

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated September 5, 2018 which denied the appellant's request for a supplement to cover the cost of a scooter lift for his vehicle because:

- the ministry determined that a scooter lift for a vehicle is not listed as medical equipment or a device relating to scooters under Sections 3.4 or relating to floor or ceiling lift devices under Section 3.8 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), or to any of the other health supplements listed in Schedule C; and,
- the eligibility criteria were not met for a life threatening health need under Section 69 of the EAPWDR.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 62, 69, and Schedule C, Sections 3.4 and 3.8

PART E – SUMMARY OF FACTS

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

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

- 1) Letter dated February 16, 2012 in which an Occupational Therapist outlined the appellant's medical issues and functional status and recommends equipment, including a three wheel heavy-duty scooter;
- 2) Purchase Authorization dated September 18, 2012 for an Invacare 4-Wheel Scooter for a total cost of \$3,500;
- 3) Letter to the appellant dated September 18, 2012 in which the ministry approved his request for a scooter;
- 4) Letter dated June 6, 2018 in which the appellant's physician wrote that the appellant was funded by the ministry for a motorized scooter because of his medical condition and disability. With no way of transporting the scooter, the appellant is confined to a 1 to 2 block radius around his home. Installing a lift on his vehicle would improve his quality of life, his physical and mental health well-being;
- 5) Letter dated July 18, 2018 in which the ministry denied the appellant's request for a scooter lift as the equipment items is not listed in the applicable legislation;
- 6) Letter dated August 10, 2018 in which the appellant's friend wrote that she has known the appellant since 2007 and he has always had mobility issues. Over the past few years, she has seen a decline in his ability to get around. He has difficulty walking and can manage for only short periods of time. He has a scooter but he is unable to go anywhere except the local grocery store because it will not fit on a transit bus;
- 7) Letter dated August 21, 2018 in which the appellant's physician wrote that the appellant has been his patient since 2005 and he suffers from significant spinal stenosis of the cervical and lumbar spine in addition to his host of medical comorbidities, which impact his ability to walk. The appellant needs to be mobile to attend medical and other appointments. He supports the request for a power lift for the appellant's vehicle to transport the scooter. The appellant does not live in an area readily amenable to public transit that is capable of handling a scooter; and,
- 8) Request for Reconsideration dated August 14, 2018.

In his Request for Reconsideration, the appellant wrote:

- He has tried to take his scooter on a bus and it is not possible.
- There are many parks, trails, shopping centers, and outdoor events that are scooter-friendly.
- His mobility is becoming increasingly worse. Although he has leg braces, which need to be changed, he still does not have the mobility he had six years ago.
- Having a lift would make things easier when doing everyday things like grocery shopping.
- Handy Dart requires more notice than he can give. Often his plans must change due to how healthy he feels first thing in the morning.

Additional information

In the Notice of Appeal dated September 12, 2018 the appellant expressed disagreement with the ministry's reconsideration decision and wrote that [having the lift] would really improve his quality of life. He can only scooter to a store or he is stuck at home. He also needs the lift for all the reasons that he, his doctor, and his friend have given to the ministry.

At the hearing, the appellant's friend stated:

- She had written a letter on behalf of the appellant, dated August 10, 2018, and she wanted to add to her previous statement.
- On a personal level, she has known the appellant since 2007 and she has seen that his disease is only getting worse. It would make sense that, as his disease progresses, the supports would increase to help him.
- His scooter gets him around locally but he cannot go to other places outside a small radius around his home.
- The appellant needs a trailer/lift so he can take his scooter to the lake or to the park.
- The ministry recognizes that the appellant has a problem but they have denied him some equipment that would make his life better.

