

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated January 20, 2020 which denied the appellant's request for a supplement to cover the cost of a new power wheelchair with upgraded components. The ministry found that the requirements of Schedule C of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) were not met and that:

- there is insufficient information to show that the medical equipment or device is the least expensive appropriate medical equipment or device [Schedule C, Section 3(1)(b)(iii)];
- there is insufficient information to show that the upgraded components of a power wheelchair are medically essential to achieve or maintain basic mobility [Schedule C, Section 3.2(1)]; and,
- upgraded components to a wheelchair which enable independent toileting and a standing power wheelchair are not included in the list of health supplements in in Section 3.5(1) of Schedule C.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 62 and Schedule C, Sections 3, 3.2 and 3.5

PART E – SUMMARY OF FACTS

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

- 1) Power Assessment Form dated January 25, 2019 for an Invacare model TDXSP with assessments in the “fair” to “poor” range and the narrative is mostly illegible although the technician’s comments include: “Based on age and condition of parts, chair needs replacement”;
- 2) Proposal dated May 23, 2019 from a medical supply provider for the following items totalling a cost of **\$8,012.47**:
 - o New standing power wheelchair, with no cost attributed,
 - o Carved foam seat with plywood base at a cost of \$1,445.00,
 - o Hip guides with hardware (\$357.00),
 - o Whitmyer Plush 14” headrest with ONYX mounting (\$296.64);
 - o Whitmyer ONYX headrest receiver hardware (\$125.00),
 - o Custom contoured backrest fabricated using the Foam in Box technique (\$2,367.00),
 - o AES swing away trunk lateral bracket (\$250.00),
 - o Custom pommel built into knee block (\$450.00),
 - o Body Point 4 Point Centre Pull Medium positioning belt (\$205.20),
 - o Custom abdominal binder strap (\$230.00),
 - o AEL AirLogic Posture support: standard-cut stretch medium (\$238.05),
 - o Custom forearm strap on right side (\$130.00),
 - o 2 custom hand hold attached to armrest (\$280.00),
 - o Custom arm rest pads (\$287.00),
 - o 2 Shoe holders (\$261.58),
 - o Frame item: swing to side armrest hardware, left side only (\$290.00), and,
 - o Custom knee block hardware and adaptation to all for asymmetrical mounting at a cost of \$800.00;
- 3) Occupational Therapy Seating Report dated July 5, 2019 in which the Occupational Therapist (OT) comments included the following:
 - o The appellant has cerebral palsy (CP), hypopanpituatarism, and hip dysplasia. The appellant also wears glasses for distance and is deaf and uses sign language.
 - o The time in wheelchair is about 15 hours per day but stands and moves a lot in the wheelchair.
 - o Mobility- able to drive using right side joystick, seat functions are operated by 4 buttons to right of the joystick.
 - o Environment of use includes looking for a job, going to the mall, shopping, and to the park. The appellant uses transit on own and has a wheelchair accessible vehicle.
 - o Current wheelchair/ seating equipment- TDX SP wheelchair with tilt and D & D standing system.
 - o Physical assessment- the appellant can fully operate the seat functions on the wheelchair and is independent with driving.
 - o The appellant requires replacement of the appellant’s current wheelchair and custom seating system.
 - o The wheelchair being used for the past several years allows the appellant to stand at the appellant’s discretion throughout the day, which has helped manage hip

