

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 June 5, 2017 which denied the appellant’s request for a wheelchair canopy (“the canopy”) and foam filled tires (“the tires”) because the requirements set out in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) were not met. Specifically, the ministry was not satisfied that the information established that:

- The tires are the least expensive appropriate medical equipment or device, as required by section 3(1)(b)(iii);
- Either a prescription from a medical or nurse practitioner for the canopy and the tires or an assessment by an occupational or physical therapist confirming the medical need for the canopy and the tires has been provided, as required by section 3(2); and
- The canopy and the tires are medically essential to achieve or maintain basic mobility, as required by section 3.2(2).

PART D – Relevant Legislation

EAPWDR, sections 3 and 3.2 of Schedule C

PART E – Summary of Facts

On March 29, 2017, the ministry approved the appellant's request for a power wheelchair without the canopy and the tires. The appellant's request for the canopy and the tires was again denied at reconsideration and is the subject of this appeal.

In support of her original request, the appellant submitted the following documents:

- 1) Medical Equipment Request and Justification form ("the MERJ")
 - Section 2 is completed by a medical practitioner ("the MP") and is dated the 12th day of an unknown month, 2016. The MP diagnoses the appellant with medical conditions including poorly controlled Type 1 diabetes and osteoporosis, and describes a number of medical conditions of the appellant's feet and legs. Attached is "Exhibit A" in which the MP reports that the appellant has Charcot feet, leg length discrepancy, multiple surgeries on her left knee and both legs, and diabetic ulcers which contribute to mobility limitations that prevent her from performing activities of daily living and attending medical specialists. Patient is required to restrict walking to avoid any possible further complications such as legs amputation as a result of excessive walking, and can't walk further than 1-2 blocks. The MP recommends a "mobile power chair – improve mobility."
 - Section 3 is dated October 6, 2016 and was completed by an occupational therapist ("the OT") who specifies that a Shoprider P424M power wheelchair is required to meet the appellant's needs.
- 2) Occupational Therapy Assessment ("the first assessment") dated October 3, 2016. The OT confirms information provided by the MP and provides the following additional information. Dynamic standing balance is poor and is at risk for falls. Must wear a cast boot at all times for protection and offloading. A manual wheelchair is used indoors and the appellant can take a few steps with a cane or crutches to transfer. Replacement of the appellant's old power wheelchair is requested. She relies heavily on the power wheelchair for community access, including attending medical appointments and grocery shopping. Seat is sufficient for client's minimal seating needs. "A cane holder is required, and a canopy is requested for cover from inclement weather. Client is an active power wheelchair user and she goes out very frequently. She would be housebound if she did not have this wheelchair to use. She is not able to walk to and/or stand at bus stops/on public transit due to risks this potentially places on her already complicated medical foot history."
- 3) Price quote dated October 4, 2016 for the wheelchair, a cane holder, the canopy, and the tires.
- 4) Revised price quote dated March 17, 2017 for the wheelchair and a cane holder (without the canopy and the tires). An explanation for the revised quote is not provided.

Following approval for the wheelchair, but denial of the canopy and the tires, the appellant submitted:

- 5) a Request for Reconsideration dated May 24, 2017, in which the appellant writes:
 - She gets sick easily (pneumonia) after getting wet from the rain. It rains almost three quarters of the time where she lives, which is why she needs a canopy.
 - In the past, when using basic (air filled) tires, she's had a flat tire several times. One of those times, it happened when she was crossing a busy road and it was a really scary and difficult situation. It was very hard to remove her power wheelchair from the road and she can't call HandiDart because they don't provide the service immediately. She had to get a special needs taxi driver to push her power chair with her to inside a taxi. For safety, the medical supplier's specialist recommended solid (foam filled) tires which can't become flat.

Information provided on appeal

The appellant submitted a Notice of Appeal (NOA), received by the tribunal on June 13, 2017, which included argument but no additional evidence. Attachments to the NOA, which include additional evidence, are as follows:

- 6) A June 11, 2017 prescription from the MP for a “wheelchair canopy” and “solid tires.”
- 7) June 12, 2017 letter (“the letter”) from the MP, in which the MP reports that without a canopy the appellant remains exposed to bad weather and rain, which frequently results in pneumonia because her immune system is quite weak. The MP also provides information respecting foam filled tires.
- 8) A June 13, 2017 Occupational Therapy Assessment (“the second assessment”) from the OT who writes that the appellant goes out almost daily, regardless of weather, and requires a canopy for the wheelchair for cover from inclement weather. The OT also writes that solid tires are required to decrease the risk of punctured tires.
- 9) A June 21, 2017 submission from the appellant who reiterates information from her reconsideration submission, including describing the need for canopy coverage due to her frequent use of the power wheelchair, regardless of weather, her susceptibility to pneumonia, and her past experiences with flat tires.

The arguments of both parties are set out in Part F of this decision.

The ministry did not provide additional evidence but in its written appeal submission stated that if it had the additional information from the MP and the OT, it may have found that the appellant’s request met the criteria for a canopy and foam filled tires. The ministry did not address the admissibility of the new information in its submission.

