

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision dated September 4, 2019, wherein the ministry denied the appellant’s request for a scooter because he does not meet the following eligibility requirements;

- pursuant to section 3(1)(b)(iii) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulations (EAPWDR) a replacement scooter is not the least expensive appropriate medical equipment or device; and,
- pursuant to section 3(2)(b) no assessment was provided by an occupational therapist or a physical therapist confirming the medical need for a replacement scooter;
- pursuant to section 3(3)(a) the appellant has not provided information indicating that it would be more economical to replace a scooter rather than repair it.

PART D – RELEVANT LEGISLATION

EAPWDR sections 62 and Schedule C section 3.

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration included the following evidence:

The appellant has Medical Services Only (MSO) designation.

On July 20, 2014 the appellant was funded a scooter by the ministry.

The appellant's occupational therapist (OT) had requested an assessment of the appellant's current scooter. This assessment dated July 8, 2019 states: "Lights, horn and tires are good. Right arm has cracked vinyl, right hand floor mat piece is missing. Batteries are strong, no issue with motor/gearbox, runs strong. Client says weight went from 170 to 240 lbs - weight capacity of scooter is 350 lbs. Other than arm pad, the only damage on the scooter is cosmetic."

On July 15, 2019 the ministry received a request for a replacement scooter. A ministry worker spoke with the OT who said that there is no new medical justification for a replacement scooter other than that the appellant has gained some weight but his current scooter is still within the weight max of 350 lbs. The ministry worker indicated that they would approve the appellant for a new arm pad for his current scooter but that the supplier indicated that the scooter is in good strong order and that no more repairs are needed other than cosmetic.

In her letter dated July 15, 2019 the appellant's OT explains that the appellant whose weight is 220lbs still uses his current scooter (weight capacity 350 lbs) funded by the ministry in 2014. She writes that the appellant states that his current scooter frequently breaks down and he has to take a taxi home. The appellant states further that he is unable to make the return trip to the bank and his current scooter is not sufficient for him because he gained approximately 100 lbs. She writes the appellant feels the requested replacement scooter (weight capacity 400 lbs) is better suited for his environment due to its wider wheel base and greater tire traction. 2 quotes were attached to the OT's letter:

- A quote for repair of the appellant's existing scooter for the total amount of \$95.23;
- A quote for a replacement scooter for the total amount of \$3500.

In his request for reconsideration dated August 12, 2019 the appellant lists his medical conditions and explains that his scooter is now 5.5 years old and too heavy to manage. He cannot take it on the bus or load it into a car. It is unreliable and stalls on average once per week for the past year. When this happens he has to call for a taxi van and wait ½ hour to 4 hours for it to come. His current scooter is very slow and can't climb hills. Once the scooter stalled and the appellant fell off and injured his back and shoulder which resulted in a three-week bed confinement. A better scooter is required to maintain basic mobility in his community.

In a prescription note dated August 16, 2019 the appellant's GP indicates that the appellant requires the use of a motorized scooter.

In his Notice of Appeal dated September 13, 2019 the appellant wrote that he has many health ailments and his scooter is not appropriate for him.

At the beginning of the hearing the appellant wished to confirm that the panel had received a copy of a prescription from a medical practitioner. This was confirmed as it was included in the appeal package. Neither the witness nor the appellant commented further on the pertinence of the document when asked if they wished to do so.

At the hearing the appellant's witness who was also his son-in-law stated that he lives near the appellant who calls him whenever his scooter breaks down. This scooter breaks down 1-2 times per month and then the appellant is stranded on the road; no-one else helps him. When there is a problem with the scooter the repair people come to the appellant's house to pick up the scooter. The witness stated further that he has to help the appellant with buying groceries, house work and repairs. He has to unload his truck to lift up the scooter when it needs transporting. He does not know what is wrong with the scooter.

At the hearing the appellant testified that his scooter is 6 years old, very heavy and difficult to load. Taxis and buses

refuse to load the scooter. He cannot even take his scooter to his doctor for his appointments. He could not load his scooter into the elevator of this building (where this appeal hearing was held). He has to carry the charger with him always because there are no charging facilities where he has to go.

The appellant reported that he had spine surgery twice and his right leg does not function properly. He also has heart and breathing problems. He can't walk more than 50 yards. He lives on a hill. When his scooter was new it ran for 20 km, now it only runs for 5 km. The problem started 6 months ago and the scooter was grounded for 1 month. The battery was tested but they did not find any problem with it. The problem with the steering wheel is still there. The technicians tested the scooter outside his house; they did not test it on a hill. Within the last 6 months the company looked at the scooter around 4 times. Repairs are always done by the company from where he got the scooter, and paid by the ministry.

The appellant stated that the ministry never asked for a medical report, and no OT or Physical Therapist ever visited him.

The ministry summarized its reconsideration decision and emphasized that the ministry's denial was based on sections 3(1)(b)(iii) and 3(2)(b) of Schedule C of the EAPWDR.

