

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 December 20, 2016, which denied the Appellant's request for a 4 wheel Scooter and cane holder (the Scooter).

The Ministry found that as the Appellant is a person with disabilities (PWD) in receipt of disability assistance, she is eligible to apply for 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:

1. The Scooter is the least expensive appropriate medical equipment or device as required by EAPWDR Schedule C, section 3(1)(b)(iii);
2. The Scooter is medically essential to achieve or maintain basic mobility as required by section 3.4(3)(c); or,
3. The Appellant is facing a direct and imminent life threatening health need pursuant to Section 69 of the EAPWDR.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The Appellant is a single recipient of disability assistance.

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

- Medical Equipment Request and Justification Summary (MERJS) dated July 14, 2016 completed by an Occupational Therapist (OT) and the Appellant's family physician recommending an electrical Scooter due to the Appellant's struggles with "prolonged ambulation". The form notes that the Appellant would also benefit from a cane holder;
- Ministry Medical Equipment Request and Justification form dated August 20, 2015 signed by a medical practitioner including the written notation "Chronic Backache. Mobility Scooter will help to mobilize." hand written in the section titled "Describe the medical condition of your patient";
- Quote from a medical equipment provider dated July 13, 2016 for the cost of the Scooter and a cane holder in the total amount of \$3,700.80; and
- Request for Reconsideration dated December 5, 2016 in which the Appellant states that she:
 - ✧ Has had a walker and a wheelchair for 5 years which she can no longer use;
 - ✧ Uses a cane constantly, not intermittently, and that she has fallen and been in and out of hospital many times "for breathing and mobility";
 - ✧ Cannot breathe while crossing the street and is "about 15 feet short of making it to the other side safely";
 - ✧ Cannot walk and carry groceries at the same time;
 - ✧ Has not been able to take public transit to visit her grandchildren in over a year;
 - ✧ Has no one to assist her with her daily living activities; and
 - ✧ Cannot use her wheelchair because of her difficulty breathing and cannot use it on an incline or lift it (over the curb).

Additional Information

In her Notice of Appeal dated December 29, 2016, the Appellant states that she disagrees with the reconsideration decision because since applying for the Scooter she has suffered a heart attack and has been denied medication for Chronic Obstructive Pulmonary Disease (COPD). She adds that she has trouble walking 15 feet and she cannot breathe or move without difficulty.

The panel did not admit the information contained in the Appellant's Notice of Appeal regarding the recent heart attack or the alleged COPD into evidence as it is not 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* (EAA).

At the hearing, the Appellant introduced as evidence official prescription receipts in the name of the Appellant for assorted quantities of 10 medications, last filled on February 17, 2017.

The panel did not admit the official prescription receipts into evidence as the panel is not qualified to interpret the relevance of the information or determine whether all or some of the medications were prescribed to treat any of the medical conditions identified in the MERJS, and therefore the panel is not qualified to determine whether the information is in support of information and records that were

before the Ministry at the time of reconsideration.

At the hearing, the Appellant stated that when the OT paid his visit to the Appellant's apartment to perform an occupational assessment he did not mention the wheelchair or the walker even though he must have seen it in the Appellant's apartment, and that he seemed more concerned about whether or not he carried bed bugs home with him. She said that his comments in the MERJS regarding the Appellant's independence with respect to bathing, toileting and grooming could not have been observed because he did not see the Appellant's bathroom during the visit. She also stated that she obtained the wheelchair and walker from a friend who had passed away and had it on hand just in case she had use for it in the future, but that she could not use the wheelchair because her asthma and COPD make it very difficult for her to breathe and she cannot operate the wheelchair on an incline or lift it over a curb.

At the hearing the Appellant also said that she needs the Scooter because that on the rare occasions where she has taken public transit she has fallen at the SkyTrain station. As a result she says that despite the OT's assessment in the MERJS that she uses public transit, she said that she does not. With respect to the OT's statement in the MERJS that she uses taxi savers, the Appellant said that she does not use taxi savers and doesn't even know what they are.

She also stated that when she visited the emergency department of her community hospital recently she had to sleep overnight in the lobby of the hospital because she had no way of getting home. She said that she has great difficulty leaving her apartment due to her mobility issues, that the food bank has to deliver food to her because she can't get out to pick up food and that when she had a fire in her building recently she could not get out of the building without help.

