

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of January 15, 2019 which determined that the appellant did not meet the eligibility requirements of section 3 of Schedule C of the EAPWDR for funding for a “Freedom AS2000” Tricycle. The ministry found that the appellant is receiving disability assistance and is eligible to receive health supplements provided under section 62 and Schedule C of the EAPWD Regulation. However, the ministry was not satisfied that:

- the appellant demonstrated that the Freedom AS2000 tricycle is the least expensive appropriate medical equipment of device as set out in the EAPWDR subsection 3(1)(b)(iii),
- the appellant had not established that a “Freedom AS2000” is medically essential in order to achieve or maintain basic mobility as set out in the EAPWDR subsection 3.2(2),
- the “Freedom AS2000” tricycle is an alternative type of wheelchair.

Further, the ministry was not satisfied that:

- the appellant was eligible for the provision of the “Freedom AS2000” as another type of medical equipment, as set out in the EAPWDR Schedule C, section 3 or as a medical supply, as set out in the EAPWDR Schedule C subsection 2,
- that the “Freedom AS2000” is an item set out in any of the other section of the EAPWD Regulation, Schedule C, and
- the appellant is eligible for a “Freedom AS2000” under Life-Threatening Health Need regulation as set out in the EAPWDR Section 69.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 62 and 69

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C

## PART E – SUMMARY OF FACTS

The appellant was not in attendance at the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

### Summary of key dates

- August 22, 2018 the appellant applied for a “freedom AS2000” tricycle.
- October 1, 2018 the above request was denied.
- December 13, 2018 the appellant submitted a Request for Reconsideration.
- January 15, 2019 the ministry completed its review of the Request for Reconsideration, the appellant was denied.

### The evidence before the ministry at the time of reconsideration:

- **Request for Reconsideration** dated December 13, 2018
- **A letter from the committee, (caregiver and advocate for the appellant),** for the appellant dated December 11, 2018 which states:
  - the appellant has had more frequent falls and staff injury has occurred
  - a request for an explanation by the ministry why they would prefer a more expensive wheel chair over a Freedom bike (an alternate wheelchair/scooter)
  - the request is for the appellant’s health and well-being and safety for her support staff.
- **A doctor’s prescription** dated December 14, 2018 which describes the appellant’s condition as Rett syndrome and recommends a freedom mobility tricycle.
- **Medical Equipment Request and Justification** form dated August 22, 2018 which describes the appellant’s medical condition as (atypical) Rett Syndrome and notes the equipment required as a custom designed adaptive alternate wheel chair for Rett syndrome to promote and maintain mobility.
- **A letter from the appellant’s Occupational Therapist (OT)** dated August 22, 2018 which states:
  - purpose of letter is for a self-propelled mobility request,
  - physical status of the appellant,
  - equipment required (freedom concepts independent mobility device),
  - and target outcomes.
- **A letter from the committee for the appellant** dated August 14, 2018 which states:
  - the appellant’s medical issues,
  - the appellant is approved for a conventional wheel chair but her supportive team have managed to ensure the appellant remains out of a wheel chair and maintains her mobility with support which has resulted in a much-improved state of overall health,
  - returning the appellant to a conventional wheel chair is an obvious quick solution it comes with detrimental consequences and regression to the appellant’s current level of

ability and overall health,

- the request is for an alternative wheel chair as a necessary means of support for the appellant to lead the best quality life possible, to reduce staff injury, and to ensure ongoing necessary therapy which occurs during the use of the assistive mobility device,
- the request is sanctioned by the appellant's Geneticist, Physical Therapist, Occupational Therapist and family physician.
- A **quotation from IslandMediquip** which provided a detailed breakdown for a Freedom Mobility AS2000 Tricycle which included:
  - *Rear Steer* \$570.00
  - *Footplate Asmy – Adj, Large Pair* \$315.00
  - *Backrest kit – Adult High Back* \$90.00
  - *Subtotal* \$4259.00

### **Additional Information**

In the **Notice of Appeal** dated January 21, 2019 the appellant stated:

- The reason why she disagrees with the ministry's decision is the ministry states she did not include information from medical professionals as to why she cannot use a walker, cane or scooter.

