

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) Reconsideration Decision dated January 30, 2017 which denied the appellant's request for funding for a scooter on the basis that the request does not meet the legislative criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 62 and Schedule C, Sections 3 and 3.4, specifically that:

- the scooter is not the least expensive available item as required by EAPWDR Section 3(1)(b)(iii) because the quote is from a non-contracted supplier who does not provide a discount and warranty; and
- the occupational therapy (OT) assessment does not adequately assess that:
  - it is unlikely that the appellant will require a wheelchair during the 5 years following the assessment, as required by EAPWDR Section 3.4(3)(a);
  - the item is medically essential to achieve or maintain basic mobility, as required by EAPWDR Section 3.4(3)(c).

## PART D – Relevant Legislation

EAPWDR Section 62 and Schedule C, Sections 3(1)(b)(iii), 3.4 (3)(a) and 3.4 (3)(c).

## PART E – Summary of Facts

The appellant is a recipient of disability assistance (DA).

The information before the ministry at reconsideration included the following:

- appellant's medical equipment request and justification form dated September 14, 2016;
- handwritten note dated August 29, 2016 from the appellant's family physician (GP) noting: *"requires Scooter. Re chronic pain syndrome, spinal stenosis"*;
- OT assessment dated October 5, 2016 completed by the appellant's occupational therapist (OT), noting the following:
  - Functional:
    - *appellant has medical history of left shoulder nerve damage, degenerative disc disease and cervical fusion surgery;*
    - *he reports chronic pain and poor mobility;*
    - *he reports that he suffered a coccyx fracture from a fall a year ago which has resulted in shooting pain down his spine, requiring pain medication and care from a pain specialist;*
    - *he can mobilize short distances using a cane, and can walk in his home for not more than a few minutes due to pain;*
    - *at the assessment he mobilized steadily with a stiff gait, leaning heavily on his cane;*
    - *he was observed to stand and walk for up to one minute with increased evidence of pain;*
  - Power Mobility:
    - *appellant reports that his power wheelchair is no longer meeting his mobility needs because he is able to walk indoors and needs power mobility to move around outdoors;*
    - *he sold the wheelchair and bought a 3-wheeled scooter now 10 years old, which no longer holds a charge;*
    - *he prefers a 4-wheeled scooter because he is concerned about stability with a 3-wheeled scooter;*
    - *the OT has no concerns about the appellant's ability to operate a scooter.*
  - Recommendations:
    - *appellant requests a higher powered scooter than that which typically funded by the ministry in order to negotiate hilly terrain between his home and the centre of town.*
- 2-page brochure provided by scooter vendor illustrating 8 models of scooters;
- November 9, 2016 letter from the ministry to the appellant requesting appellant to scooter price quote from a ministry-contracted supplier and enclosing a list of suppliers;
- November 18, 2016 quote of \$3,600 from appellant's preferred supplier (Quote 1) for a T26 4-wheeled scooter including 2 year warranty and 100 amp batteries;
- November 28, 2016 letter from an Independent Living BC social worker (SW) requesting a formal letter of denial from the ministry, reiterating the appellant's need for a higher powered scooter and confirming that none of the ministry-approved suppliers offer a scooter that will meet his need;
- November 30, 2016 letter from the ministry denying the appellant's application because the scooter quote submitted exceeds the maximum \$3,500 and comes from a non-contracted supplier who does not provide a ministry-negotiated discount or all-inclusive warranty;
- January 3, 2017 quote of \$3,500 (\$4,000 minus \$500 deduction for trading in current scooter = \$3,500) from the same supplier (Quote 2) for a T26 4-wheeled scooter including 2 year parts and labour warranty and 100 amp batteries;

- appellant's request for reconsideration submitted January 26, 2017 in which the appellant writes:
  - he lives in an area with steep hills so requires a higher powered 4-wheeled scooter;
  - none of the ministry-contracted suppliers has a scooter to meet his needs;
  - his 3-wheeled scooter is old and requires full size truck batteries.

### **Information submitted after Reconsideration**

#### Notice of Appeal

In his February 20, 2017 notice of appeal the appellant stated that the price quoted for his scooter is equivalent to what the ministry will pay. He adds that the ministry is relying on a nearby bus route but that he does not have the funding to take the bus and is unable to walk to the bus stop.

