

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated December 19, 2017, which denied the appellant's request to fund scooter repairs. The ministry found that although the appellant's scooter was still under warranty, the warranty did not cover the accidental damage that the appellant experienced so the ministry could consider funding repairs caused by accidental damage not covered by the warranty for her scooter. However, the ministry was not satisfied that there were no resources available to the appellant to pay the cost of the repairs as required by Schedule C, section 3(1)(ii) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

PART D – RELEVANT LEGISLATION

EAPWDR section 62 and, Schedule C, sections 3 and 3.4

PART E – SUMMARY OF FACTS

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

- On January 16, 2017 the ministry funded a scooter for the appellant for the total amount of \$3,577.60
- Fax cover sheet dated November 2, 2017 from the appellant's occupational therapist (OT) indicating that the appellant was involved in a car accident with her scooter, has started an insurance claim, relies on her scooter for daily transportation and requires scooter repairs
- Work Order dated November 10, 2017 (November Work Order) indicating that the appellant reported that the scooter was chugging along, doesn't have speed, and the front end is rattling
- Quotation from the scooter vendor dated November 1, 2017 for scooter repairs in the amount of \$1,705.76
- Letter from the OT dated November 24, 2017 indicating that the appellant has been a patient since September 26, 2017. The OT states that the appellant called the OT on September 26, 2017 advising that the scooter was moving slowly, rattling, and the battery was not working. The OT contacted the vendor, who followed up with repair. The OT indicates that on October 6, 2017 the appellant called again stating that the scooter was chugging along and would stop every half a block. The OT contacted the vendor who took the scooter away for repair but could only loan the appellant a manual scooter, which was not acceptable as the appellant has arthritis and manually pushing a chair would cause pain and increase symptoms. The appellant was very distressed at not having a scooter and was not able to go out. The OT states that on October 30, 2017 the appellant called the OT to say that she was involved in a scooter/car accident. The OT states that she contacted the vendor and the ministry and that she asked the vendor to send a list of repairs done on the scooter so she could apply to the ministry to replace the scooter as it was being continually repaired and was causing the appellant stress. The OT states that the appellant qualified for a scooter and that her previous scooter lasted a very long time but the scooter provided in January 2017 had numerous repairs prior to the accident. The OT states that she was in the process of requesting a new scooter and hopes that the ministry will reconsider the appellant's application and fund a new scooter as well as future funding for a loaner scooter if required
- Request for Reconsideration form dated November 20, 2017 (RFR) in which the appellant states that she had a scooter for 22 years due to her medical conditions, that she is unable to walk more than half a block and needs a scooter to get around (e.g. grocery shopping, many, many doctors' appointments). The appellant states that she's had a new scooter since late January 2017 and it has broken down four times
- Document titled Personal Medical History indicating that the appellant has back pain with compression fracture of L2, degenerative disc disease and facet joint osteoarthritis, chronic kidney disease, Addison's disease, thyroid dysfunction, osteoporosis, GERD, CHF, chronic pain syndrome, essential tremor, chronic depression, rhinitis, seborrhea, impaired glucose function, history of rectal polyps/adenoma, COPD, progressive sensory polyneuropathy, sliding hiatal hernia, osteoarthritis (widespread), calcific tendonitis (left shoulder), right carpal tunnel syndrome, intermittent claudication, stress incontinence, mild hyperlipidaemia, fibromyalgia, monoclonal gammopathy, mild cognitive decline, iron deficiency (anaemia), left wrist fracture and right ulnar collateral ligament repair (April 2017)
- Document titled Medication List listing the appellant's medications (31 medications) and
- Letter from the appellant's family physician dated December 4, 2017 indicating that the appellant requires a scooter for transportation and is extremely limited in function without it

Additional information provided

In her Notice of Appeal dated January 8, 2018, the appellant indicates that she is waiting for the vendor to repair the scooter that is under warranty, that she has no money or insurance for a scooter. The appellant states that she has asthma, COPD, Addison's disease and has been using a scooter for 22 years for groceries, medical appointments and community outings. The appellant states that she is unable to walk more than half a block and is disabled without her scooter.

