

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) reconsideration decision of June 12, 2017 (the “Reconsideration Decision”), which denied the Appellant a medical supplement for a replacement motorized wheelchair or for replacement wheelchair seating on the basis that the Appellant did not meet the statutory requirements of section 3(3) of Schedule C to the *Employment and Assistance for Persons With Disabilities Regulation* (“EAPWDR”) because:

- the request for the replacement wheelchair was made within five years of the Ministry providing a motorized wheelchair to the Appellant on May 14, 2013, which did not meet the criteria set out in section 3.2(3) of Schedule C to the EAPWDR and the Appellant had not demonstrated a change to her medical condition or growth, as required by Ministry policy; and
- although the Appellant’s request for replacement seating for her motorized wheelchair was made more than two years after the motorized wheelchair had been provided, as required by section 3.3(2) of Schedule C of the EAPWDR, the Appellant had failed to demonstrate that the wheelchair seating was “damaged, worn out or not functioning” as required by section 3(3) of Schedule C to the EAPWDR.

PART D – Relevant Legislation

EAPWDR, section 62 and Schedule C, sections 3, 3.2, and 3.3

PART E – Summary of Facts

Information before the ministry at reconsideration

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

- A quotation for the cost of a replacement motorized wheelchair, dated April 10, 2017;
- Medical Equipment Justification Letter from the Appellant's occupational therapist (the "OT"), dated April 11, 2017 (the "Letter"), in which the OT advises that the costs of repairing the Appellant's wheelchair, which he describes as being "5+ years" old, is exceeding the cost of replacing the wheelchair. The Letter also describes the Appellant as "ambulating slowly and unsteadily" and being dependent on "a power wheelchair with right joystick for all outdoor mobility needs." In the Letter, the OT adds that the Appellant "continues to utilize her power wheelchair to access her community and participate in IADLS";
- Medical Equipment Request and Justification form, dated April 11, 2017 (the "Request"), and completed by the Appellant's doctor (the "Doctor") and the OT, in which the Appellant's doctor recommends a replacement "electric scooter" for the Appellant's current motorized wheelchair which he describes as being "now 5 yrs old.";
- The Appellant's Request for Reconsideration, dated May 29, 2017 ("RFR");
- A Request and Justification form, received by the Ministry on August 20, 2012;
- A Medical Equipment Request and Justification letter, dated August 9, 2012 (the "2012 Request"), from the Appellant's then treating occupational therapist.

Information provided on appeal

In the Appellant's Notice of Appeal, received by the tribunal on June 15, 2017, the Appellant states that:

- She is disabled in her left arm and left legs which she has been unable to use since a 2009 stroke;
- She requires a scooter for her daily life for shopping and moving around;
- Her old scooter is in need of repairs; and
- It was not a fair decision to deny her a replacement wheelchair

The Appellant made no other submissions in respect of the appeal.

On the appeal, the Ministry, relied on the Reconsideration Decision.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant funding for a replacement motorized wheelchair and replacement seating for her current motorized wheelchair was reasonably supported by the evidence or was a reasonable application of the relevant statutory provisions in the circumstances of the appellant. In particular, the issue on appeal is whether the Ministry reasonably determined that the Appellant was not entitled to a replacement motorized wheelchair and replacement seating for her current wheelchair because the request for a replacement wheelchair was being made within 5 years of the Ministry providing a motorized wheelchair to the Appellant and because the Appellant had not demonstrated to the Ministry that the seating for her current motorized wheelchair was "damaged, worn out or not functioning."

The relevant legislation is section 62 of the EAPWDR, which permits the Ministry to provide health supplements set out in Schedule C of 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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4.]

Section 3 of Schedule C to the EAPWDR sets out the general requirements for eligibility for supplements in respect of the medical equipment enumerated in sections 3.1 to 3.12 of 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) 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.

Finally, sections 3.2 and 3.3 of Schedule C to the EAPWDR set out the specific criteria that must be met in order to be eligible for a supplement in respect of wheelchairs and wheelchair seating systems, respectively:

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.

Medical equipment and devices – wheelchair seating systems

3.3 (1) 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 a person's positioning in a wheelchair:

- (a) a wheelchair seating system;
- (b) an accessory to a wheelchair seating system.

(2) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is 2 years from the date on which the minister provided the item being replaced.

Appellant's position

The Appellant's position, as expressed in her Notice of Appeal, in the Request, and in the Letter is that the power wheelchair is necessary for her shopping and mobility. In the Letter, the OT confirms that the costs of repairing the Appellant's motorized wheelchair is exceeding the cost of replacing the wheelchair. The OT also confirms that the Appellant is dependent on her wheelchair for outdoor mobility and to access the community.