At the hearing, the appellant stated:

- He had not previously provided the ministry with information on pricing of the scooter lift.
- When he called the supplier, he was told that his scooter, which is a heavy model designed to carry up to 500 lbs, would be too heavy for a simple lift.
- He was told by the supplier that the appropriate trailer would have to be ordered from the United States at an approximate cost of \$9,000 and then it would have to be certified as road worthy in Canada, at an additional cost.
- Given this expense, the supplier suggested using a generic trailer available at sporting supply stores in Canada. The appellant was able to find a trailer online at a cost of \$1,299.00 plus \$59 for shipping and it is rated for 1,000 lbs. It also has a tilt function and 2-way doors that would accommodate his scooter.
- He has checked with some community organizations to see if there might be funding for a scooter lift/trailer and he has had no success.
- While he understands that this item may not be listed in the rules, the ministry is aware that he has a disability and they should understand that he needs the lift for his quality of life, since he cannot currently go to the park or the beach and he cannot walk. He needs new braces for his legs as they are getting worse with each year. He knows that he will eventually have to use a wheelchair.
- If the ministry were to review his file, they would see that he does not ask for very much in terms of equipment or supplies.
- Although not getting the lift would likely not endanger his physical health, it will have an impact on his mental health. He does not want to be stuck at home all the time, and he cannot say where that may lead.
- Handy Dart requires 3 days notice for pick up and drop off and this does not usually work for him. He has a son who is mentally disabled and Handy Dart will not accommodate spontaneous visits. He has used Handy Dart when he has a scheduled medical appointment and he can plan when he needs to be picked up.
- His eldest son had work valued at about \$1,200 done to his truck in preparation for being able to tow a trailer.
- The lift/trailer sits on the trailer hitch and has a gate that tilts down so the scooter can be

loaded and transported to another location and unloaded. It is more a trailer than a “lift”, or like an hydraulic lift, that would cost around \$15,000.

The ministry relied on the reconsideration decision.

Admissibility of New Information

The panel considered that there was no additional information for which a determination of admissibility was required under Section 22(4)(b) of the *Employment and Assistance Act*.

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 of a scooter lift for his vehicle because it is not listed as medical equipment or a device relating to scooters under Sections 3.4 or relating to floor or ceiling lift devices under Section 3.8 of Schedule C of the EAPWDR, or to any of the other health supplements listed in Schedule C, and the eligibility criteria were not met for a life threatening health need under Section 69 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. In this case, the ministry has not disputed that the requirement of Section 62 has been met in that the appellant is a recipient of disability assistance.

The ministry considered the appellant's request for a supplement to cover the cost of a scooter lift for his vehicle under Sections 3.4 and 3.8 of Schedule C of the EAPWDR, which provide:

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.

Medical equipment and devices — floor or ceiling lift devices

- 3.8 (1) In this section, "floor or ceiling lift device" means a device that stands on the floor or is attached to the ceiling and that uses a sling system to transfer a person.
- (2) A floor or ceiling lift device is a health supplement for the purposes of section 3 of this Schedule if the following requirements are met:
- (a) the minister is satisfied that the floor or ceiling lift device is medically essential to facilitate transfers of a person in a bedroom or a bathroom;
 - (b) the cost of the floor or ceiling lift device does not exceed \$4 200 or, if the cost of the floor

or ceiling lift device does exceed \$4 200, the minister is satisfied that the excess cost is a result of unusual installation expenses.

(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 from the date on which the minister provided the item being replaced.

The ministry considered the appellant's request for a supplement to cover the cost of a scooter lift for his vehicle under Section 69 of the EAPWDR, which provides:

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).

Panel's decision

In the reconsideration decision, the ministry considered the appellant's request for a scooter lift for his vehicle under Section 3.4 of Schedule C of the EAPWDR, which relates to scooters. The ministry reasonably considered that a scooter lift for a vehicle is not "a scooter" [Section 3.4(2)(a)], is not "an upgraded component of a scooter" [Section 3.4(2)(b)] and is not "an accessory attached to a scooter" [Section 3.4(2)(c)].

The appellant did not argue that the requested scooter lift for a vehicle is a scooter, or an upgraded component of a scooter or an accessory attached to a scooter. At the hearing, the appellant described the scooter lift for a vehicle to be more like a trailer the attaches to the trailer hitch of the vehicle and has a gate that tilts down to load the scooter and transport it to another location. The appellant stated at the hearing that his eldest son had put about \$1,200 of work into his vehicle to prepare the vehicle to haul a trailer. The appellant stated that while there are trailers designed to accommodate heavy-duty scooters like his, they are only available in the United States, with a starting cost of about \$9,000. He was able to find an all-purpose trailer that will accommodate up to 1,000 lbs. and is less expensive than the specialty trailer, at \$1,299.00 plus \$59 for shipping.

