

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated November 5, 2018, which denied the Appellant's request to fund scooter repairs (in this case a replacement tire) because the Ministry determined that the Appellant did not meet the legislated eligibility criteria.

Specifically, the Ministry found that, although the Appellant was eligible for health supplements as set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C, Sections 3 and 3.1 through 3.12, his request did not meet the eligibility requirement set out in EAPWDR Schedule C Subsection 3(1)(b)(i) which states that a family unit must have received the Ministry's pre-authorization for the medical equipment or device requested. In addition, the Ministry found that the Appellant did not meet the exception to the pre-authorization eligibility requirement set out in Ministry policy, namely that medical equipment can be purchased without the prior approval of the Ministry in the event of a life threatening emergency, because the Ministry determined that it could not be established that the Appellant required a replacement scooter tire due to a life threatening emergency.

PART D – RELEVANT LEGISLATION

EAPWDR Section 62 and Schedule C Sections 3 and 3.4

PART E – SUMMARY OF FACTS

The Appellant is receiving “Medical Services Only” assistance from the Ministry as a client with a PWD designation.

The evidence before the Ministry at the time of reconsideration included the following:

- Request for Reconsideration (RFR) signed by the Appellant and dated October 25, 2018, in which he states that:
 - The scooter repair service that he used to rely on to make repairs to his scooter (the Previous Repair Service) would no longer make repairs to his scooter because he and the Previous Repair Service “*have differences*”;
 - His scooter suffered a flat tire in a public transportation facility when the Appellant was en route to a medical appointment in another community several miles from his home (the Other Community). As a result he was unable to keep his appointment and did not have the \$200 necessary to repair the tire;
 - The following day he took the flat tire to another repair service (Current Repair Service) in his home community but some distance from his home, and he had to take a taxi to drop off the tire for repair and another taxi to pick it up;
 - In the past he had been “*pre-approved for tires, etc.*” but now he must pay for the repairs himself and seek reimbursement from the Ministry;
 - He still has proof that the flat tire was caused by “*metal/glass*”, and the Ministry should reimburse clients in situations like this and provide pre-authorization for repairs, particularly “*for ... mishaps, especially when (he is) not in (his home community)*”; and
 - He relies on his scooter “*100% for mobility*” and that he “*cannot afford long waits for approval to have emergency repairs done. Tires/batteries.*”
- Email from the Appellant’s contact with a third party administrator (TPA worker) to the Ministry dated September 28, 2018 in which the TPA worker states that the Appellant’s scooter has a flat tire which needs to be replaced, that the Previous Repair Service will not provide a replacement tire, and that the Current Repair Service requires an upfront payment of \$75 to make an assessment. The TPA worker also states that the replacement tire is required on an urgent basis because the Appellant has to attend upcoming medical appointments out of town;
- Email from the Appellant’s TPA worker to the Ministry dated October 4, 2018 in which the TPA worker states that the Appellant has requested assistance with the cost of fixing a flat tire on his scooter and that because he could wait no longer for the Ministry’s decision due to upcoming medical appointments in another community, he had taken his scooter to the Current Repair Service by taxi and paid for the repair with his food money. As a result he was submitting the receipt for the tire repair and asking for reimbursement;
- Invoice from the Current Repair Service dated September 28, 2018 identifying two numbered items and a labour charge plus goods and services tax for a total charge of \$67.69, which was noted as “paid”;
- Taxi cash receipt dated September 28, 2018 for a return trip from the Appellant’s residence to the Current Repair Service address in the amount of \$27.35; and,
- Original Decision of the Ministry dated October 12, 2018 stating that the Ministry has denied the Appellant’s request for health supplements because his request did not meet the eligibility criteria as set out in EAPWDR 3(1)(b)(i) and (ii); specifically that the family unit had not received pre-authorization from the Ministry for the medical equipment or device and because there are other resources available to the family unit to pay for or obtain the medical equipment or device requested.

Additional Information Submitted after Reconsideration

In his Notice of Appeal (NOA) dated November 9, 2018, the Appellant expressed disagreement with the Ministry's decision and included the following documents:

- One page typed "Summary of ... Facts" providing details of events occurring on September 27 relating to the flat tire the Appellant experienced en route to his medical appointment in the Other Community and a conversation he had with his TPA worker on the following day, and a summary of what is described as incorrect information in the Ministry's Reconsideration Decision (the Summary of Facts);
- One page copy of partial information relating to outgoing phone calls made on September 27 and 28, 2018, identifying the number called and the time of each call (the Phone Log). The information includes a call to the TPA worker at 12:39 PM on September 27, 2018 and a call to the Previous Repair Service at 1:19 PM on the same date;
- Ministry Request for Non-Local Medical Transportation Assistance form dated September 25, 2018, identifying two upcoming medical appointments on October 9 and 16, 2018 and requesting assistance with the cost of transportation by taxi and rail from the Appellant's community to the Other Community for an estimated transportation cost of \$100; and,
- Notice dated September 4, 2018 of the Appellant's medical appointment at 9:00 AM on September 27, 2018 with a Cardiologist in the Other Community (the Medical Appointment Notice).