At the hearing, the appellant provided the following documents (the "Submission"):

- Work Order dated November 16, 2016 with respect to the appellant's previous scooter
- Work Order dated March 13, 2017
- Work Order dated June 5, 2017
- Work Order dated September 29, 2017

- Two copies of the November Work Order, one with handwritten notes indicating “*unrepaired – needs stronger battery*”
- Letter from a physical and medicine rehabilitation specialist dated January 10, 2018 indicating that the appellant has had cortisone shots in her right AC joint and that the appellant is awaiting a scooter before scheduling a follow-up appointment
- Letter from the appellant’s insurance agency dated January 16, 2018 indicating that there is insufficient evidence to indicate that the driver of the vehicle was at fault for the accident of October 29, 2017 and that the insurance company is denying the appellant’s claim for damages to her scooter
- Work Order dated January 17, 2018 for a service request for the scooter due to a motor vehicle accident
- Note from a physician dated February 5, 2018 indicating that the appellant has a complex medical history with COPD and spinal stenosis and that she is unable to walk more than half a block and has used a scooter for mobility for 22 years and will need to do so indefinitely

At the hearing the appellant stated that she had one scooter for 22 years that worked excellent and she only needed a tune-up but that the scooter she received in January 2017 broke down the first time just 17 days after she had it, has broken down numerous times since, and is a “lemon”. The appellant states that she was involved in an accident with the scooter when she was crossing a crosswalk and a vehicle struck her. The appellant states that her insurance company has denied coverage to repair the scooter and she now has the letter from the insurance company confirming that information.

The appellant stated that she has numerous medical conditions including COPD, Addison’s disease (non-functioning adrenal glands for which she receives cortisone shots) and spinal stenosis and she requires a scooter urgently because she cannot walk more than half a block and needs the scooter to go shopping and get to appointments. The appellant states that without the scooter she has to take 3 buses to do anything and what used to take her less than one hour, now takes 3 ½ hours and she is totally exhausted afterwards, has no energy and sleeps for 1 ½ to 2 days.

The appellant states that she is at her wits end because the warranty will not cover the accidental repairs, the insurance company will not pay for the repairs, and the ministry is refusing to pay for the repairs and she has no money to pay for them herself. The appellant states that it is very frustrating as it feels like she is being blamed for the situation. She stated that when the scooter kept breaking down before the accident she asked the vendor to replace it but they would not do so.

Admissibility of New Information

The ministry did not object to the information in the Notice of Appeal or the Submission.

The panel has admitted the information in the appellant’s Notice of Appeal, the Submission and the appellant’s oral testimony, as they are evidence that is in support of information and records that were before the ministry at reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the Notice of Appeal and information from the physician speak to the appellant’s medical conditions, the work orders support the information regarding the scooter breakdowns, and the letter from the insurance company provides a decision on the appellant’s claim that was before the ministry at reconsideration. In the reconsideration decision the ministry noted that there was no information indicating that the insurance company would not cover the cost of the scooter repairs.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant funding for scooter repairs on the basis that she has not demonstrated that there are no resources available to her to fund the cost of the scooter repairs as required by section 3(1)(ii) of Schedule C of the EAPWDR was a reasonable application of the applicable enactment in the circumstances of the appellant.

Relevant Legislation

EAPWDR Schedule C

Medical equipment and devices

- 3 (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.12 of this Schedule are the health supplements that may be provided by the minister if
- (a) the supplements are provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation, and
 - (b) all of the following requirements are met:
 - (i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;
 - (ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
 - (iii) the medical equipment or device is the least expensive appropriate medical equipment or device.
- (2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:
- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
 - (b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.
- (2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:
- (a) a prescription of a medical practitioner or nurse practitioner for the medical

equipment or device;

(b) an assessment by a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if

(a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and

(b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

(4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.

(5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if

(a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and

(b) it is more economical to repair the medical equipment or device than to replace it.

(6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

Medical equipment and devices — scooters

3.4 (1) In this section, "**scooter**" does not include a scooter with 2 wheels.

