

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated April 24, 2017 which denied the appellant's request for a supplement to cover the cost of repairs to his power wheelchair because:

- the ministry considers that the medical equipment was damaged through misuse, as set out in Section 3(6) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR); and,
- the eligibility criteria were not met for a life threatening health need under Section 69 of the EAPWDR.

## PART D – Relevant Legislation

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

## PART E – Summary of Facts

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

- 1) Casenote Report dated February 22, 2012, in which the Occupational Therapist (OT) wrote:
  - The appellant was in a car vs. power wheelchair (PWC) accident in 2011 and he was found to be at fault as he was not crossing at a pedestrian crossing.
  - His chair leans to the right which affects positioning.
  - The chair repair costs were covered by ICBC.
  - According to a neuropsychology assessment completed in 2010, the appellant has significantly impaired visuospatial functions and his spatial relations skills were “quite poor.”
  - The OT was unable to advocate for power mobility when the appellant was demonstrating issues with hemianopia, neglect and cognitive issues;
- 2) Ministry file notes for the appellant in August and September 2016, which indicated that:
  - The ministry was contacted by the equipment supplier who stated that there was evidence by way of cigarette burns to show that the appellant has been misusing the joystick.
  - The equipment supplier stated that the state of the PWC is poor- the appellant puts out cigarettes on the joystick, the casters are completely worn and the chair has not been maintained.
  - On August 18, 2016, the ministry approved funding for various repairs to the appellant’s PWC totaling \$1,786.69, including parts and 3.5 hours of labour.
  - On September 22, 2016, the supplier indicated that the appellant is not using care when operating his device and is very hard on it. The ministry mailed the appellant a warning letter.
  - On December 13, 2016, the ministry approved funding for a “wheel solid tri-spoke” and labour totaling \$277.09.
- 3) Letter dated October 5, 2016 in which a medical practitioner wrote that having looked at the appellant’s wheelchair condition and the huge cost involved in repairing it, it is his “personal opinion that any new wheelchair would be a better option;”
- 4) Part 2 of the Medical Equipment Request and Justification (MERJ) form dated November 4, 2016 in which a medical practitioner described the appellant’s medical condition as “left hemiparesis from CVA [Cerebrovascular accident] in 2006. Hypertension/ seizure disorder.” The equipment recommended is a PWC.
- 5) Casenote Report dated November 28, 2016 in which the OT noted:
  - The representative from the equipment supplier continues to have ongoing concerns regarding the appellant’s use of his PWC. His impression of the repairs required for the wheelchair are about 10% normal wear and tear and about 90% from negligent/unsafe use of the PWC.
  - The representative reports that the appellant has been using his PWC on a broken piece near the foot rest, which also causes more damage. While approval has been given by the ministry for an additional approximate amount of \$3,000 of repairs, he feels that by the time these repairs are completed the PWC will require more repairs again.
- 6) Equipment supplier PWC Assessment Form dated December 30, 2016 with comments including “multiple burns/ ashes found” on the controller and “...overall condition very poor, chair is very dirty, covered with burns/ashes, requires extensive work for normal operation;”
- 7) Casenote Report dated January 11, 2017 in which the OT wrote that the appellant stated that he is not interested in other repairs to his PWC (i.e. specifically the power controls and the left arm rest) until his foot rest is repaired first. The appellant stated that if the equipment supplier cannot complete the repairs he is asking for, then he will take the PWC to a mechanic he knows;

- 8) Casenote Report dated January 17, 2017 in which the OT wrote:
- The representative advised that the appellant's PWC broke down on January 12, 2017.
  - The representative sent a technician to do a review or service call to determine the potential source of the chair breaking down. It appears that it could be related to the drive and controls, which is one of other repairs previously recommended to the appellant and for which the appellant declined service.
  - The appellant still requires a basic mobility device.
- 9) Quote from the equipment supplier dated January 26, 2017 for repairs to a "Permobil M300 power wheelchair" including an "R-Net Led Joystick module" for a cost of \$924.08 as well as a friction brake kit, leg rest piece, caster, foam cane cover, armrest hinge, seat support assembly, battery, arm pad, tire and tube, bearing ball, and 5 hours of labour, for the total amount of \$3,161.65, and the notation that the "warranty expired on April 2016";
- 10) Casenote Report dated January 31, 2017, in which the social worker (SW) wrote:
- In meeting with the appellant, observations were that there are burn marks on his clothing, visible burn marks on the control system of the PWC, and the appellant reports that he has put out cigarettes on the control device which he does not see as any harm as he had done this in the past with electrical systems.
  - The appellant believes he is capable of using a PWC safely and is annoyed that the team is recommending a manual wheelchair.
- 11) Casenote Report dated February 16, 2017 in which the OT wrote:
- The appellant initially reported that he had done nothing to contribute to the damage of his PWC that is beyond normal wear and tear. He then reported/acknowledged that he has put out cigarettes on the control panel and he does not understand why this would cause damage, based on his experience in electronics and mechanics.
  - The appellant showed a new strategy of placing 2 looped towels that attach to a ring on the switch and to use a spray cleaning solution if the control switch gets dirty.
  - The appellant stated that he was never given a care and ownership agreement form from the equipment supplier when he received the PWC,
- 12) Letter to the appellant dated February 21, 2017 in which the ministry denied his request for repair of the PWC brakes, leg rests, casters, joystick, armrest, seat assembly, battery, tires, tubes and 4 hours labour.
- 13) Letter to the appellant dated April 24, 2017 in which the ministry wrote that a request for a PWC had been received and that additional information is required before the request can proceed, including a (MERJ) form completed in all the parts; and,
- 14) Request for Reconsideration dated March 23, 2017.

