

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated May 4, 2018 which denied the appellant's request for a supplement to cover the cost to replace her manual wheelchair because the applicable period of time had not passed, as required by Sections 3(3)(b) and 3.2 of Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 62, and Schedule C, Sections 3 and 3.2.

## **PART E – SUMMARY OF FACTS**

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Quote from the equipment supplier dated October 12, 2017 for a manual wheelchair at a total cost of \$3,657.60;
- 2) Prescription dated February 6, 2018 in which the physician wrote that the appellant's diagnosis is Charcot foot with reduced mobility and elevation of her legs is required (elevating leg rests), gel armrest required (kyphosis with increased weight-bearing on arms), and a tension adjustable back rest for kyphosis;
- 3) Letter dated February 15, 2018 in which an Occupational Therapist (OT) provided an assessment of the appellant's need for a basic manual wheelchair;
- 4) Medical Equipment Request and Justification (MERJ) form dated February 21, 2018 in which a medical practitioner described the appellant's medical condition as "Charcot foot." The equipment recommended is a manual wheelchair;
- 5) Letter dated March 6, 2018 in which the ministry wrote that the appellant's request for the replacement of her manual wheelchair was denied as the ministry funded a manual wheelchair in July 2013 and it has not been 5 years since the appellant last received a wheelchair;
- 6) Letter dated March 23, 2018 in which the equipment supplier wrote that the date of purchase of the appellant's manual wheelchair was November 7, 2013. After being assessed by the service technician, the supplier determined that the general condition of the manual wheelchair is poor. The manufacturer is no longer in business and parts are no longer available. Based on this information, the supplier recommended that the appellant be considered for a new manual wheelchair;
- 7) Letter date April 4, 2018 in which the OT wrote that the appellant uses a manual wheelchair for all indoor mobility and she has been directed by her physician to minimize weight bearing due to Charcot foot. Her current manual wheelchair requires repairs but as per the vendor the wheelchair has been discontinued so parts are not available. The appellant uses a scooter for outdoor mobility and her apartment is not able to accommodate the scooter; and,
- 8) Request for Reconsideration dated April 5, 2018.

In her Request for Reconsideration, the appellant wrote:

- She does not agree with the decision because there are no parts for her wheelchair since the company that manufactured the wheelchair went under.
- The seat on the wheelchair she has cannot be replaced as there is not another part to be found.
- She realizes that the ministry has a policy that the wheelchair should last 5 years, but her wheelchair is just under 5 years by a few months.
- She does not want to end up on the floor when the wheelchair breaks down and she could end up with a broken bone as she has a bone problem.

### ***Additional information***

In the Notice of Appeal dated May 10, 2018 the appellant expressed disagreement with the ministry's reconsideration decision.

Prior to the hearing, the appellant provided a photograph of her current manual wheelchair.

At the hearing, the appellant showed an electronic version of the photograph of her current manual wheelchair to show that the seat is not level and it is sagging. The appellant explained that the seat, which is concave, is ruining the cushion that goes on the seat because the cushion keeps slipping off.

At the hearing, the appellant provided a Prescription dated June 27, 2018 in which her physician wrote that the appellant's wheelchair sling seat requires replacing. The appellant is at increased risk for skin breakdown secondary to this.

At the hearing, the appellant stated:

- Although the 5-year time period was not up before, it was up at the end of June 2018. She received her current manual wheelchair in June 2013. She went for surgery because the bone broke in her foot and the bone broke away "into dust." They tried to rebuild the bone with metal rods but the surgery was not successful.
- In June 2013 she had the surgery and was then in the hospital for 2 months.
- She had received the wheelchair the day before her surgery because the doctor would not operate unless she had received the chair.
- As soon as she started using the wheelchair, in August 2013, there were problems. Her right leg needed to be elevated and the rivet broke for the pedal to be hooked onto. They provided her a loaner chair until the part arrived but the part never came so they soldered the old part back on.
- The chair has "seen its life." The rivets are now all broken and if she falls on the floor she will have to call emergency services and find a place for her comfort dog. She is at risk of falling.
- She had to have her right index finger amputated in an effort to save her hand. She is at a high risk for amputation.
- She can still walk and use the 4-wheeled walker but she is at risk for a fall.
- She discovered that her car bottomed-out if she tried to transport the scooter. She is using her scooter more and more and she uses her car only when she cannot use public transit.
- She does not have the money to afford to buy a manual wheelchair.
- When the ministry approved her current manual wheelchair, she went through the same process of providing the assessment by the OT and a letter from her physician.
- She is sure her surgery was on June 27, 2013 and that her current manual wheelchair was delivered the day before because she was required to have the chair before the surgeon would operate.
- Her current wheelchair has been jerry rigged so that she can continue to use it, but yesterday more of the bolts came off. When the equipment supplier said the condition of her current wheelchair is "poor," they meant dangerous.
- They cannot use parts from another wheelchair because they do not fit properly.

At the hearing, the representative of the equipment supplier stated that:

- The wheelchair was delivered to the appellant on June 24, 2013 and she submitted the paperwork on July 11, 2013. There is a note on the file that the one-year maintenance check was scheduled for June 24, 2014.
- They usually get paid by the ministry about 3 months after the equipment is delivered. She would have to check with their accounting department to get a record of when they were paid for the appellant's current manual wheelchair.

