

## 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 29 May 2017 that denied the appellant's request for a wheelchair tilt system and a headrest for the power wheelchair that the ministry had approved for the appellant. The ministry determined that the information provided does not establish that the tilt system is medically essential to achieve or maintain basic mobility, as required under section 3.2 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The ministry further found that a medical or nurse practitioner has not prescribed a headrest and an occupational therapist (OT) has not provided an assessment confirming the medical need for a headrest, as required under section 3(2)(a) and (b) of Schedule C of the EAPWDR and that the information provided does not establish that a headrest is medically essential to achieve or maintain positioning in a wheelchair, as required under section 3.3 of Schedule C of the EAPWDR

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C, sections 3, 3.2 and 3.3.

## PART E – Summary of Facts

The evidence before the ministry at reconsideration included the following:

1. Medical Equipment Request and Justification form, with the medical or nurse practitioner recommendation section completed by a medical practitioner, signed on 21 February 2017. The appellant's medical condition is described as: "human growth hormone deficiency, inoperable severe osteoarthritis of the knees/hips/back." The recommended medical equipment is described as: "requires power wheelchair which is able to tilt." The section on specifications of medical equipment required refers to an attached letter and is signed by an occupational therapist (OT) on 21 March 2017.
2. In her letter, relevant to the requested items, the OT writes:

"Diagnoses and Symptoms: [The appellant] ... has a diagnosis of chronic fatigue, fibromyalgia, and osteoporosis of her knees, hips, and back. She also has a complex endocrine disorder which has results in a human growth hormone deficiency. Due to these conditions, [the appellant] experiences issues with muscle weakness, fatigue, pain, and difficulty with mobility.

Functional mobility and Transfers: [The appellant] mainly uses a power wheelchair to mobilize. Due to muscle weakness and joint pain, her walking distance is limited to approximately 10 feet using forearm crutches. [The appellant] is able to transfer independently and can reposition herself in her wheelchair.

Skin integrity: [The appellant] has no issues with skin integrity.

ADL's and iADL's: "... Due to her limited walking, [the appellant] uses a power wheelchair both for basic mobility within her apartment and for community access, including going to doctor's appointments and grocery shopping.

Current equipment: [The appellant] is currently borrowing a power wheelchair from the local [charitable organization]. This chair was loaned to her for one year and needs to be returned.

Equipment Recommendations: Based on my assessment I am recommending a Quickie QM-710 power wheelchair with a NXT Optima backrest and Jay Ion cushion. [The appellant] has trialed this equipment; it fits her well and she is able to operate it safely.

[The appellant] is also requesting a power wheelchair with tilt. [She] has tilt on the wheelchair she is currently using. She reports that the tilt helps her to manage her back pain. She also typically positions the chair in slight tilt when she is driving outdoors, which she reports helps to manage pain in her knees and to limit the amount of 'jarring' on her joints when she is driving outdoors.

Goal of Equipment and Other Equipment Considered: The goal of a power wheelchair is to maintain [the appellant's] level of independence with mobility and IADLs. A manual wheelchair was considered but due to [the appellant's] issues with pain and fatigue it is not sufficient for her."

3. 2 price quotes from a medical equipment supplier:
  - The first, dated 17 March 2017, for \$11,851.20, for the Quickie QM-710 power wheelchair, a seat cushion and a backrest plus a tilt system and headrest components.