Admissibility of Additional Information

Section 22(4) of the Employment and Assistance Act (EAA) provides that panels may admit as evidence the information and records that were before the Ministry when the decision being appealed was made and "*oral and written testimony in support of the information and records*" before the Ministry when the decision being appealed was made, i.e. information that substantiates or corroborates the information that was before the Ministry at reconsideration. These limitations reflect the jurisdiction of a panel established under section 24 of the EAA: to determine whether the Ministry's reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant.

No new written information was submitted by either party at the hearing.

The Panel considered the information in the Summary of Facts submitted with the NOA to be argument. The Panel considered the information contained in the Phone Log, the Ministry Request for Non-Local Medical Transportation Assistance form and the Medical Appointment Notice to be information in support of information and records that were before the Ministry at the time that the decision being appealed was made and therefore admitted those records pursuant to Section 22(4) of the EAA.

At the hearing, the Appellant summarized his position based on the evidence provided prior to the Reconsideration Decision and the information in the NOA. In terms of the sequence of events relating to the punctured scooter tire on September 27, 2018, the Appellant explained that he had taken a taxi to a public transportation facility in a nearby community early that morning en route to the 9:00 AM medical appointment referred to in the Medical Appointment Notice, public transportation from that community to the Other Community, attended the 9:00 AM appointment, and experienced the tire puncture at approximately noon on that date en route from the medical appointment to a meeting with family members in a community near the Other Community. He also referred to the Phone Log as supporting evidence of the version of events set out in his claim for reimbursement.

The Appellant stated that he must have a scooter for mobility and cannot wait for several days for the Ministry to approve a request for the repair or replacement of his scooter tires. He pointed out that it took from September 27 until October 12 (15 days) for the Ministry to respond to his urgent request for approval to repair the tire. He said that his dispute with the Previous Repair Service had occurred within the past 4 months and that the tire puncture on September 27, 2018 was the first time he had needed tire repairs since then. He stated that work of this nature had been done by the Previous Repair Service in the past without Ministry pre-authorization, and that whenever he had had a flat tire he would call the Previous Repair Service which would have someone come to his home to repair the flat tire and send a bill directly to the Ministry for payment.

The Appellant explained that he has important medical appointments which must be kept, along with appointments made with family members and the Residential Tenancy Branch, and that he had a number of these appointments in early October, which he had told the Ministry about in advance. He stated that he was communicating with the Ministry through a TPA because the Ministry was afraid to deal with him because he was loud.

The Appellant stated that he did not have the resources to pay for the tire replacement on the occasion of the September 27, 2018 tire puncture and that he had to borrow the money from a payday loan company to pay for the replacement tires or he would have had to use money he had set aside to buy food. He said that the Ministry had purchased the scooter on his behalf 5 years ago.

At the hearing, the Ministry relied on its Reconsideration Decision and stated that the legislation requires that a client must get the Ministry's pre-authorization before it will consider paying for scooter repairs. The Ministry acknowledged that the Appellant had not been required to seek situation specific pre-authorization from the Previous Repair Service and confirmed that it had paid those invoices on behalf of the Appellant even though they were not pre-approved, and stated that when the Appellant sought the services of the Current Repair Service it was reasonable for him to assume that the same billing arrangements that were in place with the Previous Repair Service would continue to apply. The Ministry explained that in some cases situation specific pre-authorization for scooter component repairs is required because in order to make an assessment as to whether it is prepared to pay for those repairs, the Ministry requires specific details, including confirmation of the need for repairs, the type of repairs required and the cost, all in the form of a quote from an accredited repair service provider. The Ministry also stated that there were three accredited service providers in the Appellant's community, two of which were the Previous Repair Service and the Current Repair Service. The Ministry stated that there was not enough information in the TPA's September 28, 2018 email for the Ministry to consider pre-authorization and the Ministry was not in a position to consider approval of the work until it received the TPA's October 4, 2018 email, which included the receipt from the Current Service Provider. For these reasons the Ministry considered the TPA's October 4, 2018 email to be the initial request.

