

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“ministry”) reconsideration decision dated October 23, 2017 in which the ministry denied the appellant’s request for a *Quickie Xperience* power wheelchair (“QX wheelchair”) because the ministry was not satisfied that the following eligibility criteria under Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) were met:

- The medical equipment or device is the least expensive appropriate medical equipment or device - subsection 3(1)(b)(iii) of Schedule C; and
- The item is medically essential to achieve or maintain basic mobility - subsection 3.2(2) of Schedule C.
- The ministry also found the appellant is not eligible for the QX wheelchair as a life-threatening health need under section 69 of the Regulation.

### **PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - sections 62 and 69, and sections 3(1)(b)(iii) and 3.2(2) of Schedule C

## **PART E – SUMMARY OF FACTS**

The evidence before the ministry at reconsideration consisted of:

1. A request for a wheelchair from an Occupational Therapist (“OT”) dated May 29, 2017 and marked as urgent. The OT stated that the appellant “is without a suitable wheelchair to meet his basic mobility needs” and he is at risk for medical complications including skin breakdown, as well as a decline in his functional status.

2. A *Medical Equipment Request and Justification* form dated April 12, 2017, with the following information:

- Section 2, *Medical or Nurse Practitioner Recommendation* signed by a physician and describing the appellant’s medical conditions as “paraplegic with pressure wound”. The physician recommended a “powered wheelchair and seating.”
- *Specifications of medical equipment required to meet the applicant’s needs* was signed by an OT who wrote, “Powered wheelchair and seating. See attached letter of justification.”

3. *Medical Equipment Request and Justification - Occupational Therapist Assessment* (“OT assessment”) dated May 30, 2017 and signed by two OTs who provided the following information:

- The appellant’s previously funded power wheelchair is beyond repair. The ministry funded a Frontier XS power wheelchair in 2011 and it broke in October 2016. The assessment indicated that this wheelchair is expensive to repair and it is inadequate for the appellant’s current positioning needs. The appellant became reliant on a donated power wheelchair that “died” in January 2017 and is likely beyond any reasonable repair. Since then, the appellant has had access to extended trials with power wheelchairs and has been able to maintain his mobility and his routine. The appellant also has a ministry funded back-up manual wheelchair but he stated he was unable to use it for “medical reasons” and x-rays in November 2016 indicated degenerative joint changes. The manual wheelchair was also considered too heavy for home support workers to provide assistance.
- The goals for the equipment are to provide a means of indoor and outdoor mobility; to provide effective seating to address the appellant’s high pressure management needs; and to achieve the best posture to minimize pain and further deformity, and to maximize the appellant’s independent function.
- The appellant’s medical conditions include paraplegia, a spinal abscess, Type 2 diabetes, morbid obesity [losing weight gradually over time], asthma, GERD, opioid dependence, chronic pain, iron-deficiency anemia, ischial tuberosity osteomyelitis, and multiple extensive wounds resulting from a combination of shearing, pressure, and trauma. The appellant receives home care nursing for wound care.
- The appellant is independently mobile indoors and outdoors with a power wheelchair. He is lift-dependent with two home support workers to help transfer and position him. The appellant has a history of not being available for the evening home care service. He would therefore sleep overnight in his power wheelchair as he is unable to transfer without assistance. The appellant requires “total care” with personal care and is independent with several other activities of daily living.
- Under Product Parameters, the assessment indicated that the appellant requires a “powered mobility device for full-time indoor and outdoor mobility”. The device needs to have specific head, hip, and foot support and positioning, as well as specified back rests and cushions for pressure management. The appellant has trialed the Q6 Edge HD and the QM710 model of power wheelchairs. The appellant would like to pursue funding for the QM710 [*panel note*: The QM710 is the QX power wheelchair requested by the appellant]. The appellant was asked to consider a heavy duty power wheelchair that would likely last longer and require less maintenance and repair; however, the appellant indicated “that a top speed of five miles per hour was not an acceptable compromise for him.”