(2) Subject to subsection (5) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (3) of this section are met:

(a) a scooter;

(b) an upgraded component of a scooter;

(c) an accessory attached to a scooter.

(3) The following are the requirements in relation to an item referred to in subsection (2) of this section:

(a) an assessment by an occupational therapist or a physical therapist has confirmed that it is unlikely that the person for whom the scooter has been prescribed will have a medical need for a wheelchair during the 5 years following the assessment;

(b) the total cost of the scooter and any accessories attached to the scooter does not exceed \$3 500 or, if subsection (3.1) applies, \$4 500;

(c) the minister is satisfied that the item is medically essential to achieve or maintain basic mobility.

(3.1) The maximum amount of \$4 500 under subsection (3) (b) applies if an assessment by an occupational therapist or a physical therapist has confirmed that the person for whom the scooter has been prescribed has a body weight that exceeds the weight capacity of a conventional scooter but can be accommodated by a bariatric scooter.

(4) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years after the minister provided the item being replaced.

(5) A scooter intended primarily for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

Panel Decision

Request for a new scooter

The reconsideration decision notes that the original ministry decision related to the appellant's request for funding to repair her scooter but in the RFR, the appellant's OT and physician also request a new scooter as a replacement. The ministry indicates that the reconsideration decision only relates to the appellant's request for funding for repairs to the appellant's scooter as that is what she originally requested and was denied. The reconsideration decision indicates that if the appellant chooses to request a new scooter, to contact her local office. The reconsideration decision also indicates that as per Schedule C, section 3.4(4) of the EAPWDR, the period of time with respect to replacement of a scooter is 5 years after the minister provided the item being replaced. The reconsideration decision indicates that this is for information purposes only and is not a formal denial for a new scooter as the reconsideration decision relates only to the appellant's request for repairs to her scooter.

Pursuant to section 24(6) of the *Employment and Assistance Act*, the panel's jurisdiction is limited to determining whether the ministry's reconsideration decision arising from the appellant's request for funding for scooter repairs was reasonable. The panel does not have the jurisdiction to make a determination about a new request for funding of a new scooter. The panel's decision is therefore only with respect to the reasonableness of the ministry's reconsideration decision denying the appellant's request for funding for scooter repairs.

Request for funding for scooter repairs

The ministry's position is that based on ministry policy "Repairing or Replacing Medical Equipment and Devices" effective October 1, 2012 (the "Policy"), which states that the ministry may consider repairing or replacing medical equipment due to the medical equipment being damaged, worn out, or not functioning if all of the following are met:

- it is more economical to repair, rather than replace, the medical equipment;
- the medical equipment has not been damaged by misuse;
- if the equipment was not previously provided by the ministry, all other eligibility requirements must be met (e.g., prescription, assessment).

The reconsideration decision states that because the damages to the appellant's scooter were incurred as a result of an accident, there was no 'misuse'. The reconsideration decision also states that although the appellant's scooter is still under warranty, the warranty does not cover accidental damage such as the appellant experienced, so as per the Policy, the minister can consider funding repairs for a scooter.

However, the ministry's position is that the ministry has not received confirmation that the appellant's insurance claim has not resulted in funding towards repairing the appellant's scooter so the ministry considers this as an alternate resource for funding the scooter repair. Therefore, the ministry's position is that the appellant has not met the legislative criteria set out in EAPWDR Schedule C, section 3(1)(b)(ii).

The appellant's position is that the scooter she received from the ministry in January 2017 is a "lemon", that it has required numerous repairs and that since the accident in October 2017 she requires further repairs for which she does not have any money to pay. The appellant states that she received a call from the insurance company on November 14, 2017 at which time the representative told her that they were not paying for the scooter repairs as they did not accept that the damage occurred due to the fault of the driver. The appellant stated that she was not aware that she had to provide that information to the ministry but she has now provided a letter from the insurance company confirming that they are not willing to pay for the scooter repairs. The appellant states that the vendor would not repair the scooter under the warranty, the insurance company will not pay for the repairs and she has not other money to pay for the repairs, so she has demonstrated that there are no resources available to her to fund the scooter repairs.