- The second, dated 21 April 2017, for \$8792.10, for the same wheelchair and seating, with the tilt system and headrest components not included.
4. The ministry adjudicator's notes. Regarding the tilt system: "Tilt – discussed OT has indicated that the client really wanted the tilt however was not expecting that to be funded."
  5. The appellant's Request for Reconsideration dated 12 May 2017, to which is attached a letter from the appellant dated 10 May 2017 and an accompanying medical imaging report of an MRI of the right knee on 17 September 2014. In her letter, the appellant states that;
    - Her knees have been prone to dislocation since childhood, and, referring to the MRI report, there is very little holding her right knee together. Driving over every crack in the sidewalk and the endless curbside intersections and crosswalks causes her right knee to almost dislocate.
    - Although she is still able to transfer to the toilet on her own, she has difficulty voiding if she has been using an upright wheelchair. The undue pressure on her sacrum is only relieved by tilting the wheelchair far back into a recliner position. This helps her urinate more easily.
    - Currently she is using a borrowed wheelchair that has the tilt feature. However, when the motor of that wheelchair broke, the repair company loaned her a wheelchair for the month of April. It had no tilt and driving it outside was unbearable due to severe knee pain and near dislocation. She can only mobilize in the community when the wheelchair is tilted back, thus relieving the pressure on her knees from the nonstop bumps she encounters outside. As a result she had to spend the entire month indoors.
    - In her initial application, her family doctor specified that she needed the tilt option due to the severity of her knee problems.
    - Because her neck muscles are very weak, driving over every crack in the sidewalk and the endless curbs at intersections and crosswalks also causes her neck to whip forward and back as well as side-to-side. This is why she also requires her wheelchair to have a headrest.
    - By denying her the tilt and headrest options, the ministry has denied her the opportunity to go outside to be in the open air and to do simple errands for herself. This seriously restricted existence has far reaching mental health repercussions, as isolation is a killer. She has no family or friends in the area, and she suffered a nervous breakdown in November 2016 due to her social isolation. She fears that staying inside alone will cause her further stress and isolation, thus exacerbating the state of her mental health. She needs to get out and be with other people, and to regain some degree of independence for herself.

### **Notice of Appeal**

The appellant's Notice of Appeal is dated 21 June 2017. Under Reasons, the appellant writes that she has an extremely complicated medical history, which would best be explained in person before a tribunal if possible.

## Information submitted on appeal

Before the hearing, the appellant submitted additional information in emails to the Tribunal dated 17 July 2017. This submission included a letter dated 17 July 201 from a second occupational therapist (“OT2”) who writes that she has been the appellant’s OT for six years at an aquatic rehabilitative exercise program. She goes on to write:

“[The appellant...] as been on corticosteroids for 38 years. The major side effect of this medication is severe muscle wasting and severe muscle weakness throughout the body; a second side effect of severe fat redistribution. For [the appellant] this has meant gradual loss of all her stabilizing muscles which has lead to severe joint wear and deterioration...

[The appellant] has gradually lost her ability to ambulate and support herself against gravity over the years I have known her. At this time she can bring herself up to standing but cannot ambulate for more than a few steps even with braces and support. She is able to sit for short periods of time in a standard chair, but cannot maintain this position for long due to poor muscle control and no fat padding on her legs or buttock, and when the chair is in motion as she does not have adequate core strength or knee joint integrity for shock absorption. A wheelchair with a headrest and tilt provides more passive support which would relieve the constant pressure on [her] knees, spine, sacrum and buttock providing her with the means for basic mobility outside the home with adequate pain management. Although [she] has voluntary movement of neck, her muscle weakness is severe enough that she is unable to control neck movements outdoors. There is much force and momentum during outdoor travel that requires good neck muscle control, which [she] does not have, to maintain head position. Therefore for outdoor mobility a headrest is basic required support for [her]. Having the ability to mobilize outside the home is also very important for her] mental health.

In the home, being able to change the degree of tilt throughout the day would greatly aid in [her] ability to manage her pain, relieve collapsing of her core and pressure which affects her ability to maintain regular bowel function. A wheelchair with tilt and the use of yoga blocks under her hips would enable [her] to reach her counters and cupboards to chop/prepare/cook foods and wash her own dishes and thus maintain more autonomy/independence within her home, reducing the need for Home Support services.

In conclusion I believe that [the appellant’s] ability to manage her pain, maintain independence and function in the community require a wheelchair that is equipped with a headrest and tilt feature.”