The Ministry also explained that non-urgent requests for pre-authorization were considered on a first come, first served basis, and that it can take up to 4 weeks to approve. Based on current (November 2018) workloads the non-urgent requests would take between 9 and 18 business days. The Ministry explained that its Health Assistance Branch determines whether a request is considered urgent, and if so there are four levels of priority, each with different timeframes for a decision: standard (with a decision expected in 5 business days of the date of receipt of a quote from an accredited supplier), high (3 business days), urgent (1 business day) and critical (2 to 3 hours). The Ministry said that based on the available information the Appellant's request would likely have been considered either urgent or critical. The Ministry could not explain why it had taken 6 business days from the date that it received the information it required to make the decision in this case, nor why the Ministry had waived the pre-authorization requirement with respect to the Previous Repair Service.

The Ministry also stated that it might be prepared to review the requirement that the Appellant deal with the Ministry through a TPA in the future, thereby limiting the contact points necessary in reviewing such requests for pre-authorization.

While the Ministry's Reconsideration Decision was based solely on its determination that the Appellant's request for payment of a replacement tire for the scooter had not received the Ministry's pre-authorization, the Ministry further explained at the hearing that, with respect to whether or not there were resources available to the Appellant to pay the cost of the repairs, because the Appellant was able to borrow the required funds from a payday loan company it would have considered that the resources were available. The Ministry did not address the other requirements set out in EAPWDR Schedule C, Subsections 3(1) and 3(2) in its Reconsideration Decision or at the hearing.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the Ministry's Reconsideration Decision of November 5, 2018, wherein the Ministry denied the Appellant's request to fund scooter repairs because the Ministry determined that the Appellant did not meet the program criteria, was reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the Appellant.

The relevant legislation is as follows:

EAPWDR

General health supplements

62 The minister may provide any health supplement set out in section ... 3 [*medical equipment and devices*] of Schedule C to or for

- (a) a family unit in receipt of disability assistance ...

Schedule C - Health Supplements

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 ...

(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 ...

(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(2) ... the following items are health supplements for the purposes of section 3 of this Schedule ...

- (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.

(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.

* * *

The Appellant's position is that he should be able to have urgent repairs such as tire repairs or replacements for his scooter, which is a necessary medical device, automatically billed to the Ministry as he did with the Previous Supplier where the services are provided by an approved Ministry supplier, and that when he is forced to pay in advance he should not have to wait 15 days for a decision. The Appellant also disputes the Ministry's contention that he had the resources to pay for the replacement tire. The Ministry's position is that the Appellant's request for payment of scooter repairs, in this case a replacement tire, did not meet the legislated eligibility criterion set out in EAPWDR Schedule C, Subsection 3(1)(b)(i), namely that the family unit had not received the Ministry's pre-authorization for the medical equipment or device requested.

The Panel Decision

EAPWDR Section 62 states that the Ministry may provide the medical equipment and devices set out in EAPWDR Schedule C Section 3 for a family unit in receipt of disability assistance. Neither party contends that the Appellant is not receiving disability assistance or that his scooter is not a medical device as defined in EAPWDR Schedule C Section 3.

EAPWDR Schedule C Sections 3.1 through 3.12 identify the types of medical equipment or devices that may be provided by the Ministry to a client provided the criteria set out in EAPWDR Schedule C Section 3 are met. EAPWDR Schedule C Section 3.4 states that a scooter, an upgraded component of a scooter and an accessory attached to a scooter are health supplements for the purposes of EAPWDR Schedule C Section 3. The Panel notes that neither “upgrade” nor “accessory” are defined terms in the legislation. The online Oxford Living Dictionary defines upgrade as to “*raise (something) to a higher standard, in particular improve (equipment or machinery) by adding or replacing components*” and “accessory” as “*a thing which can be added to something else in order to make it more useful, versatile, or attractive*”. The Panel notes that a replacement tire is a replacement part, and as such might not reasonably fit the definition of an upgrade or an accessory.

Assuming a replacement part such as a scooter tire does reasonably fit the definition of an upgrade or an accessory, EAPWDR Schedule C Sections 3(1) and (2) and Section 3.4(3) set out the pre-conditions which must be met in order that the medical equipment or device described in EAPWDR Schedule C Sections 3.4 may be provided by the Ministry. These criteria are:

- it is provided to a family unit that is eligible under EAPWDR Section 62 (which, as explained above, is not argued in this appeal);
- the family unit has received the pre-authorization of the minister for it;
- there are no resources available to the family unit to pay the cost of or obtain it;
- it is the least expensive appropriate one; and
- the Ministry has received either a medical prescription for it or an assessment by an occupational therapist (OT) or physical therapist (PT) confirming the medical need for it, or both, at the Ministry’s discretion.

