

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) Reconsideration Decision dated May 23, 2017 which denied the appellant's request for funding for a manual wheelchair with a lightweight carbon fibre frame, on the basis that the request does not meet the legislative criteria as per Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule 3, Sections:

- 3(1)(b)(iii), because the medical equipment or device requested is not the least expensive appropriate medical equipment or device; and
- 3.2 (b), because an assessment by the physiotherapist has not confirmed the appellant's medical need for the requested medical equipment or device.

At reconsideration the ministry narrowed the issue under to consideration of a lightweight carbon fibre frame only, as opposed to a lightweight carbon fibre wheelchair with lightweight component parts. This determination was also appealed by the appellant.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The appellant is a recipient of disability assistance.

The information before the ministry at reconsideration included the following:

- appellant's request for a rigid ultra-lite wheelchair dated February 14, 2017;
- letter/assessment dated March 2, 2017 signed by the appellant's family physician (GP) and occupational therapist (OT). Relevant facts are summarized as follows:
 - patient suffers triplegia secondary to brain stem damage from meningitis, affecting both lower extremities and his left upper extremity and hand. He also has a history of a fractured left collarbone and separated left shoulder;
 - he requires a wheelchair for all functional mobility;
 - he can complete all necessary transfers and manages his daily living activities (DLA) independently;
 - he participates in sports and is a college student;
 - his current wheelchair is no longer cost-effective to repair;
 - his decreased left upper extremity and hand function, in combination with his previous injuries results in increased fatigue and pain when propelling his wheelchair, in particular when transferring the wheelchair into his vehicle, because of its weight. As a result, his increased shoulder pain is now impacting his ability to complete his DLA;
 - his needs would best be met with an ultra-lightweight wheelchair, to maximize DLA and minimize further injury to his shoulder;
 - the carbon frame wheelchair is required for improved balance and roll-ability and to assist with prevention of repetitive strain injuries. The carbon fibre frame is required to provide optimal performance and durability to accommodate the appellant's highly active lifestyle, including minimizing chair weight for easier propulsion, permitting independent transfers into a vehicle for transport;
 - 85 degree frame angle facilitates appellant's lower extremity positioning, and allows him to get close for transfers and functional activities;
 - calf strap is required;
 - Newton roll casters are required for optimal maneuverability, durability and maneuverability in everyday environments;
 - Spinergy LX 26 inch wheels and Schwalbe Marathon tires are required for optimal propulsion for optimal propulsion, durability and to keep weight as light as possible;
 - carbon fibre clothing guards are required to prevent clothing from becoming entangled in the wheels. The carbon fibre material is necessary to make the wheelchair as light as possible to facilitate propulsion and independent transfers into the vehicle;
 - ride forward cushion permits a stable base of support for functional tasks while minimizing the risk of pressure ulcers.
- price quote dated December 1, 2016 for a carbon frame wheelchair with accessories (Quote 1);
- price quote dated March 30, 2017 for a similar wheelchair without carbon frame but with accessories (Quote 2);
- insurance statement dated March 30, 2017 from the extended insurance benefits plan of appellant's parents confirming that the plan will not cover the cost of a replacement wheelchair;
- ministry purchase authorization dated April 11, 2017 for a non-carbon frame wheelchair plus wheelchair seating at a total cost of \$5,425.20;
- appellant's request for reconsideration submitted May 10, 2017 in which the patient notes:
 - in 2011 he suffered a near-fatal case of bacterial meningitis and required extensive rehabilitation to resume everyday living;

- he sustained shoulder injuries while playing high level hockey prior to his illness. These injuries are exacerbated by having to use a wheelchair for mobility and for all other aspects of his life, and he requires weekly massage and has been referred to a physiotherapist by his GP;
- his biggest issue is disassembling his wheelchair and placing it in his car.
- prescription from the GP dated April 27, 2017 stating “light weight carbon fibre wheelchair is necessary (medically necessary) because of injury to shoulders”;
- note from the GP dated April 27, 2017 referring the appellant to a physiotherapist with comment: “shoulder injury”.