The panel notes that the Policy indicates that repairs for medical equipment may be considered if it is more economical to repair, rather than replace the equipment, the medical equipment has not been damaged by misuse; and if the equipment was not previously provided by the ministry, all other eligibility requirements must be met. However, in this case, the ministry did provide the appellant with funding for the scooter in January 2017 so the panel finds that the ministry's application of the Policy was not reasonable because under the Policy "all other requirements must be met" applies to equipment that was not provided by the ministry. The ministry representative stated that it was her understanding that the Policy applied to all medical equipment requests set out in sections 3.1 to 3.11 of EAPWDR Schedule C but she could not confirm why the Policy would apply in the appellant's circumstances given that the ministry had provided her scooter.

The panel also finds that the ministry's application of the legislation in the appellant's circumstances was not reasonable. The reconsideration decision indicates that the ministry determined that the appellant did not meet the legislative criteria of section 3(1)(b)(ii) of EAPWDR, Schedule C. However, section 3(1) states that subject to sections (2) to (5) of that section, the medical equipment and devices that may be provided as health supplements are the ones specified in sections 3.1 to 3.11 of Schedule C. While Schedule C, section 3.4 relates to scooters, and includes a scooter, an upgraded component of a scooter or an accessory attached to a scooter, neither section 3.1 nor 3.4 sets out the criteria for scooter repairs.

The applicable legislation for repairs to equipment that was provided by the ministry is set out in EAPWDR Schedule C, section 3(4) which states that subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment that was previously provided by the minister if it is more economical to repair the medical equipment than to replace it. Section 3(6) states that the ministry may not provide repairs of medical equipment under subsection (4) if the minister considers that the medical equipment was damaged through misuse. The reconsideration decision indicates that the ministry was satisfied that the appellant's scooter was not damaged through misuse, but due to accidental circumstances from the accident, so the ministry accepts that the criteria of EAPWDR Schedule C, section 3(6) were met.

As the ministry provided the appellant with her scooter in January 2017, it is clear that the appellant meets that aspect of EAPWDR Schedule C, section 3(4). With respect to whether it is more economical to repair the medical equipment than to replace it, the reconsideration decision does not provide the ministry's position on this issue. However, the panel notes that the scooter purchased in January 2017 cost \$3,577.60 whereas the quote for the scooter repairs dated November 1, 2017 indicates that the repairs would cost \$1,705.76, so the panel finds that the ministry was not reasonable in not determining that it would be more economical to repair the medical equipment rather than replace it, or in not addressing this aspect of the legislation in its reconsideration decision.

As the ministry provided the appellant with her scooter in January 2017, it is clear that EAPWDR Schedule C, section 3(4) applies in the appellant's circumstances. With respect to whether it is more economical to repair the medical equipment than to replace it, the reconsideration decision does not provide the ministry's position on this issue. However, the panel notes that the scooter purchased in January 2017 cost \$3,577.60 whereas the quote for the scooter repairs dated November 1, 2017 indicates that the repairs would cost \$1,705.76.

In the alternative, if EAPWDR Schedule C, section 3(1)(b)(ii) is applicable to the issue of funding for scooter repairs, the panel finds that the ministry's reconsideration decision was not reasonable as the letter from the insurance company indicates that they are not willing to cover the cost of the scooter repairs, and the appellant has therefore provided confirmation that the claim she made from the accident will not result in funding towards repairing her scooter. The evidence at reconsideration is that the ministry was aware that the appellant had filed a claim with her insurer and the appellant had not yet received a decision on the claim. Considering the appellant's evidence that the vendor will not repair the scooter, that the insurance company will not pay for the scooter repairs and accepting the appellant's evidence that she has no alternative resource to fund the scooter repairs, the panel finds that the ministry was not reasonable in determining that the appellant did not meet the criteria of EAPWDR Schedule C, section 3(1)(b)(ii).

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for funding for her scooter repairs was not a reasonable application of the applicable enactment, and therefore rescinds the decision. The appellant is successful on appeal.