

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated February 18, 2016, which denied the appellant's request for a Shoprider 888 scooter and cane holder (the "Scooter"). The ministry found that as the appellant is a person with disabilities (PWD), he is eligible to apply to the ministry for health supplements under the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR). However, the ministry was not satisfied that the information provided established that the Scooter is the least expensive appropriate medical equipment or device as required by EAPWDR Schedule C, section 3(1)(b)(iii) or that it is medically essential to achieve or maintain basic mobility as required by section 3.4(3)(c).

PART D – Relevant Legislation

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

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 October 14, 2015 recommending an electrical scooter due to the appellant's osteoarthritis right knee. The form notes that the appellant has no family physician and was seen in the emergency department.
- Quote from a medical equipment provider dated November 26, 2015 for the cost of the Scooter in the amount of \$3,558.80.
- Letter from the appellant's occupational therapist (the "OT") dated December 1, 2015 indicating that the appellant has right knee osteoarthritis and wears neoprene braces on both knees to provide external bracing and pain relief. The OT indicates that the appellant was recently diagnosed with gout and takes anti-inflammatory and gout medications to assist with joint swelling. The OT also indicates that the appellant occasionally uses a cane to assist with off-loading the knee joint. The OT indicates that the appellant advised her that he can walk a couple of blocks but is limited due to his knee pain, that he is not able to access his community easily and would like to have a scooter so that he is able to grocery shop and attend appointments.
- Request for Reconsideration dated February 3, 2016 (RFR) in which the appellant states that he requires the Scooter on an urgent basis as he requires it for his basic mobility needs. The appellant states that he also suffers from gout in his shoulder area and that no wheelchair is possible. The appellant also states that he is applying for a new walker again.

Additional Information

In his Notice of Appeal the appellant states that the Scooter is urgently required for mobility. The appellant also provided two prescriptions from a medical practitioner dated February 25, 2016; one for an extra thick double mattress bed and one for a walker.

The appellant provided a submission dated April 4, 2016 (Submission 1) that included handwritten letters from him and another person (the "Friend"). The appellant states that he had been notified of the ministry's reconsideration decision on April Fool's Day as to why he and the Friend had been cut off disability when he is single. The appellant states that he will not be blackmailed by the ministry into a common law relationship. He also states that he requires medical transportation of \$157.50 to get to various medical appointments. The Friend states that she and the appellant are not in a common law relationship.

The appellant provided a second submission dated April 4, 2016, which included a duplicate of Submission 1 plus the appellant's resume (Submission 2).

The appellant provided a submission that included a letter dated April 12, 2016 requesting a home visit from a ministry worker to demonstrate that he is not living in a common-law relationship. The appellant also included the ministry's Statement of Account dated March 18, 2016 with respect to the Friend (Submission 3).

The appellant provided a submission dated April 22, 2016 regarding the status of his relationship with the Friend, that he is single and not in a common law relationship.

[]

The appellant provided a submission dated May 11, 2016, 205 pages (Submission III) that included the following:

- newspaper article regarding the appellant's living situation with the Friend
- financial documents
- medical information about the appellant's friend/room-mate
- duplicate copy of the prescription for the walker dated February 25, 2016 with a quote from a medical equipment provider dated April 4, 2016 for a walker at a cost of \$424.09
- handwritten information regarding the appellant and the Friend's living situation

The appellant provided a submission dated May 13, 2016, 458 pages with various information requesting that it be included in all of his appeals and his friend/roommate's appeals (Submission IV):

- the appellant's phone bill
- funds for care giving costs for his long term client
- documentation regarding the Friend's financial information and medical condition
- Emergency Record dated July 4, 2004 indicating the appellant's diagnosis of acute chronic lower back pain
- referral for the appellant to access HandiDart dated May 12, 2016 for at least one year due to medical problems, form completed by the appellant's physician requesting assistance for a transportation allowance due to the appellant's hiatus hernia, ulcer, back fracture and left leg osteoarthritis
- doctor's note dated April 6, 2016 indicating that the appellant requires a diet allowance for at least one year for dysphasia due to severe hiatus hernia
- medical equipment request and justification dated March 25, 2011 with a recommendation for a scooter due to the appellant's left knee fracture and T12 vertebrae fracture
- various communications with the ministry regarding the appellant's living situation with the Friend
- quote from a medical equipment provider dated April 22, 2016 for a Shoprider Trailblazer 889 SL/SE for \$4,295 (Quote 2)
- letter dated May 14, 2016 requesting that the ministry authorize his doctor's request for medical equipment to prevent imminent danger to his health

