

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated August 17, 2015 which denied the appellant's request for a scooter, pursuant to Schedule C of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR), because the information provided to the ministry does not establish that:

- the scooter is the least expensive appropriate medical equipment or device [section 3(1)(b)(iii)];
- an assessment by the occupational therapist (OT) has confirmed the medical need for the scooter [section 3(2)(b)]; and
- the scooter is medically essential to achieve or maintain basic mobility [section 3.4 (3)(c)].

## PART D – Relevant Legislation

*Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR), Section 62.

*Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR), Schedule C, Sections 3 and 3.4.

## PART E – Summary of Facts

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

1. Medical Equipment Request and Justification form signed by the appellant's physician and dated December 9, 2014, and signed by the appellant's OT and dated March 11, 2015;
2. OT Assessment signed and dated March 12, 2015. The OT wrote that appellant reported pain in bilateral ankles, knees and hips is an issue that restricts her mobility. Limited endurance and deconditioning are issues as well. The appellant is able to ambulate limited distances. She walks with a 4 wheeled-walker within her apartment suite and the dining area, approximately 200 feet each way. She is required to take a seated rest using her walker as a seat when ambulating between her suite and the dining area. The appellant reports that she will gain independence with community access and this will relieve some of the strain on her limited social supports.;
3. Letter from the physician signed and dated July 27, 2015, in which he describes the appellant's medical conditions, prescribed a scooter "which is medically very beneficial for her basic mobility needs as a result of medical conditions." The physician wrote that the appellant has been mobilizing indoors with a cane and a walker all the time. She reported an increase in falls outside and inside. She was using a wheelchair which is very difficult for her due to severe shoulder pains. and, recommends that a scooter is medically essential to achieve and maintain basic mobility;
4. Patient Drug Summary dated June 29, 2015;
5. Special Transportation Subsidy application form signed and dated May 6, 2010;
6. Letter from the appellant's psychiatrist, signed and dated April 1, 2008, in which the appellant's mental state is described, as well as a diagnosis and treatment plan;
7. Radiology report dated March 22, 2008: Chest x-ray and CT scan of chest and abdomen-nodule in right middle lobe;
8. Thyroid Ultrasound dated January 3, 2013;
9. Radiology report dated September 25, 2011: Right Knee and Ankle – severe degenerative changes noted in knee, medical malleolar fracture in ankle;
10. Radiology report dated December 19, 2007: Moderate further deterioration of right knee. On the left, less pronounced similar change consistent with mid to moderate degenerative osteoarthritis;
11. Radiology report dated 2002: Right Knee – Early degenerative joint margin spurring;
12. Radiology report dated January 12, 2010 – Right Shoulder – Prominent sub-acromial spur could be cause of impingement. Mild AC joint degeneration;
13. Radiology report dated January 3, 2013 – Left Knee – Thinning of medial main knee joint compartment and spur formation along all joint margins including patella: summary advanced osteoarthritis;
14. List of medications;
15. A quote from a medical supply company for a scooter at a cost of \$3325.50;
16. Ministry record of telephone conversation on June 25, 2015 with the OT where he advised that the client can use a manual wheelchair and she wants to use the scooter to access the community, and she is able to use public transit or HandyDart; and
17. Request for reconsideration signed and dated July 21, 2015 which states that the appellant uses a manual wheel chair which causes her severe pain in the hands, the OT has confirmed that the scooter is necessary for basic mobility and it is prescribed by

her physician as being medically essential for her basic mobility. Further she does not have the resources to pay for the scooter. Therefore she has satisfied the legislative requirements and the ministry should provide her with a scooter.

In the notice of appeal signed and dated August 25, 2015, the appellant stated that the decision is not fair.

Prior to the hearing the appellant submitted the following:

- Note from her psychiatrist signed and dated September 1, 2015, which states that she has been a patient since 2003, she suffers from major depression and severe arthritis and chronic pain, and she is totally disabled and needs constant help with her daily living activities (DLA); and
- Note from her physician with no signature and dated April 22, 2013, which states the appellant suffers from severe osteoarthritis of both knees among other medical conditions and that surgery is not an option for her due to poor lungs, heart and weight.

