

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (“the ministry”) dated January 5, 2017 which held that the appellant did not meet all of the eligibility criteria under s. 3 and 3.4 of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*, for the provision of a scooter. In particular, the ministry determined that the following requirements were **not** met:

- An assessment by an occupational therapist (OT) or physical therapist (PT) confirms that it is unlikely that the appellant will have a medical need for a wheelchair during the 5 years following the assessment - s. 3.4(3)(a) of Schedule C.
- The minister is satisfied that the requested scooter is medically essential to achieve or maintain basic mobility - s. 3.4(3)(c) of Schedule C.

PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*, s. 3 and 3.4 of Schedule C

## PART E – Summary of Facts

The appellant is in receipt of disability assistance. On June 27, 2016, the ministry received the appellant's request for a scooter comprised of the following documents:

1. Medical Equipment and Justification form (MERJ) signed and dated June 29, 2016 by a medical practitioner who describes the appellant's medical condition as quadriplegia and recommends a New Fortress 4-wheeled scooter.
2. June 23, 2016 letter from an OT providing the following information:
  - C7 partial quadriplegia due to an arteriovenous malformation, suffered a brain infarct for a similar malformation in 2009, has had several ongoing medical issues including urosepsis and insulin dependent diabetes with neuropathic ulcers at both heels.
  - Living in a care facility since 2013. Uses manual wheelchair inside the facility. Transfers into scooter for all outings. Scooter is quite deteriorated from many years of heavy use. No longer drives a vehicle. Independently transfers using a transfer board. Uses Handidart when necessary.
  - Fortress scooter is recommended, noting that the appellant is not willing to upgrade to a power chair. Scooter seat could be custom modified to support a rehab seat cushion in the future if physical and functional needs change.
  - Quote in the amount of \$3,453.45 is attached.

Following denial of his request, the appellant submitted his Request for Reconsideration and a 2-page letter he wrote that is dated October 28, 2016. The appellant writes that he has had good use of his scooter for approximately 12 years and that he has tried other scooters and electric wheel chairs but prefers the Fortress because of how it rides on uneven sidewalks, the stability provided by the three wheels, the ease with which he can get around town shopping, and the good range it has. Further, it is simpler to repair and maintain. The appellant confirms that his wheelchair is his main mobility inside. He requests replacement of his Fortress Scooter he states was provided by the government in 2004, as it is worn to the point that parts are no longer available. For the last two years he has had use of a borrowed scooter, which has since been taken back. Without his scooter, and having lost his driver's license, he is now grounded and not able to go out for anything like shopping and going out and being in contact with others. The Handidart must be booked two weeks in advance and will only take him to and from an appointment with no other stops. He feels like he is in jail and is losing touch with what is going on outside his room.

In his Notice of Appeal and oral testimony at the hearing, the appellant confirms the information he provided at reconsideration, again describing his belief that the scooter is safer and more stable than a power wheelchair, that the scooter is his last resort to get out, and that he has been without a scooter for one year. He cannot always wait 2 weeks to arrange for the Handidart. The appellant stated that the PT did not say anything about the likelihood of the need for a power wheelchair.

At the hearing, the ministry stood by its reconsideration decision, explaining that assessing whether or not equipment is medically essential to meet a client's basic mobility needs is discretionary, as "basic mobility" is not defined in the legislation. The ministry is guided by its policy which states that

equipment is necessary to meet basic mobility needs if it is necessary to perform day to day activities in the home or in the community.

**PART F – Reasons for Panel Decision**

The issue under appeal is whether the ministry’s decision to deny the requested scooter was reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant’s circumstances. That is, was the ministry reasonable to conclude that:

- An assessment by an occupational therapist (OT) or physical therapist (PT) 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 - s. 3.4(3)(a) of Schedule C; and
- The requested scooter has not been established as being medically essential to achieve or maintain basic mobility - s. 3.4(3)(c) of Schedule C?

The relevant portions of sections 3 and 3.4 of Schedule C of the *EAPWDR* are set out below.

**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.

### *Appellant's Position*

The appellant's position is that he requires a three-wheeled Fortress scooter to enable him to get out of his residence to shop, attend to other errands, and to engage with the outside community. The appellant also questioned the ministry's apparent preference to provide power wheelchairs when a scooter meets his needs.

### *Ministry's Position*

The ministry's position is that the requirement of section 3.4(3)(a) of Schedule C of the EAPWDR that an OT or PT confirm that the appellant is unlikely to have a medical need for a wheelchair during the 5 years following the assessment is not met. The ministry relies on the information that the appellant currently uses a manual wheelchair indoors and the PT's comment respecting the appellant's unwillingness to upgrade to a power chair, which the ministry interprets as suggesting that the PT has offered the option of a power wheelchair and that a power wheelchair may be the most appropriate device for the appellant's mobility needs.

The ministry also takes the position that it is not satisfied that the information establishes that the scooter is medically essential to achieve or maintain basic mobility which is a requirement of section 3.4(3)(c). The ministry argues that the appellant is able to maintain inside mobility with his manual wheelchair and outside mobility via the Handidart transit service.

### *Panel Decision*

Respecting the requirement of section 3.4(3)(a) of Schedule C that either an OT or PT confirm that it is unlikely that the person requesting a scooter will have a medical need for a wheelchair during the 5 years following the OT or PT assessment, there is no dispute that the appellant currently uses a wheelchair, though its use is limited to moving about indoors and to access the Handidart. Additionally, the information provided by the appellant's PT does not confirm that the appellant is unlikely to have a medical need for a wheelchair within the next 5 years. Accordingly, the panel finds that the ministry reasonably determined that the requirement of section 3.4(3)(a) of Schedule C was not met.

The ministry's second basis for denial is that it was not satisfied that the requested scooter is medically essential to achieve or maintain basic mobility as required by 3.4(3)(c) of Schedule C. The panel finds that the evidence that the appellant uses a manual wheelchair for moving about indoors was reasonably viewed by the ministry as establishing that the appellant's basic mobility needs indoors are currently met. However, it would be unreasonably narrow to interpret basic mobility as being limited to mobilizing indoors and in accordance with its policy, the ministry acknowledges basic mobility as including the ability to mobilize outside of one's home to attend to regular day to day activities. Day to day activities reasonably include attending to errands such as shopping and appointments, which cannot always be planned a week or more in advance, as well as socializing and accessing short distances outside one's home. The information provided by both the PT and the appellant is that the appellant requires his scooter for all outings and that without a scooter his access to the community is limited to occasions for which he has pre-arranged the Handidart, which the panel finds enables the appellant to some but not all day to day activities. Accordingly, the panel finds that the ministry unreasonably concluded that the requested scooter is not medically essential to achieve or maintain basic mobility.

As all of the legislated requirements must be met to be eligible for a scooter, the panel finds that the ministry's reconsideration decision which found that all of the legislated criteria for the requested scooter were not met was reasonably supported by the evidence and therefore the panel confirms the decision. The appellant is not successful on appeal.