

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated June 5, 2018 in which the ministry found that the appellant was not eligible for a power wheelchair (with power tilt and seating) as a health supplement under the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"), Schedule C. The ministry was not satisfied that the following criteria 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).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - section 62 and Schedule C

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. A Request for Reconsideration (“RFR”) signed by the appellant on May 22, 2018, with a typed submission from the appellant’s support worker arguing in support of the appellant’s request for a power wheelchair. The support worker indicates the appellant previously had a power wheelchair but currently uses a walker and experiences frequent falls both inside her residence and while out in the community.

2. A request for a power wheelchair from an Occupational Therapist (“OT”) dated January 3, 2018, with the following attached documents:

- An undated letter from the OT requesting pre-approval for funding for a power wheelchair with seating and providing the following information:
 - The appellant’s medical conditions include arthritis (with chronic knee and back pain), IBS, Diabetes, O.P. Sympathetic dystrophy, Narcolepsy and sleep disorder; and a history of substance abuse.
 - The appellant had been using a power wheelchair since 2012 but her power wheelchair was worn out and unusable, and has since been disposed of.
 - The appellant is able to walk short distances with a four wheeled walker. Her ability to ambulate fluctuates due to pain and on “bad days” she struggles to get to the dining area of her residence.
 - The appellant is unable to propel a manual wheelchair due to pain and fatigue. While the OT “cannot determine that she will make reasonable, consistent safety decisions while on the power mobility” (due to a history of risk-taking behavior), the appellant acknowledges the risk and reports she will operate the power wheelchair safely and responsibly.
 - The appellant has her own room in a wheelchair accessible building. She has to walk more than 100 metres to access the dining and common areas of her residence. A power wheelchair increases her options for housing in the future, by enabling her to consider locations with hills or longer distances to access her suite.
 - The appellant requires trunk support and a headrest as she fatigues quickly. When she had a power wheelchair, she utilized tilt and a good foam cushion to maintain her position, assist with pain control, and prevent pressure injury.
 - The equipment requested is a Pride Quantum Q6 Edge power wheelchair for improved access to a variety of environments based on its compact base and tight turning radius. Requested add-ons/ accessories include power tilt, Q6 Logic joystick, Tru Comfort backrest and cushion, and accompanying headrest.
- A Medical Equipment Request and Justification form signed by the appellant on June 20, 2017 and by the OT on November 14, 2017, with attached prescription pad note.
- A prescription from a physician dated March 12, 2017 that states, “due to her medical conditions and lack of mobility, patient is wheelchair bound and requires an electric wheelchair, please provide one for her.”
- A quotation from a medical equipment supplier dated October 30, 2017. The total cost of a Pride Quantum Q6 Edge power wheelchair (with tilt, cushioning, and other accessories) is \$11,173.25.

3. Information from the ministry’s record of decision which included:

- A letter dated June 5, 2018 in which the ministry advised the appellant she was not eligible for a power wheelchair (with power tilt and seating) upon reconsideration of the information provided.
- The reconsideration decision which indicates the appellant is in receipt of disability assistance. The

Summary of Facts indicates the appellant submitted an application for a power wheelchair on January 3, 2018. On April 4, 2018, the ministry denied the request. On May 22, 2018, the appellant submitted her RFR which was reviewed by the ministry on June 5, 2018.

- A letter dated April 4, 2018 in which the ministry advised the appellant she was not eligible for a power wheelchair as a health supplement.
- Adjudicator decision notes containing the following information:
 - The ministry funded a power wheelchair with seating in February 2013.
 - 2018-03-05: The adjudicator left a message for the OT, asking, “why can she not propel?”- the appellant’s pain is in her knees and back.
 - 2018-03-05: The OT returned the adjudicator’s call. The OT stated, “client does not require tilt.” The OT indicated she would review the information to answer the adjudicator’s question, “why not a scooter?”-the appellant has indoor mobility.
 - 2018-03-14: The OT left a message indicating she consulted with her colleagues and “they all think a scooter may meet her needs.”
 - 2018-03-14: The OT left a subsequent message indicating the appellant is: *opposed to a scooter. Stated she is a better driver on a power wheelchair than a scooter, OT has not seen her drive a scooter. A scooter is hard to get on the bus. She states she requires tilt due to her medical condition that causes her to fall asleep and she would like to be able to go into tilt so she can fall asleep safely.*
 - 2018-03-28: The adjudicator spoke with the OT who indicated the appellant will not trial a scooter. The OT reported that the appellant’s “mobility has improved” since her last power wheelchair was purchased.

Additional information

On June 13, 2018, the Tribunal received the appellant’s Notice of Appeal which states the reason she disagrees with the ministry’s reconsideration decision. The panel accepts the submission as argument.