The Doctor also confirms the Appellant's need for a replacement motorized electric wheelchair.

Neither the Appellant, the OT, nor the Doctor speak specifically to any issues or problems with respect to the seating for the Appellant's current motorized wheelchair, although the OT does recommend replacement of "her current power wheelchair and cushion" due to the costs of repairing the equipment.

Ministry Position

The Ministry position, as set out in the reconsideration decision is that the Appellant is ineligible for a replacement motorized wheelchair because 5 years have not elapsed since the Ministry's provision of funding to the Appellant for her current motorized wheelchair, as required by section 3.2(3) of Schedule C to the EAPWDR. The Ministry advises in the reconsideration decision that it provided funding for the Appellant's current motorized wheelchair on May 14, 2013. The Ministry also cites a policy which sets out that the time period referred to in 3.2(3) of Schedule C to the EAPWDR does not apply where "an item is required due to changes in a person's medical condition or growth" but notes that there was no evidence of any change in the Appellant's medical condition.

With respect to the reference to seating for the Appellant's motorized wheelchair, the Ministry's position is that the Appellant has failed to demonstrate that the current seating is "damaged, worn out, or not functioning" as required to be eligible for funding of any of the medical equipment and devices referenced in sections 3.1 through 3.12 of Schedule C to the EAPWDR.

Panel Decision

Replacement motorized wheelchair

Section 3.2(3) of Schedule C to the EAPWDR provides that "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 items described in subsection (2) are "(a) a wheelchair; (b) an upgraded component of a wheelchair, (c) an accessory attached to a wheelchair."

The Appellant's request for a replacement wheelchair, to be eligible for funding, would have to have been made more than five years since the Ministry last provided funding to the Appellant for a wheelchair. The Ministry sets out May 14, 2013 as the date it funded the Appellant's current wheelchair. Although the Doctor describes the Appellant's wheelchair as being "now 5 yrs old" and the OT describes the Appellant's wheelchair as "5+ years" old, the panel finds that the evidence before the Ministry at the time of reconsideration is consistent with the Ministry's stated position that it last funded a wheelchair for the Appellant on May 14, 2013. In addition to the fact that the Appellant did not challenge that evidence in her Notice of Appeal, despite the fact that the timing of the Ministry's last funding for a wheelchair for the Appellant was expressly cited in the Reconsideration

Decision, it is also noteworthy that the 2012 Request, which was also before the Ministry at reconsideration, was dated August 9, 2012, which would still make the Appellant's request less than five years from the earliest date that the Ministry *could* possibly have funded her current wheelchair. For the foregoing reasons, the panel accepts the Ministry statement that the Appellant's current wheelchair was funded on May 14, 2013.

In the result, the panel finds that Ministry decision to deny funding for a replacement wheelchair for the Appellant because the time period set out in section 3.2(3) of Schedule C to the EAPWDR had not elapsed was a reasonable application of legislation in the Appellant's circumstances.

Although the reasonableness of the application of the Ministry's stated policy that the time period referred to in section 3.2(3) of Schedule C to the EAPWDR does not apply where "an item is required due to changes in a person's medical condition or growth" is beyond the scope of review of the panel, it is nevertheless of note that neither the Doctor nor the OT referenced any change to the Appellant's medical condition in the time since the Ministry funded her current wheelchair.

Replacement wheelchair seating

Section 3(3) of Schedule C to the EAPWDR permits the Ministry to "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."

The request for seating, as set out in the Letter, appears to be for seating in conjunction with a replacement wheelchair for the Appellant. There does not appear to be any reference to replacement seating for the Appellant's current wheelchair and, more importantly, there is no reference in the Notice of Appeal, the Request, or the Letter to any issues with the seating system on the Appellant's current wheelchair.

In the result, the panel finds that the Ministry decision to deny the Appellant funding for replacement wheelchair seating due to a lack of evidence establishing that the current wheelchair seating system was "damaged, worn out or not functioning" was a reasonable application of section 3(3) of Schedule C to the EAPWDR in the Appellant's circumstances.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation and for the reasons provided above, the panel finds that the ministry's decision that the Appellant is not eligible for funding for a replacement motorized wheelchair and for replacement seating for her current motorized wheelchair is reasonably supported by the evidence and is a reasonable application of the relevant statutory provisions. In the result, the panel confirms the Ministry's decision. The Appellant is not successful on appeal.