In the reconsideration decision, the ministry also considered the appellant's request for a scooter lift for his vehicle under Section 3.8 of Schedule C of the EAPWDR, which relates to floor or ceiling lift devices. The ministry reasonably considered the definition for a "floor or ceiling lift device" set out in Section 3.8(1) to mean "a device that stands on the floor or is attached to the ceiling and that uses a sling system to transfer a person" and determined that the scooter lift for a vehicle does not meet this definition. The ministry also considered that the floor or ceiling lift device must be medically essential to facilitate transfers of a person in a bedroom or a bathroom, and wrote that information submitted with the appellant's initial request and Request for Reconsideration does not demonstrate that the scooter lift for a vehicle is intended to facilitate transfers in a bedroom or bathroom. The appellant described the requested lift as designed to attach to a vehicle and not the ceiling or floor in a bedroom or bathroom and the lift is designed to transport a scooter and not a person.

The ministry also considered the other health supplements listed in Schedule C of the EAPWDR and reasonably determined that a scooter lift for a vehicle is not listed as medical equipment or a device as set out in Sections 2, 2.1, 2.2, 3.1 to 3.12, 4, 4.1, 5, 6, 7, 8, and 9.

At the hearing, the appellant's friend stated that the ministry recognizes that the appellant has medical problems and they have provided him with a scooter but they have denied him some equipment that would make his life better. She stated that she has known the appellant since 2007 and over the past few years she has seen a decline in his ability to get around. She wrote in her letter dated August 10, 2018 that the appellant has difficulty walking. He has a scooter but he is unable to go anywhere except the local grocery store because his scooter will not fit on a transit bus. The appellant's friend stated at the hearing that it would make sense that, as the appellant's disease progresses, the supports provided by the ministry would increase.

At the hearing, the appellant stated that he understands that a scooter lift/trailer for his vehicle may not be listed in the rules, but he argued that the ministry is aware that he has a disability and they should understand that he needs the lift for his quality of life. The appellant stated that he cannot currently go to the park or the beach with his scooter and he cannot walk. The appellant stated he has used Handy Dart for a scheduled medical appointment and when he is able to plan when he needs to be picked up. The appellant stated that Handy Dart requires more notice than he can usually give since his plans must change due to how healthy he feels first thing in the morning. The panel finds that the ministry reasonably determined that the requested scooter lift for a vehicle is not listed as medical equipment or a device relating to scooters under Section 3.4 or to floor or ceiling lift devices under Section 3.8 of Schedule C of the EAPWDR, or to any of the other health supplements listed in Schedule C.

Section 69 of the EAPWDR- Life threatening health need

In the reconsideration decision, the ministry acknowledged that the appellant is a recipient of disability assistance and is, therefore, eligible to receive health supplements pursuant to Section 62 of the EAPWDR. The panel finds that the ministry reasonably concluded that Section 69 of the EAPWDR is intended to provide a remedy for those persons in the family unit who are otherwise not eligible for a health supplement under the EAPWDR. The appellant stated at the hearing that while not having the scooter lift for his vehicle would likely not endanger his physical health, being stuck at home all the time will have an impact on his mental health and he

cannot say where that may lead. There was no additional evidence provided of a 'direct' and 'imminent' life threatening need for a scooter lift for his vehicle. The panel finds that the ministry reasonably determined that the appellant's request for a supplement to cover the cost of a scooter lift for his vehicle did not meet all of the eligibility criteria for a life threatening health need under Section 69 of the EAPWDR.

Conclusion

In conclusion, the panel finds that the ministry's decision, which denied the appellant's request for a supplement to cover the cost of a scooter lift for his vehicle because it is not listed as medical equipment or a device relating to scooters under Sections 3.4 or relating to floor or ceiling lift devices under Section 3.8 of Schedule C of the EAPWDR, or to any of the other health supplements listed in Schedule C, and the eligibility criteria were not met for a life threatening health need under Section 69 of the EAPWDR, was a reasonable application of the applicable enactment in the appellant's circumstances. 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) <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 type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME S. Walters	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018-10-02

PRINT NAME Linda Smerychynski	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018-10-02
PRINT NAME Jeremy Sibley	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018-10-02