#### Oral Evidence at Hearing - Appellant

At the hearing the appellant stated that he believes that he believes that 3-wheeled scooters are no longer sold, because they are unsafe. He now does not think that the T26 scooter described in Quote 1 has sufficient power for his needs. He added that taking the bus is not an option for him because he is unable to ambulate once he gets into town because he cannot hold his body erect using a walker and cannot walk for more than a minute using a cane without excruciating pain. He can no longer afford to repair his existing scooter. It requires a new axle at a cost of \$2,500. He also noted that he lives in subsidized housing and he is reluctant to move because it is very difficult to find affordable housing nearer the centre of the city.

The appellant added that he sold his powered wheelchair and has spent the past 2 years pushing himself to be partially ambulatory using a cane indoors and relying on his current scooter for transporting himself out of doors.

#### Oral Evidence at Hearing – Ministry

The ministry representative stated that she had researched the policy of limiting the purchase of a scooter to a ministry-contracted supplier and discovered that in certain circumstances the ministry will allow purchases of medical equipment and devices from a supplier who does not have ministry contract.

The panel considered the information contained in the appellant's notice of appeal and the oral evidence tendered by the appellant at the hearing and determined that all of it was admissible under EAA Section 22(4) as evidence in support of the information before the ministry at reconsideration because it added additional detail to the information relied upon by the ministry at reconsideration and did not contain new information. The panel also admitted the ministry's oral evidence because it was in support of the issue of non-contracted suppliers raised in the reconsideration decision.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision which denied the appellant's request for funding for a scooter on the basis that the request does not meet the legislative criteria set out in EAPWDR Sections 62 and Schedule C, Sections 3 and 3.4, specifically that:

- the scooter is not the least expensive available item as required by EAPWDR Section 3(1)(b)(iii) because the quote is from a non-contracted supplier who does not provide a discount and warranty; and
- the occupational therapy (OT) assessment does not adequately assess that:
  - it is unlikely that the appellant will require a wheelchair during the 5 years following the assessment, as required by EAPWDR Section 3.4(3)(a);
  - the item is medically essential to achieve or maintain basic mobility, as required by EAPWDR Section 3.4(3)(c).

Relevant legislation:

### **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) 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

- (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.

### **3.4 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.

The appellant argues that only a 4-wheeled scooter with two 100 amp batteries is powerful and stable enough to enable descent down a steep hill from his home to the centre of the city for shopping and attending appointments and ascent back to his home without running out of battery power. He has attempted unsuccessfully to obtain a similar scooter from a ministry-contracted service provider. He is unable to walk to/from the bus stop using either a cane or a walker because his back will not support him and he suffers excruciating pain, and once he arrives at his destination he requires a scooter for mobility. For the same reason Handi Dart is not an option for him. His current scooter is 10 years old and requires a new motor, at an estimated cost of \$2,000 and new batteries, **also estimated at \$2,000**. He does not wish to return to a powered wheelchair because he has spent the last 2 years strengthening himself sufficiently to use a cane for brief periods and his scooter for his remaining mobility needs. He believes that the ministry should provide him with \$3,500 to purchase a new scooter, and will top up that amount from his own funds if necessary.

The ministry's position is set out in the reconsideration decision and in its written submission, summarized as follows:

- pursuant to EAPWDR Section 62 the ministry may provide a health supplement for medical equipment and devices under Section 3 of Schedule C because the appellant is a recipient of DA;
- in order to receive a health supplement for a scooter the appellant must meet all of the legislated eligibility criteria contained in Schedule C, Sections 3 (1) – 3 (6) and all of the legislated eligibility criteria for a scooter contained in Section 3.4;
- the appellant has not met the criterion in Section 3 (1)(b)(iii) because the item he requested is not the least expensive appropriate medical equipment or device;
- the appellant has not met the criterion in Section 3.4 (3)(a) because the OT assessment did not confirm that it is unlikely that the person from whom the scooter has been prescribed will have a medical need for a wheelchair during the 5 years following the assessment;
- the appellant has not satisfied the ministry that he has met the criterion in Section 3.4 (3)(c), namely that the item is medically essential to achieve or maintain basic mobility, because the information submitted does not indicate that the appellant has trialed a 4-wheeled walker to get to and from the bus stop.

### **Panel Decision**

#### **Eligibility for a Health Supplement:**

The panel finds that the ministry reasonably determined pursuant to EAPWDR Section 62 (b) that because the appellant is a recipient of DA he is eligible for a health supplement for medical equipment and devices under Schedule C, Section 3 so long as all applicable legislated criteria are met.