Evidence Received after Reconsideration

Documentary:

In his Notice of Appeal dated May 31, 2017 the appellant stated that he requires a lighter wheelchair with lighter attachments and seatback and tires because he finds it so difficult (bordering on impossible) to transfer his chair across his chest and into his car.

Prior to the hearing the appellant submitted the following 2 documents:

1. June 16, 2017 note from the wheelchair supplier

The note indicated that the weight of a carbon fibre wheelchair with carbon backrest and upgraded accessories is approximately 20.7 lbs, and the weight of an aluminum wheelchair with aluminum backrest and standard accessories is approximately 30.5 lbs.

2. June 19, 2017 letter from the GP:

The appellant’s GP noted:

- a. the appellant’s diagnoses (ethoid encephalocele, meningeal encephalitis, tripareisis and neurogenic bladder);
- b. that a carbon fibre chair with all the necessary lower weight attachments (including lightweight tires, backrest, etc) is medically necessary because it is nearly impossible for the appellant to transfer his aluminum chair out of his car;
- c. that by receiving a [lightweight carbon] wheelchair the appellant would be able to lead a more independent life;
- d. he has urged the appellant to pursue as many community activities and educational programs as possible in order to become self-sufficient.

Oral:

3. Evidence of Appellant’s Mother (M)

M explained that 3-4 times per day the appellant must disassemble his wheelchair, lie back and put the tires in the back of his vehicle, then lift the remaining parts of the chair back over his chest. She added that a carbon fibre clamp, backrest, etc are all part of the wheelchair, adding: “It is the whole carbon light package that makes the chair lighter”.

4. Evidence of Appellant’s Father (F)

F stated that the aluminum replacement wheelchair approved by the ministry would be heavier than the existing wheelchair because the ministry did not approve the lighter Newton tires that are affixed to the appellant’s current wheelchair.

5. Evidence of Appellant

The appellant narrated the details of his disability: while playing junior hockey he suffered 2-3 shoulder separations and a fractured collarbone. Six years ago, at the age of 17, he contracted meningitis, rendering him triplegic, affecting his lower extremities and his upper left arm and hand.

The appellant stated that for him “basic mobility” means being healthy and active in the community, adding that it is an important part of his life. He has worked hard to achieve mobility through the use of a manual wheelchair. His daily activities include shopping, attending college, participating in volunteer activities and maintaining his physical health through adapted sports and recreational activities. For sports and recreation he uses an “all-sports chair” which is stored at the recreation centre. He uses a vehicle to carry out his daily living activities, which involves disassembling his wheelchair, lying back and putting the tires in the back of his vehicle, then lifting the remaining parts of the chair back over his chest and into the vehicle, a task he performs 3-4 times daily. He now finds that it is almost impossible to his current aluminum wheelchair into his vehicle due to its weight. He also explained that he did not try out the aluminum wheelchair model approved by the ministry because the supplier did not have one, and because the wheelchair already approved by the ministry is essentially the same as the chair he is currently using.

Admissibility of Additional Documentary and Oral Evidence

The ministry representative objected to the admission of the two documents: #1, because it contained new information regarding the weight differential between an aluminum wheelchair and a carbon fibre wheelchair, and #2, because the GP’s letter does not clarify whether the aluminum chair described in the letter is the chair currently used by the appellant or is the new aluminum chair already approved by the ministry.

The panel considered the new documentary evidence and admitted both #1 and #2 under EAA Section 22 (4) as evidence in support of the information before the ministry, for the following reasons:

- Document # 1 supports the statement made by the GP and OT, considered by the ministry at reconsideration, that “[the appellant] has a very difficult time transferring the wheelchair into his vehicle because of its weight, even when it is dismantled. As a result he is experiencing increased shoulder pain that is now impacting his daily function and ability to complete his ADLs and IADLs.” The heaviness of the current aluminum wheelchair and its impact on the appellant’s basic mobility was before the ministry at reconsideration. Document #1 supports the GP and OT’s assertions that the aluminum chair is heavier than the carbon frame chair by describing and comparing the weight of each chair.
- Document #2 speaks directly to the aluminum chair currently used by the appellant and elaborates on the difficulty experienced by the appellant in transferring the aluminum chair, describing it as “nearly impossible”. This information does not differ substantially from the statements of the GP and OT before the ministry at reconsideration, which include the phrase: “[the appellant] has a very difficult time transferring [the aluminum chair]”, and thus is not new information, and supports the evidence that was before the ministry at reconsideration.