At the hearing, both parties summarized their arguments and the ministry did not submit any new evidence. The appellant stated that she previously trialed a scooter and in fact had a scooter for a 2 year period before she received a power wheelchair. The appellant explained that she had a second hand scooter; “it wore out and the OT thought a power wheelchair was more suitable.” The ministry did not provide any contrary evidence regarding the appellant’s history of using a scooter. The panel admits the information under section 22(4) of the *Employment and Assistance Act* as background information in support of the appellant’s previous use of a power wheelchair that was before the minister when the decision being appealed was made.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry reasonably determined that the appellant was not eligible for a power wheelchair (with power tilt and seating) as a health supplement under the EAPWDR, Schedule C, subsections 3(1)(b)(iii) and 3.2(2). In particular, was the ministry's finding that a power wheelchair is not the least expensive appropriate medical equipment, and is not medically essential to achieve or maintain basic mobility, reasonably supported by the evidence or a reasonable application of the legislation?

The ministry based its reconsideration decision on the following legislation:

EAPWDR

Basic eligibility

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,

Schedule C - Health Supplements

General requirements for 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.

Specific eligibility criteria for wheelchairs and wheelchair seating

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.

Medical equipment and devices — wheelchair seating systems

3.3 (1) 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 a person's positioning in a wheelchair:

(a) a wheelchair seating system;

(b) an accessory to a wheelchair seating system.

(2) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is 2 years from the date on which the minister provided the item being replaced.

Arguments

At the reconsideration, the ministry was satisfied that the appellant is eligible to receive health supplements under section 62 and Schedule C of the EAPWDR as a person in receipt of disability assistance. Thus, the criterion of basic eligibility is not in dispute.

The ministry argued that a power wheelchair is not the least expensive appropriate medical equipment and is not medically essential to achieve or maintain basic mobility because a scooter could meet the appellant's mobility needs. The ministry stated that no evidence was provided to establish that the appellant cannot operate a power scooter. The ministry noted that a scooter is less expensive than a power wheelchair; that transit buses provide access for scooters; and that a power scooter would allow for mobilization on hills and across longer distances. The ministry indicated the appellant was unwilling to trial a scooter, but the adjudicator's notes indicated that the OT and her colleagues "all think that a scooter may meet her needs."

The appellant made the following arguments to which the ministry responded in turn:

- Due to her narcolepsy, a scooter would pose a significant safety hazard because it does not have an automatic shut-off like a motorized wheelchair does. The tilt function on a power wheelchair allows her to remain in a safe position when she falls asleep. The ministry noted that the support worker reported safety concerns (risk of falls and injury) but the OT did not request a power wheelchair to specifically address the appellant's sleep problems; or describe the frequency or duration of the appellant's "periods of fatigue" or the frequency of the appellant's "bad days".
- A scooter would not be suitable from a space perspective, due to the tight corner and small hallway outside the appellant's room. It would certainly create a fire hazard if parked in the hallway and could be stolen if parked outside the building. A power wheelchair, on the other hand, permits the appellant to "turn on a dime" and maneuver in and out of her room safely. The ministry argued there was "no indication that a scooter cannot be parked in another area either inside or outside the building" or driven into the appellant's room.
- Her medical condition has worsened since she lost her power wheelchair: she is in "continuous pain - eating painkillers like smarties" which she never did before. Although she uses her walker occasionally, she may not be able to use her legs in the future as her health problems progress. Without a power wheelchair, her quality of life has diminished: she "cannot access basic resources", visit family or friends, or go shopping for groceries and this is "devastating" for her. The ministry noted that neither the OT nor the physician reported a decline in the appellant's physical health - the OT indicated the appellant can walk short distances using a four wheeled walker and advised the adjudicator that the appellant's mobility has improved. When asked at the hearing about the reported improvement in her mobility, the appellant maintained that her condition has gotten worse and the OT's opinion was based on only one meeting and does not reflect her doctor's opinion.
- The ministry "drags its feet on medical issues...makes the client wait way too long for a decision; puts clients at risk, then makes them jump through more hoops by saying they need to provide more information." The ministry asked the appellant whether she had requested the OT to provide information on a scooter being too big for her space. The appellant replied that she did not know it would be necessary to follow up with the OT. The ministry asked the appellant if she had looked at newer, smaller scooters. The appellant indicated that she had, "but they are still quite big." The ministry explained that a client can still apply for a power wheelchair or other equipment if their medical condition changes and new information is provided.

Panel's decision

Subsection 3(1)(b) of Schedule C authorizes the minister to provide the medical equipment and devices described in section 3.2 of the Schedule (wheelchairs) if all of the requirements under sections 3(1) and 3(2) are met, as well as the specific requirements for a wheelchair in subsection 3.2(2). The ministry reviewed the general eligibility requirements under sections 3(1) and 3(2) of Schedule C as well as the specific eligibility criteria for wheelchairs and wheelchair seating under sections 3.2 and 3.3. but was not satisfied that a power wheelchair was the least expensive appropriate equipment under subsection 3(1)(b)(iii) of Schedule C or medically essential to achieve or maintain basic mobility as required by subsection 3.2(2).

