

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of April 25, 2018 (the “Reconsideration Decision”), which denied the Appellant a health supplement for a replacement scooter because the Appellant’s request did not meet the statutory requirements of sections 3(3)(b) and 3.4(4) of Schedule C to the *Employment and Assistance for Persons With Disabilities Regulation* (“EAPWDR”) because the request for the scooter was made less than five years from the date that the Ministry had provided the Appellant’s previous scooter, which had been stolen.

PART D – RELEVANT LEGISLATION

EAPWDR, section 62,

EAPWDR, Schedule C- sections 3(3)(b) and 3.4(4)

PART E – SUMMARY OF FACTS

The information before the Ministry at the time of the Reconsideration Decision consisted of the following:

- a sales quotation for a new scooter, dated December 19, 2017 (the “Quote”), in the amount of \$3,500.00;
- a Medical Equipment Request and Justification, signed by the Appellant’s doctor on December 14, 2017 (the “Request”);
- a faxed letter, dated January 4, 2018 (the “Letter”) from an occupational therapist noting that:
 - the Appellant has a medical history that includes “type 2 DM, hypertension, COPD, sleep apnea, urinary retention, osteoarthritis with knee replacement, cardiac arrest, hypoxic brain injury, mitral regurgitation, and valvular atrial fibrillation.”
 - the Appellant is able to transfer independently and mobilizes with a walker;
 - the Appellant has a history of falls;
 - the Appellant is without a scooter, following the theft of his previous scooter;
 - the Appellant was unaware that scooters could be stolen even if the keys were in his possession but is now aware that scooter keys are universal;
 - the Appellant is “extremely reliant on his power mobility device”, can only walk short distances, and is at high risk of falls;
- a letter from the Ministry, dated March 21, 2018, denying the Appellant’s request for a replacement scooter;
- the Appellant’s Request for Reconsideration, dated April 13, 2018 (the “RFR”), in which the Appellant refers to the Letter.

In his Notice of Appeal, filed May 10, 2018, the Appellant states that:

- he needs a scooter to safely mobilize in his community;
- his scooter was stolen and that he is not at fault as it was locked; and
- he is not eligible for any other funding.

In his oral evidence at the hearing of the Appeal, the Appellant reiterated that he was unaware that other keys could be used to fit his previous scooter and that he still had both keys to his stolen scooter. He also stated that he believed the scooter was rolled onto a truck while he was in a coffee shop.

The Appellant stated that he needed the scooter because he is unable to walk. He stated further that he recently had to move to a facility that provides more care and that he has lost his appetite. The Appellant also stated that he has experienced some depression since his scooter was stolen.

The Ministry relied on the Reconsideration Decision and noted that, as the Appellant had been provided with his previous scooter in February, 2015, he was not eligible for a replacement until February, 2020 under sections 3(3) and 3.4(4) of Schedule C to the EAPWDR.

Admissibility of New Information

The panel admits the Appellant’s oral evidence at the hearing as oral testimony in support of information and records that were before the Ministry at the time of the Reconsideration Decision, pursuant to section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

Issue on appeal

The issue in this appeal is whether the Reconsideration Decision, which denied the Appellant a health supplement for a replacement scooter because the request was made less than five years from the date that the Ministry had provided the Appellant's previous scooter, was reasonably supported by the evidence or was a reasonable application of sections 3(3)(b) and 3.4(4) of Schedule C to the EAPWDR.

Applicable Legislation

Section 62 of the EAPWDR authorizes the Ministry to provide 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
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

Section 3 of Schedule C to the EAPWDR sets out the criteria generally for eligibility for health supplements and medical equipment:

- 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.

Section 3.4 of Schedule C to the EAPWDR sets out the specific criteria for eligibility for health supplements related to scooters and related accessories:

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.

Appellant's Position

The Appellant's position is that he requires a scooter for his mobility because he is limited in his ability to walk. The Appellant further claimed that the theft of his previously approved scooter was not his fault as he had locked the scooter and had all of its keys in his possession at the time that it was stolen.

Ministry's Position

The Ministry does not dispute that the Appellant requires a scooter but states that it is limited by the statutory provisions contained in sections 3(3) and 3.4(4)(b) to the EAPWDR. In its Reconsideration Decision, the Ministry also referenced a policy exception that can, in certain circumstances, permit the Ministry to authorize a replacement scooter within the time period set out in section 3.4(4)(b). However, as the panel is limited to consideration of whether the Reconsideration Decision was a reasonable application of the relevant *legislation*, the panel makes no findings with respect to the Ministry's application of its policy exception.

Panel Decision

Section 3(3) of Schedule C to the EAPWDR confers on the Ministry the discretion to provide replacement medical equipment or devices, that is worn out or not functioning if

- (a) it is more economical to replace 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.

The types of equipment which are subject to the time period described in section 3(3)(b) of Schedule C to the EAPWDR are set out in section 3.4(2) and include:

- a scooter
- an upgraded component of a scooter; and
- an accessory attached to a scooter.

For any of the above items, the time period referenced in section 3(3)(b) is set out unambiguously in section 3.4(4) of Schedule C to the EAPWDR as “5 years after the minister provided the item being replaced.” In other words, the Ministry is not legislatively authorized to replace a scooter or any upgraded component or accessory within 5 years of such items having been provided by the Ministry. There are no legislative exceptions to that time period and, given that the Ministry had provide the Appellant with his previous scooter in February, 2015, the earliest that it would be legislatively authorized to replace the stolen scooter is February, 2020. The panel finds that the Ministry was reasonable in its application of section 3.4(4) of Schedule C to the EAPWDR.

In view of all of the foregoing, the panel finds that the Ministry’s denial of the Appellant’s request for a replacement scooter was a reasonable application of the relevant statutory provisions in the circumstances of the Appellant and, in the result, the panel confirms the Reconsideration decision.

The Appellant is not successful in his appeal.

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister
for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Adam Shee

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/June/6

PRINT NAME

Sandra Chan

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/June/6

PRINT NAME

Stephanie Korour

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/June/6