

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated April 24, 2017 which denied the appellant's request for a supplement to cover the cost of repairs to his scooter because:

- the ministry considers that the medical equipment was damaged through misuse, as set out in Section 3(6) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR); and,
- the eligibility criteria were not met for a life threatening health need under Section 69 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 62, 69, and Schedule C, Sections 3

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Sales Quotation from a medical equipment supply company (“the equipment supplier”) dated May 17, 2017 for repairs to a Pegasus 4-wheel scooter, including a transaxle for \$398.40, motor for \$398.40, tire for \$172.80, tube for \$61.44 and labour of \$320, for a total cost of \$1,351.04;
- 2) Ministry notes of conversations with a representative of the equipment supplier who indicated on May 25, 2017 that the appellant tows a trailer behind his scooter, has been warned that the scooter cannot handle the tow, and the motor, transaxle, tires, and tubes need replacing again in less than 3 months; on July 4, 2017 indicating that the appellant tows a trailer with recyclables, that he has been advised that the scooter cannot handle towing, and that the appellant regularly drives the scooter on the highway between communities;
- 3) Letter to the appellant dated May 25, 2017 in which the ministry wrote that the ministry funded repairs to his scooter on February 22, 2017 at a cost of \$1,294.40 for transaxle, tires and tube. The ministry has received another quote for repairs to the same scooter for the same repairs at a cost of \$1,351.04. The repairs are denied based on misuse of equipment. Proper care and use of the equipment is required to ensure that the scooter remains in operable condition;
- 4) Letter to the appellant dated May 25, 2017 in which the ministry wrote that his request for a supplement to cover the scooter repair of the transaxle, motor, tires, tubes and labour is denied; and,
- 5) Request for Reconsideration dated June 19, 2017.

In his Request for Reconsideration, the appellant wrote:

- He has never towed a trailer behind his scooter.
- In February, [the equipment supplier] said in 2 or 3 weeks to tighten the axel but the repairs were not done. He told his daughter they never fixed the axel because it was still knocking in the back of the scooter. After that, he signed the paper they said would fix the axel.
- He uses the scooter to go to the doctor, to pick up his pills, to pick up his insulin and to do blood work.

Additional information

In the Notice of Appeal dated July 18, 2017 the appellant expressed disagreement with the ministry’s reconsideration decision and wrote that he was not towing a trailer. He used the scooter for his doctor and his prescriptions and his blood tests.

At the hearing, the appellant stated:

- He had considered getting a petition signed by all the people who see him operating his scooter to confirm that he does not tow things with it, but this is not available for the hearing.
- He gave the equipment supplier \$300 to do some repairs on the axel of the scooter because he really needed it. He came with another \$100 to give them, but the total amount for the repairs was around \$638.
- After the repairs, he just drove the scooter a short distance to his friend’s house and the motor went on it. When the motor quit he could not afford to pay for the repairs because it costs around \$1,000 and he needed the ministry to fund the repairs.
- In January or February 2017 when the repairs were done, they changed the motor, the battery and the axel but he told his daughter that he could still hear a clanging when he drove the scooter.
- He was not happy with the repair work but he tried not to get angry, as he has learned to control his anger through anger management teaching. He does not understand why the tires and the motor need changing after only 3 months. He thought the tires were still good. He asked the workers how long they have been repairing scooters.

- He has driven the scooter on the highway because he needs to get to his daughter's place to help with babysitting. Now they have to pick him up, or he will hitchhike to get places. It is very expensive to take a taxi to his appointments.
- The representative from the equipment supplier told him that the scooter should not be taken on the highway so he reduced the number of times per week he drove on the highway. His regular trip is approximately 10 km in distance.
- He has never towed anything behind his scooter. The toy that he picked up for his grandson was plastic and would not have weighed more than 10 lbs.

At the hearing, the appellant's advocate stated:

- The appellant had picked up a plastic peddle toy for his grandson at a yard sale and transported it by tying it to the back of his scooter, but he was not "towing" anything.
- After he explained the situation to the representative from the equipment supplier who had reported that the appellant was towing a trailer with the scooter, she told him that she would call the ministry to rescind what she had previously stated.
- He has seen the appellant hundreds of time on the road with his scooter and he never tows anything behind it.
- He wonders if the previous repairs to the appellant's scooter were done properly as it seems unusual that the motor would require replacing after 3 months of use. He is interested to see the scooter log of the time it was operated after the previous repair work and suspects there may be a commercial dispute with the equipment supplier about the extent of the repairs completed.
- Given the remote location where the appellant lives, there are very limited options for him for transportation. He drives to another community but he stays for a few days before he returns.

The ministry relied on the reconsideration decision, as summarized at the hearing. The ministry stated that:

- There was no information available to her that the representative from the equipment supplier had called the ministry to revise or rescind her previous statement.
- It is both the allegation of towing with the scooter and the use of the scooter on the highway that are considered "misuse." The scooter is provided to replace a person's ability to walk and not to serve as a replacement for a vehicle to drive from one community to another.
- While the ministry considers the requests for funding repairs, it is the appellant's responsibility to ensure that proper maintenance is performed on the scooter and that the repairs are completed as quoted.

Admissibility of New Information

The ministry did not raise an objection to the admissibility of the oral testimony on the appellant's behalf. The panel considered the information in the oral testimony, which related to the appellant's need for and use of his scooter, and the panel admits the information in the oral testimony on behalf of the appellant as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4) of the *Employment and Assistance Act (EAA)*.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of repairs to his scooter because the ministry considers that the medical equipment was damaged through misuse, as set out in Section 3(6) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and the eligibility criteria were not met for a life threatening health need under Section 69 of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

Pursuant to Section 62 of the EAPWDR, the applicant must be a recipient of disability assistance or be a person in receipt of disability assistance (or a dependant) in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has not disputed that the requirement of Section 62 has been met in that the appellant is a recipient of disability assistance.

