

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) reconsideration decision of August 21<sup>st</sup>, 2017 denying the Appellant’s request for a medical equipment supplement. The Ministry determined that the Appellant did not meet all of the requirements for a medical equipment supplement as per section 62 and Schedule C section 3 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). Specifically, the Ministry determined that there was no evidence provided to support the Appellant’s claim that the requested custom (refurbished) seating for his back-up manual wheelchair was the least expensive medical equipment or device as per section 3(1)(b)(iii) of the EAPWDR – due to the appellant’s power chair being sufficiently equipped most recently in January 2017. Further, the ministry determined that the appellant did not meet the criteria in his request to repair his new power wheelchair because in the opinion and by the assessment of a prescribed professional, pursuant to section 3(2)(a) & (b) of the EAPWDR the used parts that the appellant claims are in need of repair, do not pose risk to the appellant, are fit to use, and therefore not medically necessary.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) Section 62 & Schedule C, section 3.

## PART E – Summary of Facts

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

- 1) May 4th 2017 – A request for funding of custom seating for a back-up manual wheelchair as well as repairs to a power wheel chair which included:
  - \*A May 2, 2017 - dated letter from the Occupational Therapist indicating the appellant's condition and challenges with the current wheelchair(s) – both the manual back-up chair as well as the power chair.
  - \*Price quote dated April 27<sup>th</sup>, 2017 for the requested repairs to power wheelchair – for a total of \$5100.00.
  - \* Price quote dated April 27<sup>th</sup>, 2017 for the requested repairs to the manual back-up wheel chair – for a total of \$2184.64
  - \*Medical Equipment Request and Justification form completed May 2, 2017 – by Occupational Therapist.
  
- 2) A Denial Summary – dated June 23<sup>rd</sup>, 2017 which indicated that the ministry had provided the appellant funding for a new power wheelchair in January 2017 for a total of \$6992.00. The power wheelchair is described as the primary mobility equipment for the appellant and the funding was intended to address the appellant's mobility needs. The manual wheelchair is used as a backup mobility equipment. The appellant's father is concerned that the previously used parts that were transferred from the old power chair to the new power chair during construction are dated, and may put the appellant at risk if they fail while out in the community. An assessment by the Occupational Therapist (OT) and vendor indicated that there was no risk to the appellant. A conversation between the ministry adjudicator and the OT dated – June 5<sup>th</sup>, 2017 indicated that the request came primarily from the father of the appellant due to the concern that the older parts transferred to the new power chair placed his son at risk – but that the OT and vendor had assessed the parts and determined that they worked sufficiently and posed no risk.

The appellant's representative provided a dated – August 25<sup>th</sup>, 2017 letter indicating his concerns as they related to the use of pre-used parts in the construction of the appellant's new power wheelchair. The ministry did not object to the admission of this information at the hearing. The panel determined that the information was in support of the information that was before the Reconsideration Officer at the time the decision was made, and therefore admissible as per section 22(4) of the Employment and Assistance Act.

The ministry relied on the reconsideration decision and submitted the appellant's original quote, dated – September 14<sup>th</sup>, 2016 for the new power wheelchair; which had indicated that the transferring of used parts from the old chair to the new chair was outlined in the original quote. The appellant's representative did not object to the admissibility of the information and the panel determined that it was in support of the information that was before the Reconsideration Officer at the time the decision was made, and therefore admissible as per section 22(4) of the Employment and Assistance Act.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry of Social Development and Social Innovation (the “Ministry”) reconsideration decision of August 21<sup>st</sup>, 2017 denying the Appellant’s request for a medical equipment supplement. The Ministry determined that the Appellant did not meet all of the requirements for the medical equipment supplement as per section 62 and Schedule C section 3 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). Specifically, the Ministry determined that there was no evidence provided to support the Appellant’s claim that the requested custom (refurbished) seating for his back-up manual wheelchair was the least expensive medical equipment or device as per section 3(1)(b)(iii) of the EAPWDR – due to the appellant’s new power chair being sufficiently equipped most recently in January 2017. Further, the ministry determined that the appellant did not meet the criteria in his request to repair his new power wheelchair because in the opinion and by the assessment of a prescribed professional, pursuant to section 3(2)(a) & (b) of the EAPWDR- the used parts that the appellant claims are in need of repair, do not pose risk to the appellant, are fit to use, and therefore not medically necessary.

The relevant sections of the legislation are as follows:

### Employment and Assistance for Persons with Disabilities Regulation

#### 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 under 19 years of age, or [B.C. Reg. 161/2017]
- (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.

### Employment and Assistance for Persons with Disabilities Regulation

#### 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.

(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 — 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.

