



PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the "Ministry") reconsideration decision dated March 7, 2019 which denied the appellant a tilt system for his wheelchair by reason that it was not the least expensive option pursuant to Schedule C, subsection 3(1)(b)(iii) Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"), and that the Ministry was not satisfied that item was medically essential to achieve or maintain basic mobility pursuant to Schedule C, subsection 3.2(2) EAPWDR.

PART D -- RELEVANT LEGISLATION

s. 24 Employment and Assistance Act ("EAA")

s. 62, Schedule C sections 3, 3.2, 3.3 Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR")

PART E – SUMMARY OF FACTS

The evidence before the Ministry at reconsideration was:

- On November 21, 2018 the appellant submitted an application for a wheelchair tilt system and leg strap. The application contained the following documents and information:
 - o The appellant submitted a medical equipment request and justification form ("MERJ").
 - o In the MERJ, the appellant's physician (the "Physician") described the appellant's condition as Rheumatoid Arthritis ("RA") and recommended "wheelchair tilt system and leg strap" and that the appellant requires a tilt system to support his pain reduction in the seat.
 - o In the MERJ the appellant's occupational therapist ("OT") specified that a "tilt system to power wheelchair and leg strap" were required.
 - o The OT also wrote a letter providing that the appellant has RA and seizure and has recently got a power wheelchair through the Ministry. The appellant's current concerns are pain in the back while sitting in the wheelchair. The appellant would also benefit from a leg strap to his power wheel chair while driving to stabilize his legs from sliding over.
 - o A price quote from a company dated November 15, 2018 listing CG tilt add onto Rovi Power Wheelchair (\$3,500), Headrest with Mounting Hardware (\$369.84), Freight to ship controller back to Motion Concepts for reprogramming (\$125).
 - o Another price quote from the same company for the Leg Strap being \$73.60
- On December 1, 2018 the Ministry approved funding for a wheelchair leg strap. The appellant's request for a wheelchair tilt system was denied.
- The appellant signed a request for reconsideration ("RFR") on February 8, 2019

The client's RFR includes:

- Self report stating "because the nerves in my back are being pinch[ed] off when I'm in my wheelchair, my legs and feet go to sleep. It already takes 20 to 30 minutes to get myself into the chair to go out for the day. It takes the same amount of time to get out of the chair. So getting up to move around is a really hard thing to do. Having the tilt seating on my chair would do two things and they are my legs and feet would not go to sleep or numb. And it would also help with the pain I have in my lower back."

The Ministry confirmed with the company that issued the quote that the tilt system is power tilt and not manual tilt.

The appellant's Notice of appeal states "I am in this chair for 8 hours a day getting up is not going to happen."

At the hearing, the appellant provided evidence that:

- He doesn't know what the least expensive option for a tilt system is, but the power tilt system was the cheapest option for a power system that he found.
- He was recently diagnosed with a severe case of osteoporosis.
- He needs the tilt system to alleviate him from the stress in his spine, chance of seizure, and reduction in painkillers
- He is in his chair for up to 6 hours per day.
- When asked about using a manual system, the appellant stated that his chair already has a manual system and there are no other manual systems for his chair that he is aware of. The appellant stated he must get out of his chair to make the manual parts function. The appellant stated that he would require an additional person to assist him to operate a manual chair.
- The appellant stated he can take his dog outside for a short walk around the building and doing small things. He can't get up and walk around like other people.
- The appellant stated that the option that he chose was the best option. The chair that he has is a manual tilt system. He spends up to ½ hour or 45 minutes to get out of his chair. The chair was put in a "manual tilt" position from the company that he purchased the chair from.
- When he originally requested the chair from the Ministry he wasn't sure if he required a tilt.

The Ministry relied on their reconsideration decision.

- The Physician and the OT did not give explanation as to why this device was required for mobility. There was no information from the appellant about the ability to reposition himself in the chair.
- The manual tilt or the power tilt information provided by the appellant is the only information provided by the appellant and the Ministry doesn't accept this evidence without additional information to support the verbal evidence of the appellant.
- The Ministry relied on the fact that most of the information from the appellant, the Physician, and the OT was not adequate for them to determine that the power tilt system was required.