The ministry relied on the reconsideration decision, as summarized at the hearing. The ministry clarified at the hearing that:

- The funding for the appellant's current manual wheelchair was approved by the ministry on May 30, 2013. There was no indication of the relevance of the July 2013 reference made in the letter to the appellant dated March 6, 2018.
- When the ministry approves an item, a purchase authorization will be provided for the equipment supplier. Then the supplier and the client will need to arrange for the delivery of the item. The ministry would not necessarily be aware when the item is delivered to the client.
- Once the item is delivered to the client, the equipment supplier would submit an invoice and the ministry would pay the supplier directly.

### ***Admissibility of New Information***

The ministry did not object to the admissibility of the letter from the physician. The panel considered the information in the letter and the oral testimony on behalf of the appellant, which related to the appellant's need for a manual wheelchair and information about when she received her current wheelchair, and the panel admits the information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4) of the *Employment and Assistance Act (EAA)*.

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

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost to replace her manual wheelchair because the applicable period of time had not passed, as required by Sections 3(3)(b) and 3.2 of Schedule C of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

Pursuant to Section 62 of the EAPWDR, the applicant must be a recipient of disability assistance or be a person in receipt of disability assistance (or a dependant) in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. The ministry considered the appellant's request for the cost of replacing her manual wheelchair under Sections 3 and 3.2 of Schedule C of the EAPWDR, which provide:

### **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- 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.

### *Panel's decision*

In the reconsideration decision, the ministry acknowledged that the appellant continues to require a manual wheelchair for indoor mobility due to her medical conditions and her mobility restrictions. However, the ministry considered that in order to replace the appellant's current manual wheelchair, Section 3(3)(b) of Schedule C of the EAPWDR requires that a period of time has passed, as further defined in Section 3.2 of Schedule C to be 5 years after the ministry provided the item being replaced, and concluded that this time period had not passed in the appellant's circumstances. The ministry wrote in the reconsideration decision that the ministry approved funding for the appellant's current manual wheelchair on May 30, 2013 and that the wheelchair was purchased on November 7, 2013. The ministry wrote that the appellant received her ministry-funded manual wheelchair in November 2013 and concluded that the ministry is unable to consider funding a replacement wheelchair until 5 years have passed, or until November 2018.

At the hearing, the appellant emphasized the importance of her manual wheelchair for her indoor mobility and stated that although she can still walk and use a 4-wheeled walker for support, she is at a risk for a fall and her medical condition causes serious problems if any bones are broken. The appellant stated that her current manual wheelchair is in a "dangerous" condition and cannot be repaired as the parts are no longer available. The appellant referred to the letter dated March 23, 2018 in which the equipment supplier wrote that the service technician determined that the general condition of the manual wheelchair is "poor" and that the manufacturer is no longer in business and parts are no longer available.

The appellant also argued that her current manual wheelchair was delivered to her about a day prior to her surgery to repair a broken foot, which occurred on June 27, 2013. A representative of the equipment supplier consulted the company records and stated that the appellant's current manual wheelchair was delivered to the appellant on June 24, 2013 and that the paperwork was submitted by the equipment supplier on July 11, 2013. The appellant argued therefore that, as of June 24, 2018, 5 years passed since delivery of her current wheelchair. The representative did not know for certain when the ministry paid for the manual wheelchair, although she stated that payment is usually made by the ministry about 3 months or more after the equipment is delivered.

Section 3.2 of Schedule C of the EAPWDR stipulates that the period of time referred to in Section 3(3)(b) of the Schedule with respect to replacement of the wheelchair is 5 years after the ministry provided the item being replaced. In other words, the time period for determining

whether 5 years has passed commences on the date that the ministry “provided” the item being replaced. The appellant did not dispute that the funding for her current manual wheelchair was approved by the ministry on May 30, 2013. The ministry had no information to dispute the appellant’s assertion, which was confirmed by a representative of the equipment supplier, that her current manual wheelchair was delivered to her by the equipment supplier on June 24, 2013. While the letter dated March 23, 2018 from the equipment supplier wrote that the ‘date of purchase’ of the appellant’s manual wheelchair was November 7, 2013, this date is more likely than not when the ministry paid the equipment supplier for the wheelchair.

The ministry concluded that the appellant’s current manual wheelchair was “provided” to her in November 2013, or the month that the ministry paid for the wheelchair. The panel finds as fact that the appellant’s current manual wheelchair was delivered to her by the equipment supplier on June 24, 2013. However, the panel finds that on the date of the reconsideration decision of May 4, 2018 the ministry reasonably concluded that 5 years had not passed since the ministry provided the appellant’s current manual wheelchair as the earliest date is 5 years from the date of the ministry’s approval of funding, which would be May 30, 2018. Therefore, according to Sections 3(3)(b) and 3.2 of Schedule C of the EAPWDR, the ministry reasonably determined that the appellant was not eligible for replacement of her manual wheelchair.

### *Conclusion*

In conclusion, the panel finds that the ministry's decision, which denied the appellant's request for a supplement to cover the cost to replace her manual wheelchair because the applicable period of time had not passed, was a reasonable application of the applicable enactment in the appellant’s circumstances. Therefore, the panel confirms the ministry’s reconsideration decision. The appellant’s appeal, therefore, is not successful.



**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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018-06-28

PRINT NAME

Diane O'Connor

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-06-28

PRINT NAME

Adam Shee

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-06-28