At the hearing the appellant submitted the following:

- Letter from her physician signed and dated August 24, 2015, which states that she has recently developed progressive osteoarthritis in the joint of the right thumb, this causes difficulty in rolling a wheelchair, and that pain is not responding to the usual anti-inflammatories and analgesics;
- Copy of a prescription for morphine signed by her physician and dated August 19, 2015;
- Two letters of support from the appellant's friends, one of whom was a witness at the hearing;
- Receipt from a local charity in the name of the appellant and dated November 21, 2012, which shows a payment of \$9.50 and no description of the item(s) sold or rented to the appellant . The appellant stated that this was for her manual wheelchair and that this establishes how long she has been using a wheelchair; and
- 3-page internet printout which describes the living facility the appellant resides at.

### **Admissibility of New Information**

The ministry did not object to the any of the new information presented by the appellant. This new information provides additional detail with respect to information provided at the time of the reconsideration decision. Accordingly, the panel has admitted this new information 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.

At the hearing the appellant stated the following:

- A brief history of her personal struggles, and her medical conditions, the treatment she undergoes for those conditions and how they affect her mobility;
- She does not leave her residence and must rely on others but her children are not able to help due medical reasons and most of her community live too far away;
- She has difficulty using a wheelchair due to arthritic pain in her thumb and the unevenness of the outdoor pavement, therefore she must take a taxi for even a 1 block journey to her doctor;
- Indoors her mobility is not restrict due to the smooth surfaces in her building. For 3 years she has mostly used the manual wheelchair for around her residence and has used the walker "only a limited amount." Her doctor has said that she needs to use her walker to walk in her

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- apartment or she will not be able to stand at all;
  - When she obtained the manual wheelchair from a charitable organization, they told her the heavier model was appropriate for her large body size;
  - Her knees are sponge-like without sufficient bone to accommodate her weight and surgery is not an option due to her multiple medical conditions; and
  - Her OT only met with her twice for less than an hour and did not do a good job of explaining her condition and did not assess her in her wheelchair, therefore he does not know the difficulty she has with mobility outside of her residence.

Her advocate added the following:

- The ministry has approved the appellant for a Special Transportation subsidy and should therefore be fully aware that she cannot use public transportation and that the subsidy is not enough to meet her needs. Also the OT did not assess the appellant's use of public transit and has refused to give any more evidence in this matter;
- The appellant has already trialed alternatives to a scooter. She has been using a manual wheelchair since 2012 but this is now too difficult due to the pain in her upper limbs, and a light weight wheelchair is not an option due to her size;
- The appeal papers were submitted by July 31, 2015 but the ministry waited until August 17, 2015 to contact the OT and at that point the OT was unavailable. It is unreasonable for the ministry to wait until the last day to seek clarification on any perceived discrepancies;
- In his assessment, the OT did confirm that the scooter is for basic mobility but the ministry is misinterpreting his words and his other statements were incorrect; and
- The physician confirmed that the use of a manual wheelchair is difficult due to shoulder pain. The advocate mistakenly referred to the difficulty from pain in the hands. However both are upper limbs so this should not make a difference and the ministry ought to be relying on the physician's assessment more because he is the professional and has known the appellant for 28 years;

The witness' oral testimony corroborated the appellant's statements and corroborated her own letter of support in which she stated that she helps the appellant with mobility issues whenever possible. The witness stated that she pushes the appellant in her manual wheelchair to the park and for shopping but it is heavy and the wheels get stuck and it is hard for her to push. Sometimes she will drive the appellant to the store but she is working and has her own family so she cannot help that often. The appellant has to take taxis and that is expensive.

At the hearing the ministry relied on its reconsideration decision and added that there is a discrepancy in the information provided by the physician with that which is provided by the OT. This raises the question as to whether or not the scooter is necessary to make life easier for the appellant or medically essential to achieve basic mobility. The ministry also stated that since the item being requested is over \$500, an assessment from the OT (or physical therapist) is required. Finally the ministry pointed out that alternatives to the scooter did not appear to be trialed, such as a newer light-weight manual wheelchair, which may be less taxing on the uneven pavement and manageable despite the appellant's thumb pain.

