

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) reconsideration decision dated July 14, 2017 in which the ministry denied the appellant’s request for medical equipment and devices, a scooter, on the basis that he did not meet all of the criteria set out in sections 3 and 3.4 of Schedule C, Employment and Assistance for Persons with Disabilities Regulation, specifically:

- The minister is not satisfied that a scooter is the least expensive appropriate device;
- The minister is not satisfied that an assessment by an occupational therapist has confirmed that it is unlikely that the appellant will have a medical need for a wheelchair in the following five years;
- The total cost of the scooter and accessories exceeds the limit of \$3,500; and
- The minister is not satisfied that a scooter is medically essential to achieve or maintain basic mobility.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 62; Schedule C, sections 3 and 3.4

PART E – Summary of Facts

Information before the minister at reconsideration included:

- A copy of a ministry adjudicator summary, undated.
- A copy of the ministry's letter to the appellant advising him of their decision, dated May 31, 2017.
- A copy of a letter to the ministry from an Occupational Therapist ("OT"), dated May 25, 2017.
- A copy of a quote from a wheelchair supplier dated May 3, 2017, in the amount of \$3,510.25.
- A Medical Equipment Request and Justification form signed by a medical practitioner on January 26, 2017 and by an OT on May 29, 2017, which stated that the appellant has vertebral fractures. The attached memo from an occupational therapist stated that the appellant's walking tolerance is greatly affected by spinal stenosis, degenerative lumbar spine and compression fractures with chronic back pain, arthritis pain affecting shoulders, elbows, hips and knees, general weakness and decreased balance. A 4WW [4 wheeled walker] is recommended by the OT to assist client mobility for indoor and short distance outdoor use and also for decreased fall risk. It states that the appellant is only interested in using a scooter and not a power wheelchair, and therefore is requesting a scooter to fulfill his basic mobility need. Under Functional Status, the OT wrote that the appellant is independent with aids but with fall risk and that he walks independently with a cane but with decreased balance, tolerance and endurance and with fall risk. He wrote that the appellant is independent with ADL. Under Summary, the OT wrote that the appellant can walk but not for long distances due to pain and weakness and decreased tolerance and endurance and therefore the appellant is requesting a motorized scooter.
- The appellant's Request for Reconsideration, signed June 19, 2017.

At the hearing, the appellant stated that he had two back surgeries and has pins in some vertebrae. He is finding it more difficult to walk with a cane and he cannot stand for long periods. The appellant stated that he can manage to walk at home but not as far as the bus stop and that he relies on HandyDart or taxi saver coupons. The appellant said he only manages to get out and shop once a month. He stated that a walker would not allow him to get out into the community. The appellant stated that his OT arranged for the scooter trial and he cannot understand why he did not make a clear recommendation to the ministry that he required a scooter to achieve or maintain basic mobility. The appellant advised that he previously owned a scooter that was given to him by his brother. The appellant said the scooter was very useful. However, the scooter was stolen a few months after he received it. With respect to the cost of purchasing a new scooter, the appellant stated that he would pay the amount over the maximum allowed under the legislation.

The ministry referred to the information contained in the reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the decision in which the ministry denied the appellant's request for medical equipment and devices, a scooter, on the basis that he did not meet all of the criteria set out in sections 3 and 3.4 of Schedule C, Employment and Assistance for Persons with Disabilities Regulation, specifically:

- The minister is not satisfied that a scooter is the least expensive appropriate device;
 - The minister is not satisfied that an assessment by an occupational therapist has confirmed that it is unlikely that the appellant will have a medical need for a wheelchair in the following five years;
 - The total cost of the scooter and accessories exceeds the limit of \$3,500; and
- the minister is not satisfied that a scooter is medically essential to achieve or maintain basic mobility.

Legislation

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.

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.

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.

The appellant's position is that he meets the eligibility requirements for provision of a scooter. He argued that his medical condition has deteriorated to the point where he cannot walk far with a cane or walker, and without a scooter he is restricted to his home. He argued that his OT arranged for the trial of a scooter at his home and recommended the most suitable model. . The appellant stated that he would pay the amount of the cost over \$3,500, which is the maximum amount allowed under the legislation.

The ministry's position is that the appellant's application does not meet the legislative requirements for provision of a scooter. The ministry found that the appellant's OT did not confirm that it is unlikely the appellant will have a medical need for a wheelchair during the following five years, as required under section 3.4(3)(a) of Schedule C, EAPWDR, that the total cost of the recommended scooter would exceed the maximum amount under section 3.4(3)(b) of Schedule C ,and that the minister is not satisfied that a scooter is medically essential to achieve or maintain basic mobility as required under section 3.4(3)(c) of Schedule C. With respect to section 3(1)(b)(iii) od Schedule C, EAPWDR, the requirement that the medical equipment requested is the least expensive appropriate equipment, the ministry found that the OT's recommendation of a 4 wheeled walker would be the less expensive option.

Panel Decision

In addition to meeting the requirements for provision of health supplements in section 62, EAPWDR and the requirements for provision of medical equipment and devices in section 3 of Schedule C, there are additional requirements for provision of a scooter set out in section 3.4(3) of Schedule C which must be met.

The ministry determined that the information provided by the appellant's OT did not confirm that it is unlikely the appellant will have a medical need for a wheelchair in the following five years. The OT wrote in his letter of May 25, 2017 that the appellant doesn't want to use a wheelchair due to arthritis pain, decreased strength, tolerance and endurance, however this does not explicitly address the requirement of section 3.4(3)(a). The Panel finds that the ministry reasonably determined that the appellant's application does not meet this requirement.

The ministry determined that the quote provided for the scooter requested exceeded the maximum of \$3,500 set out in section 3.4(3)(b) of Schedule C. The quote is for \$3,510.25. The Panel finds the ministry reasonably determined that the quote for the requested scooter exceeds the maximum allowable under the legislation.

The ministry determined that the information provided does not satisfy the requirement that a scooter is medically essential to achieve or maintain basic mobility. The information provided by the appellant states that he is walking independently with a cane but with decreased balance and with fall risk, that he can walk, but not

for long distances, with a cane and that he does not want to use a wheelchair due to pain and decreased strength, tolerance and endurance. When considering the evidence provided by the OT, the Panel noted the phrase used by the OT, "...[the appellant] is requesting a motorized scooter..." and the report of mobility by the OT as stated by the appellant, together with the OT's recommendation for a 4 wheeled walker do not state clearly that a scooter is necessary for basic mobility. The Panel finds that the ministry reasonably concluded that it has not been confirmed that it is medically essential for the appellant to have a scooter to achieve or maintain basic mobility.

The ministry determined that the OT's recommendation of a 4 wheeled walker would be the least expensive appropriate medical equipment for the appellant. The Panel notes that the OT wrote "a 4WW is recommended by writer to assist client mobility for indoor and short distance outdoor use, and also for increased tolerance and decrease fall risk", and that the appellant is requesting a motorized scooter, which does not clearly indicate that a scooter is the least expensive appropriate equipment or whether a four wheeled walker would be sufficient. The Panel finds that the ministry reasonably determined that the requirement of section 3(1)(b)(iii) of Schedule C was not met.

The Panel confirms the ministry decision. The appellant is not successful on appeal.