At the hearing the following questions were asked of and answered by the ministry:

- Does the ministry have an approved definition of a wheel chair? The ministry representative was not able to find a clear definition of a wheel chair. In ministry policy a wheel chair is manually powered by arms or electric.
- In the Reconsideration Decision, the ministry stated the health professionals should consider alternative equipment the ministry is authorized to provide to meet the appellant's needs. When asked if there was an alternate list for a wheel chair, the ministry representative was not able to produce a list.

## PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's determination that the appellant did not meet the eligibility requirements for funding for a "Freedom AS2000" Tricycle was either a reasonable application of the legislation or reasonably supported by the evidence. The ministry found that the appellant is receiving disability assistance and is eligible under section 62 of the EAPWDR to receive health supplements provided under section 3 of Schedule C of the regulations.

The ministry conducted a review of the appellants application against all eligibility aspects of the general health supplements in sections 62 and the eligibility for the funding of a "Freedom AS2000" tricycle under section 3 of schedule C. However, the ministry was not satisfied that:

- the appellant demonstrated that the Freedom AS2000 tricycle is the least expensive appropriate medical equipment of device as set out in the EAPWDR subsection 3(1)(b)(iii),
- the appellant had not established that a "Freedom AS2000" is medically essential in order to achieve or maintain basic mobility as set out in the EAPWDR subsection 3.2(2),
- the "Freedom AS2000" tricycle is an alternative type of wheelchair.

Further, the ministry was not satisfied that:

- the appellant was eligible for the provision of the "Freedom AS2000" as another type of medical equipment, as set out in the EAPWDR Schedule C, section 3 or as a medical supply, as set out in the EAPWDR Schedule C subsection 2,
- that the "Freedom AS2000" is an item set out in any of the other section of the EAPWD Regulation, Schedule C, and
- the appellant is eligible for a "Freedom AS2000" under Life-Threatening Health Need regulation as set out in the EAPWDR Section 69.

**The relevant legislation is as follows:**

### **Employment and Assistance for Persons with Disabilities Regulation section 62**

#### **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 under 19 years of age, 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.
- [en. B.C. Reg. 145/2015, Sch. 2, s. 4; am. B.C. Reg. 161/2017, App. 2, s. 2.]

#### **Schedule C**

##### **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 — canes, crutches and walkers**

**3.1** (1) Subject to subsection (2) 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 cane;
- (b) a crutch;
- (c) a walker;
- (d) an accessory to a cane, a crutch or a walker.
- (2) A walking pole is not a health supplement for the purposes of section 3 of this Schedule.

**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.

**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 — toileting, transfers and positioning aids**

**3.5** (0.1) In this section:

"positioning chair" does not include a lift chair;

"transfer aid" means a transfer board, transfer belt or slider sheet.

(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 facilitate toileting or transfers of a person or to achieve or maintain a person's positioning:

(a) a grab bar in a bathroom;

(b) a bath or shower seat;

(c) a bath transfer bench with hand held shower;

(d) a tub slide;

(e) a bath lift;

(f) a bed pan or urinal;

(g) a raised toilet seat;

(h) a toilet safety frame;

(i) a floor-to-ceiling pole in a bathroom or bedroom;

(j) a portable commode chair;

(k) a standing frame for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;

(l) a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;

(m) a transfer aid for a person for whom the transfer aid is medically essential to transfer from one position to another.

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

**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).

[en. B.C. Reg. 61/2010, s. 4; am. B.C. Regs. 197/2012, Sch. 2, s. 8; 145/2015, Sch. 2, s. 12.]

### **The Appellant's Position**

The appellant did not attend the appeal and did not submit any further evidence for consideration. The appellant had requested a specifically named piece of equipment, a "Freedom AS2000 Tricycle" as a custom designed alternate wheelchair for Rett Syndrome. The appellant supplied evidence that the health professionals sanctioned the request for this device and did not make recommendations for use of a walker, cane or scooter.

**Section 62 subsection 3(1)(b)(iii) EAPWDR-** the medical device is the least expensive appropriate medical equipment or device.

### **Ministry's Position**

Neither the appellant's doctor or OT state the appellant is unable to use a walker, scooter or cane. The ministry is therefore unable to establish that the "freedom AS2000" tricycle is the least expensive appropriate medical equipment or device.

