



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”), reconsideration decision dated February 16, 2016 in which the Ministry denied the Appellant’s request for a replacement scooter because it has not been five years since the Ministry provided the item being replaced as required under Schedule C, subsections 3(3)(b) and 3.4(4) of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”). The Ministry further determined that a replacement scooter could not be provided under subsections 3(4) and 3(6) of EAPWDR Schedule C which deal with equipment repairs, and that the Appellant was not eligible for the scooter as a life-threatening health need under EAPWDR section 69.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - sections 62 and 69, and Schedule C

## PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration included the following:

- 1.** The Appellant's Request for Reconsideration dated January 18, 2016 that was followed by a submission of February 16, 2016 from her advocate, an occupational therapist ("the OT"). The OT indicated he assessed the Appellant for a scooter in 2014 and that scooter was stolen from the Appellant's previous residence under circumstances where she was "taken advantage of." The OT stated that the Appellant filed a police report regarding the theft of her scooter, has moved to another community where her home has a secure storage area for a scooter, and has agreed to purchase theft insurance and provide documentation of such prior to the delivery of a replacement scooter. The OT recommended a replacement scooter and provided argument. The panel will address both parties' arguments in *Part F – Reasons*.
- 2.** A letter to the Ministry from the Appellant dated March 11, 2015 in which she provided a police report file number relating to the theft of her scooter.
- 3.** Quotations for a scooter dated April 2, and November 3, 2015.
- 4.** Medical Equipment Request and Justification forms ("request forms") for a scooter:
  - (i)** signed by a physician on September 21, 2015 recommending a scooter for transportation due to degenerative changes to the Appellant's cervical spine, low back pain, and compression fracture;
  - (ii)** signed by the OT on March 10, 2015 with attached letter dated November 3, 2015, identical to his letter of April 7, 2015 (summarized below);
  - (iii)** signed by the Appellant on October 5, 2014 with unsigned and undated medical practitioner's section describing the Appellant's back problems and mobility issues and recommending a scooter for mobility outdoors including shopping and doctor's appointments;
  - (iv)** signed by a physician on February 12, 2015, recommending a scooter (amended with a specific model name) and indicating the Appellant has had a scooter "for around 15 years" after back injuries. The Appellant indicated on this form that her scooter was stolen from her home.
  - (v)** signed by the OT on April 7, 2015 with attached letter (of same date). The OT indicates the Appellant is a Persons With Disabilities ("PWD") client with a diagnosis of lumbar radiculopathy secondary to a disc lesion. The Ministry has provided a scooter in the past due her decreased mobility and risk of falls. Her scooter was stolen "last fall"; the Ministry instructed her to apply for a mobility device again; she has submitted a police report, and the OT has received a referral to assess her for a scooter. The OT noted that the Appellant uses a scooter for basic mobility outdoors and she lives in a hilly area. She was trialed with a scooter and is familiar with the controls. A wheelchair, in the alternative, is unsuitable or unnecessary.
- 5.** A letter to the Appellant from the Ministry dated December 16, 2015, denying the Appellant's request for a scooter to replace one that was stolen. The Ministry noted that it funded a scooter in August 2014 and the legislation states a scooter cannot be considered for replacement for five years.
- 6.** Ministry (adjudicator) file notes:
  - (i)** November 3 to December 16, 2015 indicating the Appellant was provided with a scooter in November 2007 and again in August 2014. A replacement scooter was denied in July 2015. In November 2015, a physician and the OT recommended a scooter to aid with basic mobility and

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community access. The request was denied on December 16, 2015 (for the reason noted in the Ministry's letter summarized in 5. above)

(ii) July 2015 indicating the Appellant has made a police report regarding her scooter being stolen and a replacement scooter is denied as it has not been five years since the minister last provided the item.

7. Documents relating to the Ministry's prior approval for a scooter:

- A purchase authorization dated July 11, 2014 for a scooter that cost \$3,271.80.
- Ministry file notes from July 2014 indicating that a scooter funded by the Ministry in 2007 was stolen in 2013. A replacement scooter would be provided given the Appellant's medical condition including her limited ability to walk distances greater than ten feet. The adjudicator noted that the Appellant uses a walker indoors but needs a scooter to reach the bus stop. A manual wheelchair is not an option due to her pain and fatigue issues and she does not require a power wheelchair.
- A Request form signed by the OT on March 31, 2014 with attached letter of same date recommending a replacement for the scooter that was stolen in 2013.
- A prescription for a scooter from a physician, dated March 25, 2014.
- A quotation for a scooter dated March 31, 2014.
- A copy of Ministry policy, *Medical Equipment and Devices*. The policy of October 1, 2012 outlines the eligibility criteria for repair and replacements of scooters and states that the replacement time period does not apply when an item is required "due to changes in a person's medical condition or growth."