The appellant also submitted 5 pages of notes. In these notes:

- The appellant takes issue with some of the information provided by the first OT, particularly the implication left by the OT that the tilt system is not necessary and that she'd like the tilt for her pleasure and for fun as opposed to any practical necessity.
- She provides argument for the tilt mechanism as recommended by her physician much along the lines of that set out in her letter at reconsideration. Without the tilt, she cannot go outside as the constant jarring movement causes agonizing pain in both knees. Thus, without the tilt, she is housebound – something she sees equivalent to being in “solitary confinement.” She compares the cost of the tilt mechanism to that of what it would cost the government to pay for her to live in assisted living. She also notes that with a tilt mechanism she would be self-sufficient in the kitchen and bathroom, but without tilt she is currently dependent on the home support for her basic activities of daily living.

- She writes that she thought a headrest was standard wheelchair equipment. Her wheelchair, with no headrest, makes it impossible for her to mobilize outside the home due to the severity of jarring on sidewalks and curbs. She also notes that the ministry-provided chair is too large for her petite frame and she questions the OT's ability to provide an adequate assessment of her needs.
- She provides background to her medical condition and employment history.

In her notes, the appellant also explained three attached photographs:

1. The appellant in the ministry-provided wheelchair, showing how low she sits in the wheelchair at her kitchen counter.
2. The appellant in the loaner wheelchair with tilt, showing that the front of the wheelchair is elevated and by sitting on the front few inches of the seat she can reach the cupboard above the counter.
3. The appellant in the ministry provided wheelchair, showing her feet several inches above the footplate, as a demonstration that she is not weight bearing with her feet.

## The hearing

At the hearing, the appellant submitted a letter from her physician, dated 10 July 2017. The physician writes:

[The appellant] has a long history of pituitary adenoma which required surgery to completely remove her pituitary gland. She has been on a number of hormone treatments as replacement since her surgery in 1979. She has also developed severe and worsening osteoarthritis of her knees. Due to the both the extend [*sic*] of her pituitary insufficiency, and the medications she is on for her insufficiency, it is been deemed that she is not able to get surgery to replace her knees. We tried braces, canes, crutches, walkers and over the past 2-3 years she has become more and more immobile. She is now completely dependent on her wheelchair for mobility. Using the tilt in her wheelchair allows her to maintain independence in her ADLs both inside and outside of the house. With the tilt she is able to elevate herself to reach items out of her cupboards, do meal preparation on her counter tops and cook in way she cannot as she cannot stand on her own. When she is outside of the house, she is able to tilt the chair back a small amount, which alters the position of her legs and takes the strain on her knees. This has allowed her to reduce pain medications and has increased her mobility outside of the house. It is my opinion that the tilt is medically necessary to maintain her function and independence, as well as reduce the amount of medications she is required and is an integral part of her treatment and health plan.

As a result of both her pituitary insufficiency, along with her OA, along with a diagnosis of fibromyalgia, her muscles tire easily and she develops pain in her muscles. Without a headrest, she is unable to sustain the position of her neck over long periods of time without developing increased pain. She requires the headrest so she can rest and relax her neck muscles.

In her testimony, the appellant reviewed her medical history, which she described as unique and complex, that has resulted in the collapse of major muscle groups and extreme fat redistribution, the latter leading to her having little padding her buttock area.

As she explained in her notes, she felt that the first OT did not fully understand her medical condition or circumstances, and left the wrong impression in her letter – that she wanted the tilt mechanism for fun and not because it was a necessity for basic mobility.

She stated that, without the tilt mechanism, using the ministry-provided wheelchair outside on a sidewalk is agony for her with the constant jarring caused by sidewalk seams and curbs. In fact, a few days previously, this had caused a painful shoulder dislocation. As a result, she considers herself homebound.

The appellant explained how distressing it is for her to be homebound and dependent on others. She referred to the photographs showing how, with the tilt mechanism, she could elevate her seat and work at her kitchen counter preparing meals and washing dishes, as well as reach for items in her cupboards. This is no longer the case, so she must rely on extra visits by her caregivers.