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the minister when the decision being appealed was made and “oral and written testimony in support of the information and records” before the minister when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the minister at reconsideration. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA – to determine whether the ministry’s reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry’s decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

In this case, the panel determined that as there was no prescription for the canopy or the tires from the MP, or even any reference to those items by the MP at the time of reconsideration, the MP’s prescription is new information, the admission of which could place the panel in the position of finding the ministry unreasonable to determine it did not have the prescription. Accordingly, the panel determined that the MP’s prescription is not in support of the information at reconsideration and is therefore not admissible under section 22(4) of the EAA.

The panel also determined that the information relating to the tires in the letter from the MP and the second assessment by the OT is not admissible under section 22(4) of the EAA as it is not information in support of the information before the ministry at reconsideration. The panel recognizes that the initial quote prepared by the wheelchair supplier included the tires, and that the appellant's reconsideration submission addressed the need for the tires, however, the applicable legislation expressly requires information addressing the need for a wheelchair and any accessories or upgraded components from specified health care professionals. Given that there was no information respecting the tires from either the MP or the OT at reconsideration, or any other health care professional described in the applicable legislation, the panel concluded that the admission of this information would result in the panel making its own independent assessment and decision as to whether or not the new information from the MP and/or OT meets the legislative tests. Such a decision would exceed the panel's role of reviewing the reasonableness of the ministry's reconsideration decision.

The panel finds that the new information from the MP in the letter and from the OT in the second assessment that addresses the canopy is consistent with and substantiates the OT's request for the canopy in the first assessment and is therefore admissible in accordance with section 22(4) of the EAA as information in support of the information at reconsideration. The appellant's appeal submission reiterates information previously provided by the appellant in her Request for Reconsideration, with a more detailed description of the various medical specialists whose appointments she regularly attends, and is therefore admissible in accordance with section 22(4) of the EAA.

Despite the panel's finding respecting the inadmissibility of some of the information for this appeal, the appellant may wish to put all of the information provided on appeal before the ministry in the future.

PART F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry decision which held that the appellant is not eligible for funding for the canopy and the tires because the requirements set out in the Schedule C of the EAPWDR were not met is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. That is, was the ministry reasonable in determining that the information did not establish that:

- The tires are the least expensive appropriate medical equipment or device, as required by section 3(1)(b)(iii);
- Either a prescription from a medical or nurse practitioner for the canopy and the tires or an assessment by an occupational or physical therapist confirming the medical need for the canopy and the tires has been provided, as required by section 3(2); and
- The canopy and the tires are medically essential to achieve or maintain basic mobility, as required by section 3.2(2)?

Relevant Legislation

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.

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.**

Panel Decision

Eligibility for the tires – requirements of section 3(1)(b)(iii) of Schedule C

Section 3(1)(b)(iii) requires that the requested medical equipment or device, in this case the tires, be the "least expensive appropriate medical equipment or device." The appellant's position is that she requires the tires because solid tires are needed for her safety and have been recommended by the equipment specialist. The ministry's position is that neither the MP nor the OT describes a need for the tires in the MERJ or other documents and furthermore, the OT does not state that basic wheelchair tires are insufficient to meet the appellant's needs. The panel finds that while the tires are included in the initial price quote prepared by the wheelchair supplier, neither the MP nor the OT mentions them or provides any rationale as to why they might be required or "appropriate" to meet the appellant's needs. In the absence of information from the MP or OT explaining why the tires requested are needed or why the wheelchair's air filled tires are not suitable, the panel concludes that the ministry reasonably determined that it cannot be established that the tires (foam filled) are the least expensive appropriate medical equipment or device and that the requirement of section 3(1)(b)(iii) was not met.

Requirements of section 3(2) of Schedule C

Section 3(2) of Schedule C requires that for wheelchairs, and any upgraded components and accessories, the ministry must be provided with one or both of the following:

- (a) a prescription of a medical or nurse practitioner
- (b) an assessment by an occupational or physical therapist confirming the medical need for requested items.

It is within the ministry's discretion as to whether one or both is required. In this case, the reconsideration decision does not expressly state that both are required. The ministry determined that both the request for the canopy and the tires did not meet this requirement.

The Canopy

The appellant's position is that she requires the canopy to access the outdoors, that it rains three quarters of the time, and that she easily gets pneumonia.

The ministry's position is that the MP does not describe a need for the canopy in the MERJ or Exhibit A. In the absence of any reference to the canopy by the MP at reconsideration, the panel finds that the ministry reasonably determined that a prescription of a medical or nurse practitioner for the canopy has not been provided.