*Additional submissions*

Subsequent to the reconsideration decision, the Appellant filed a Notice of Appeal dated February 21, 2016 in which she provided her argument for requiring a replacement scooter.

The Appellant attended the hearing with her advocate (the OT) who cited a new diagnosis that impacts the Appellant's mobility. They did not have any medical documentation available to confirm the condition and the panel explained that it can admit additional evidence if it is in support of the information the Ministry had at the reconsideration. The advocate stated that the Appellant's scooter was stolen in late November 2015 after she had had it for five months. The medical condition that the approval of the scooter was based on causes her pain and numbness and affects her gait. The advocate stated that nothing has changed in terms of her function or ability to mobilize and a scooter is still the recommended equipment/device. The Appellant added that her area is very hilly and she cannot make it out of her apartment on some days as it is hard to get up hills without a scooter. The Appellant stated she did not know about insurance before but has found out that it costs three dollars per month. She submits that she would be able to pay for five years of insurance for a replacement scooter.

The Ministry reviewed the reconsideration decision and stated, in response to questions, that the Ministry does not have any policy relating to stolen medical equipment/devices but it could look at replacing a stolen scooter if the item turned up and could be assessed for damage. Regarding a crisis supplement for medical equipment pursuant to EAPWDR section 69, the Ministry stated that it could consider a request based on a new diagnosis to determine whether there was a life threatening health need for a scooter.

With the exception of the information regarding a new diagnosis that was not before the Ministry at the reconsideration, the panel finds that the oral testimony relates to the Appellant's circumstances as outlined in the reconsideration record. The panel admits the testimony under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of information and records that were before the Ministry at the time the decision being appealed was made.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision which denied the Appellant's request for a replacement scooter because it has not been five years since the Ministry provided the item being replaced, as required under Schedule C, subsections 3(3)(b) and 3.4(4) of the EAPWDR, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. The panel will also assess the reasonableness of the Ministry's determinations that the Appellant's request for a replacement scooter could not be assessed under subsections 3(4) and 3(6) of EAPWDR Schedule C which deal with equipment repairs, and that she was not eligible for the scooter as a life-threatening health need under EAPWDR section 69.

The legislation that applies to replacement scooters is the following:

### **EAPWDR – SCHEDULE C Health Supplements**

#### **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.

(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.

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- (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.

### **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.

### **EAPWDR - Health supplement for persons facing direct and imminent life threatening health need**

**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 health 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) the person's family unit is receiving 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 3(1).

#### *Appellant's position*

The Appellant submits that she will be without a mobility device for over three years, and she needs a scooter as her medical condition is exacerbated by physical exertion. In his letter for the reconsideration (February 16, 2016), the OT noted that the Appellant would not be eligible for a replacement scooter under the Ministry criteria until 2019. He argued, however, that her circumstances have changed to reduce the risk of theft re-occurrence, in particular, she would purchase theft insurance. The OT notes "the financial and potential health impacts" that will occur if the Appellant does not receive a replacement scooter arguing that she is essentially housebound, cannot access the food bank to make ends meet, and relies on costly taxis to access the community including medical appointments. She lives on a hill which is extremely difficult to manage with her walker and it is unreasonable for her to do so considering her level of pain and fatigue. The OT recommends, "as a reasonable compromise for all parties", that the Ministry should replace the scooter under the condition that the Appellant provides documentation of theft insurance.

At the hearing, the OT added that while the Ministry decision is consistent with the legislation, it is unfair from an ethical perspective. He argued that the Appellant has a right to access medical services and the community and he would like to know how the legislation came about, and how it can be changed or exempted through Ministry policy. The Advocate noted that there are no loaner programs for scooters in the Appellant's community and a three year loaner would not be realistic anyway due the requirement for maintenance. Further, charities may still charge \$500-600 for a scooter and the Appellant added that she would not know the quality. In addition, donations are difficult to come by and the advocate has a large caseload as a community OT and cannot spend time seeking out a scooter through other means.

#### *Ministry's position*

The Ministry argued that the Appellant's request does not meet the legal and program requirements for a replacement scooter. First, the Ministry determined that it could not make a determination under subsections 3(3) and 3(3)(a) of EAPWDR Schedule C because these subsections authorize a health supplement for medical equipment that is "damaged, worn out or not functioning" if it is more economical to repair the equipment than to replace it. The Ministry submitted that the requirements under these subsections cannot be met because the scooter's whereabouts are unknown.

#### *Panel's decision – subsections 3(3) and 3(3)(a) – EAPWDR Schedule C*

As noted by the Ministry, these subsections require an assessment of the condition of the item, and a replacement scooter can only be authorized where an assessment determined that it is more economical to replace than to repair it. Further, pursuant to subsection 3(3)(b), in order for a damaged scooter to be replaced, the legislated time frame for scooter replacement would still need to

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have passed. As there was no evidence that the stolen scooter has been recovered, the panel finds that the Ministry reasonably found that a determination cannot be made as to whether the requirements set out in subsections 3(3) and 3(3)(a) of EAPWDR Schedule C have been met.