The balance of her presentation addressed points made in her notes submitted on appeal.

The ministry stood by its position at reconsideration.

### **Admissibility of additional information**

The ministry did not object to the admissibility of the additional information provided by the appellant before the hearing or the physician's letter submitted at the hearing.

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 light, with the exceptions and caveats noted below, the panel finds that the information in the letter from OT2 and the appellant's physician is in support of the information before the ministry at reconsideration, as it tends to substantiate the information provided by the appellant in her letter at reconsideration. However:

- The panel does not admit as evidence any reference in these letters to a tilt mechanism elevating the appellant so she can work at her kitchen counter and reach a shelf above, as this factor was not before the ministry at reconsideration.
- The panel does not admit as evidence the physician's comments regarding a headrest, as this information was not before the ministry at reconsideration as a medical practitioner's prescription as required under section 3(2)(a) of Schedule C of the EAPWDR.
- The panel does not admit as evidence the letter from OT2 as an assessment confirming the medical need for a tilt system and/or a headrest, as this information was not before the ministry at reconsideration as an OT's assessment as required under section 3(2)(b) of Schedule C of the EAPWDR.

The panel does not admit as evidence the first 2 photographs attached by the appellant to her notes submitted before the hearing, as these relate to the tilt mechanism elevating her so she can work at her kitchen counter and reach a shelf above, a factor that was not before the ministry at reconsideration.

The panel accepts the notes provided by the appellant in her submission on appeal and her testimony at the hearing as argument in support of her appeal.

While the panel has made these determinations as to admissibility for this appeal as discussed above, this does not preclude the appellant from putting similar information before the ministry at a future date.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable in denying the appellant's request for a wheelchair tilt system and a headrest for the power wheelchair that the ministry had approved for the appellant. More specifically, the issue is whether the following ministry determinations were reasonably supported by the evidence or were a reasonable application of the legislation in the circumstances of the appellant:

- That the information provided does not establish that the tilt system is medically essential to achieve or maintain basic mobility, as required under section 3.2 of Schedule C of the EAPWDR.
- That a medical or nurse practitioner has not prescribed a headrest and an occupational therapist (OT) has not provided an assessment confirming the medical need for a headrest, as required under section 3(2)(a) and (b) of Schedule C of the EAPWDR and that the information provided does not establish that a headrest is medically essential to achieve or maintain positioning in a wheelchair, as required under section 3.3 of Schedule C of the EAPWDR.

The relevant legislation is from Schedule C of the EAPWDR:

### 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.

(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.

## **Analysis**

### *Wheelchair tilt system*

In the reconsideration decision, the ministry reviewed the information provided regarding the request for a power tilt system and determined that it cannot be established such a mechanism is medically essential to achieve or maintain basic mobility and that therefore the requirement set out in EAPWDR section 3.2(2) of Schedule C has not been met. In making this determination, the ministry noted the following:

- Although the medical practitioner in the Medical Equipment Request and Justification form stated that the appellant “requires power wheelchair which is able to tilt,” he does not state why she requires tilt functionality and that he does not provide information indicating that she requires a wheelchair tilt system in order to achieve or maintain basic mobility.
- In her letter included with the initial application, the OT stated that the appellant reports the wheelchair tilt system enables her to reduce pain to her knees and back. However, in this letter the OT does not provide information to suggest that she requires a wheelchair tilt system to achieve or maintain basic mobility.
- Referring to the ministry adjudicator’s decision notes that state: “Tilt – discussed OT has indicated that the client really wanted the tilt however was not expecting that to be funded,” this suggests that although the appellant wanted a wheelchair tilt system, the OT was not of the opinion that a tilt system is necessary.