### **Appellant's Position**

The committee for the appellant, who is a caregiver, had provided a letter stating that the appellant is unable to use a walker, cane or scooter and offered to provide video recording on request to demonstrate that.

### **Panel Finding**

In the reasons for filing the appeal the appellant appears to contend that the ministry had considered the information provided from medical professionals that the appellant cannot use a walker, cane or scooter. The committee for the appellant, who is a caregiver, had provided a letter stating that the appellant is unable to use a walker, cane or scooter and offered to provide video recording on request to demonstrate that. The ministry contends that in both the original application and the physician's prescription in support of reconsideration the physician and occupational therapist failed to provide corroboration.

While significant weight must be given to the evidence of the appellant, unless there is a legitimate reason not to do so, the appellant did not provide any further evidence at appeal. Although there is argument that the OT's discussion of the diagnosis and description of the appellant's condition would be sufficient to answer this question it is noted that the legislation requires the medical equipment or device to be the least expensive.

While not explicit in the legislation that a walker, cane or scooter be considered in the first place it is reasonable to consider and compare the cost of such authorized supplements if they are suitable alternatives to the requested item.

The panel finds the ministry's need for a confirmation of minimum level of support necessary to be appropriate, such that it could then consider the original request as to suitability due to cost and that there is no clear statement from either a physician or occupational therapist that the appellant is unable to use a walker, scooter or cane.

The panel therefore concludes that the ministry's decision that the appellant has not met the eligibility requirements of section 3 (1)(b)(iii) of Schedule C, was a reasonable application of the relevant



legislation and reasonably based on the facts before it.

**Section 62 subsection 3.2(2) EAPWDR-** medically essential in order to achieve or maintain basic mobility

**Appellant’s Position**

The appellant contends that the provision of a physician recommendation and subsequent prescription, and an occupational therapist statement that the “Freedom AS2000” meets the legislative requirements for approval of a “Freedom AS200” to promote or maintain a basic level of mobility satisfies this legislative requirement. The original medical equipment request and justification request clearly demonstrate that this equipment would meet basic mobility and indeed therapeutic needs of the appellant. The physician’s recommendation is for a Freedom Concepts custom designed adaptive alternate wheelchair for Rett Syndrome, to promote or maintain mobility.

The target outcomes listed in the OT assessment show- maintained function, strength and ability, and maintenance of stamina and also show a number of improvements that would be expected. The OT assessment was detailed in the provision of the appellants physical challenges and quotes her medical geneticist as stressing that the appellant needs frequent opportunities to weight bear to retain her walking ability. Skill loss is listed as a feature for a person with the appellants diagnosis, so skill maintenance is of paramount importance.

**Ministry’s Position**

The ministry form used for the equipment request also seeks ‘product parameters’ such as a discussion of other solutions, and in ‘environment and other supports’ section seeks a discussion on present equipment and why it is no longer meeting the needs of the client. While the OT assessment does mention, under previous equipment, that the appellant has been provided with a stroller (sic) there are no clear statements provided from either the physician or the OT that the “Freedom AS2000” is medically essential to maintain basic mobility, merely that it is recommended. In fact, in the attached justification letter the OT states the appellant is ambulatory within her home, does not have a manual wheelchair, and walks daily with supervision. In the supporting letter the committee states that the appellant remains out of a wheelchair and maintains her mobility with support. This information conflicts with the committees later letter in support of reconsideration where she states that the appellant cannot use a walker, cane or scooter.

**Panel Finding**

The panel finds there is no indication in the information before the ministry that the actual “Freedom AS2000” alone is medically essential to achieve or maintain basic mobility. The panel previously found that there is no clear statement from either a physician or occupational therapist that the appellant is unable to use a walker, scooter or cane.

The panel therefore finds that the ministry’s determination that it cannot be established that the

“Freedom AS2000” is medically essential to achieve or maintain basic mobility was a reasonable application of the relevant legislation and reasonably based on the facts before it.

**Section 62 Schedule C subsection 3 EAPWDR-** another type of medical equipment.

**Appellant’s Position**

The appellant submits the Freedom AS2000 is a qualifying piece of medical equipment that should be considered by the ministry.

