

## 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 March 24, 2017 that denied the appellant’s request for a scooter because the ministry determined that the appellant did not meet the eligibility requirements to receive a replacement of medical equipment under sections 3(3)(b) and 3.4(4) of Schedule C of the Employment Assistance for Persons with Disabilities Regulation (*EAPWDR*). Specifically, the ministry had funded a scooter for the appellant in October 2015 and despite the fact that the appellant’s scooter has been stolen the ministry determined that the appellant is not eligible for a replacement scooter because the replacement period has not passed. The ministry determined that the appellant is not eligible for a replacement until October 16, 2020 (note that the Reconsideration Decision incorrectly stated October 16, 2010).

## PART D – Relevant Legislation

EAWPDR, section 62  
EAWPDR, Schedule C, sections 3 and 3.4

## PART E – Summary of Facts

With the consent of both parties the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act* (EAA).

The documentary evidence before the ministry at reconsideration included the following:

1. A *Medical Equipment Request and Justification* form signed and dated by the appellant's physician on December 21, 2016. The physician described the appellant's medical condition as Multiple Sclerosis (MS).
2. The appellant's *Request for Reconsideration* form signed and dated on March 7, 2017. Accompanying the form is an undated one-page statement submitted by the appellant that reports that the appellant discovered on December 6, 2016 that his scooter was stolen from the front of his basement accommodation during the night. The appellant notified the RCMP and was provided with a file number after providing the necessary information regarding the scooter. The appellant reported that the scooter has not been recovered and that it had been kept in a safe environment. The appellant stated that since his scooter was stolen and as a consequence of his disability (MS) he can not do anything and faces difficulty in moving and walking. He indicated that the income assistance he receives from the ministry is not sufficient to enable him to buy a new scooter. The appellant proposes that the ministry can offset the cost of a replacement scooter from the cost of the medication for his MS treatment. He states that cost of two months' treatment equals the cost of the scooter and he can stop the medication for two months. He attached a copy of a receipt from a pharmacy dated March 6, 2017 in the amount of \$3,972.28 but it does not identify the item(s) purchased.

The appellant's *Notice of Appeal* was signed and dated on March 30, 2017. In his reasons for appeal the appellant stated "*The ministry decision is dealing with upgrading scooter, but in my case the scooter was stolen and the RCMP has not found it yet. The nature of my MS causes difficult(y) in moving and walking.*"

The *Reconsideration Decision* was dated March 24, 2017. The Decision noted that the appellant is in receipt of disability assistance and therefore is eligible for the health benefits set out in sections 3 and 3.1-3.12 in Schedule C of the EAPWDR. Nonetheless, the ministry stated that the appellant did not meet the eligibility requirements set out in sections 3(3)(b) and 3.4(4) of Schedule C of the EAPWDR which provides for a replacement of medical equipment previously provided by the ministry that is damaged, worn out or not functioning. The ministry noted that the time period referred to in section 3(3)(b) with respect to replacement of a scooter is 5 years after the minister provided the item being replaced. The ministry observed that it funded a scooter for the appellant on October 16, 2015 and accordingly the 5 year replacement period has not passed. The ministry stated that according to section 3.4(4) the appellant is not eligible for a replacement scooter until October 16, 2010 (note: this should read October 16, 2020). The ministry noted that there is an exception in policy which allows the ministry to replace an item before the expiration of the legislated time period, when the item is required due to changes in a person's medical condition or growth. The ministry explained that there is no evidence confirming that the appellant's need for a replacement scooter has arisen due to changes in his medical condition or growth so this exception does not apply to the appellant. The ministry stated that no other exception is available for consideration.

The appellant's written submission consisted of submissions dated April 11, 2017 (4 pp.); April 15, 2017 (2 pp.); April 21, 2017 (10:45 a.m.) (2 pp.); April 21, 2017 (11.01 a.m.) (4 pp.) and April 26, 2017 (4 pp.). The April 11, 2017 submission stated the RCMP file number for the stolen scooter and included a one-page statement of contact information from a health provider, a photo of the missing scooter and a cover description of a medication (presumably the appellant's MS

medication). The April 15, 2017 submission included a one-page statement of contact information from a detachment of the RCMP. The earlier submission from April 21, 2017 included a letter dated April 18, 2017 from an RCMP detachment that confirms that the appellant contacted the RCMP on December 6, 2017 to report that his motor scooter had been stolen. The letter advised that no suspects, witnesses or surveillance are available and the file is concluded. The later submission of April 21, 2017 included the same letter from the RCMP dated April 18, 2017, a purchase authorization to purchase the appellant's (stolen) scooter dated October 5, 2015 and the one-page statement of contact information from a health provider (noted above). In the submission dated April 26, 2017, the appellant stated that he has two disabilities: MS and Polio in the right leg. Also included with this submission were a Client Recommendation from a health provider completed and signed by a therapist and dated February 17, 2015 that recommended that the appellant be provided with a scooter and a 4 wheeled walker (which the appellant refused). In addition, this submission included the previously noted letter of April 18, 2017 from the RCMP and the photo of the missing scooter.