In his Request for Reconsideration, the appellant wrote:

- He needs a motorized wheelchair and his world has spiraled out of control since his PWC was shelved.
- He has been informed via letter from the ministry that he has been approved for a new wheelchair despite the unsubstantiated claim that he has been "misusing" his wheelchair. He operates and requires the device daily and has been using it in the manner for which it is intended. He has not driven the PWC in any fashion that would cause the device to cease to work or damage it in terms of its ability to operate normally.
- A manual wheelchair is not a satisfactory substitution for him in any way. He is a triple stroke survivor and exclusively confined to his wheelchair, and a motorized device is vital to his quality of life and recovery.
- His hand is almost locked shut like a claw and he does not have the ability to freely move around in a manual chair along with the strength in his upper and lower body to operate it.

### **Additional information**

In the Notice of Appeal stamped received on May 2, 2017 the appellant expressed disagreement with the ministry's reconsideration decision and wrote that the worker is talking "vendor's language" without talking to him. It is a one-sided decision.

At the hearing, the appellant provided the following additional documents:

- 1) Letter to the appellant dated September 22, 2016 in which the ministry wrote:
  - Regarding the quote to repair the appellant's PWC for \$3,656.85 submitted on August 31, 2016, the ministry will fund these repairs.
  - Concern has been raised that the appellant is not utilizing his PWC with the proper care and attention required of a power mobility device.
  - Based on the information provided to the ministry, it appears that the current repairs are due to damage beyond normal wear and tear and there is responsibility for the damage on the appellant's part.
  - Future eligibility for funding may be affected if repetitive damage resulting from misuse occurs.
  - The appellant is not eligible to apply for consideration of a new PWC until April 2019.
- 2) Letter to the appellant dated October 26, 2016 in which the ministry wrote:
  - The ministry has processed and paid for all requests for wheelchair repairs for the appellant's PWC to date, despite indicators that the repairs may have been based on misuse of the equipment and lack of proper maintenance.
  - The appellant has been advised, in the letter dated September 22, 2016, that the ministry does not cover repair costs associated with misuse of equipment.
  - The ministry urged the use of caution with the power equipment and proper maintenance.
  - Any further requests for repairs will be assessed individually on their own merit.

At the hearing, the appellant and his caregiver stated:

- The wheel has fallen off his PWC three times. Once, his foot went under the wheel and he has a wound from it.
- Without his PWC, he has no way to get to his doctor's appointments. It was hard for him to attend the hearing in the manual wheelchair and he needed help from people.
- The PWC is still sitting in his house. The equipment supplier gave him a big pipe to use as the joystick. He showed the piece of pipe to the panel and stated that this cost the ministry \$3,500 and is useless.
- The PWC is not safe to drive the way it is and he would rather have physician-assisted suicide than possibly be killed in the PWC.
- He has been happy when he had the PWC but, without it, he has not been able to visit his family and he has not been happy. He is not comfortable in his current manual wheelchair, which is rented from a charitable organization.
- The equipment supplier has said that the PWC cannot be made safe to use. For example, the wheel assembly consists of a post on top and the wheel is held by a little thread to the chair.
- The first PWC he received from the ministry lasted for 7 years and was still running fine until the battery would not work.
- His current PWC is only 2 years old and it started having problems almost from the first day. A plug came out when it got caught on the door of a bus and cut the power to the chair.
- Copper is the best substance to absorb heat and it cannot heat up, as is being claimed by the equipment supplier and the ministry. Rubber is not an electrical conductor and they are saying that it is burnt. Every power device works with positive and negative charges and makes a spark.