The Appellant also stated that she has three grandchildren who are the children of her son and she has not been able to visit them for close to a year due to her mobility issues. She said that her son is her only family member and that he works long and irregular hours. As a result he cannot help her in any way.

The Appellant noted that her family doctor will not write letters and will only fill out forms in a limited way. She said that her doctor's diagnosis of chronic back pain, while accurate, was also incomplete and that the Appellant also suffers from many other ailments that were not included in Section 2 of the MERJS where the Appellant's doctor was asked to describe the Appellant's medical condition, and the Appellant presented the prescription receipts identified above as evidence of those other ailments.

The Appellant stated that she did not have anyone to help her interpret the Ministry's reconsideration decision and that she had read it herself but didn't fully understand the OT's assessment or why the Ministry made the decision it did as she only has a grade 3 education. She confirmed that the OT had visited her apartment, and had observed her physical status, which included having her walk around the apartment and from the apartment down to street level. The Appellant also stated that the OT did not accompany her to a store or assess her abilities on public transit. The OT also visited the Appellant at her home on a separate occasion after he had arranged for a Scooter to be provided and at which time the Appellant was assessed in the operation of the Scooter.

The Appellant's Advocate (the Advocate) stated that he met the Appellant in early February and did not have a opportunity to assist her with her application for the Scooter before that, and that the

Appellant had navigated the Scooter application process on her own. He said that on review of the file he noticed that a few issues with the application requirements, including that the Ministry had found that the walker and wheelchair had not been assessed, and acknowledged that these requirements had not been met. However, the Advocate argued that the OT did address the need for a Scooter and found that the Appellant clearly met the criteria. He emphasized that it is also clear that the Appellant has very restricted mobility and that in certain situations which she could not foresee, such as a fire in her apartment building, her life would be in danger due to her lack of mobility.

Regarding the Ministry's assessment that the Appellant's testimony in her request for reconsideration was not corroborated by the OT's assessment or the Appellant's doctor's description of her medical condition (chronic back pain), the Advocate argued that, while on the surface there might be inconsistencies, when all of the evidence is taken into account it is clear that the Appellant has multiple barriers and that despite the discrepancies there appears to be an acknowledgment by the Appellant's family physician and the OT that the Scooter is required.

The Advocate also noted that it had been a long time since the OT's assessment and that since that time the Appellant has suffered from a heart attack. Therefore he argued that her need for a Scooter had increased since the OT's assessment was completed in July 2016.

At the hearing, the Ministry relied on its reconsideration decision and advised the Appellant that if she had additional information regarding her medical condition she could arrange to have it provided to the Ministry in the prescribed form by a medical practitioner and if she also arranged for an updated complete assessment she could reapply for a Scooter.

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, the panel must determine whether the Ministry was reasonable in determining that the Scooter is not an eligible item under EAPWDR Schedule C sections 3 to 3.12.

The relevant legislation is as follows:

EAPWDR

General health supplements

62 The minister may provide any health supplement set out in section ... 3 [*medical equipment and devices*] of Schedule C to or for

(a) a family unit in receipt of disability assistance ...

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 section ... 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:

... (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

EAPWDR 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. ...

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; ...

(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 ... ;

(c) the minister is satisfied that the item is medically essential to achieve or maintain basic mobility. ...

The Appellant's position is that while she has a wheelchair and a walker, she cannot use them because of her disabilities and that she requires the Scooter to be mobile and to do her errands. She does not know why the OT did not assess her use of the walker and the wheelchair as he must have been aware that she had the equipment because they were in plain view when he visited her apartment. The Advocate argues that when all of the evidence is taken into account it is clear that the Appellant has multiple barriers and that there is an acknowledgment by both the Appellant's medical practitioner and the OT that the Scooter is required.

The Ministry's position is that because the Appellant is the recipient of disability assistance she is

eligible to receive health supplements provided under EAPWDR Schedule C, Sections 3 and 3.4, but the Ministry is not satisfied that the information provided with the Appellant's application establishes that the Scooter is the least expensive appropriate medical equipment or device or that the Scooter is medically essential to achieve or maintain basic mobility, as required pursuant to Sections 3 and 3.4 of the EAPWDR.