**4. Comparison price quotations for power wheelchairs:**

- May 26, 2017: Quickie QM710 power wheelchair with accessories including cushions, positioning supports, and a custom footplate, for a total price of \$16,909.43;
- August 23, 2017: Quantum Q6 Edge HD power wheelchair with accessories including cushions, pads and custom foot block, for a total price of \$15,166.77.

**5.** A ministry *Purchase Authorization* dated August 24, 2017 approving funding “equivalent to a Q6 Edge HD with True Balance HD power tilt, and specified wheelchair seating”, for a total amount of \$15,166.77. The ministry noted that a heavy duty (“HD”) chair was funded “as the client was within 15 pounds of the maximum weight capacity of the standard chair.” A higher weight capacity device was funded to ensure that safety and warranties can be guaranteed. The ministry also commented that “increased speed through high speed motors are not required for basic mobility and cannot be considered for power wheelchairs. HD chairs are tested and deemed to travel at a sufficient speed to ensure the safety of users.”

**6.** Two pages of notes from a ministry adjudicator with a date range between June 2 and August 24, 2017 with the following information:

- The appellant’s previous wheelchairs, funded by the ministry in 2013, included a Ranger MDX with tilt, and a back-up chair.
- The OT reported that the appellant has current, extensive pressure sores, is without a suitable wheelchair, and he is resistant to “a heavy duty trial” as “client wants a faster top speed.”
- A consultant noted that the appellant is very hard on equipment and he does not want an HD model as it has a slower speed. The consultant noted that after consulting with the OT and the adjudicator “it was felt that it was more prudent to fund a chair to meet present weight capacity and potential increase in weight.” It was noted that the Q6 Edge chair has a 400 pound weight capacity and the appellant’s weight has at times exceeded 300 pounds. The consultant noted that the appellant wants a chair “with more speed than is possible with the HD motors.” Funding equivalent to the Q6 Edge HD with tilt was recommended.
- The adjudicator noted that a Q6 Edge HD with tilt was approved “due to the client’s weight and limitations of the QM 710 capacity. QM 715 is less cost effective. Approved \$15,166.77 including seating.”

**7.** A Request for Reconsideration (“RFR”) signed by the appellant on October 10, 2017 stating his argument on reconsideration. The appellant stated that the Q6 Edge wheelchair does not move fast enough to enable him to “get away from any threat.” The appellant attached a letter from his OT, dated October 6, 2017. The OT noted the appellant’s arguments for a faster power wheelchair and stated that the appellant “suffers from extreme anxiety and feels very vulnerable in the power wheelchair with tilt, and in particular the Q6 Edge model with a top speed of 4.5 miles per hour.” The OT noted that the appellant is requesting a QX power wheelchair with a top speed of 6.5 miles per hour, and the QX chair has a top speed comparable to the appellant’s previous power wheelchair that was funded by the ministry.

**8.** The ministry’s *Summary of Facts* which indicated the appellant submitted an application for a QX power wheelchair on May 30, 2017. On August 24, 2017, the ministry approved funding for a Q6 Edge power wheelchair, in place of the QX model. The appellant requested reconsideration on October 10, 2017. The ministry reviewed his RFR on October 23, 2017.

### *Procedural matters*

The hearing was adjourned twice. On November 28, 2017, the Tribunal granted an adjournment as the appellant is dependent on his care aides' assistance and he could not attend the hearing at the scheduled time. On December 15, 2017, the panel granted an adjournment at the hearing due to the appellant experiencing a medical emergency. The Tribunal approved the ministry's request to attend the re-scheduled hearing via telephone. The appellant attended the re-scheduled hearing with his advocate.

### *Additional submissions*

Subsequent to the reconsideration decision the appellant filed his *Notice of Appeal* dated November 9, 2017 in which he stated his argument on appeal. At the hearing, the appellant and his advocate elaborated on the appellant's arguments and the ministry reviewed the legislation and responded to the arguments. The panel will consider both parties' arguments in *Part F - Reasons*.