The ministry also takes the position that the OT does not confirm the medical need for the canopy. The ministry notes that the OT does not describe the need for the canopy in the MERJ and argues that although the OT requests the canopy for cover from inclement weather in her assessment, she does not state that the canopy is required. While the ministry correctly notes that the OT writes that the canopy is "requested" rather than "required" in the first assessment, in that same assessment the OT explains why the canopy is requested - for use in "inclement weather" - and the OT provides additional information respecting the appellant's use of the wheelchair which is reasonably viewed as directly relating to the use of a canopy. Specifically, the OT states that the appellant "goes out very frequently" and "relies heavily" on the wheelchair for community access, including medical appointments and grocery shopping, and that the appellant "would be housebound if she did not have this wheelchair to use." The panel finds that in the first assessment, the OT identifies the medical need for the wheelchair to mobilize outdoors and directly relates the use of the canopy to mobility outdoors during inclement weather. This information is confirmed in the second assessment, with the addition of the word "requires", by the OT's statement that the appellant "goes out almost daily, regardless of weather, and requires the canopy for cover from inclement weather." Given the frequency of the appellant's use of the power wheelchair, the panel finds that mobilizing outdoors necessarily encompasses mobilizing during inclement weather, noting that the appellant's various medical appointments would not be limited to times of dry weather. While an assessment from an OT or physical therapist is at issue for this criterion, the panel notes that both the appellant and the MP provide supporting information relating to the need for the canopy when describing the appellant's susceptibility to illness, in particular pneumonia, as it relates to exposure to wet weather.

The panel concludes that when the OT's "request" for the canopy is viewed together with the OT's reason for the request - inclement weather - and the description of the frequent use of the wheelchair by the appellant, the ministry has unreasonably determined that the OT's assessment does not establish a medical need, or requirement, for the canopy as an accessory to the wheelchair. Therefore, the panel concludes that the ministry was unreasonable in determining that the requirements of section 3(2) of Schedule C were not met for the canopy.

The Tires

The appellant argues that she requires the foam filled tires for safety, as she has experienced break downs with air filled tires. The ministry argues that neither the MP nor the OT mention foam filled tires. In the absence of any reference to foam filled tires by either the MP or the OT, the panel concludes that the ministry reasonably determined that neither a prescription of a medical or nurse practitioner nor an assessment by an occupational or physical therapist confirming the medical need for the foam filled tires has been provided and that the requirements of section 3(2) of Schedule C are not met.

Requirements of section 3.2(2) of Schedule C

Section 3.2(2) requires that the minister is satisfied that the requested item is medically essential to achieve or maintain basic mobility. The ministry determined that both the request for the canopy and the tires did not meet this requirement.

The Canopy

The appellant argues that she requires the canopy to protect her from inclement weather when she needs to ambulate to attend various medical appointments and shop, and that the canopy will reduce her health problems as her immune system is quite weak and she gets sick (pneumonia) easily in rainy weather. The ministry argues that the MP does not describe a need for the canopy, the OT requests the canopy but does not state that it is required, and a wheelchair canopy is intended for protection from rain or snow, not for achieving or maintaining basic mobility; therefore, it cannot be established that the canopy is medically essential for the appellant to achieve or maintain basic mobility.

The panel notes that the legislation expressly allows for the provision of accessories to wheelchairs. In this case, the panel finds that the OT has requested the canopy to facilitate use of the wheelchair in inclement weather. As the OT reports, and the MP confirms, due to a number of medical conditions the appellant is reliant on her power wheelchair to mobilize outdoors, and the OT reports the appellant would be housebound without her power wheelchair. While, as the ministry notes, the wheelchair itself can be used without a canopy, as it can without the cane holder which was approved for funding by the ministry, that fact alone is not determinative of whether an accessory is or is not required to achieve or maintain basic mobility. In this case, the panel finds that the OT's information in both the first assessment and the second assessment describes the use of the canopy as relating to use of the wheelchair in inclement weather. Based on the OT's description of the appellant's frequent use, including the need to attend numerous medical appointments which are not set to accommodate weather conditions, the canopy would directly impact the appellant's ability to mobilize throughout the year, especially during the fall and winter. Accordingly, the panel finds that the OT's "request" identifies a need for the canopy during the course of the appellant's frequent regular use of her power wheelchair in order to mobilize outdoors. Therefore, the panel concludes that the ministry has unreasonably determined that the request for the canopy did not meet the requirement of section 3.2(2) of Schedule C that it be medically essential to achieve or maintain basic mobility.

The Tires

The appellant argues that she requires the foam filled tires for safety, as she has experienced break downs with air filled tires. The ministry argues that neither the MP nor the OT mention foam filled tires. The panel notes that the OT did assess other functional components of the wheelchair, including seating, but did not mention tires. In the absence of any reference to foam filled tires by either the MP or the OT, the panel concludes that the ministry was reasonable in not being satisfied that the tires (foam filled) are medically essential to achieve or maintain basic mobility and determining that the requirements of section 3.2(2) of Schedule C are not met.

Conclusion

For the above reasons, the panel concludes that the ministry's reconsideration decision that denied the appellant's request for the tires because the requirements set out in Schedule C were not met is reasonably supported by the evidence. Accordingly, the panel confirms the ministry's reconsideration decision respecting the tires and the appellant is not successful on appeal respecting the tires.

For the above reasons, the panel finds that the ministry's reconsideration decision that denied the appellant's request for the canopy because the requirements set out in Schedule C were not met is not reasonably supported by the evidence. Accordingly, the panel rescinds the ministry's reconsideration decision respecting the canopy and the appellant is successful on appeal respecting the canopy.