

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated January 27, 2017 which denied the appellant's request for both a power wheelchair and a 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 the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

However, the ministry was not satisfied as to the following:

- that the power wheelchair or the scooter were the least expensive appropriate medical equipment or device as required by EAPWDR Schedule C, subsection 3(1)(b)(iii);
- that the power wheelchair is medically essential to achieve or maintain basic mobility as required by EAPWDR Schedule C, subsection 3.2(2);
- that it is unlikely that the appellant who has been prescribed a scooter will have a medical need for a wheelchair during the 5 years following the assessment as required by EAPWDR Schedule C, subsection 3.4(3)(a); and
- that the scooter is medically essential to achieve or maintain basic mobility as required by EAPWDR Schedule C, subsection 3.4(3)(c).

In addition, the ministry determined the appellant's request did not meet the legislated criteria set out in Section 69 of the EAPWDR that the health supplement was needed for a person facing a direct and imminent life threatening health need.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 62 and 69, Schedule C, Sections 3, 3.2 and 3.4.

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

- A Medical Equipment Request and Justification #1 dated September 28, 2015 for a motorized scooter for the appellant whose medical condition is described by a Medical Practitioner (MP) as Osteoarthritis, Scoliosis, Diabetes-insulin dependent and Sciatica.
- A letter from an Ophthalmologist dated December 17, 2015 indicating that the appellant does not have the visual acuity to ride a scooter.
- A letter from an Occupational Therapist dated September 20, 2016 indicating that the appellant has a second doctor's referral for a power wheelchair rather than a motorized scooter and that the Occupational Therapist (OT) does not recommend power mobility for the appellant because her eye doctor has stated her vision is not sufficient.
- A Medical Equipment Request and Justification #2 dated September 26, 2016 for an electric wheelchair for the appellant whose medical condition is described by a different Medical Practitioner as Fibromyalgia and Osteoarthritis (significant [illegible] pain aggravated by activity).
- A Request for Reconsideration dated January 19, 2017 in which the appellant writes that she now has a set of new glasses and "can see real good without a problem". She indicates that she needs a power chair so she can get around because her hips and legs get numb and if she tries to walk, she falls.

In her Notice of Appeal dated February 2, 2017, the appellant indicates that she "just can't walk anywhere as she suffers pain and can barely move".

At the hearing the appellant testified that she now has the right set of glasses, sees well and is able to operate a power wheelchair. She indicated that she called her eye specialist to get a letter about her new glasses but was told that the ministry has to make the request for a letter. Due to her medical conditions which include fibromyalgia, COPD and osteoarthritis, the appellant stated that she uses a walker in the house but can't get around or out to appointments such as her doctors. She has borrowed her mother's wheelchair which has recently broken down and finds that walking 20 or 30 feet is the limit before she must sit down. The appellant explained that she has seen her Occupational Therapist once since she received her new glasses last fall. At that time, the Occupational Therapist performed several different eye exams and the appellant believes she passed all but 1 of them. The appellant indicated that she has very limited education which is possibly why she didn't pass one exam. The appellant testified that her Occupational Therapist doesn't come around or return her phone calls and that she would like to find a different Occupational Therapist.

In response to questions, the ministry representative indicated that while the appellant's physician provided a diagnosis of her medical conditions, the Medical Practitioner did not describe limitations to the appellant's ability to get around over short or long distances and does not describe any restrictions to the appellant's mobility. Missing also was a quote for both the power wheelchair and the scooter. The ministry representative stressed the importance of having documents from medical professionals to support the appellant's request for a power wheelchair. The ministry representative explained to the appellant that the ministry could not find an Occupational Therapist for her and that



the appellant would have to find a new Occupational Therapist through her local health agency.

The ministry relied on its reconsideration decision.

Admissibility of Additional Information

The panel considered the oral testimony of the appellant as corroborating the previous information from the appellant in her Request for Reconsideration regarding the impacts of her medical conditions, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the Employment and Assistance Act.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision which held that the appellant is not eligible for a power wheelchair or a scooter because she failed to meet the legislative criteria set out in the EAPWDR 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 failed to meet the criteria listed in Sections 62 and 69 as well as Schedule C, subsections 3(1)(b)(iii), 3.2(2), 3.4(3)(a) and 3.4(3)(c)?