The Panel notes that additional conditions are prescribed by EAPWDR Schedule C Section 3.4(3); however, as neither party raised the applicability of these conditions, they will not be addressed by the Panel.

Ministry Pre-Authorization

The Panel notes that, while it might have been appropriate for the Ministry to require pre-authorization before the scooter tire was replaced, the Appellant followed the procedure he had successfully used before under the same circumstances and was not expecting to have to pay any monies upfront. In addition, the Panel notes that the Appellant did try to get pre-authorization as soon as his tire went flat, as he contacted the TPA on September 27 and 28, 2018 to let the TPA know the situation and to try to initiate the request. Furthermore, the Panel notes that the Ministry knew that the Appellant had a pre-authorization arrangement with the Previous Repair Service, yet when he contacted the Current Repair Service for assistance he was told that he would have to make an upfront payment as it was not prepared to bill the Ministry directly. The Panel notes that the Ministry stated at the hearing that it was reasonable for the Appellant to assume that the same billing arrangement would apply when he sought the services of the Current Repair Service. The Panel notes that the Current Repair Service was on the Ministry's approved supplier list and therefore there was an established relationship and established billing procedures in place between the Ministry and the Current Repair Service.

With respect to the time taken to consider the Appellant's request, the Panel notes that the Ministry agreed that the Appellant's request was urgent or critical and should have been adjudicated within one business day, and that the Ministry could not explain why it took 6 business days to respond to the Appellant's initial request for pre-authorization.

For these reasons the Panel finds that, if a replacement part such as a scooter tire reasonably fits the definition of an upgrade or an accessory, the Ministry should have applied its standard practice regarding scooter tire repairs or replacements and not have made an exception in this case by relying on a narrower interpretation of the pre-authorization requirements set out in EAPWDR Section 3 to deny the Appellant reimbursement for the replacement tire.

Availability of Resources

While the Ministry did not rely on EAPWDR Schedule C Subsection 3(1)(b)(ii) in reaching its decision, the Panel notes that in the original decision dated Oct 12th, 2018, the Ministry did consider the fact that the repairs had been paid for by the Appellant as evidence that other resources were available, and that upon learning at the hearing that the Appellant had arranged for payment of the invoice by borrowing the required funds from a payday loan company, the Ministry re-iterated this consideration. The Panel also notes that payday loan companies typically have very lax lending restrictions and tend to charge exorbitant rates of interest on very small, short-term loans. The Panel finds that it would not have been reasonable for the Ministry to rely on the fact that the Appellant was able to obtain funding from a payday loan company as evidence that he had the resources available to pay for a replacement tire.

Least Expensive Appropriate Device

The Ministry did not rely on EAPWDR Schedule C Subsection 3(1)(b)(iii) in reaching its conclusion that the Appellant did not meet the requirements of the legislation for payment of the cost of the scooter tire replacement. As such, the Panel will not address this condition.

Medical Prescription and/or OT or PT

The Ministry did not rely on EAPWDR Schedule C Subsection 3(2) in reaching its conclusion that the Appellant did not meet the requirements of the legislation for payment of the cost of the scooter tire replacement. As such, the Panel will not address this condition.

EAPWDR Schedule C Section 3(4) and 3(6) state that unless the Ministry considers that the medical equipment or device was damaged through misuse, it may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the Ministry if it is more economical to repair the medical equipment or device than to replace it. As the Ministry had previously provided the scooter and has determined that the scooter was not damaged through misuse, the Panel notes that the Ministry must have in place procedures which will allow it to determine whether it is more economical to repair a scooter tire rather than to replace it. The Panel assumes that this test, in addition to factors such as setting a reasonable limit to the cost of scooter tire repair and replacement, is one of the conditions that must be met under the terms of the supplier arrangements between the Ministry and its approved service providers. This would explain why, the Panel supposes, the Ministry has relationships with suppliers and clients that allow for the direct billing of prescribed services provided to Ministry clients by those suppliers without always requiring that each service must be pre-authorized by the Ministry on an individual basis.

Conclusion

The Panel finds that the Ministry's Reconsideration Decision, which determined that the Appellant was not eligible for scooter repairs because he did not meet the program criteria, was not a reasonable application of the applicable enactment in the circumstances of the Appellant, and therefore rescinds the Ministry's decision. The Appellant is successful in his appeal.

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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 Simon Clews	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018/12/05

PRINT NAME Tina Ahnert	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/12/05

PRINT NAME Vivienne Chin	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/12/05