The ministry's written submission was dated May 5, 2017 and confirmed that the ministry submission would be the *Reconsideration Decision*.

The panel noted that the appellant's statement that he has Polio in his right leg was not in support of the information before the ministry at the time of reconsideration and therefore did not admit this information as per section 22(4)(b) of the *Employment and Assistance Act*. The panel did admit the remainder of the appellant's submissions as they were found to be in support of the information before the ministry at the time of reconsideration.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision that denied the appellant's request for a scooter because the ministry determined that the appellant did not meet the eligibility requirements to receive a replacement of medical equipment under sections 3(3)(b) and 3.4(4) of Schedule C of 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 was not eligible to receive a replacement scooter because the replacement period has not passed.

The relevant legislation is as follows:

From the EAPWDR:

### **General health supplements**

**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.

### **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 — scooters**

**3.4** (1) In this section, "**scooter**" does not include a scooter with 2 wheels.

(2) Subject to subsection (5) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (3) of this section are met:

- (a) a scooter;
- (b) an upgraded component of a scooter;
- (c) an accessory attached to a scooter.

(3) The following are the requirements in relation to an item referred to in subsection (2) of this section:

- (a) an assessment by an occupational therapist or a physical therapist has confirmed that it is unlikely that the person for whom the scooter has been prescribed will have a medical need for a wheelchair during the 5 years following the assessment;
- (b) the total cost of the scooter and any accessories attached to the scooter does not exceed \$3 500 or, if subsection (3.1) applies, \$4 500;
- (c) the minister is satisfied that the item is medically essential to achieve or maintain basic mobility.

(3.1) The maximum amount of \$4 500 under subsection (3) (b) applies if an assessment by an occupational therapist or a physical therapist has confirmed that the person for whom the scooter has been prescribed has a body weight that exceeds the weight capacity of a conventional scooter but can be accommodated by a bariatric scooter.

(4) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years after the minister provided the item being replaced.

(5) A scooter intended primarily for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

### **Appellant's Position**

The appellant argued that his scooter was stolen and without it he can not do anything. He stated that his scooter was kept in a safe environment and he has reported the theft to the RCMP but they have not been able to recover the scooter and have closed the file. His medical condition (MS) causes difficulty in moving and walking. Accordingly, he needs a replacement scooter.

### **Ministry's Position**

The ministry argued that the appellant is not eligible for a replacement scooter because sections 3(3)(b) and 3.4(4) of Schedule C of the *EAPWDR* specify that the replacement period for a scooter is five years. Since the ministry provided the appellant with a scooter in October 2015 the appellant will not be eligible for a replacement scooter until October 2020. The ministry noted that there was an exception in policy which allows the ministry to provide a replacement item before the time period for replacement has occurred but this is only in the circumstance where the item is required due to changes in a person's medical condition or growth. The ministry notes that there is no evidence of such a change in the case of the appellant and the ministry stated that no other exception is available for consideration.

### **Panel Decision**

The panel recognizes that the appellant is severely restricted due to the loss of his scooter. Nonetheless, the panel notes that sections 3(3)(b) and 3.4(4) of Schedule C of the *EAWPDR* do not authorize the ministry to exercise discretionary authority to replace medical equipment if the replacement period of five years has not passed. The only exception in ministry policy applies where the item is required due to changes in a person's medical condition or growth and this exception does not apply to the appellant. Accordingly, the panel finds that the ministry reasonably determined that the appellant had not satisfied the eligibility criteria for a replacement scooter contained in sections 3(3)(b) and 3.4(4) of Schedule C of the *EAWPDR*.

### **CONCLUSION**

The panel finds that the Ministry's decision dated March 24, 2017 that found that the appellant was not eligible for a replacement scooter, was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the Ministry decision; the appellant is not successful in his appeal.