- Putting out a cigarette on the control panel is not a misuse of the PWC. Ashes fall on the controller and on the cushions because he does not deny that he smokes.
- He has 20 years of experience in the electrical trades and he knows that cigarettes are not causing damage to the control panel because it is made of copper.
- He believes there are manufacturer defects in the PWC and the equipment supplier has also said there are manufacturer problems. The wheels on the PWC have nothing to do with the control panel. The foot rest was dragging on the ground and it also broke.
- The problems with the PWC are mechanical and not electrical as the ministry claims.
- The equipment supplier has made some repairs but they have not been done properly. They tried to attach the wheel assembly with glue, which was not sufficient to hold it and the piece was made of aluminum.
- The PWC did not need repairs to the control panel.

The ministry relied on the reconsideration decision, as summarized at the hearing. The ministry stated:

- There is no information in the appellant's file regarding the repair history on the appellant's previous PWC, which he says lasted for 7 years.
- There is no receipt or other information to show that the repairs for \$3,656.85, which were approved by the ministry in the letter dated September 22, 2016, have been completed by the equipment supplier.
- There is no information regarding the claims for repairs made against the warranty.

#### ***Admissibility of New Information***

The ministry did not object to the admissibility of any of the additional letters provided by the appellant and did not raise an objection to the admissibility of the oral testimony on the appellant's behalf. The panel considered the information in the letters and the oral testimony, which related to the appellant's need for and use of a PWC, and the panel admits the information in the letters and the oral testimony on behalf of the appellant as being 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)*.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of repairs to his PWC because the ministry considers that the medical equipment was damaged through misuse, as set out in Section 3(6) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and the eligibility criteria were not met for a life threatening health need under Section 69 of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

Pursuant to Section 62 of the EAPWDR, the applicant must be a recipient of disability assistance or be a person in receipt of disability assistance (or a dependant) in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has not disputed that the requirement of Section 62 has been met in that the appellant is a recipient of disability assistance.

The ministry considered the appellant's request for the cost of repairs to his PWC under Section 3 of Schedule C of the EAPWDR, which provides:

### **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.

*Panel's decision*

*Section 3(6) of the EAPWDR- Equipment damaged through misuse*

In the reconsideration decision, the ministry considered that the appellant required repairs to his PWC due to damage through misuse of the PWC and, therefore, the ministry may not provide for the cost of repairs, pursuant to Section 3(6) of Schedule C of the EAPWDR. The ministry wrote that the appellant's PWC was damaged through misuse since the representative from the equipment supply company advised the ministry in August and September 2016 that the appellant has burned the joystick by putting cigarettes out on it, has not maintained the chair, is not using care when operating the PWC, and is "very hard on it." The ministry wrote that the information from the OT in November 2016 also shows that the equipment supplier reported that the repairs required for the appellant's PWC are about 90% from negligent/unsafe use of the PWC and 10% from normal wear and tear, including causing more damage by using the PWC on a broken piece near the foot rest, and putting out cigarettes on the control device. The ministry wrote that the information from the equipment supplier in December 2016 indicated that the overall condition of the PWC is "very poor," that it was very dirty and covered with burns and ashes and that it "requires extensive work for normal operation." The ministry wrote that the information from the equipment supplier and the OT is not indicative of repairs required to the PWC due to general "wear and tear" and the ministry sent the appellant a warning letter on September 22, 2016 with regard to the appellant's misuse of his PWC.

The appellant wrote in his Request for Reconsideration that he has not driven the PWC in any fashion that would cause the device to cease to work or damage it in terms of its ability to operate normally. However, the panel finds that "misuse" in the ordinary definition of the word also includes mistreating or abusing the equipment in a way that damage occurs before the normal wear to be expected over time. The ministry reasonably considered the report in August 2016 from the representative of the equipment supplier who was servicing the appellant's PWC that there were cigarette burns on the joystick, that the PWC was in poor condition and has not been maintained, and that the appellant has been very hard on the PWC. While the ministry warned the appellant in a letter dated September 22, 2016 that future funding may be affected if "repetitive damage resulting from misuse occurs," the ministry had also approved repairs to the appellant's PWC in the total amount of \$3,656.85. It is unclear if any of the approved repairs have been undertaken.

At the hearing, the ministry did not have information to verify that any of the repairs set out in the quote submitted by the appellant on August 31, 2016 and approved by the ministry in the letter dated September 22, 2017 have been completed to the appellant's PWC. In November 2016, the representative for the equipment supplier had expressed reluctance to proceed with the approved repairs as he advised the OT that by the time these repairs are completed, he believes the PWC will require more repairs. The appellant also stated to the OT on January 11, 2017 that he is not interested in repairs to the power controls and the left arm rest of his PWC until his foot rest is repaired first. When the appellant's PWC stopped functioning on January 12, 2017, the equipment supplier stated that the breakdown "...could be related to the actual wheelchair drive and controls... this is one of the other repairs previously recommended by the vendor to the client, which the client has declined services for." There was no information provided on the appeal to clarify whether some of the items to be repaired in the quote submitted by the appellant on August 31, 2016, for which the appellant may remain eligible, are also included in the quote dated January 26, 2017, which is the subject of this appeal.