#### **Eligibility under Schedule C:**

EAPWDR Schedule C, Sections 3 and 3.4 list several criteria for eligibility for a health supplement for medical equipment and devices generally and for a scooter particularly. This decision will focus on the three criteria that the ministry determined had not been met, namely:

1. 3 (1)(b)(iii) – that it is the least expensive appropriate medical equipment or device;
2. 3.4 (3)(a) – the OT assessment confirms unlikely need for a wheelchair within 5 years;
3. 3.4 (3)(c) – that the item is medically essential to achieve or maintain basic mobility.

#### **1. Section 3 (1)(b)(iii) - Least Expensive Appropriate Equipment:**

The ministry is not satisfied that the appellant has met this criterion for the following reasons:

- the \$500 trade-in value of the current scooter was not applied to Quote 1, which would have led to a final price of \$3,100 ( $\$3,600 - \$500 = \$3,100$ ) for the T26 model, which is less than the net price for the T31-B model in Quote 2;
- the appellant has not satisfied the ministry that he is unable to walk to and from the bus stop using a 4-wheeled walker in place of a cane;
- the OT does not address the appellant's functional need for a higher-than-average powered scooter in the OT assessment, relying instead on the appellant's assertions;
- the OT also does not address the functionality or appropriateness of the appellant's current scooter.

The appellant did not provide convincing evidence to explain why he had not been given a trade-in value of \$500 on the less expensive T26 model, stating only that he is now of the opinion that the T26 is not powerful enough to meet his needs. He did not provide any expert evidence from a scooter supplier to support his position or to support the appellant's assertion that his current scooter is no longer appropriate for his needs. Also, the OT did not provide a functional assessment of the appellant's need for the higher-powered T31-B model or the appropriateness/functionality of the

appellant's current scooter. The panel therefore finds that the ministry reasonably determined that there was insufficient information to satisfy the ministry that the requested scooter was the least expensive appropriate medical equipment or device.

The ministry also determined that the appellant had failed to provide information relating to the use of a 4-wheeled walker to get to and from the bus stop. The appellant's GP clearly states in his August 29, 2016 note that the appellant "requires [a] Scooter". The OT also notes that the appellant could not stand and walk for more than 1 minute without exhibiting "increased evidence of pain". The appellant has provided evidence that he is unable to rest his weight on a walker because he can't hold his body up long enough to cover the 280 meters to the bus stop. The panel therefore finds that the ministry's determination that the appellant had failed to provide information relating to the use of a 4-wheeled walker to get to and from the bus stop was not reasonable.

2. Section 3.4 (3)(a) – OT assessment confirms unlikely need for a wheelchair within 5 years;

In the OT assessment dated October 5, 2016 the OT does not provide an assessment confirming that the appellant will have a medical need for a wheelchair during the 5 years following the assessment.

The panel finds that the ministry reasonably determined that the criterion set out in Section 3.4 (3)(a) that requires an assessment by an OT confirming that it is unlikely that the appellant will need a wheelchair in the ensuing 5 years was not met.

3. Section 3.4 (3)(c) – the item requested is medically essential to achieve or maintain basic mobility

The appellant's GP has stated that the appellant requires a scooter due to chronic pain and spinal stenosis. The OT assessed the appellant as moving steadily with a stiff gait, leaning heavily on a cane, and able to stand for up to 1 minute with increased evidence of pain. The appellant indicates that he is in constant pain and can lean on his cane for brief periods only. He also indicates that he is unable to get to the bus stop using either a cane or a 4-wheeled walker due because he cannot hold up his body for a sufficient length of time without his back or shoulder giving way.

However, the item requested by the appellant is a 2-person, 4-wheeled "golf cart" type vehicle with two 100 amp batteries. It is pictured in the evidence submitted by the appellant. The appellant has not offered evidence by a scooter supplier, OT or physician to corroborate the appellant's position that he requires a higher powered scooter than is typically funded by the ministry. The appellant also has not submitted evidence from the OT or a scooter supplier/repair person as to appropriateness, functionality or repairability of the appellant's current scooter.

The panel therefore finds that the ministry reasonably determined that the criterion set out in Section 3.4 (3)(c) was not met because there was insufficient information submitted by the appellant to establish that either of the scooter models requested by the appellant was medically essential to achieve or maintain basic mobility.

Conclusion

In conclusion the panel finds that the ministry's determination that the appellant is not eligible for a health supplement for a scooter because the criteria for a health supplement for medical equipment and devices set out in Schedule C, Sections 3 (1) (b)(iii) and 3.4 (3)(a) and (c) were not met was reasonably supported by the evidence, and confirms the decision of the ministry. The appellant is not successful in his appeal.