

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated October 1, 2018 which held that it is unclear what the appellant's request for a reconsideration relates to because the scooter he requested was approved in October 2017 and has not requested funds to repair said scooter. Since there has been no denial made, the ministry does not have any decision to reconsider.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 62.

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Schedule C, Sections 3 and 3.4.

PART E – SUMMARY OF FACTS

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

1. Picture of the appellant's current scooter that was approved by the ministry in October 2017 (the scooter).
2. Ministry pre-authorization, dated October 16, 2017, for the purchase of a wheelchair and scooter.
3. Health Service Branch contract, dated November 7, 2017 and signed by the appellant and the scooter dealer, in which both parties concur to a maintenance agreement.
4. Invoice, dated November 7, 2017, for the purchase of the scooter that was delivered on November 7, 2017.
5. Letter from the ministry to the appellant dated July 11, 2017, which stated that the purchase of a power wheelchair has been denied because the appellant did not trial the less expensive equipment such as a basic scooter and therefore it cannot be confirmed that the power wheelchair is the least expensive appropriate item available.
6. Quote, dated July 27, 2017, for a manual wheelchair and cushion.
7. Quote, dated July 24, 2017, for the scooter.
8. Medical equipment request and justification, signed and dated July 31, 2017 by the appellant's physician and signed and dated August 18, 2017 by the appellant's occupational therapist (the OT).
9. 3-page assessment of the appellant by the OT supporting the need for a scooter and manual wheelchair.
10. Request for Reconsideration (RFR), signed and dated September 17, 2018, in which the appellant outlined the mechanical deficiency of the scooter and the struggles he faced in getting it repaired.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated October 15, 2018, in which the appellant stated that he has had ongoing problems with the scooter and ongoing problems getting it fixed with the company that sold the scooter and holds the warranty.

The panel admits the NOA as the appellant's argument.

Evidence at the Hearing

The appellant submitted an invoice for repairs done to the scooter by a company other than the seller of the scooter. The invoice, dated May 7, 2018, details the repairs that were completed.

At the hearing the appellant's witness stated, in part, the following:

- He has known the appellant for 4 – 4.5 years and in that time the appellant has used a wheelchair or scooter for mobility.
- The appellant is one of the best trained scooter drivers he has seen and the appellant knows how to run it and care for it.
- The city is not wheelchair/scooter friendly as it has rough sidewalks.
- Every time the scooter gets repaired it comes back from the shop more damaged than when it went in.
- The main issue seems to be the headlight.
- The replacement scooters provided during times of repair were in worse condition than the appellant's scooter.
- The repair company blamed the appellant for the damages.

At the hearing the appellant stated, in part, the following:

- He is unable to locate his OT.
- The scooter was working fine for the first week after receiving it but then soon began to malfunction and he has been trying to get it fixed since that week.
- The headlight mount is the problem and has had numerous issues.
- The scooter went for repairs but was not actually repaired.
- In May 2018 the headlight mount was replaced by another company which does not hold the warranty.
- The warranty company accused the appellant of damaging the headlight mount and said there was nothing wrong with the scooter.
- He researched the company that sold him the scooter and they have a bad rating with the Better Business

Bureau.

- The ministry should be reimbursed for the price of the scooter.
- He asked the ministry to look into the warranty and he was told to deal with the company that holds the warranty directly and sent him a list of companies that repair scooters. However none of those companies will touch any scooter that was purchased from the company that sold him his scooter.
- He verbally asked the ministry for another scooter, and his third party administrator has also contacted the ministry regarding the scooter.

At the hearing the ministry relied on its reconsideration decision.

Admissibility of Additional Information

The ministry did not object to the admission of additional information.

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the minister when the decision being appealed was made and "oral and written testimony in support of the information and records" before the minister when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the minister at reconsideration. These limitations reflect the jurisdiction of the 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. That is, panels are limited to determining if the ministry's decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

In this case, the panel determined that the appellant's oral testimony, the testimony of the witness and the invoice dated, May 7, 2018 provided additional detail or disclosed information that was in support of the information or corroborated the information addressed in the reconsideration. Accordingly, the panel has admitted this information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance*

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision which held that it is unclear what the appellant's request for a reconsideration relates to was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was it reasonable for that the ministry to conclude that since ministry approved the requested scooter in October 2017, the appellant has not requested funds to repair said scooter, and there has been no denial made regarding said request, the ministry cannot determine anything to reconsider.

The relevant legislation requires the following:

EAPWDR

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,
- (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 a dependent child, 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.

Schedule C, section 3 and 3.4

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.

(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.

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.

The Party's Position

The appellant argued that the purchased scooter has had ongoing mechanical issues and the warranty company will not fix the problems. He also argued that he made a verbal request for another scooter.

The ministry argued that since the appellant had not made a request for repairs to the current scooter which in turn was denied, it had nothing to reconsider.

The Panel's Decision

In this case, neither party denied the appellant's need for a scooter nor that the scooter is malfunctioning. The issue before the panel is whether the ministry's reconsideration decision in which the ministry concluded that it has not denied anything on this matter and consequently cannot determine anything to reconsider was reasonably supported by the evidence, or was a reasonable application of the legislation in the circumstances of the appellant. The panel notes that in its reconsideration decision, under the summary of facts, the ministry points out that on August 9, 2018 the appellant expressed his dissatisfaction with the scooter and requested another scooter. As a result the panel finds that the appellant did indeed request a new scooter. The panel also notes that in the ministry's reconsideration decision, appendix A (which is page 4 of 10) starts by stating "The Ministry of Social Development and Social Innovation has denied your request for a scooter". At the hearing the ministry explained that this sentence was part of a reconsideration decision from July 2017. However the panel was not reasonably

convinced that the ministry would make such a grave error as to include phrases from a previous decision or not proof-read the current decision. The panel noted that it was not privy to any written denial of another scooter from the ministry. However, the ministry has not been able to provide a reasonable explanation to rectify the discrepancy; in fact, at the hearing, the ministry even acknowledged the discrepancy. As a result, the panel finds that the ministry position that it did not deny anything on this matter and consequently cannot determine anything to reconsider is not reasonable based upon the evidence before it at reconsideration.

Conclusion

The panel finds that the ministry's reconsideration decision, which held that there is no denial and consequently no matter for it to reconsider, was not reasonably supported by the evidence and rescinds the decision. The panel finds that though it cannot make a determination regarding the appellant's eligibility for another scooter, the appellant is entitled to have the request for reconsideration proceed to reconsideration. The appellant is successful at appeal.

APPEAL NUMBER

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

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/11/19

PRINT NAME

Rabinder Nijjar

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/11/19

PRINT NAME

Tajdin Mitha

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/11/19