Relevant Legislation

General health supplements

Section 62 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) a family unit in receipt of disability assistance,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is a dependent child, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

Health supplement for persons facing direct and imminent life threatening health need

Section 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.

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.
- (3) 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.
- (4) A high-performance wheelchair for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

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.
- (2) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item

described in subsection (1) of this section is 2 years from the date on which the minister provided the item being replaced.

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.

Ministry's Position which addresses the appellant's request for both a power wheelchair and a scooter.

Eligibility for a Power wheelchair - EAPWDR Schedule C, subsection 3(1)(b)(iii)

The ministry's position is that the appellant's request does not meet the eligibility requirement that a power wheelchair is the least expensive appropriate medical equipment or device for the following reasons:

While the physician in the Medical Equipment Request and Justification #2 lists the appellant's medical conditions and states pain is aggravated by activity, the Medical Practitioner does not describe limitations to the appellant's ability to ambulate over short or long distances and does not describe the nature of any restrictions to mobility or physical activity.

In the same Medical Equipment Request and Justification #2, the Occupational Therapist does not speak to a need for a power wheelchair and indicates that she does not recommend power mobility for the appellant because her eye doctor has stated that her vision is not sufficient.

A document from a medical professional has not been received by the ministry to establish that the appellant, who now wears glasses, has visual acuity to operate a power wheelchair.

Also, a quote from a medical supplier has not been provided to determine that a power wheelchair is the least expensive appropriate medical equipment or device.

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Eligibility for a Power wheelchair - EAPWDR Schedule C, subsection 3.2(2)

The ministry's position is that the appellant's request does not meet the eligibility requirement that the ministry must be satisfied that the power wheelchair is medically essential to achieve or maintain basic mobility for the following reasons:

In the Medical Equipment Request and Justification #2 the Medical Practitioner does not describe limitations to the appellant's ability to ambulate over short or long distances and does not describe the nature of any restrictions to mobility or physical activity.

In the same Medical Equipment Request and Justification #2, the Occupational Therapist does not speak to a need for a power wheelchair and indicates that she does not recommend power mobility for the appellant because her eye doctor has stated that her vision is not sufficient.

A document from a medical professional has not been received by the ministry to establish that the appellant, who now wears glasses, has visual acuity to operate a power wheelchair.

Eligibility for a Scooter - EAPWDR Schedule C, subsection 3(1)(b)(iii)

The ministry's position is that the appellant's request does not meet the criterion set out that a scooter is the least expensive appropriate medical equipment or device for the following reasons:

In the Medical Equipment Request and Justification #1, the Medical Practitioner lists the appellant's medical conditions and recommends a motorized scooter. However, the Medical Practitioner does not describe limitations to the appellant's ability to ambulate over short or long distances and does not describe the nature of any restrictions to mobility or physical activity.

In the letter from the Ophthalmologist dated December 17, 2015, it indicates that the appellant does not have the visual acuity to ride a scooter. In the Occupational Therapist letter dated September 20, 2016, it indicates that the Occupational Therapist does not recommend power mobility for the appellant because her eye doctor has stated that her vision is not sufficient.

A document from a medical professional has not been received by the ministry to establish that the appellant, who now wears glasses, has visual acuity to operate a power wheelchair.

Also, a quote from a medical supplier has not been provided to determine that a scooter is the least expensive appropriate medical equipment or device.

Eligibility for a Scooter - EAPWDR Schedule C, subsection 3.4(3)(a)

The ministry's position is that the appellant's request does not meet the criterion set out that it is unlikely that the appellant who has been prescribed a scooter will have a medical need for a wheelchair during the 5 years following the assessment.

While the ministry notes that the appellant has requested both a scooter and power wheelchair, in the

most recent Medical Equipment Request and Justification #2, the Medical Practitioner recommends an electric wheelchair. The Occupational Therapist does not support the appellant's request for power mobility due to limitations of visual acuity.

Eligibility for a Scooter - EAPWDR Schedule C, subsection 3.4(3)(c)

The ministry's position is that the appellant's request does not meet the criterion set out that the ministry must be satisfied that the scooter is medically essential to achieve or maintain basic mobility for the following reasons:

In the Medical Equipment Request and Justification #1, the Medical Practitioner does not describe limitations to the appellant's ability to ambulate over short or long distances and does not describe the nature of any restrictions to mobility or physical activity.