In order to determine if the equipment requested is the "least expensive appropriate medical equipment or device" under the Regulation, the ministry would reasonably require information on the cost and function of at least two items. The evidence of the two medical professionals (the OT, and the physician who wrote the prescription for an electric wheelchair) as well as the support worker and the appellant, establishes that the appellant requires a mobility aid beyond her current four wheeled walker which she can only use for short distances due to her physical limitations. A quotation was provided for a Q6 Edge power wheelchair (with tilt and seating) in the amount of \$11,173.25. The ministry indicated that a scooter is less expensive than a power wheelchair and the appellant did not argue otherwise. Based on

a cost comparison, the panel finds that the ministry reasonably determined that a power wheelchair is not the least expensive medical equipment under subsection 3(1)(b)(iii) of Schedule C.

The parties disagree over whether a scooter is “appropriate” equipment under subsection 3(1)(b)(iii). The evidence from the physician in the prescription note (March 12, 2017) indicated the appellant is “wheelchair bound” and “requires an electric wheelchair”, while the newest evidence from the OT (adjudicator’s notes from March 2018) indicates that a scooter “may meet” the appellant’s needs and her mobility has actually improved since she last had a power wheelchair. The adjudicator’s notes indicate the OT has not seen the appellant drive a scooter and the appellant refused to trial one. The ministry argued that it is therefore difficult to establish that a power scooter will not meet the appellant’s basic mobility needs.

The appellant argued that the scooter she had in the past was too large and awkward to maneuver in her small space but the evidence indicates she did not trial a scooter in her most recent application for a mobility aid. Consequently, there is insufficient evidence to determine whether a scooter is too large for the appellant’s current residence. The support worker indicated that a scooter would need to be parked outside the appellant’s door due to the tight corner and small hallway (becoming a fire code violation) but as noted by the ministry, there was “no indication that a scooter cannot be parked in another area either inside or outside the building.” The ministry also noted that despite the tight space, the support worker did not “explicitly state that a power scooter cannot be driven into your room.” The OT indicated the appellant’s residence is wheelchair accessible but did not address whether the space could accommodate a scooter. The panel therefore finds that the ministry’s determination that a power wheelchair is not the least expensive appropriate medical equipment was reasonably supported by the evidence.

In determining whether a power wheelchair is the most appropriate equipment from a medical standpoint, the ministry was not satisfied that the appellant requires a power wheelchair specifically for her sleep disorder and the associated safety concerns that she and the support worker raised. The appellant indicated that a scooter does not have the automatic shut off, tilt feature, and easier maneuverability that a power wheelchair provides. The evidence from medical professionals indicated the appellant has narcolepsy and sleep disorder but as noted by the ministry, the OT did not describe how often the appellant needs “increased support” due to her fatigue.

While the physician prescribed an electric wheelchair “due to her medical conditions and lack of mobility”, the prescription note was over a year old and did not provide any detail about the appellant’s propensity to fall asleep and experience frequent falls as a result of her conditions. The appellant was frustrated by the length of time the ministry takes to make a decision and stated that her doctor does not think her mobility has improved. Nonetheless, there was no additional information from the physician and based on the OT’s evidence, the panel finds that the ministry reasonably determined a power wheelchair was not the least expensive appropriate medical equipment under subsection 3(1)(b)(iii) of Schedule C.

The parties’ positions on subsection 3.2(2) of Schedule C are based on the same arguments and information as for subsection 3(1)(b)(iii). The ministry highlighted the OT’s information that indicated the appellant can walk short distances using a four wheeled walker. The ministry argued “it cannot be established that a power scooter would not meet your basic mobility needs over long distances.” The appellant argued that her mobility has not improved and although she can currently use her walker for short distances, her conditions are getting worse and a power wheelchair is medically essential as her quality of life has suffered greatly without it.

There was no indication that the appellant had trialed a scooter and the evidence from medical professionals was insufficient to establish that the appellant requires a power wheelchair or specific wheelchair features due to her narcolepsy or a worsening of her medical conditions. The panel therefore finds that the ministry reasonably determined that a power wheelchair is not medically essential to achieve or maintain basic mobility pursuant to subsection 3.2(2) of Schedule C. Under subsection 3.2(2)(a), a wheelchair is a health supplement that the minister is authorized to provide only when satisfied that the wheelchair is medically essential to achieve or maintain basic mobility.

Conclusion

The panel finds that the ministry's reconsideration decision which found that the appellant was not eligible for a power wheelchair under Schedule C of the EAPWDR was reasonably supported by the evidence. The panel confirms the ministry's decision. The appellant is not successful in her appeal.

PART G—ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H—SIGNATURES	
PRINT NAME Margaret Koren	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018-07-04

PRINT NAME David Handelman	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018-07-04

PRINT NAME Kim Polowek	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018-07-04