At the hearing, the appellant stated that he has 20 years of experience in the electrical trades and he knows that putting out cigarettes on the control panel is not causing damage because the control panel is made of copper, which is the best substance to absorb heat and it cannot heat up, as is being claimed by the representative for the equipment supplier and the ministry. The panel finds that the ministry reasonably relied on the information provided by the representative of the equipment supplier that the appellant's actions in extinguishing cigarettes on the control panel was causing damage to the joystick and was indicative of "misuse" through mistreating or abusing the equipment. While this specific action was not detailed in the ministry's letter to the appellant dated September 22, 2016 to make it abundantly clear to the appellant, the appellant was provided notice that the ministry considered that he was generally "...not utilizing [his] power wheelchair with the proper care and attention required of a power mobility device" and the appellant reported to the OT that he had received a letter from the ministry in September calling future funding for repairs into question.

Following the ministry's warning letter of September 22, 2016, there was evidence that the appellant's care of his PWC did not improve. In a letter dated October 6, 2016, the appellant's physician wrote regarding the PWC that was provided to the appellant in 2014 that "...looking at his wheelchair condition and the huge cost involved in repairing it, it is [his] personal opinion that any new wheelchair would be a better option." The ministry considered the OT's report of November 28, 2016 that the representative from the equipment supplier "continues to have ongoing concerns" regarding the appellant's use of his PWC and that "his impression of the repairs required for the wheelchair are about 10 per cent normal wear and tear and about 90 percent from negligent/unsafe use of the power chair." The equipment supplier also provided a summary in the Assessment Form dated December 2016 that the overall condition of the PWC is "very poor, chair is very dirty; covered with burns/ashes; requires extensive work for normal operation." In the Report dated January 31, 2017, the appellant's SW observed that there were burn marks on the appellant's clothing, visible burn marks on the control system of the PWC, and the appellant stated that he has put out cigarettes on the control device and he has done this in the past with electrical systems with no harm.

In the Report dated February 16, 2017, the OT wrote that the appellant acknowledged that he has put out cigarettes on the control panel and he does not understand why this would cause damage based on his experience in electronics and mechanics. However, the appellant also showed the OT a new strategy of placing 2 looped towels that attach to a ring on the switch and to use a spray cleaning solution if the control switch gets dirty, which suggested that the appellant was beginning to respond to the ministry's concerns about his care of his PWC. The request for repairs considered by the ministry at reconsideration related to a quote from the equipment supplier dated January 26, 2017, prior to the change in the appellant's approach, and the panel finds that the ministry reasonably considered the previous evidence from the representative of the equipment supplier, the OT, and the SW of the poor condition of the appellant's PWC damaged through the appellant's "mistreating" the equipment. The panel finds that the ministry reasonably considered that the appellant's PWC was damaged through misuse by the appellant, according to Section 3(6) of Schedule C of the EAPWDR and he is, therefore, not eligible for an additional supplement from the ministry to cover the cost of repairs to his PWC detailed in the quote dated January 26, 2017.



*Section 69 of the EAPWDR- Life threatening health need*

The ministry acknowledged that the appellant is a recipient of disability assistance and is, therefore, eligible to receive health supplements pursuant to Section 62 of the EAPWDR. The panel finds that Section 69 of the EAPWDR is intended to provide a remedy for those persons in the family unit who are otherwise not eligible for the health supplement under the regulation. Although the appellant argued in his Request for Reconsideration that he is a triple stroke survivor exclusively confined to his wheelchair, and a motorized device is vital to his quality of life and recovery, there was no additional evidence provided of a 'direct' and 'imminent' life threatening need for repairs to the PWC. The panel finds that the ministry reasonably determined that the appellant's request for a supplement to cover the cost of repairs to his PWC did not meet all of the eligibility criteria for a life threatening health need under Section 69 of the EAPWDR.

*Conclusion*

In conclusion, the panel finds that the ministry's decision, which denied the appellant's request for a supplement to cover the cost of repairs to his PWC because the ministry considers that the medical equipment was damaged through misuse, as set out in Section 3(6) of Schedule C of the EAPWDR and the eligibility criteria were not met for a life threatening health need under Section 69 of the EAPWDR, was a reasonable application of the applicable enactment in the appellant's circumstances. Therefore, the panel confirms the ministry's reconsideration decision. The appellant's appeal, therefore, is not successful.