The panel determined the additional oral evidence was provided at the hearing. The appellant provided evidence that the power tilt system he intended to purchase was the cheapest option that he looked into and that a manual tilt system was, to his knowledge, not available for his chair. The panel determined that this evidence was in support of information about the wheelchair tilt system which was before the Ministry at reconsideration and admitted the evidence pursuant to s.22(4) of the EAA.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's decision to deny the appellant a tilt system for his wheelchair by reason that it was not the least expensive option pursuant to Schedule C, subsection 3(1)(b)(iii) Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"), and by reasons that the Ministry was not satisfied that item was medically essential to achieve or maintain basic mobility pursuant to Schedule C, subsection 3.2(2) EAPWDR was reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The legislation provides:

EAA

24 (1) After holding the hearing required under section 22 (3) [panels of the tribunal to conduct appeals], the panel must determine whether the decision being appealed is, as applicable,

- (a) reasonably supported by the evidence, or
- (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

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 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.]

Medical equipment and devices

3 (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.12 of this Schedule are the health supplements that may be provided by the minister if

(a) the supplements are provided to a family unit that is eligible under section 62 [general health supplements] of this regulation, and

(b) all of the following requirements are met:

- (i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;
- (ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
- (iii) the medical equipment or device is the least expensive appropriate medical equipment or device.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;

(b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

(a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;

(b) an assessment by a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if

(a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and

(b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

(4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.

(5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if

(a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and

(b) it is more economical to repair the medical equipment or device than to replace it.

(6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

Medical equipment and devices — wheelchairs

3.2 (1) In this section, "wheelchair" does not include a stroller.

(2) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:

(a) a wheelchair;

(b) an upgraded component of a wheelchair;

(c) an accessory attached to a wheelchair.

(3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years after the minister provided the item being replaced.

(4) A high-performance wheelchair for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

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.

The panel finds:

The Ministry denied the appellant's request for a tilt system on two grounds. The first was that pursuant to Schedule C Section 3(1)(b)(iii), the appellant did not choose the least expensive option for the tilt system. The documentary evidence provides one quote for a power tilt system. The appellant states that out of all the options he investigated, the quote he provided to the Ministry is the cheapest one. Further, the appellant states that there is no additional manual tilt system for his wheelchair that he is aware of. The Ministry states in their reconsideration decision that a manual tilt system is an option that should be explored.

The panel finds that regardless of whether a manual tilt system is an option for the appellant's wheelchair, the Ministry was reasonable in determining that the least expensive option was not chosen. The Ministry didn't have documentary evidence of other available options presented to them. The appellant provided verbal evidence that the quote he provided was the least expensive for a power tilt system. The more expensive quotes that the appellant obtained, could have been provided to the Ministry to support his verbal evidence. Further with respect to the manual tilt option, the appellant stated there is no other manual tilt option other than the manual tilt already on his wheelchair that he "was aware of". Information from the company that gave the quote or information from the OT or Physician about manual tilt options could have been provided to the Ministry. Given the information before the Ministry, the panel finds that it was reasonable for the Ministry to determine that the least expensive option was not chosen.

The Ministry determined that pursuant to s.3.2(2) EAPWDR, the Ministry was not satisfied that the appellant required the device for basic mobility pursuant to s.3.2(2) EAPWDR. Section 3.2 EAPWDR governs the Ministry for determinations about an upgrade or accessory to a wheelchair. Neither the appellant, the OT or the Physician referred to the tilt system being required for the appellant's basic mobility or how the tilt system would be used to achieve basic mobility. The panel finds therefore, that it was reasonable for the Ministry to determine that the tilt system was not required in order for the appellant to achieve basic mobility.

s.3.3 EAPWDR governs the Ministry for determinations regarding wheelchair seating systems. The Ministry did not rely on this section in their decision. The panel finds, that given that the tilt system may be more like a "seating system" (3.3) than an "upgrade or accessory to the wheelchair" (3.2), it would be reasonable to assess this section of the legislation also. The reconsideration decision refers to the relevance of the appellant's ability to change positions while seated, but it doesn't specifically reference s.3.3 EAPWDR.

To qualify for a seating system an appellant must show that the device is necessary to achieve or maintain a person's positioning in the wheelchair. The appellant provides some evidence about seating but doesn't state that the device is necessary to achieve his positioning in the wheelchair. The OT does not reference the appellant's positioning in the wheelchair. The Physician states "pain reduction in the seat" but does not indicate that the device is necessary to achieve the appellant's positioning. As such the panel finds that it was reasonable for the Ministry to deny the appellant the tilt system pursuant to s 3.3 EAPWDR.

For these reasons, the panel finds the Ministry's decision was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.

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 checked="" 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 MEGHAN WALLACE	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) April 12, 2019

PRINT NAME LAURIE KENT	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/04/11
PRINT NAME LINDA PIERRE	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/04/11