## Panel Decision

The ministry's position, as set out in the reconsideration decision, is that the appellant is not eligible for further funding to replace used parts of the new power chair because the appellant does not meet all of the criteria set out within section Schedule C section 3 of the Employment and Assistance for Persons with Disabilities Regulation. The appellant's representative stated in his appeal that the vendor had made a mistake in the construction of the new power chair (the vendor should not have stripped the old chair and re-used the parts for the new chair), and that the used parts are over 10 years old, and he is concerned that the used parts will break down and leave his son stranded in the community. Further, the appellant's representative indicated that the new power chair has remained at the vendor office, and in the meantime, the appellant has been using his back-up manual chair which is not properly equipped with the customized position equipment required for the appellant. The appellant's representative requested that the newly constructed power chair have the older parts replaced, and too - that the manual back-up chair be equipped with the customized positioning equipment he needs.

Section 62 of the EAPWDR outlines the following; 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 under 19 years of age, or [B.C. Reg. 161/2017] (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person. The ministry is satisfied that the appellant meets the EAPWDR criteria of section 62.

Schedule C of the EAPWDR outlines the following; section 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.** The ministry notes that the appellant does not meet the eligibility criteria due to the ministry having already provided funding for the power wheelchair in January 2017, and that the information provided by the appellant does not establish that the custom seating that was provided for the new power wheelchair cannot also be used for the manual back-up chair – and therefore the request for additional equipment for the manual back-up chair is not the least expensive appropriate equipment or device. Further to this noted reason, the ministry provides that the request for new parts to replace the old (transferred parts) from the original power chair to the newly constructed chair is not the least expensive appropriate medical equipment or device due to the assessment by the OT indicating that the used parts worked sufficiently well in the newly constructed power chair.

EAPWDR Schedule C section 3 (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.** The ministry notes that the appellant has not provided a prescription of a medical practitioner for repairs, and that the information gathered by the ministry adjudicator on June 5<sup>th</sup>, 2017 – in a conversation with the OT reveals that the used parts, by the opinion and assessment of the OT and vendor that the used parts work sufficiently well in the power chair and posed no risk to the appellant. Therefore, the information provided does not establish confirmation from an OT of a medical need for repairs to the power chair. The ministry notes that eligibility under the EAPWDR Schedule C sections 3 (1)(b)(iii) and 3 (2)(a) & (b) have not been met, and

therefore the appellant has been denied.

The panel finds that the ministry reasonably determined that the evidence failed to establish that the appellant's request fell within the specific circumstances of Schedule C sections 3 subsection (1) and (2) of the EAPWDR. Specifically, section 3(1)(b)(iii) where not *all* of the following requirements were 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; specifically - **(iii) the medical equipment or device is the least expensive appropriate medical equipment or device.** The panel finds that the ministry was reasonable in its determination to deny the appellant medical equipment because he did not meet the eligibility criteria - based on the fact that the ministry had already provided funding for the power wheelchair in January 2017, and that the information provided by the appellant did not establish that the custom seating that was provided for the new power wheelchair could not also be used for the manual back-up chair – and therefore the request for additional equipment for the manual back-up chair is not the least expensive appropriate equipment or device. Further, the panel finds that the ministry was reasonable to deny medical equipment based on the fact that that the request for new parts to replace the old (transferred parts) from the original power chair to the newly constructed chair is not the least expensive appropriate medical equipment or device – and was evidenced by the assessment of the OT on June 5<sup>th</sup>, 2017 which indicated that the used parts worked sufficiently well in the newly constructed power chair.

Further, the panel finds that the ministry was reasonable when it determined that the criteria under EAPWDR Schedule C section 3 (2) for medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12 that the family unit must provide to the minister *one or both* of the following had not been met. Specifically, the panel finds that the evidence establishes that the appellant did not provide either **(a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;** or **(b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.** The panel finds that the ministry was reasonable when it determined that that the appellant had not provided a prescription of a medical practitioner for repairs, and further, the panel finds that the ministry was reasonable when it relied on the information gathered by the ministry adjudicator on June 5<sup>th</sup>, 2017 – through a conversation with the OT who had stated that in her professional opinion, and by vendor assessment, that the used parts work sufficiently well in the power chair and posed no risk to the appellant, and therefore not medically necessary.

As such, the panel finds that the ministry reasonably determined that the appellant failed to provide sufficient evidence to support his claim for medical equipment funding. Accordingly, the panel finds that the decision of the ministry to declare the appellant ineligible for medical equipment was a reasonable application of the applicable enactment in the circumstances of the appellant. Therefore, the panel confirms the ministry's decision pursuant to section 24(1)(a) and section 24(2)(a) of the Employment and Assistance Act. The appellant therefore is not successful in his appeal.