The panel admitted the appellant's Notice of Appeal and his and the witness' oral testimony pursuant to section 22(4) of the Employment and Assistance Act because the new information is in support of the information before the ministry at reconsideration; it confirms information on the appellant's medical condition and provides additional background and detail on the appellant's scooter.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry's decision to deny the appellant's request for a replacement scooter because he did not meet the eligibility requirements set out in section 3(1)(b)(iii), section 3(2)(b) and section 3(3)(a) of Schedule C of the EAPWDR was a reasonable application of the legislation or reasonably supported by the evidence. The ministry determined that

- pursuant to section 3(1)(b)(iii) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulations (EAPWDR) a replacement scooter is not the least expensive appropriate medical equipment or device; and,
- pursuant to section 3(2)(b) no assessment was provided by an occupational therapist or a physical therapist confirming the medical need for a replacement scooter.
- pursuant to section 3(3)(a) the appellant has not provided information indicating that it would be more economical to replace a scooter rather than repair it.

Schedule C of the EAPWDR

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

....

(b) all of the following requirements are met:

...

(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.

(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.

3.4 Medical equipment and devices — scooters

(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.

Appellant's position

The appellant argues that the ministry should approve his request for a replacement scooter because his current scooter is not appropriate and does not provide the appellant with basic mobility within his community. It is too heavy to manage and cannot be taken on the bus or loaded into a car. It is very slow and cannot climb hills. The battery only lasts for 5 km - when the scooter was new it lasted for 20 km. In addition, the scooter is unreliable and puts the appellant's health at risk; it stalls once a week and leaves him stranded on the road. When the scooter breaks down the appellant has to call his son-in-law for help or he has to call a taxi van and wait a long time for it to come. Once the appellant fell off when his scooter stalled and injured himself which resulted in a three-week bed confinement. The ministry never asked for a medical report, and neither OT nor Physical Therapist ever visited him.

Ministry position

The ministry's position is that the least expensive appropriate medical device available to the appellant is his current scooter funded by the ministry in 2014. The appellant's OT has not confirmed a medical need for a replacement scooter pursuant to section 3(2)(b) of Schedule C of the EAPWDR. Although the appellant argues that he requires a replacement scooter because the one he is using is difficult to manage and is unreliable, the ministry does not have evidence of the malfunctioning he describes. In fact, his scooter was assessed on July 8, 2019 as being in proper working order. Also, when the appellant applied for a scooter in 2014, his OT noted his weight as being 190 lbs. In her July 15, 2019 fax his current OT indicates the appellant's weight is now 220 lbs (verbally she indicates 240 lbs) which is 30-50 lbs heavier, not 100 lbs heavier as he indicated to her. Regardless, this is still below the 350 lbs weight restriction that his current scooter has.

Schedule C section 3(3)(a) of the EAPWDR states that the minister may provide a medical equipment replacement if it is more economical to replace it rather than repair it. In this case the appellant has not provided information indicating that it would be more economical to replace the scooter than to repair it as set out in section 3(1)(b)(iii).

Considering the above collectively, the ministry finds that the legislated requirements have not been met.

Panel decision

Evidence including an assessment by the supplier confirms that the appellant's current scooter is damaged. Pursuant to section 3(3) the ministry may provide a replacement scooter if the current scooter is damaged, worn out or not functioning and if (a), it is more economical to replace than to repair the current scooter, and (b), the period of time, if any, set out in section 3.4 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

The panel finds that, based on the evidence, the ministry reasonably determined that pursuant to section 3(3)(a) the appellant has not provided information that it would be more economical to replace the scooter rather than repair it; quotes provided illustrate that costs for a replacement scooter are \$3500 while repairs of the current scooter are \$95.23.

Section 3.4(4) sets out that the period of time with respect to replacement of the appellant's current scooter is 5 years. As the appellant's current scooter was funded on July 20, 2014, and the date of the reconsideration decision is September 4, 2019 the panel finds that the appellant had his current scooter more than 5 years and as a result section 3(3)(b) has been met. The panel notes that the ministry did not explicitly discuss section 3(3)(b) but implied that this section has been met.

While the ministry determined that pursuant to section 3(1)(b)(iii) the least expensive appropriate medical device available to the appellant is his current scooter, the panel finds that the appropriateness of the appellant's current damaged scooter is not supported by the evidence which renders this ministry determination unreasonable. The panel finds further that section 3(1) refers to circumstances with options to choose from various appropriate medical devices or equipment; for example, there may be a choice between 2 appropriate scooter models. In the appellant's circumstances there are no options to choose from - rather, the ministry was supposed to decide whether it is more economical to replace than to repair the appellant's damaged scooter. Consequently, the panel finds that the ministry was not reasonable when it applied section 3(1) in the appellant's circumstances.

The panel notes that while the ministry neither acknowledged nor discussed the appellant's GP's prescription for a motorized scooter, section 3(3) does not speak of a requirement of a prescription or confirmation of the medical need for the medical equipment or device. While the ministry determined that pursuant to section 3(2)(b) no assessment was provided by an occupational therapist or a physical therapist confirming the medical need for a replacement scooter the panel finds that the requirements of section 3(2) refer to section 3(1) which is not applicable in the circumstances of the appellant as previously discussed. Therefore the ministry was not reasonable when it applied section 3(2)(b) in the appellant's circumstances.

Conclusion

The panel finds that the ministry's determination that the appellant is not eligible for a replacement scooter is reasonably supported by the evidence and is a reasonable application of the legislation in the appellant's circumstances. The ministry's reconsideration decision is confirmed and the appellant is not successful on appeal.

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"/> and 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	
PRINTNAME Inge Morrissey	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/10/01

PRINTNAME Angie Blake	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/10/01
PRINTNAME Donald Stedeford	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/10/01