In addition, the Ministry's position is that the Appellant does not require a remedy under Section 69 of the EAPWDR because she is eligible to receive medical equipment and devices under Section 3 of Schedule C of the EAPWDR provided she met the requirements specified in that Section, which she did not in this case.

Panel Decision

Section 62 of the EAPWDR states that the Ministry may provide any of the medical equipment and devices set out in Section 3 of Schedule C of the EAPWDR to or for a family unit in receipt of disability assistance. As the Appellant is the sole member of a family unit in receipt of disability assistance, the panel finds that Section 3 of the EAPWDR applies to the Appellant.

Section 3(1) of Schedule C of the EAPWDR states that a Scooter may be provided by the Ministry if it is provided to a family unit that is eligible under Section 62 of the EAPWDR, if the family unit has received the Ministry's pre-authorization of the minister for the Scooter, if there are no resources available to the family unit to obtain one, and if it is the least expensive appropriate medical equipment or device. The additional criteria are set out in Section 3(2) of Schedule C of the EAPWDR are that the family unit must provide the Ministry with a prescription for the scooter and an assessment by an OT or physical therapist confirming the medical need for it.

The Ministry argues that the a walker or manual wheelchair might be less expensive and appropriate devices but have not been trialed, and that therefore it has not been confirmed that a Scooter is the least expensive available option. The panel notes that the MERJS does not mention that a walker or a wheelchair were trialed or even that the appellant had them, and the OT also states in the MERJS that the appellant gets around sufficiently with a single point cane. The panel further notes that a single point cane, a walker and a wheelchair are all likely to be less expensive than a scooter. Therefore the panel finds that the Ministry was reasonable in determining that a walker or a manual wheelchair might be considered less expensive and appropriate devices in the circumstances of the Appellant and that neither had been tested. The panel also finds that the Ministry's argument that it has not been confirmed that a Scooter is the least expensive available option is reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the Appellant.

Section 3.4(3)(c) of Schedule C of the EAPWDR states that the Ministry must be satisfied that the item requested is *medically essential* to achieve or maintain basic mobility. In its reconsideration decision, the Ministry found that the evidence does not demonstrate that the Scooter is medically essential. The panel notes that while the OT reports that the Appellant takes frequent breaks when walking in the community because of shortness of breath, there is no information provided in the MERJS that would indicate that the extra time taken represents a significant barrier to the Appellant's ability to complete her activities in the community. Furthermore, the MERJS reports that the Appellant can ambulate independently over short distances and use her cane for local errands. The MERJS also indicates that, while a Scooter "would greatly affect her community participation and

engagement”, it does not establish that a Scooter is *medically essential* to achieve or maintain basic mobility. Therefore the panel finds that the Ministry reasonably determined that the requirements set out in Section 3.4(3)(c) of Schedule C of the EAPWDR have not been met.

Section 69 of the EAPWDR states that the Ministry may provide to a family unit any health supplement set out in Section 3 of Schedule C of the EAPWDR if it is provided to or for a person in the family unit who is otherwise not eligible for it under the EMPWDR, and if the Ministry is satisfied that 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, if the health supplement is necessary to meet that need, if a person in the family unit is eligible to receive premium assistance under the *Medicare Protection Act*, and if the requirements specified in the applicable sections of Schedule C are met. As indicated above, the Ministry states in its reconsideration decision that the Appellant does not require a remedy under Section 69 because she is eligible to receive medical equipment and devices under Section 3 of the EAPWDR. The panel notes that none of the evidence in the medical practitioner's description of the Appellant's medical condition in the Medical Equipment Request and Justification form or in the MERJS establishes that the Appellant faces a *direct and imminent* life-threatening health need for the Scooter. The panel also notes that even the Appellant's testimony did not establish that she faced a direct and imminent life threatening need. Therefore the Ministry determined that the Appellant's request did not meet the legislated criteria set out in Section 69 and that the Appellant is not eligible for a Scooter under Section 69 of the EAPWDR. The panel finds that the Ministry reasonably determined that the requirements set out in Section 69 of the EAPWDR have not been met.

Conclusion

The panel acknowledges that a Scooter has been recommended by the Appellant's OT and family physician and would be beneficial for her decreased mobility. 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 was a reasonable application of the legislation in the circumstances of the Appellant. The panel therefore confirms the Ministry's decision and the Appellant is not successful in her appeal.