

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated September 30, 2019, which held that the appellant was not eligible for funding for a Pride Go Go LX 4 wheeled scooter (“Scooter”).

The ministry held that the appellant is eligible to receive health supplements set out under the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C*, section 3, but that the appellant’s request did not meet the criterion set out in EAPWDR Schedule C section 3.4(3)(c), which requires that the ministry must be satisfied that the Scooter is medically essential to achieve or maintain basic mobility.

PART D – RELEVANT LEGISLATION

EAPWDR, section 62 and Schedule C, section 3, 3(3)

PART E – SUMMARY OF FACTS

The information before the ministry at the time of reconsideration included the following:

- Medical Equipment Request and Justification form dated May 31, 2019 recommending the Scooter due to the appellant's severe arthritis bilateral knees and chronic dizziness with exertion.
- Quote from an equipment provider dated July 15, 2019 for the cost of the Scooter in the amount of \$2,307.60
- Assessment from an occupational therapist (the "OT") dated July 15, 2019 indicating that the appellant is independent in activities of daily living and transfers from all seating surfaces. The OT indicates that the appellant is independently ambulatory with steady gait with no mobility aids and declined a need for a 4-wheeled walker or cane. The OT indicates that the appellant had trialled walkers in the past and does not want a cane or walker due to right arm weakness since a fall when the appellant broke the appellant's wrist and injured the appellant's shoulder elbow in 2015. The OT also indicates that the appellant has limited standing tolerance due to bilateral knee pain and past history of right knee popping out while moving a laundry machine. The OT indicates that the appellant has driven in-store scooters at a few stores and is requesting the Scooter as it is one of the models that disassembles/assembles and would transport in the appellant's car to for use in local shopping centres.
- Request for Reconsideration dated September 5, 2019 (RFR) in which the appellant states that the appellant requires the Scooter to get around locally to the park to see the appellant's grandchildren, accompany the appellant's son (who has special needs) around the neighbourhood, go to the appellant's vegetable garden plot, go shopping, and to pay bills. The appellant's son provides assistance to help the appellant to the appellant's car and up and downstairs in the appellant's home, the appellant requires the Scooter to be out in the neighbourhood and for shopping. The appellant states that the appellant used a cane and walker for 10 years and although the appellant's son provides help, the appellant is not independent and is "...*just holding onto the shred's I have left*". The appellant states that the OT misunderstood the appellant's needs and that the appellant needs the Scooter not for fun but to continue the appellant's daily routine and get out in the community.

The appellant did not attend the hearing. Having confirmed that the appellant was notified of the hearing, the panel proceeded with the hearing pursuant to EAR section 86(b).

PART F – REASONS FOR PANEL DECISION**Issue on Appeal**

The issue on appeal is whether the ministry's decision to deny the appellant's request for funding for the Scooter was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable when concluding that the Scooter is not medically essential to achieve or maintain basic mobility as required by EAPWDR Schedule C, section 3.4(3)(c)?

Relevant Legislation**EAPWDR – Schedule C****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.

Panel Decision

The appellant's position is that the Scooter is required to continue the appellant's daily routine, including shopping, paying bills, getting to medical appointments, accompanying the appellant's son on walks, getting out to the garden and parks, and enjoying the appellant's community. The appellant's position is that the OT misunderstood the appellant's needs and that there was miscommunication between the appellant and the OT. In particular, the appellant states that when the OT asked if the needed assistance the appellant said no, thinking that the OT meant assistance from an outside source or person, rather than the Scooter. The appellant's son provides assistance getting to/from car and upstairs and to bed. The appellant's position is that getting food is a basic need so the Scooter is necessary to achieve or maintain basic mobility.

The ministry's position is that the OT assessment indicates that the appellant is requesting the Scooter in order to shop at larger shopping centres, which is not considered to be basic mobility. The reconsideration decision indicates that while the appellant specifies other uses for the Scooter including walking with the appellant's son in the community, going to the playground to watch the appellant's grandchildren, mobilizing to the appellant's garden plot, paying bills in the community, and attending medical appointments, these uses were not included in the OT assessment making it difficult to determine that the Scooter is necessary to achieve or maintain basic mobility. The ministry also notes that while the appellant indicates use of a cane, walker, and mobilizes with the assistance of the appellant's son, this information was not included in the OT assessment.

The ministry notes that while there may have been a misunderstanding between the appellant and the OT, the assessment provided does not confirm that the Scooter is medically essential for the appellant to achieve and maintain mobility as discussed in the RFR. In addition, there is no assessment to determine the appellant's level of mobility with the use of the appellant's walker and cane, or information to determine how the appellant is able to mobilize in the appellant's community with these items.

The ministry's position is that based on the OT assessment provided, the appellant is independently ambulatory with a steady gait with no mobility aids; the appellant is independent in daily living activities and transfers from all seating surfaces. The ministry's position is that based on the information provided there is no confirmation that the Scooter is medically essential to achieve or maintain basic mobility.

The panel finds that the ministry reasonably determined that the Scooter is not medically essential to achieve or maintain basic mobility as required by EAPWDR Schedule C, section 3.4(3)(c). In particular, the information provided by the OT indicates that the appellant is independent in activities of daily living and transfers from all seating surfaces. The OT indicates that the appellant is independently ambulatory with steady gait with no mobility aids and declines need for 4-wheeled walker or cane. The OT indicates that the appellant trialed

walkers in the past and does not want a cane or walker due to right arm weakness since the appellant had a fall and broke the appellant's wrist and injured the appellant's shoulder and elbow in 2015.

The appellant states that there was a misunderstanding or miscommunication with the OT and the appellant does not feel that the OT understands the appellant's true needs, but the appellant did not provide further information clarifying the OT assessment or provide information from another OT to address the misunderstanding or to confirm that the Scooter is required to achieve or maintain basic mobility. The information in the RFR and the OT assessment is inconsistent and it makes it difficult to get a clear picture of the appellant's mobility needs. In addition it is reasonable for the ministry to rely on the OT assessment in determining whether the Scooter is medically essential to achieve or maintain basic mobility.

As the OT does not confirm that, or explain why, the Scooter is necessary to achieve or maintain basic mobility, the panel finds that the ministry's determination that it was not satisfied that the Scooter the appellant has chosen met the requirement of EAPWDR Schedule C, section 3.4(3)(c) was reasonable.

Conclusion

The panel acknowledges that the Scooter has been recommended for the appellant and may be beneficial. However, having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's reconsideration decision finding the appellant ineligible for funding for the Scooter was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's 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

Helene Walford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/11/11

PRINT NAME

Laurie Kent

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/11/11

PRINT NAME

Wayne Reeves

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/11/11