At the hearing, the appellant testified that he previously had a faster chair [7 miles per hour] that was funded partly by the ministry and partly by a federal program. The chairs he has had in the past few years have been slower and his most recent request for a faster chair was initially for one that was even faster, with a top speed of 8 miles per hour. The appellant said that the OT put in a request for a QM 710 model [which the ministry refers to as the QX power wheelchair] and the ministry approved the Q6 Edge chair instead. The appellant stated that he often spends the night in the chair because he cannot make it home from community and social functions before the end of his care aides' evening shift. He explained that he wants to have the same option that an able-bodied person would have, to stay out and socialize after the event is over.

In response to questions from the panel, the appellant explained that the 2 mile per hour difference in speed between the QX wheelchair and the Q6 Edge chair that the ministry approved would be "like the difference between brisk walking and jogging." When it was highlighted that anxiety was not included among the medical conditions listed in the OT assessment, the appellant explained that the OTs were focused on his physical needs and did not inquire about his mental health. The appellant noted that his anxiety condition is documented in the ministry's records because in 2008, when the appellant was still able-bodied, he was deemed to be unemployable due to anxiety and depression.

The panel admits the oral submissions under section 22(4) of the *Employment and Assistance Act*, as evidence in support of the information and records that were before the minister at the time the decision being appealed was made. The panel finds that the appellant's testimony provides background information regarding his medical conditions and his request for funding for a QX wheelchair.

## **PART F – REASONS FOR PANEL DECISION**

The issue on appeal is whether the ministry's reconsideration decision of October 23, 2017 in which the ministry denied the appellant's request for a QX wheelchair was reasonably supported by the evidence, or was a reasonable application of the legislation in the circumstances of the appellant. The ministry was not satisfied that the following eligibility criteria under Schedule C of the EAPWDR were met:

- The medical equipment or device is the least expensive appropriate medical equipment or device - subsection 3(1)(b)(iii); and
- The item is medically essential to achieve or maintain basic mobility - subsection 3.2(2).
- The ministry also found the appellant is not eligible for the QX wheelchair as a life-threatening health need under section 69 of the Regulation.

The ministry was satisfied that the appellant met the general eligibility criteria for health supplements under the EAPWDR as follows:

### **EAPWDR - General health supplements**

62 (1) Subject to subsections (1.1) and (1.2), 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 family unit if the health supplement is provided to or for a person in the family unit who is

- (a) a recipient of disability assistance

However, the ministry was not satisfied that all of the requirements of Schedule C were met:

### **EAPWDR - Schedule C - Health Supplements**

#### **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 (B.C. Reg. 197/2012)

**(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.

Additional requirements specific to wheelchairs:

#### **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.

The ministry was also not satisfied the eligibility criteria set out in section 69 were met:

**Health supplement for persons facing direct and imminent life threatening health need**

**69** The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

(a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,

(b) the health supplement is necessary to meet that need,

(c) a person in the family unit is eligible to receive premium assistance under the Medicare Protection Act, and

(d) the requirements specified in the following provisions of Schedule C, as applicable, are met:

(i) paragraph (a) or (f) of section (2) (1);

(ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

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*Analysis*

*Appellant's arguments*

In his *Notice of Appeal* the appellant argued that the ministry's reconsideration decision was not reasonably supported by law and evidence. At the reconsideration, the appellant argued that the Q6 Edge wheelchair does not move fast enough to enable him to "get away from any threat." The appellant explained at the hearing that he needs to get away from aggressive panhandlers who have victimized him in the past. The appellant argued that the ministry has overlooked his anxiety even though his mental health conditions are documented in his history with the ministry.

The appellant argued that the letter from his OT dated October 6, 2017 attests to his "severe anxiety" and his need for a QX power wheelchair rather than the Q6 Edge chair. The advocate noted that the OT's letter stated that the appellant suffers from "extreme anxiety", and the OT indicated that the QX power wheelchair has a top speed similar to the appellant's previous chair which was funded by the ministry.

The advocate argued that under the Regulation, the ministry should consider that "basic mobility" includes a mental component, and not just physical ability. The advocate explained that a slower chair not only increases the appellant's anxiety but also creates more barriers for the appellant as it forces him to make choices about leaving the house that an able-bodied person would not have to make. The appellant argued that he should have the same options as an able-bodied person who would not have to worry about developing skin infections if they arrive home after 9 or 10 p.m. A wheelchair "is not meant for sleeping in" and the "biggest reason" he needs a faster chair is to protect his health and safety. The appellant noted that a slower wheelchair also creates a safety hazard as he cannot make it across the street before the traffic light changes. The appellant argued that his weight is consistently lower now and that authorizing "a slower chair for a heavier person is derogatory" and makes him feel that he is not entitled to a faster chair only because he has weighed more in the past.

