



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated January 18, 2016, which denied the Appellant's request for repairs to his power wheelchair. The Ministry considered that the damage to the Appellant's wheelchair was due to misuse and denied the requested repairs under section 3 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

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

PART E – Summary of Facts

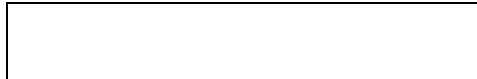
Information before the minister at reconsideration included:

- A copy of an invoice from a wheelchair service provider dated May 30, 2013, totaling \$9,727.90.
- A copy of a letter dated May 30, 2013 from the Ministry, signed by the Appellant, acknowledging that he has read the letter and understands his responsibilities in operating and caring for the equipment.
- A copy of a letter from the Ministry to the Appellant dated August 21, 2014 stating that it appears that he is not utilizing the power wheelchair with proper care and attention and warning that future eligibility for funding of repairs may be affected if repetitive damage from misuse occurs.
- A copy of “HAB notes” dated August, 2014, partly illegible, stating that the ministry has decided that the current repairs are due to misuse and will not be authorizing funding.
- A copy of a Health Assistance Branch decision sheet dated November 30, 2015, stating that the ministry has denied the request for repairs to the Appellant’s wheelchair.
- A copy of the Ministry’s letter to the Appellant dated November 30, 2015, advising him of their decision.
- A copy of an estimate for repairs to the Appellant’s wheelchair dated October 6, 2015, in the amount of \$2,325.44.
- A copy of a quotation for maintenance dated August 28, 2015 in the amount of \$80.00.
- The Appellant’s Request for Reconsideration, signed December 21, 2015.

At the hearing, the Appellant, through his representative, submitted a copy of an Outpatient Clinic Note from a local hospital dated February 17, 2016, which states that the Appellant’s medical history includes Hepatitis C, Osteomyelitis, recurrent cellulitis, traumatic splenic injury with pseudo aneurysm and embolization, MRSA colonization and severe osteoarthritis of the knees bilaterally. The Ministry did not object to the admission of this document. The Panel determined the document was admissible under s.22(4) of the Employment and Assistance Act as it was in support of the records before the minister at reconsideration relating to the Appellant’s disability.

The Appellant’s representative gave evidence as a witness: He stated that he has worked with the Appellant for over a year, and has found that the Appellant tends to keep to himself and only recently opened up about his past, including being abducted, which has made him fearful. As a result, the Appellant tries to avoid others, keeping his eyes down, and travels through alleys to get to his treatment three times daily. He stated that the Appellant has severe osteoarthritis; therefore a wheelchair is essential for mobility. He stated that the Appellant’s mental health is an issue, but it is very difficult to get him to see a psychiatrist. He stated that the Appellant is on a prescription for opioid therapy, he has Hepatitis C and severe osteoarthritis, needing knee replacement, and therefore he needs a wheelchair.

The Appellant stated that the damage to his wheelchair is due to the fact that he has to go over potholes and other obstacles, and that he has sometimes repaired the chair himself. He stated that not all of the repairs listed on the estimate are necessary, and he only needs three things – the joystick and front and rear casters. The Appellant denied misusing or abusing the wheelchair and said that sometimes he bumps into things, such as a wall or parking meter, but he doesn’t do it on purpose. He stated that he has been looking after the chair as well as he can, and has not lent it to anyone. In response to questions from the Ministry, the Appellant stated that the damage to his wheelchair resulted from hitting a pole when he was looking down. He stated that he has the missing parts of the wheelchair at home. The Appellant denied attempting to modify the joystick, but he hit a wall and some insulation was torn off of it. He denied abusing the wheelchair. In response to questions from the Panel, the Appellant stated that he did not tell the repair technician that he only needs three things repaired; he just wanted them to get it working. He stated that there have been no repairs between August, 2014 and the current request. He drove the chair for a year with no problem other than a flat tire. The Appellant stated that he does not know why the technician got the idea that the chair had been abused, perhaps he saw drywall on the chair, and any modification he noticed was the Appellant’s attempt to put it back together. The Appellant stated that he has had a chair on loan from a friend for some weeks and it



is not damaged.

The Ministry relied on its Reconsideration Decision and did not provide additional evidence at the hearing. In response to questions from the Panel, the Ministry agreed that some of the information summarized in the decision was taken from the illegible letter in the appeal record. The Ministry agreed that the decision that the wheelchair was subject to abuse was as a result of the information provided by the contractor.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision which denied the Appellant's request for repairs to his power wheelchair. The Ministry considered that the damage to the Appellant's wheelchair was due to misuse and denied the requested repairs under section 3 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation.

Legislation

EAPWDR

69 The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
- (b) the health supplement is necessary to meet that need,
- (c) a person in the family unit is eligible to receive premium assistance under the *Medicare Protection Act*, and
- (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
 - (i) paragraph (a) or (f) of section (2) (1);
 - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

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

- (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.

The Appellant's position is that he did not abuse or misuse the wheelchair, and because it is essential to his mobility, it should be repaired.

The Ministry's position is that the Appellant has a history of requiring significant repairs to his wheelchair that have been reported by the contractor to be the result of misuse, and the Ministry will not fund the current repairs, which are the result of severe damage.

Although some of the original reports from the contractor regarding the history of repairs to the Appellant's wheelchair are not legible, the Panel accepts the Ministry's summary as recorded in the Reconsideration decision, which provides details of alleged misuse from 2013 concerning damaged footrests and 2014 concerning damaged drive controls, as well as a copy of a letter from the Ministry to the Appellant in 2014 warning him that eligibility for funding of repairs may be affected if damage from misuse occurs. In the present instance, the Ministry determined that the repairs required, which include the joystick, armrest, footrest, footplate, casters, battery shroud, foot platform and battery bracket, were due to misuse, as reported by the

repair technician.

The Panel notes that there is no formal diagnosis of mental illness or disability. Whether or not the Appellant intentionally caused damage to his wheelchair, the extent and frequency of repairs since the wheelchair was provided in 2013 supports the Ministry's determination of misuse. Within four months after the wheelchair was provided to the Appellant, it required \$828 in repairs. One year later, the contractor reported that the Appellant was abusing the wheelchair and attempting to modify parts. The quote for the repairs in 2015 that are the subject of this appeal is \$2,325.44. The Appellant argued that he travels down alleys and rarely looks up, which results in a greater likelihood of damage. He also argued that he did not discard parts as stated by the technician, but took them off the wheelchair and has them in his home. This appears to be inconsistent with the Appellant's statement that he has not modified his wheelchair. In 2014 the technician reported that abuse was occurring on the Appellant's wheelchair and in 2015 reported that the chair was very soiled, not running, with significant damage to joystick, arm and platform.

The Panel finds that the Ministry reasonably relied on the reports from the contractor concerning the extent of damage to the Appellant's wheelchair and their conclusion that it was caused by misuse. Under EAPWDR Schedule C, s.3(6) the minister may not provide repairs of medical equipment or a medical device if the minister considers that the medical equipment or device was damaged through misuse. The Panel therefore confirms the Ministry decision as reasonably supported by the evidence and as a reasonable application of the applicable enactment in the circumstances of the Appellant.