**Ministry’s Position**

In reviewing other medical equipment or devices the ministry’s position is that that the Freedom AS2000 is not one of the following;

- A cane; a crutch; a walker and accessories listed under section 3.1 of schedule C,
- A scooter; an upgraded component of a scooter; an accessory to a scooter under section 3.4,
- A grab bar or other item listed in section 3.5 of schedule C,
- A hospital bed or other item listed in section 3.6,
- A pressure relief mattress, shown in section 3.7,
- A floor or ceiling lift device; other item listed in section 3.8 of schedule C,
- A positive airway pressure device; other item listed in section 3.9 of schedule C,
- A custom-made or off-the-shelf foot orthotic; other item listed in section 3.10 of schedule C,
- A hearing instrument under section 3.11, or
- A non-conventional glucose meter under section 3.12.

**Panel Decision**

The legislation requires for each of these health supplements that a prescription of a medical practitioner or nurse practitioner for the medical equipment or device be provided and/or if required by the minister, an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device be provided.

The panel found no such prescription from a physician or evidence from a therapist to substantiate such a request, nor any indication that such a request was made was made by the appellant for any of these ten items listed in the regulations.

The panel finds the ministry’s determination was a reasonable application of the relevant legislation and reasonably based on the facts before it for these ten supplements.

**Section 62 Schedule C subsection 2 EAPWDR-** medical supply

[Redacted]

**Appellant's Position**

No evidence was given in terms of this regulation.

**Ministry's Position**

The item requested is not a disposable or reusable medical supply.

**Panel decision**

The regulation EAPWD Schedule C section 2 sets out that the ministry may provide either disposable or reusable medical supplies. The panel found no such prescription from a physician or evidence from a therapist to substantiate such a request, nor any indication that such a request was made was made by the appellant.

The panel finds the ministry's determination was a reasonable application of the relevant legislation and reasonably based on the facts before it.

**Section 62 Schedule C sections 2(1)(c), 2(2) and 2(2.1) EAPWDR - criteria as a therapy****Appellant's Position**

No evidence was given in terms of this regulation.

**Ministry's Position**

The ministry may provide no more than 12 visits per calendar year for acupuncture....and physiotherapy treatments. A "freedom AS2000" tricycle is not one of these.

**Panel Decision**

The panel found no such prescription from a physician or evidence from a therapist to substantiate such a request, nor any indication that such a request was made was made by the appellant.

The panel finds the ministry's determination was a reasonable application of the relevant legislation and reasonably based on the facts before it.

**Section 62 Schedule C sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, and 9 EAPWDR – health supplements****Appellant's Position**

No evidence was given in terms of this regulation.

**Ministry's Position**

The ministry may provide: oral, eye, dental, diet, and natal supplements. A "freedom AS2000" tricycle is not one of these.

**Panel Decision**

The panel found no such prescription from a physician or evidence from a therapist to substantiate such

a request, nor any indication that such a request was made was made by the appellant.

The panel finds the ministry's determination was a reasonable application of the relevant legislation and reasonably based on the facts before it.

**Section 69 EAPWDR** – health supplement for a person facing a direct and imminent life-threatening health need.

**Appellant's Position**

No evidence was given in terms of this regulation.

**Ministry's Position**

The information submitted does not demonstrate the appellant faces a direct and imminent life-threatening health need. The "Freedom AS2000 is not a health supplement set out in Schedule C.

**Panel Decision**

Section 69 is intended to provide a remedy for those persons who are facing a direct and imminent life-threatening health need. The panel found no evidence from a physician or a therapist to substantiate such a request to address a direct and imminent life threatening health need nor any indication that such a request was made by the appellant.

The panel finds the ministry's determination was a reasonable application of the relevant legislation and reasonably based on the facts before it.

**Section 62 Schedule C sub-sections 3.1-3.12 medical device**

The EAPWD Regulation provides for the provision of a piece of medical equipment/device that is set out in Schedule C. Those items are contained in twelve sub-sections 3.1 thru 3.12. Subsection 3.2 includes a wheelchair, upgraded component of a wheelchair and an accessory attached to a wheelchair. Section 3.3 contains the terms wheelchair seating system and an accessory to a wheelchair seating system. There are no definitions of any of these items within the regulation.

**Appellant's Position**

The appellant had requested an "alternate wheelchair" as described by her committee. The items recommended and later prescribed by her physician was a custom designed alternate wheelchair for Rett Syndrome by Freedom Concepts. The OT, completing the assessment used the term "custom adapted mobility" and specifically named a piece of equipment, a "Freedom AS2000 Tricycle".

