

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated December 4, 2015 which denied the appellant's request for a Shoprider GK10 Spirit wheeled scooter and cane holder (the "Scooter"). The ministry found that as the appellant is a person with disabilities (PWD), she is eligible to apply to the ministry for health supplements under *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR). However, the ministry was not satisfied that the information provided established that the Scooter is an eligible item under EAPWDR Schedule C, sections 3 to 3.12.

## PART D – Relevant Legislation

EAPWDR Schedule C, sections 3 to 3.12

## PART E – Summary of Facts

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

- Medical Equipment Request and Justification form dated April 21, 2015 recommending a scooter due to the appellant's multiple sclerosis (MS) affecting her mobility
- Quote from an equipment provider dated September 14, 2015 for the cost of the Scooter in the amount of \$2,932.80
- Letter from an occupational therapist (the "OT") dated September 21, 2015 indicating that the appellant was assessed for a scooter due to difficulties with mobility arising from relapse remitting MS. The OT indicates that the appellant is able to walk short distances indoors with her 4-wheeled walker but is unsteady even with aids due to her right foot drop. Outdoors, the appellant is only able to walk 6 to 8 meters before requiring a reset break. The OT notes that the appellant has a lightweight manual wheelchair that was lent to her but her spouse, reports that he has been unable to push her in the wheelchair due to his own deteriorating health condition. The appellant is unable to arm propel as she has developed tendonitis in her left wrist and foot propulsion is not possible due to her foot drop and decreased strength/coordination in her lower extremities. The OT indicates that the appellant would benefit from a scooter to be independent in her community. The OT indicates that the appellant trialed the Scooter but the OT has concerns that it is not very stable and may be a safety risk and may not meet her needs long-term. The appellant is aware that the Scooter may not meet her long-term care needs. The OT recommended that the appellant trial another scooter but the appellant declined as no other recommended scooter disassembles.
- Request for Reconsideration dated November 23, 2015 (RFR) in which the appellant states that she requires the Scooter and that she declined the trial of another scooter as she needs one that can be disassembled to fit in her vehicle. The appellant states that if she has a scooter that does not disassemble she will be limited to just getting out and about in her house, backyard or community and friends and family could not take her other places. The appellant states that she understands there are safety concerns regarding the Scooter so she would take extra care in being safe.

### **Additional Information**

In her Notice of Appeal the appellant states that she disagrees with the reconsideration decision as the OT confirms her medical need for a scooter. The appellant states that she was not told about the safety concerns with the Scooter and questions why she would have been given a chance to trial the Scooter if there was a known safety issue and concern of being unstable. The appellant states that she did not have any problems with the Scooter when she trialed it and she does not understand the OT's opinion that the Scooter may not meet her long term needs. The appellant states that the Scooter will promote her independence beyond just her house, yard, and surrounding neighborhood.

The ministry relied on the reconsideration decision as the ministry's submission on the appeal.

The panel has admitted the information contained in the appellant's Notice of Appeal into evidence as it is 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*. In particular, the new information relates to the appellant's position with respect to the suitability and necessity of the



Scooter.

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant funding for the Scooter was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the Scooter is not an eligible item under EAPWDR Schedule C sections 3 to 3.12?

The relevant legislation is as follows:

### **EAPWDR**

#### **General health supplements**

**62** (1) Subject to subsections (1.1) and (1.2), the minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who is a recipient of disability assistance.

### **SCHEDULE C**

#### **Medical equipment and devices**

**3** (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.12 of this Schedule are the health supplements that may be provided by the minister if (B.C. Reg. 197/2012)

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

(b) all of the following requirements are met:

- (i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;
- (ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
- (iii) the medical equipment or device is the least expensive appropriate medical equipment or device.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister: (B.C. Reg. 197/2012)

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
- (b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(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.
- (B.C. Reg. 197/2012)

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or 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. (B.C. Reg. 197/2012)

(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.C. Reg. 197/2012)

(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.

(B.C. Reg. 61/2010)

### **Medical equipment and devices – canes, crutches and walkers**

**3.1** (1) Subject to subsection (2) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:

- (a) a cane;
- (b) a crutch;
- (c) a walker;
- (d) an accessory to a cane, a crutch or a walker.

(2) A walking pole is not a health supplement for the purposes of section 3 of this Schedule.

### **Medical equipment and devices – wheelchairs**

**3.2** (1) In this section, "**wheelchair**" does not include a stroller.

(2) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:

- (a) a wheelchair;
- (b) an upgraded component of a wheelchair;
- (c) an accessory attached to a wheelchair.

### **Medical equipment and devices – wheelchair seating systems**

**3.3** (1) The following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain a person's positioning in a wheelchair:

- (a) a wheelchair seating system;
- (b) an accessory to a wheelchair seating system.

### **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.C. Reg. 197/2012)

(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; (B.C. Reg. 197/2012)

(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. (B.C. Reg. 197/2012)

(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.

(B.C. Reg. 61/2010)

\*\*\*\*\*

The appellant's position is that she requires the Scooter to promote her independence due to declining mobility from her MS. The appellant's position is that the OT has confirmed that she has a medical need for a scooter and that the safety concerns raised by the OT should not prevent the ministry from approving her request for the Scooter as she trialed it and felt that it addressed her current needs. The appellant's position is that she needs the Scooter because it disassembles and fits in her vehicle whereas other scooters that do not disassemble will limit her to being in her house, yard, and neighborhood. The appellant's position is that if the Scooter was not safe, then it does not make sense that the OT would have allowed her to try it.