The panel also admitted the oral evidence of M, F and the appellant under EAA Section 22 (4) for the following reasons:

- M’s evidence spoke directly to the ministry’s contention that only a carbon fibre frame was at issue upon reconsideration, and clarified the appellant’s original request, the GP/OT’s March 2, 2017 assessment, and the Request for Reconsideration, all of which described the need for a lightweight wheelchair with lightweight component parts, as opposed to simply a carbon fibre frame of a wheelchair.
- F’s evidence spoke directly to the ministry’s denial of lighter-weight Newton tires by explaining that the wheelchair without Newton tires approved by the ministry on April 11, 2017 would be heavier than the appellant’s current aluminum chair, because the current chair has lightweight tires. The issue of the weight of the tires and the exclusion

- of lighter-weight tires was discussed by the ministry in its reconsideration decision.
- the appellant's oral evidence supported his position that a carbon fibre wheelchair is necessary for his basic mobility, which was at issue in the reconsideration decision.

At the appeal the ministry relied on the reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision which denied the appellant's request for a manual wheelchair with a lightweight carbon fiber frame, on the basis that the request does not meet the legislative criteria as per Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule 3, Sections:

- 3(1) (b) (iii), because the medical equipment or device requested is not the least expensive appropriate medical equipment or device; and
- 3.2 (2), because an assessment by the physiotherapist has not confirmed the appellant's medical need for the requested medical equipment or device.

At reconsideration the ministry narrowed the issue under to consideration of a lightweight carbon fibre frame only, as opposed to a lightweight carbon fibre wheelchair with lightweight component parts. This determination was also appealed by the appellant.

Relevant Legislation:

Schedule C, Section 3 of the EAWPDR

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.

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.

The appellant argues that the carbon fibre wheelchair together with its lightweight component parts is medically essential for his basic functional mobility. He finds it nearly impossible to carry out his daily living activities with a heavier aluminum wheelchair and heavier component parts, due to the partial paralysis in his upper body and the recurring stress on his injured shoulder.

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

1. the appellant's request does not meet the eligibility requirement set out in EAPWDR Section 3 (1) (b)(iii) as the least expensive appropriate medical equipment and device, for the reasons noted in bullet #1 (above), and because a carbon fibre frame wheelchair is more expensive than a typical manual wheelchair;
2. the ministry is not satisfied that the carbon frame wheelchair is medically essential to achieve or maintain basic mobility, as required by EAPWDR Schedule C, subsection 3.2 (2) because the GP/OT assessment does not state that the appellant is unable to propel a typical manual wheelchair over long distances on college campuses, up ramps or on varying terrains, and does not indicate that the appellant is unable to transfer his current wheelchair into a vehicle;
3. because the appellant did not refer specifically to lightweight Newton wheels in his reconsideration request the reconsideration decision addresses only the appellant's eligibility for a lightweight carbon fibre frame.

Panel Decision

The legislative criteria for a wheelchair which must be met once a person has met the threshold eligibility requirements under EAPWDR Section 62 are set out in Schedule C, Sections 3 (1)-(4). The ministry has determined that two of these subsections were not met, namely:

1. pursuant to section 3 (1)(b)(iii), the carbon wheelchair is not the least expensive appropriate medical device for the appellant; and
2. pursuant to subsection 3.2 (2), the carbon fibre wheelchair is not medically essential to achieve or maintain basic mobility. (*emphasis added by underlining.*)

The panel will examine these determinations separately.

