the evidence showed that the appellant paid for the repairs and requested the ministry to reimburse her expenses but did not provide any evidence that there were no resources available to her to pay for the costs of those repairs, other than stating in her Notice of Appeal that she was not financially able to pay for the repairs. The panel notes that there is no evidence as to how she paid for those expenses and whether or not she could plan to pay for normal wear and tear of the equipment she had received in 2011. Thus, the panel finds the ministry reasonably determined there was not enough evidence showing the appellant did not have resources available to her to pay for the costs of those repairs as required by s. 3 (1)(b)(ii), Schedule C of the EAPWDR.

The panel comes to the conclusion that the ministry's decision was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.