In her notes submitted on appeal and at the hearing, the appellant asked whether “basic mobility” includes mobility outdoors. Though the term is not defined in legislation, and not explained in the reconsideration decision, the ministry defines basic mobility on its website under *Guidelines for determining medically essential to achieve or maintain basic mobility* as “a client’s need for equipment due to a mobility impairment which is necessary to perform their day-to-day activities in their home and/or community.” The panel finds this interpretation consistent with the requirements of section 8 of the *Interpretation Act* that “Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.”

The panel notes that in her submission on appeal, the appellant writes, “Given the information I read in the package provided [Record of the Ministry Decision], I am not surprised I was denied tilt and headrest for my wheelchair.”

In his letter submitted at the hearing, the appellant's physician gives several reasons why a tilt system would benefit the appellant, concluding that, "It is my opinion that the tilt is medically necessary to maintain her function and independence, as well as reduce the amount of medications she is required and is an integral part of her treatment and health plan." However, he has not suggested the ministry-provided wheelchair is inadequate for the appellant to maintain or achieve basic mobility; nor has he indicated that a tilt system is necessary to achieve that result.

The panel notes that the discussion by the first OT regarding the requested tilt system reads that the benefits of such a system are those reported by the appellant and not based on an assessment by the OT, and as the ministry noted, in discussion with the ministry adjudicator the OT did not offer any firm support for that aspect of the medical equipment request. As such, the OT's statements regarding the tilt system cannot be said to provide an assessment confirming the medical need for a tilt system.

The determination of whether the requested equipment is medically essential to achieve or maintain basic mobility is at the discretion of the minister, taking into account all the evidence, including that of the appellant. However, the legislation is clear that in making that determination, the ministry must have before it, and be guided by, a prescription from a medical or nurse practitioner, and an assessment by an OT or a physical therapist confirming the medical need for the requested equipment.

Taking into account the ministry's explanation in the reconsideration decision, the panel finds that the ministry was reasonable in finding that the information provided does not establish that the requested tilt system is medically essential for the appellant to achieve or maintain basic mobility, as required under section 3.2(2) of Schedule C of the EAPWDR.

### Headrest

In the reconsideration decision, the ministry found that the appellant's request does not meet the eligibility requirements set out in sections 3(2)(a) or 3(2)(b) and 3.3(1) of Schedule C of the EAPWDR. The ministry noted that:

- The appellant's medical practitioner does not describe the need for a wheelchair headrest in the Medical Equipment Request and Justification form. Further, the medical practitioner does not indicate that the appellant requires medical equipment to avoid involuntary movement of her neck and head.
- In her letter included with the initial application, the OT does not speak to the need for a wheelchair headrest. Further, the OT does not indicate that the appellant requires medical equipment to avoid involuntary movement of her neck and head.
- The ministry adjudicator's decision notes do not indicate that the OT provided the adjudicator with information indicating the need for a headrest.

In her notes provided on appeal, the appellant stated that she thought a headrest was standard wheelchair equipment. The panel's view, a headrest might be considered a logical, standard accessory for a wheelchair equipped with a tilt mechanism (because of the extra strain on the neck for any user of a wheelchair so equipped). However, as the ministry denied the appellant's request for a tilt mechanism, and considering that the legislation speaks to the need for the minister to be satisfied that an accessory attached to a wheelchair is medically essential to achieve or maintain a person's position in a wheelchair, the panel finds the ministry was reasonable in considering a wheelchair headrest as an accessory under section 3.3 of Schedule C.

Considering that the appellant's physician did not provide the ministry with a prescription for a headrest, and that the ministry did not have before it an assessment by an OT or a physical therapist of a standard wheelchair equipped with a headrest accessory, the panel finds that the ministry was reasonable in determining that it was not satisfied that the headrest is medically essential to achieve or maintain the appellant's positioning in a wheelchair and was therefore reasonable in denying the requested headrest.

### **Conclusion**

Based on the foregoing, the panel finds that the ministry's decision to deny the appellant's request for a wheelchair tilt system and a headrest for her ministry- provided power wheelchair is reasonably supported by the evidence. The panel therefore confirms the Ministry's decision.