1. Least Expensive Appropriate Medical Device

The evidence confirms that the carbon fibre wheelchair is more expensive than a conventional aluminum manual wheelchair. If cost were the sole criterion in subsection 3(1) (b) (iii) the criterion would not be met by the appellant. However, the legislation states that the medical device must be the least expensive **appropriate** device. "Appropriate" is defined in the Canadian Oxford Dictionary as "suitable or proper".

The appellant's evidence is that due to his triplegia and shoulder injuries it is now nearly impossible to lift his conventional aluminum chair into his vehicle. The March 2, 2017 GP/OT assessment notes:

“decreased left upper extremity and hand function, in combination with his previous injuries results in increased fatigue and pain when propelling his wheelchair, in particular when transferring the wheelchair into his vehicle, because of its weight. As a result, his increased shoulder pain is now impacting his ability to complete his DLA; his needs would best be met with an ultra-lightweight wheelchair, to maximize DLA and minimize further injury to his shoulder.” In his follow-up letter of June 19, 2017 the GP added: “a carbon fibre chair with all the necessary lower weight attachments (including lightweight tires, backrest, etc) is medically necessary because it is nearly impossible for the appellant to transfer his aluminum chair out of his car.” Witness F stated that the aluminum replacement wheelchair approved by the ministry would be heavier than the appellant’s current wheelchair because the ministry did not approve the lighter Newton tires that are affixed to the appellant’s current wheelchair.

The totality of the evidence submitted by the appellant prior to reconsideration and during the hearing indicates that neither his current wheelchair nor the composite Apex rigid frame wheelchair without Newton wheels approved by the ministry on April 11, 2017 is the least expensive medical device appropriate for the appellant’s needs.

The panel therefore finds that the ministry was not reasonable in determining that the criterion set out in subsection 3(1) (b) (iii) of EAPWDR Schedule C was not met.

2. Medically Essential to Achieve or Maintain Basic Mobility

The appellant is a young man who contracted bacterial meningitis six years ago at the age of 17, rendering him triplegic, affecting his lower extremities and his upper left arm and hand. He has also suffered a separated left shoulder and fractured left collarbone. He has worked hard to achieve mobility through the use of a manual wheelchair. His daily activities include shopping, attending college, participating in volunteer activities and maintaining his physical health through adapted sports and recreational activities. He uses a vehicle to carry out his daily living activities, and must disassemble his wheelchair, lie back and put the tires in the back of his vehicle, then lift the remaining parts of the chair back over his chest. He now finds that it is almost impossible to his current aluminum wheelchair into his vehicle. He performs this action 3-4 times daily.

The ministry determined that the GP/OT assessment indicated a need for a lightweight manual wheelchair frame to assist with ease of propulsion for a highly active lifestyle and propulsion over long distances and up steep grades. It was not satisfied that the information provided by the OT and GP established that the appellant is unable to use a manual wheelchair of typical weight to mobilize on various terrains or to achieve or maintain basic mobility. The reconsideration decision also suggests that the appellant wishes to have a lightweight carbon fibre wheelchair because it would be better suited for recreational sports, and cites EAPWDR Schedule C, Section 3.2(4) as authority that a high-performance wheelchair for recreational or sports use is not a health supplement under Schedule C.

The appellant does not use his wheelchair for recreational or sports activities. An adapted wheelchair for these purposes is provided for him and stored at the local recreation centre.

The April 27, 2017 prescription note from the GP states that “a lightweight carbon fibre wheelchair is medically necessary because of injury to shoulders”. The March 2, 2017 assessment letter from the GP and OT notes that the client’s current wheelchair is “no longer meeting his basic mobility needs”. He has pain and increased fatigue when propelling throughout the day, and has a very difficult time transferring the wheelchair into his vehicle because of its weight, even when dismantled. The resulting increased shoulder pain is impacting his daily functioning and ability to complete his ADL’s

and IADL's. The GP adds further detail to the appellant's difficulties in his letter of June 19, 2017, wherein he states a carbon fibre chair with all the necessary lower weight attachments (including lightweight tires, backrest, etc) is medically necessary because it is nearly impossible for the appellant to transfer his current chair out of his car. The June 16, 2017 note from a wheelchair supplier confirms that an aluminum chair with standard accessories is 50% (10 pounds) heavier than a lightweight carbon fibre model.