*Ministry's arguments*

The ministry noted general requirements that must be met for the provision of medical equipment and devices that are set out in sections 3(1) to 3(6) of EAPWDR Schedule C. The ministry argued that under the Regulation, the minister may provide “the least expensive appropriate medical device” described in section 3.2 of Schedule C [wheelchairs] where the three legislated criteria set out in subsection 3(1)(b) are met, and where the additional requirements under subsection 3(2) of Schedule C are also met:

Subsection 3(1)(b) requirements:

- The family unit has received pre-authorization from the minister; and
- There are no resources available to the family unit to pay for the equipment and
- The medical equipment or device is the least expensive appropriate medical equipment or device.

Subsection 3(2) requirements:

- The family unit must provide the minister with one or both of the following: a prescription for the wheelchair from a medical or nurse practitioner and/or an assessment by an OT or physical therapist confirming the medical need for the chair.

The ministry did not consider whether the pre-authorization and availability of resources criteria were met. The panel notes that the evidence includes an assessment by an OT as set out in subsection 3(2) of Schedule C. The ministry argued that the QX wheelchair requested by the appellant is not the least expensive appropriate medical equipment or device under subsection 3(1)(b)(iii) of Schedule C. The ministry noted that the Q6 Edge power wheelchair at a cost of \$12,321.40 [basic price without all accessories] is cheaper than the QX chair at a cost of \$14,642.07 [basic price].

In order to determine that the Q6 Edge power wheelchair is also an “appropriate” wheelchair for the purpose of subsection 3(1)(b)(iii) of Schedule C, the ministry considered the requirements specific to wheelchairs under subsection 3.2(2) of the Schedule. This subsection sets out that the ministry may fund a wheelchair if the minister is satisfied that the item is “medically essential to achieve or maintain basic mobility.” The ministry argued that the legislation does not set out minimum speed requirements for wheelchairs or the need for wheelchairs to achieve higher mobilization speeds to evade threats. The ministry argued that the information provided establishes that a Q6 Edge wheelchair “is sufficient...to achieve or maintain basic mobility.”

At the hearing, the ministry confirmed that the appellant’s anxiety condition was not considered in the original request for a QX power wheelchair as it is not noted among the medical conditions listed in the OT’s assessment. The ministry acknowledged that anxiety was reported in the OT’s letter provided for the reconsideration. The ministry explained that when it processes a request for a wheelchair, it may go into the history regarding past equipment that the client was using. However, the ministry “does not go into the file to seek out information that was documented in the past, only what is submitted with the most recent request.”

When asked to explain how the ministry defines “basic mobility”, the ministry replied that it does not have a policy definition. The ministry explained that where the term is not defined in the legislation, the ministry would base its opinion on recommendations from OTs and medical specialists. The ministry explained that funding for the Q6 Edge power wheelchair was provided on the basis of a consulting OT’s opinion and information from equipment providers, as well as assessments and recommendations from the appellant’s OT.

*Panel's decision - subsection 3(1)(b)(iii), least expensive appropriate equipment or device*

Considering the quotations provided for the two models of power wheelchairs, the evidence indicates that in terms of total cost, the Q6 Edge chair with a price tag of \$15,166.77 is \$1,742.66 cheaper than the QX wheelchair with its price tag of \$16,909.43. The panel therefore finds that the ministry reasonably concluded the QX wheelchair does not meet the criterion of the "least expensive" equipment under subsection 3(1)(b)(iii) of Schedule C.

With respect to whether the ministry was reasonable in finding that the Q6 Edge model is also an "appropriate" wheelchair for the appellant under subsection 3(1)(b)(iii) of Schedule C, the panel notes that the physician and the OTs who provided information for the appellant's request did not specifically recommend any particular model of wheelchair. These professionals stated that the appellant needs a "suitable wheelchair to meet his basic mobility needs" [OT's request dated May 29, 2017]; or a "powered wheelchair and seating" [*Medical Equipment Request and Justification* form, and OT assessment].