The ministry's position is that as the appellant is a recipient of disability assistance she is eligible to receive health supplements provided under EAPWDR Schedule C, section 3 to 3.12. The reconsideration decision also indicates that the ministry is satisfied that the information provided establishes the medical need for a scooter and that a scooter is medically essential for the appellant to achieve or maintain basic mobility. However, the ministry is not satisfied that the appellant's request for the Scooter meets all the eligibility requirements set out in the legislation.

The ministry's position is that while the Scooter may be the least expensive, the information provided by the OT indicating that the Scooter is not very stable, poses a safety risk and may not meet the appellant's long term needs does not establish that it is appropriate so it does not meet the legislative criteria required by EAPWDR Schedule C section 3(1)(b)(iii). In addition, the reconsideration decision also states that the replacement period for scooters is set out in EAPWDR Schedule C, section 3.4(4) as five years and as the OT suggests that the Scooter may not meet the appellant's needs for the full term of the replacement period, there is some doubt as to whether the Scooter ultimately might not be the least expensive option either.

The ministry's position is that because the OT does not confirm the medical need for the model of scooter that the appellant has chosen, the request for the Scooter does not meet the criterion set out in EAPWDR Schedule C section 3(2)(b).

The ministry's position is that as the OT has not confirmed that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment the appellant has

not met the criteria of EAPWDR Schedule C section 3.4(3)(a).

The ministry's position is that although the information provided demonstrates that a scooter is medically essential to achieve or maintain the appellant's basic mobility, the ministry is not satisfied that the Scooter the appellant has chosen fulfills this requirement so the legislative criteria of EAPWDR Schedule C, section 3.4(3)(c) is not met.

Panel Decision

Although the appellant is of the view that the Scooter does not pose a safety concern and is the best model to meet her needs, the information from the OT indicates that the Scooter is not very stable, poses a safety risk, and may not meet the appellant's long term needs. The panel notes that the OT indicated that the appellant demonstrated that she could safely get on and off the Scooter with the assistance of her cane for stability and could safely operate the Scooter. Despite that however, the OT did not recommend the Scooter and the appellant declined to trial the other recommended model. The panel finds that as the OT has not recommended the Scooter, the ministry's decision that the Scooter is not the least expensive appropriate medical equipment or device as required by EAPWDR Schedule C section 3(1)(b)(iii) was reasonable.

Although the OT does not specifically state whether the Scooter would need to be replaced within the five year replacement period specified by EAPWDR Schedule C, section 3.4(4), the OT states that the Scooter will not meet the appellant's long term needs. The panel finds that the ministry was reasonable in determining that if the Scooter will not meet the appellant's longer term needs that the information provided did not establish that the Scooter will last the full replacement term, so the Scooter may not be the least expensive option either, as required by EAPWDR Schedule C, section 3(1)(b)(iii).

As the OT does not confirm the medical need for the model of scooter that the appellant has chosen, the panel finds that the ministry's decision that the request for the Scooter does not meet the criterion set out in EAPWDR Schedule C section 3(2)(b) was reasonable. The legislation is clear that an assessment by an occupational therapist or physical therapist confirming the need for the medical equipment or device is necessary and although the OT confirms the need for a scooter the OT does not confirm the need for the Scooter requested by the appellant.

The OT has not confirmed that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment so the panel finds that the ministry was reasonable in determining that the appellant has not met the criteria of EAPWDR Schedule C section 3.4(3)(a).

Although the OT confirms that the a scooter is medically essential for the appellant to achieve or maintain basic mobility, the OT does not confirm that the Scooter will achieve this requirement due to safety concerns as well as concerns about how long mobility would be "maintained" with this option, so the panel finds that the ministry's determination that it was not satisfied that the Scooter the appellant has chosen met the requirement of EAPWDR Schedule C, section 3.4(3)(c) was reasonable.

***Dissenting view***

The ministry acknowledged a medical need for a scooter and the dissenting view is that the requirement in section 3(2)(b) of Schedule C only relates to a current need for a scooter as opposed to the other possible medical equipment and device options as catalogued in Sections 3.1 to 3.12 of Schedule C as health supplements. The assessment by the OT identified impacts from the appellant's multiple sclerosis, including decreased endurance and tolerance for activity and right foot drop, that dictate a medical need for a motorized scooter, after having reviewed other possible mobility options such as 4-wheeled walker and a manual wheelchair. The reservations expressed by the OT in her assessment related to the safety of the particular features and design of the model of Scooter trialled and preferred by the appellant, but the OT also recommended that the appellant trial another model of scooter as being suitable. The dissenting view is that the ministry's interpretation of section 3(2)(b) of Schedule C was too restrictive as requiring an assessment by an OT confirming a medical need for a particular model of equipment.

**Conclusion**

The panel acknowledges that a scooter has been recommended by the appellant's OT and would be beneficial for her decreased mobility caused by her MS. However, having reviewed and considered all of the evidence and the relevant legislation, and accounting for the dissenting view with respect to EAPWDR Schedule C section 3(2)(b), the panel finds that the ministry's reconsideration decision finding the appellant ineligible for funding for the Scooter was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.