**Ministry's Position**

The ministry's position, previously stated, that while the "Freedom AS2000" is an alternate to a wheelchair in that it is a different mode of transportation, it is not an alternate *type* of wheelchair. The inference here is that if the "Freedom AS2000" is indeed a wheelchair or alternate *type* of wheelchair it may well be eligible for funding under section 3.2 of Schedule C subject to meeting all other regulatory requirements such as lowest cost and being medically necessary.

The ministry notes "that the Freedom AS2000 tricycle is manually powered by movement of one's legs/feet, like a typical tricycle or bicycle. A wheelchair is of course either powered by movement of one's arms/hands or electronically powered."

At the hearing the ministry provided further information as to the definition of a wheelchair. The ministry representative attended by phone and searched her computer and referred to the ministry policy document. The representative advised that while the ministry does not appear to have a definition of a wheelchair the policy provides for the approval of a cane, a crutch or a walker and a manual or powered wheelchair, wheelchair seating systems and scooters. The policy prohibits a walking pole, and wheelchairs and scooters intended for recreational or sports use.

The ministry stated they do not have a list of approved wheelchairs by either manufacturer or type. The ministry representative was unable to confirm which specific types of wheelchair, for example manual dynamic tilt wheelchairs or special power assist wheelchairs may be approved by the ministry as arms/hand or electronically powered under section 3.2 (2).

### **Panel Decision**

The panel finds the ministry's contention that a wheelchair is "*either manually powered by movement of one's arms/hands or electronically powered*" only is not supported by the ministry's evidence.

For this reason, the panel felt required to review the reasonableness of the statement in the reconsideration decision that the "Freedom AS2000 Tricycle" does not meet the eligibility requirements for wheelchairs. It appears that the definition of a wheelchair is left to the ministry representatives to define on a case by case basis and different people may well provide widely different interpretations.

The requirement for regulatory provision includes the need for the minister to be satisfied that the item is medically necessary to achieve or maintain basic mobility. A position supported by the appellant's doctor and OT.

A dictionary definition of a wheelchair is simply put – "a chair with wheels".

The "Freedom AS2000" was quoted as having;

- Rear steer,
- Solid tires,
- Parking brake,

- Break kit – rear steer position,
- Handle Bar Kit – Hoop Bars,
- Seatbase - Adult,
- Seatbelt Kit – Large 2”,
- Footplate Asmy-Adj, Large pair,
- Backrest kit – Adult high Back and
- Seatframe kit – As adult High Back

The ministry representative stated that the website for the “Freedom AS 2000” refers to the item as a tricycle. No evidence was presented that a wheelchair must have a specific number of wheels. As the freedom has wheels and a chair with rear steer it meets that definition. As it also contains a set of pedals and a chain and can be propelled to some extent by the rider it appears to fit a definition of manually powered. The addition of other items in the list would appear to meet the description of upgraded components and accessories attached to a wheelchair under section 3.2 (2).

The additions shown on the quote for seatbelt, seat adjustments and backrest were added by the OT as necessary items. The ministry addressed the eligibility requirements of section 3.3 and found that the “Freedom AS2000” would not comply with the requirements for a wheelchair seating system, or an accessory to a wheelchair seating system. These items are health supplements if medically essential to achieve or maintain a person’s positioning in a wheelchair. No evidence was presented to support this decision. For those reasons the panel finds the ministry’s determination that the ministry does not consider a “Freedom AS2000” tricycle to be a wheelchair is not reasonably supported by the facts and is not a reasonable interpretation of the legislation.

The panel recommends the ministry create a definition in policy of what a wheelchair and accessories are for the purposes of interpreting the regulation.

### **Conclusion**

Although the panel did not find the ministry was reasonable in all the decisions of this appeal, the panel does find that the ministry’s reconsideration decision which determined that the appellant was not eligible for funding to purchase a “Freedom AS2000” was a reasonable application of the applicable legislation in the circumstances of the appellant and therefore confirms the decision. The appellant is not successful on 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 Charles Schellinck	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/02/11

PRINT NAME Robert Fenske	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/02/11

PRINT NAME DONALD STEDEFORD	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/02/11