The appellant provided a submission dated May 16, 2016, 72 pages with various information requesting that it be included in all of his appeals and his friend/roommate's appeals (Submission V) that included the following:

- list of budget payments for May 25 funds indicating that after his payments were made he had no funds to get through the month of June
- copies of rent receipts for March and April 2016
- newspaper article dated August 14, 2007 regarding the appellant's dispute with the ministry over his transportation allowance
- shelter information dated May 16, 2016
- note regarding the appellant's medical conditions (duodenal ulcer, esophagus problems, poor eye-sight and anxiety attacks), a list of his medical appointments which include seeing his doctor twice per month, physiotherapist once or twice per week, ulcer specialist once per year, eye specialist once per year and emergency room at the hospital (unexpected)
- letter from a medical practitioner dated July 25, 2007 indicating that the appellant has documented arthritis in his thoracic spine, esophageal spasms and osteoarthritis in his left

-
- knee and hip
 - communications with the ministry regarding office attendance and third party administration, and prior tribunal hearings
 - letter dated May 14, 2016 (duplicate of the letter of same date in Submission IV) requesting that the ministry authorize his doctor's request for medical equipment to prevent imminent danger to his health

The appellant provided a submission with various information requesting that it be included in all of his appeals and his friend/roommate's appeals (Submission VI) that included the following:

- a report regarding the appellant's medical condition and functional status as at March 9, 2011 indicating that the appellant has gastro-esophageal inflammation, cardiac disease, old fracture to left clavicle and T12, moderate arthritis of the glenohumeral joints, unstable left knee joint, mild lumbar spondylitic changes and ACL-Deficient Knee such that the appellant's mobility is negatively impacted by his weak left knee and that he uses a back brace and off the shelf ACL brace
- Letter from an occupational therapist dated April 6, 2011 requesting funding for a scooter
- Communications between the appellant and the ministry regarding third party administration
- Application for special transportation subsidy dated May 18, 2016
- Request dated May 18, 2016 for \$270 plus tax to cover the cost of medication for the appellant's back pain
- Appellant's Friend's Request for Reconsideration dated May 10, 2016 regarding the appellant's request for a crisis supplement for food;
- Transportation Supplement Letter dated June 27, 2007
- Receipts for taxi expenses

The appellant did not attend the hearing. Having confirmed that the appellant was notified of the hearing, the panel proceeded with the hearing pursuant to EAR section 86(b).

At the hearing, the ministry relied on the reconsideration decision.

Admissibility of New Information

The panel has admitted the information contained in the appellant's Notice of Appeal and the quote for the walker 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. The panel has not admitted the prescription for an extra thick mattress bed as there were no records regarding back pain or need for a mattress before the ministry at the time of reconsideration.

The panel has reviewed the appellant's submissions and notes that they are the result of a Freedom of Information request from the ministry's files of the appellant and the Friend. The bulk of the material relates to a wide range of issues not relevant to this appeal between the appellant and the ministry going back to 2004. The panel finds that the bulk of the information in the submission is not in support of the information and records before the ministry at reconsideration, as it cannot be said that it corroborates or substantiate anything that is in the Record of the Ministry Decision and therefore cannot be admitted as evidence (i.e., not taken into account in the panel's decision.)

[]

In particular, the panel has not admitted Submissions 1, 2 or 3 into evidence as the new information is not in support of information and records that were before the ministry at the time of reconsideration.

The panel has not admitted the submission dated April 22, 2016 into evidence as the new information regarding the status of the appellant's relationship with the Friend is not in support of information and records that were before the ministry at the time of reconsideration.

The panel has admitted the prescription and quote for the walker from Submission III 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*. The panel has not admitted the rest of the documents from Submission III into evidence as the newspaper article; financial information and information about the Friend's financial information do not support the information before the ministry at the time of reconsideration.

The panel has admitted Quote 2 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*. The panel has not admitted the rest of the documents from Submission IV into evidence as the information regarding the appellant's back pain and ulcers, requests for medical transportation and diet allowance, financial information and information about the Friend do not support the information before the ministry at the time of reconsideration. The panel accepts the appellant's letter dated May 14, 2016 from Submission IV as argument.

The panel has admitted the letter from the appellant's physician dated July 25, 2007 into evidence from Submission V into evidence as the information regarding the diagnosis of osteoarthritis in the appellant's left knee 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*. The panel has not admitted the newspaper article, shelter information, financial information and information regarding the appellant's other medical conditions as that information was not before the ministry at the time of reconsideration. The panel accepts the appellant's letter dated May 14, 2016 from Submission V as argument.