The ministry considered the appellant's request for the cost of repairs to his scooter under Section 3 of Schedule C of the EAPWDR, which provides:

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.

Panel's decision

Section 3(6) of the EAPWDR- Equipment damaged through misuse

In the reconsideration decision, the ministry considered that the appellant required repairs to his scooter due to damage through misuse of the scooter and, therefore, the ministry may not provide for the cost of repairs, pursuant to Section 3(6) of Schedule C of the EAPWDR. The ministry wrote that the appellant's scooter was damaged through misuse since there have been requests for repairs to the motor and transaxle of his scooter in June 2016, January 2017 and May 2017 and it is unlikely that a scooter would require these repairs on three separate occasions within a 12-month period due to wear and tear through regular use. The ministry wrote that a representative of the equipment supplier has witnessed the appellant towing a trailer and stated that the appellant was advised that scooters are not built for towing. The ministry wrote that a representative of the equipment supplier is aware that the appellant regularly drives his scooter on the highway, travelling great distances between communities, and scooters are not meant for highway travel.

The appellant wrote in his Request for Reconsideration that he has never towed a trailer behind his scooter and he needs the scooter to go to the doctor, to pick up his pills, to pick up his insulin and to do blood work. At the hearing, the appellant and his advocate explained that the appellant had picked up a plastic peddle toy for his grandson at a yard sale and transported it by tying it to the back of his scooter, but he was not "towing" anything. The advocate stated that after he explained the situation to the representative of the equipment supplier who had reported that the appellant was towing a trailer with the scooter, she told him that she would call the ministry to rescind what she had previously stated. The ministry stated at the hearing that there was no information available to her that the representative from the equipment supplier had called the ministry to revise or rescind her previous statement.

The panel notes that the ministry wrote in the reconsideration decision that the same representative from the equipment supplier was contacted by the ministry on July 4, 2017 and, at that time, repeated the statement that the staff have witnessed the appellant towing a trailer containing recyclables with his scooter, and that he had been advised that the scooter cannot handle towing. Given the ministry's recent conversation with the representative of the equipment supplier, the panel finds that it is more likely than not that the appellant was towing an item or items with the scooter, although it is not clear what the "recyclables" were and whether it may have been the plastic peddle toy that the appellant and his advocate described at the hearing.

At the hearing, the appellant acknowledged that he has driven the scooter on the highway because he needs to get to his daughter's place to help with babysitting. The appellant acknowledged that the representative from the equipment supplier told him that the scooter should not be taken on the highway and he subsequently reduced the number of times per week he drove on the highway. His regular trip is approximately 10 km in distance one way. The appellant's advocate clarified that, given the remote location where the appellant lives, there are very limited transportation options and the appellant occasionally drives to another community with his scooter but he stays for a few days before he returns.

The panel finds that "misuse" in the ordinary definition of the word includes mistreating the equipment in a way that damage occurs before the normal wear to be expected over time. The ministry reasonably considered the history of requests for repairs to the motor and transaxle of the appellant's

scooter, which occurred in June 2016, January 2017 and May 2017 and concluded that it is unlikely that a scooter would require these same repairs on three separate occasions within a 12-month period due to wear and tear through regular use. Although the appellant's advocate raised questions about the standard to which the repairs were completed in January 2017, the ministry pointed out at the hearing that the appellant is responsible for ensuring that the equipment supplier completes the repairs as quoted.

The panel finds that the ministry reasonably considered the report from the equipment supplier that the appellant had been towing an item or items with his scooter and that he had also been using it on the highway to drive several kilometers from one community to another, despite warnings not to use the scooter on the highway, and that this is considered misuse of the scooter. The ministry clarified at the hearing that the scooter is provided to replace a person's ability to walk and not to serve as a replacement for a vehicle to drive from one community to another. Although the appellant stated that he reduced the number of trips he made with his scooter between communities, he did not claim to have ceased using his scooter on the highway. Therefore, the panel finds that the ministry reasonably considered that the appellant's scooter was damaged through misuse by the appellant, according to Section 3(6) of Schedule C of the EAPWDR and he is, therefore, not eligible for an additional supplement from the ministry to cover the cost of repairs to his scooter as detailed in the quote dated May 17, 2017.

Section 69 of the EAPWDR- Life threatening health need

The ministry acknowledged that the appellant is a recipient of disability assistance and is, therefore, eligible to receive health supplements pursuant to Section 62 of the EAPWDR. The panel finds that Section 69 of the EAPWDR is intended to provide a remedy for those persons in the family unit who are otherwise not eligible for the health supplement under the regulation. Although the appellant wrote in his Notice of Appeal that he uses the scooter for his doctor appointments and to pick up his prescriptions and to attend his blood tests, there was no additional evidence provided of a 'direct' and 'imminent' life threatening need for repairs to the scooter. The panel finds that the ministry reasonably determined that the appellant's request for a supplement to cover the cost of repairs to his scooter did not meet all of the eligibility criteria for a life threatening health need under Section 69 of the EAPWDR.

Conclusion

In conclusion, the panel finds that the ministry's decision, which denied the appellant's request for a supplement to cover the cost of repairs to his scooter because the ministry considers that the medical equipment was damaged through misuse, as set out in Section 3(6) of Schedule C of the EAPWDR and the eligibility criteria were not met for a life threatening health need under Section 69 of the EAPWDR, was a reasonable application of the applicable enactment in the appellant's circumstances. The panel confirms the ministry's reconsideration decision. The appellant's appeal, therefore, is not successful.