Second, the Ministry's main reason for denying the request for a replacement scooter was because the time frames set out in subsections 3(3)(b) and 3.4(4) of EAPWDR Schedule C have not been met. The Ministry submitted that it provided a scooter in July 2014 and the Appellant is therefore not eligible for a replacement scooter until August 2019. At the hearing, the Ministry submitted that the legislated time frame is "set in stone and replacement outside of the time frame can only be looked at under Ministry policy." The Ministry's policy incorporates the legislative requirements but allows an exception to the legislated time frame for replacement of an item "when the item is required due to changes in a person's medical condition or growth." The Ministry notes in the decision that no other policy exception is available. The panel notes that the Appellant's condition does not meet the Ministry's policy exception as there was no evidence confirming a change in her medical condition. The OT confirmed that a scooter is still the most appropriate equipment/device for the Appellant's medical condition, and the physician continued to recommend a scooter.

*Panel's decision - subsections 3(3)(b) and 3.4(4) – EAPWDR Schedule C*

As noted above, subsection 3(3)(b), in relation to the replacement of medical equipment, is a criterion that must be met when the Ministry is assessing whether to replace a scooter that has been damaged or is otherwise not functioning. This subsection requires the period of time referenced in sections 3.1 to 3.12 of Schedule C, as applicable, to have passed. Subsection 3.4(4) of Schedule C sets out that the period of time applicable to the replacement of a scooter is "5 years after the minister provided the item being replaced."

Earlier in this decision, the panel found that the Ministry reasonably determined that the Appellant's scooter could not be assessed for repairs as it was stolen and has not been recovered. The panel now finds that the Ministry reasonably determined that the criterion in subsection 3.4(4) of EAPWDR Schedule C was not met. The Appellant acknowledged that she received a scooter in 2014 and is not eligible for a replacement scooter under the legislated time frame until 2019. While she has taken steps to reduce the chances of theft for a replacement scooter and the Ministry is sympathetic to her circumstances, the legislation, as noted by the Ministry, does not make any exceptions for theft.

Further, the panel does not have the authority to determine the ethical and rights based arguments that were raised by the advocate. The panel's decision-making authority is set out in section 24 of the *Employment and Assistance Act* which states that the panel is to decide whether the Ministry's reconsideration decision was reasonably supported by the evidence or whether the Ministry reasonably applied the legislation. The panel finds that the Ministry reasonably applied subsection 3.4(4) of EAPWDR Schedule C in determining that five years has not passed since the minister last provided the Appellant with a scooter.

Third, the Ministry noted that section 69 of the EAPWDR is intended to provide a remedy for persons facing a direct and imminent life-threatening health need and who are not otherwise eligible to receive a health supplement to meet the need. The Ministry submits that the Appellant does not require a remedy under section 69 because she is otherwise eligible for health supplements (including medical equipment) pursuant to sections 2 and 3 of Schedule C of the EAPWDR. The Ministry also argued



that the information submitted with the Appellant's application for a replacement scooter and her Request for Reconsideration does not establish that she faces a direct and imminent life-threatening health need for the item requested.

*Panel's decision – section 69 - Life threatening health need*

This section states that the minister may provide a health supplement for medical equipment (e.g., a scooter) if the health supplement is provided to a person who is not otherwise eligible for the health supplement under the regulation, and if the minister is satisfied that the following four criteria are met: (a) the person faces a direct and imminent life threatening need for the item and has no resources to meet the need, (b) the health supplement is necessary to meet the need, (c) the family unit is receiving premium assistance from Medicare, and (d) the applicable provisions of sections 2 (general health supplements) and sections 3 to 3.11 (medical equipment and devices) of Schedule C are met.

The Ministry determined that the Appellant is eligible for general health supplements and medical equipment under the regulation because she qualifies for these supplements as a person, under the age of 65, with PWD designation pursuant to the basic eligibility provision in section 62(1)(a) of the EAPWDR. The criteria set out in paragraphs (a) to (c) of section 69 therefore do not need to be examined and the minister does not need to be satisfied that the Appellant has a life threatening health need for the item pursuant to section 69, paragraph (a). The Panel notes that despite her medical diagnosis and resulting functional limitations with mobility, as well as her physician's and OT's recommendations for a replacement scooter, the Appellant is still eligible to receive health supplements under Schedule C, sections 2 and 3 as long as additional criteria for specific items are met. Accordingly, the panel finds that the Ministry reasonably determined that the Appellant is not eligible for a replacement scooter pursuant to section 69 of the EAPWDR.

*Conclusion*

The panel confirms the Ministry's reconsideration decision as a reasonable application of the applicable enactment [EAPWDR Schedule C and section 69], pursuant to sections 24(1)(b) and 24(2)(a) of the *Employment and Assistance Act*.