In both the letter from the Ophthalmologist and in the Medical Equipment Request and Justification #2, in Section 3 where the Occupational Therapist comments, they indicate that the appellant does not have the visual acuity to operate a scooter.

A document from a medical professional has not been received by the ministry to establish that the appellant has visual acuity to operate a scooter.

Appellant's Position

The appellant argues that she now has a set of new glasses, can see well and is able to operate a power wheelchair. The appellant's position is that she needs a power wheelchair so she can get around because her medical conditions prevent her from going outside and to appointments. Although she has previously borrowed her mother's wheelchair, it has broken down. The appellant states that her hips and legs get numb and if she tries to walk, she falls. The appellant reports that she uses a walker around the house and that she just can't walk anywhere as she suffers pain and can barely move.

Panel's Decision

Eligibility for a Power wheelchair EAPWDR Schedule C, subsections 3(1)(b)(iii) and 3.2(2)

The evidence supports the ministry's position because without all the requested information being provided by the appellant such as; a description by the appellant's doctor of the appellant's limitations to her ability to move physically over short or long distances and the type of any restrictions to her mobility or physical activity, a document from a medical professional such as the appellant's eye doctor to confirm her vision is good enough to safely operate a power wheelchair, detailed specifications and a functional assessment concerning the medical equipment requested from an Occupational Therapist and a quote for the power wheelchair; the ministry cannot reasonably determine if all the requirements of the applicable legislation are met.

The panel finds it is the appellant's responsibility to provide the ministry with any and all information

needed so they can make a proper determination on the facts. Without the evidence needed, the ministry is unable to determine whether the power wheelchair is the least expensive appropriate medical equipment or device and that a power wheelchair is medically essential for the appellant to achieve or maintain basic mobility pursuant to the legislation.

Eligibility for a Scooter EAPWDR Schedule C, subsections 3(1)(b)(iii), 3.4(3)(a) and 3.4(3)(c)

The evidence supports the ministry's position because without all the requested information being provided by the appellant such as; a description by the appellant's doctor of the appellant's limitations to her ability to move physically over short or long distances and the type of any restrictions to her mobility or physical activity, confirmation from an Medical Practitioner that the appellant will not have a medical need for a wheelchair during the 5 years following the assessment, a document from a medical professional such as the appellant's eye doctor to confirm her vision is good enough to operate a scooter, detailed specifications and a functional assessment concerning the medical equipment requested from an Occupational Therapist and a quote for the scooter; the ministry cannot reasonably determine if all the requirements of the applicable legislation are met.

The panel finds it is the appellant's responsibility to provide the ministry with any and all information needed so they can make a proper determination on the facts. Without the evidence needed, the ministry is unable to determine whether the scooter is the least expensive appropriate medical equipment or device and that the appellant will not have a medical need for a wheelchair during the 5 years following the assessment, and that a scooter is medically essential for the appellant to achieve or maintain basic mobility pursuant to the legislation.

Eligibility Due to Life Threatening Health Need – Section 69

Ministry's Position

The ministry position is that this legislation is intended to provide a remedy to those persons who are not otherwise eligible to receive health supplements under Schedule C, Sections 2(1)(a) and (f) and Section 3.

The ministry argues that the information submitted by the appellant does not establish that she faces a direct and imminent life threatening need for a scooter or power wheelchair.

Also, the appellant's request does not meet the legislated criteria because she is eligible to receive health supplements under the above noted sections.

Appellant's Position

The appellant did not present a position.

Panel Decision

The evidence is the appellant has a Persons with Disabilities designation and is therefore eligible to receive health supplements under Schedule C and that Section 69 only applies to a person who is not eligible to receive health supplements set out in Schedule C sections 2(1)(a) to (f) and 3 of the EAPWDR.

The panel finds the ministry's decision that Section 69 does not apply to the appellant is supported by the EAPWDR legislation because she is entitled to receive health supplements.

Conclusion

Having reviewed and considered the evidence and the legislation, the panel finds that the ministry's reconsideration decision, which denied the appellant's requests for a power wheelchair and a scooter are reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the ministry's reconsideration decision and the appellant is not successful on appeal.