The advocate argued that the OT's letter of October 6, 2017 implicitly recommends the QX wheelchair to assist the appellant in dealing with his anxiety as he "feels very vulnerable...with the Q6 Edge chair with a top speed of 4.5 miles per hour." However, as noted by the ministry, the appellant's mental health was not put forward in his original request for a QX wheelchair. While it may be reasonable for the ministry to look at mental as well as physical components when forming an opinion of "basic mobility", there is insufficient medical evidence to confirm that a QX wheelchair is medically essential for basic mobility on the basis of a mental health condition. In particular, there is no indication that the appellant would not be able to attend his regular community functions and events in the Q6 Edge wheelchair despite the barriers that he faces as compared to able-bodied persons. Further, the information in the Record indicates that it is the appellant's view, rather than the opinion of medical professionals, that a power chair with a top speed of 5 miles per hour is not suitable for his needs. .

In addition, the 2 mile per hour difference in speed between the Q6 Edge and QX models was described by the appellant as similar to the difference between brisk walking and jogging. It is difficult to conclude that the appellant needs to move at a jogging speed in order to have basic mobility in a power wheelchair. Based on the medical evidence of the appellant's physician and OTs and the specifications of the Q6 Edge and QX models, the panel finds that the ministry reasonably concluded that the Q6 Edge chair is the least expensive appropriate power wheelchair under Schedule C of the EAPWDR. The ministry reasoned that that the QX model is not medically essential for achieving or maintaining the appellant's basic mobility as required by the Regulation and the panel finds that the ministry reasonably applied the legislation in the circumstances of the appellant.

*EAPWDR - section 69 - life-threatening health need*

The ministry argued that the appellant is not eligible to receive a QX power wheelchair as a health supplement for a person facing a direct and imminent life-threatening health need. The ministry noted that section 69 applies to the health supplements and medical equipment and devices set out in Schedule C of the EAPWDR. The ministry argued that section 69 is intended to provide a remedy for persons who are facing a direct and imminent life-threatening health need and who are otherwise not eligible for these supplements. The ministry argued that the appellant does not require a remedy under section 69 because he is eligible to receive health supplements under sections 2(1)(a) and (f) and section 3 of Schedule C. The ministry also argued that the requirement for "imminent" need was also not met.



The panel finds that the ministry reasonably determined the appellant is not eligible for the QX wheelchair under section 69 of the EAPWDR. The Regulation authorizes the ministry to provide the medical equipment and devices set out in section 3 of Schedule C [which includes wheelchairs under subsection 3.2(2)(a)]. However, the person requesting the item must be “otherwise not eligible” for health supplements. The ministry confirmed that the appellant meets the general eligibility requirement for health supplements under section 62 of the EAPWDR. The panel notes that the appellant would therefore be eligible for a wheelchair under Schedule C provided that all of the specific criteria for this item were met. Accordingly, the panel finds that the ministry reasonably determined that section 69 is not applicable in the circumstances of the appellant because he meets the general eligibility requirement for medical equipment under the Regulation.

In addition, the panel finds that the ministry reasonably determined that the information provided does not satisfy the criterion of “imminent life-threatening health need” under subsection 69(a). While the appellant and his medical professionals reported serious health risks in the form of open skin wounds and infections that cause the appellant to attend the hospital as a medical emergency, there was insufficient medical evidence to confirm that the wounds pose an immediate threat to the appellant’s life if he does not receive a QX wheelchair.

#### *Conclusion*

The panel finds that the ministry’s reconsideration decision that determined the appellant is not eligible for a QX power wheelchair under subsection 3(1)(b)(iii) of Schedule C and section 69 of the EAPWDR was reasonably supported by the evidence and was a reasonable application of the Regulation in the circumstances of the appellant. The panel confirms the decision pursuant to section 24 of the *Employment and Assistance Act* and the appellant is not successful in his appeal.