To summarize, the evidence establishes that:

- the appellant uses his wheelchair to carry out his daily activities, including shopping, attending college, participating in volunteer activities and maintaining his physical health through adapted sports and recreational activities;
- he does not use his wheelchair for sports or recreation;
- the GP has prescribed a lightweight carbon fibre wheelchair because it is medically necessary because of injury to shoulders;
- the GP/OT assessment notes that the current wheelchair, which is slightly lighter than the chair approved by the ministry because it has lightweight Newton tires, is no longer meeting the appellant's basic mobility needs due to the pain and increased fatigue when propelling throughout the day to perform his ADLs and IADLs;
- the GP's June 19, 2017 letter repeats that a carbon fibre chair with all the necessary lower weight attachments is medically necessary because it is nearly impossible for the appellant to transfer his current chair out of his car;
- the typical weight manual wheelchair with standard accessories is approximately 50% heavier than a lightweight carbon fibre model.

The panel notes that the GP and OT use the term "medically necessary" rather than "medically essential" as worded in the legislation. "Necessary" is defined in the Canadian Oxford Dictionary as "requiring to be done, achieved, etc; requisite, essential." The word "necessary" therefore carries the same meaning as the word "essential". The ministry at reconsideration was not satisfied that the GP and OT had established that the appellant was unable to use a typical weight aluminum wheelchair because they did not include a specific statement to that effect in their assessment. However, there is no requirement in the legislation that a medical professional or OT must also state that the appellant is unable to propel or disassemble and load a conventional aluminum wheelchair. It is not reasonable to expect that the medical professionals must add that the appellant is unable to propel or disassemble and load a conventional aluminum wheelchair when the GP has already noted that the lightweight chair is medically necessary and the GP/OT assessment states that the appellant's is no longer meeting the appellant's basic mobility needs due to pain and increased fatigue while propelling his current chair.

The panel finds that there is sufficient evidence from the GP, OT and appellant to establish that the appellant requires a lightweight carbon fibre wheelchair to achieve and maintain basic mobility, and accordingly finds that the ministry was not reasonable in determining that the criterion set out in subsection 3.2 (2) of EAPWDR Schedule C was not met.

3. Determination by Ministry that Request for Reconsideration is for a Lightweight Carbon Frame Only

On April 11, 2017 the ministry approved a motion composite Apex rigid manual wheelchair without a lightweight carbon fibre frame and without lightweight Newton wheels. Based on this approval and the appellant's request for reconsideration, which did not specifically ask for lightweight Newton wheels, the reconsideration officer decided to narrow the issue under appeal to only the carbon frame, not the lightweight wheels or the lightweight component parts of the wheelchair.

The appellant's original request included lightweight components, including Newton wheels. The GP's prescription is for a "lightweight (carbon frame) wheelchair". It does not prescribe a carbon frame only. The March 2, 2017 GP/OT assessment describes in detail the need for lightweight components. The evidence of M, F and the appellant explains that lightweight components are part of a lightweight carbon fibre wheelchair, and F states that the chair approved by the ministry would be heavier than the appellant's current chair because the appellant's current chair has Newton wheels.

The reconsideration officer's determination that the reconsideration decision should be limited to a lightweight carbon frame only is therefore not reasonable based on the evidence submitted by the appellant, the GP, the OT and witnesses M and F.

Conclusion

The panel finds that the reconsideration decision denying the appellant's request for a lightweight carbon-fibre wheelchair because EAPWDR Schedule C subsections 3(1) (b)(iii) and 3.2 (2) were not met and denying consideration of a lightweight carbon fibre wheelchair with Newton wheels and other lightweight component parts was not reasonably supported by the evidence, and was not a reasonable application of the applicable enactments in the circumstances of the appellant, and rescinds the decision. The appellant is successful in his appeal.