The panel has admitted the physician's report dated March 9, 2011 into evidence from Submission VI as the information regarding the appellant's unstable left knee 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*. The panel has not admitted the remaining information from Submission VI into evidence, being the communications regarding third party administration, application for special transportation, receipts for taxi expenses and information regarding the Friend, as that does not support the before the ministry at the time of reconsideration.

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 appellant was not eligible for the Scooter as the information provided did not establish that Scooter is the least expensive appropriate medical equipment or device as required by EAPWDR Schedule C, section 3(1)(b)(iii) or that it is medically essential to achieve or maintain basic mobility as required by section 3.4(3)(c)?

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 – 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 he requires the Scooter on an urgent basis to meet his basic mobility needs including getting to and from the grocery store and various medical appointments due to decreased mobility resulting from his back pain, osteoarthritis and gout. The appellant’s position is that the OT has confirmed that he has a medical need for the Scooter and that he needs it to prevent imminent danger to his health. The appellant’s position is that he cannot use a wheelchair due to gout in his right shoulder.

The ministry’s position, as set out in the reconsideration decision, is that as the appellant is a recipient of disability assistance he is eligible to receive health supplements provided under EAPWDR Schedule C, section 3 to 3.12. However, the ministry’s position is that although the information provided by the OT establishes that the appellant has difficulty with mobility as a result of osteoarthritis in his right knee, it is unclear as to why the appellant has not trialed the least expensive equipment, such as a walker or a manual wheelchair so the request does not meet the legislative

criteria required of EAPWDR Schedule C, section 3(1)(b)(iii).

The ministry also takes the position that the information provided does not establish that the Scooter is medically essential to achieve or maintain basic mobility as required by EAPWDR Schedule C, section 3.4(3)(c). In particular, the reconsideration decision states that the “*OT reports that you are unrestricted from taking public transportation to mobilize within the community*”. At the hearing the ministry representative stated that the word “*unrestricted*” was a typographical error and that it should have read “*restricted*”. The OT reports that the appellant is able to walk a couple of blocks and occasionally uses a cane to assist with mobility, so the ministry is not satisfied that the appellant is unable to ambulate once he reaches his destinations. The ministry also states that the OT does not report that the appellant requires assistance with daily living activities as a result of his diagnosis so the ministry is not satisfied that the appellant requires the Scooter to achieve or maintain basic mobility.

Panel Decision

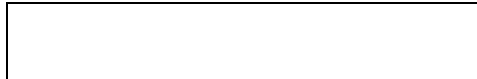
Although the appellant states that he is unable to use a wheelchair because of gout in his shoulders there is no medical information provided to establish that he cannot use a wheelchair or that he has trialed a wheelchair. In addition the OT indicates that the appellant occasionally uses a cane to assist with mobility but the OT has not provided information indicating that the appellant is unable to use a walker. The panel also notes that the appellant has been prescribed a walker and indicates that he is applying for funding for a walker. The panel finds that the Quote for the Scooter is less expensive than Quote 2 so the Scooter is the least expensive of the two scooters that the appellant is considering; however the panel finds that the ministry was reasonable in determining that the Scooter is not the least expensive appropriate medical equipment as required by EAPWDR Schedule C, section 3(1)(b)(iii) as it is unclear why the appellant has not trialed other equipment that may be less expensive than the Scooter, such as a walker or manual wheelchair.

Although the appellant states that he requires the Scooter on an urgent basis and that it is necessary to prevent imminent danger to his health, the OT states that the appellant can walk a couple of blocks but is limited due to his knee pain and is not able to access the community easily so he would like the Scooter. The OT does not indicate that the appellant is restricted from taking public transportation to mobilize within the community and that he can walk a couple of blocks. The OT does not indicate that the appellant requires the Scooter to achieve or maintain basic mobility, only that the appellant would like the Scooter. The OT reports that the appellant wears neoprene braces on both knees to provide external bracing and he occasionally uses a cane to assist with off-loading the knee joint. There is no further information from the OT or the appellant’s physician indicating that the appellant require the Scooter on an urgent basis to prevent imminent danger to his health.

As the OT does not confirm that, or explain why, the Scooter is necessary to achieve or maintain basic mobility, 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.

Conclusion

The panel acknowledges that the Scooter has been recommended for the appellant and may be



beneficial for his decreased mobility caused by his osteoarthritis, back pain and gout. However, having reviewed and considered all of the evidence and the relevant legislation, 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.