## 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 scooter because it could not be established that the scooter is the least expensive appropriate medical equipment or device, an assessment by the OT has confirmed the medical need for the scooter and the scooter is medically essential to achieve or maintain basic mobility, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant legislation requires the following:

Schedule C, section 3 and 3.4 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) stipulates the eligibility requirements as:

### 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.**

### 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 Panel's Decision

##### *Least Expensive Appropriate:*

Schedule C of the EAPWDR, section 3(1)(b)(iii) states that the medical equipment or device requested must be the least expensive appropriate medical equipment or device. The ministry argues that the OT reported that the appellant uses a 4 wheel walker indoors and has stated to the ministry that the appellant is able to use a manual wheelchair. The ministry argues that the manual wheelchair is a less expensive option to the scooter and that a light weight option, which may not cause pain to the appellant's hands or arm, was not trialed. The ministry further argues that the

appellant is given a Special Transportation subsidy to cover the cost of her outings. The appellant argues that a scooter is the least expensive appropriate medical equipment because a manual wheelchair is too difficult and painful to operate on the uneven surfaces that she encounters outdoors, and this is supported by both letters from her physician. She also argues that the charity from which obtained her wheelchair suggested that a manual light-weight wheelchair is not an appropriate option because of her size. Finally she argues that the Special Transportation subsidy is not enough money to cover the many trips she needs to take in the community. In this case, the evidence presented does not establish that the appellant has trialed a light-weight manual wheelchair. Furthermore, the OT's assessment establishes that the appellant can walk up to 200 feet indoors with her 4-wheel walker though it is difficult and she needs to take breaks. However an assessment of her outdoor use of the 4-wheel walker was not conducted and, therefore, a less expensive option for outdoor mobility was not explored. The panel finds that the ministry was reasonable in finding that the evidence does not establish that a scooter is the least expensive appropriate medical equipment or device as set out in schedule C, section 3(1)(b)(iii) of the EAPWDR.

*Medical Need:*

Schedule C of the EAPWDR, section 3(2)(b) sets out that the assessment by the OT must confirm the medical need for the medical equipment or device. The ministry argues that the OT's assessment does not establish that the scooter is a medical need. Rather it is a more convenient and less difficult way for the appellant to access her community. The appellant argues that she can no longer use her manual wheelchair due to pain and that she has a myriad of medical conditions that make it necessary for her to acquire a scooter, which is supported by her physician. The legislation establishes that when requested by the ministry, an assessment from either a physical therapist or OT that supports the medical need for the equipment or device requested must be provided. In this case, an OT provides an assessment which sets out the diagnosis of the appellant's medical conditions and her physical function. However the OT does not give evidence that demonstrates how the appellant's medical conditions affect her physical functioning and why only a scooter would meet her medical need. In fact, the OT reported that the appellant uses a 4-wheeled walker to meet her mobility needs and the OT stated to the ministry that the appellant could also use a manual wheelchair. There was no further information from the OT provided on the appeal. The panel finds that the ministry was reasonable in finding that the evidence does not establish that the OT has confirmed the medical need for the scooter as set out in schedule C, section 3(2)(b).

*Medically Essential for Basic Mobility:*

The ministry argues that the evidence presented is inconsistent therefore it is not satisfied that the scooter is medically essential to achieve or maintain basic mobility. The appellant argues that she can no longer use her manual wheelchair due to pain in her shoulder and hands and she does not have enough support (family and friends) to help. She also argues that her physician stated that the scooter was essential to achieve basic mobility and this was confirmed by the OT when he stated she is "...reliant on the help of others to complete IADL activities in the community...due [to a] lack of mobility". She further argues that the OT's opinion that she can use a manual wheelchair is unsubstantiated because he did not assess or witness her use of the manual wheelchair. Section 3.4(3)(c) of Schedule C of the EAPWDR sets out that the ministry must be satisfied that the item requested is medically essential to achieve or maintain basic mobility. In this case, the physician and the OT have contradicted one another. The physician stated in his letter dated July 27, 2015 that the scooter "is medically essential to achieve and maintain her basic mobility". However, the OT, in his

assessment on March 12, 2015, stated that the appellant can walk 200 feet with a 4 wheel walker, and in his statement to the ministry representative on June 25, 2015, he stated that the appellant can use a manual wheelchair. Furthermore the appellant stated that the OT did not assess her use of the wheelchair, which adds to the inconsistencies because the use of the variety of types of manual wheelchairs may not have been reviewed as an option by the OT. The panel finds that an assessment of a variety of types of equipment is relevant and necessary to this analysis, in order to specify the equipment features that address the appellant's particular restrictions and provides for her "basic" mobility along the range of levels of mobility. The panel finds that the ministry was reasonable in finding that the evidence does not establish that the scooter is essential to achieve or maintain basic mobility as set out in schedule C, section 3.4 (3)(c) of the EAPWDR.

**Conclusion:**

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's reconsideration decision is reasonably supported by the evidence. The panel therefore confirms the ministry's decision.