- pain, leg cramps, spasticity in legs and helped maintain independence.
- A new standing wheelchair was tried and the appellant was able to operate the controls and drive it well.
 - The primary reason other wheelchairs were not tried was that there are very few wheelchairs with standing feature and no others are available for trying. The most versatile chair available especially for adding custom seating, is the Permobil F5 that the appellant tried.
 - Product parameters/ suggested equipment to trial- power wheelchair with tilt, standing feature, and other power functions such as elevation- this allows the appellant the option to stand throughout the day to relieve pain in hips, cramps in legs, and to help control spasticity. The appellant hopes to use the standing feature to make independent bladder management possible.
 - Custom seating system- the appellant has many postural deviations that do not permit use of commercial products. The appellant has severe lordosis that requires a molded backrest and various custom strapping is needed to assist the appellant to sit upright and to stand supported and upright.
- 4) Sales Quotation dated August 7, 2019 in which the medical supplier quoted a total cost of **\$50,733.12** that includes the following items:
- F5 Base Corpus VS-F5 MPO ("F5") at a cost of \$14,439.36,
 - VS Power Adjustable Seat Height at \$3,693.12,
 - Batteries for \$926.40,
 - Enhanced Steering Perform Unit for \$1,174.08,
 - Bodypoint J/S Handle at \$151.68,
 - Slimline Retractable Joystick Mount at \$447.36,
 - Adjustable Height Panel Bracket at \$346.56,
 - Power Tilt and Power recline at \$13,640.64,
 - Power Standing Function at \$7,008.00,
 - Multiple Seat Function Control Kit at \$2,736.96,
 - Direct Backrest Frame for \$471.36,
 - Corpus VS Power Leg rest Elevation at \$3,603.84,
 - Corpus VS Stand and Drive Package for \$1,338.24,
 - Knee support at \$206.40,
 - Adjustable removable knee support for \$301.44,
 - Universal headrest adapter for \$247.68.
- 5) Follow Up Occupational Therapy Seating Report dated August 12, 2019 in which the OT comments included the following:
- The appellant is working on independent urination which requires use of the standing feature.
 - A new standing wheelchair continues to be an appropriate wheelchair for the appellant.
 - The F5 wheelchair was tried and the appellant was able to operate the controls and drive it well.
 - The primary reason other wheelchairs were not tried was that there are only two or three wheelchairs with standing feature and no others were available for trying.
 - The recommendation is for a new power standing wheelchair for posture control, for managing pain and spasticity and for maintaining/enhancing functional abilities.
 - The appellant is dependent on a power wheelchair for mobility as the appellant

- cannot use a manual wheelchair due to very dystonic arm function and postural deviations.
- The F5 wheelchair is recommended as it is one of the only manufacturers that offers both power driving, standing, and tilt, and integrates well when custom seating is needed.
 - The appellant must use a custom seating system due to severe postural changes.
 - The F5 is a stable front wheel drive power wheelchair base with programmable electronics and independent suspension, which will allow the appellant to independently and safely operate the wheelchair indoors and on the outdoor terrain that the appellant encounters in normal activities including transportation, ramps and uneven terrain.
 - The F5 has the ability to support the necessary power seating system recommended and is not available on any other Permobil wheelchair.
 - Upgraded components include:
 - power adjustable seat height required for the VS power standing system to work properly;
 - batteries;
 - enhanced steering perform unit R-Net;
 - Joystick handle 4" U-shaped flex-shaft;
 - slimline retractable joystick mount;
 - adjustable height bracket;
 - power tilt and recline are seat functions that are essential for the standing feature to work on the F5 wheelchair;
 - power standing function that allows the appellant to stand intermittently throughout the day as this helps reduce leg cramping and controls spasticity in legs, helps with independent managing of bladder, and for pressure management, digestion, respiration, circulation, and to prevent bone loss;
 - multiple seat function control;
 - direct backrest frame;
 - power leg rest elevation required for the standing feature to function;
 - Corpus VS stand and drive package allowing the wheelchair to be driven in the standing position;
 - knee support that is necessary for standing;
 - removable knee support hardware; and
 - headrest adapter.
- 6) Letter dated August 21, 2019 to the ministry in which the OT enclosed the seating consultations, quotations, and service report.
 - 7) Medical Equipment Request and Justification (MERJ) dated August 21, 2019 in which the medical practitioner described the medical condition as CP and absent pituitary gland and specified the medical equipment recommended as "power wheelchair with tilt, elevated seat/legs and standing. Custom seating." The OT referred to the reports for the specification of the medical equipment required to meet the appellant's needs;
 - 8) Letter dated November 19, 2019 to the appellant in which the ministry denied the appellant's request for a F5 Corpus power wheelchair with adjustable seat height, power tilt, power recline, power standing, power leg rest elevation, multiple seat function control kit, stand and drive package;
 - 9) Purchase Authorization dated November 25, 2019 in which the ministry approved funding

totalling **\$7,212.47** for a swing to side armrest hardware for a power wheelchair at a cost of \$290 and custom wheelchair seating for \$6,922.47;

- 10) Medical Certificate Note dated December 4, 2019 in which the medical practitioner wrote that equipment recommended for the appellant is a "wheelchair with power recline/ leg rest elevator/ knee support/ power stander"; and,
- 11) Request for Reconsideration dated January 3, 2020.

In the Request for Reconsideration, the appellant's caregiver wrote:

- The wheelchair requested is to meet the appellant's specific need.
- The power recline is to relieve hip pain caused by shortening of hamstring and scoliosis. The appellant requires Botox in hamstrings. This position relieves pressure on hip.
- Leg rest elevation- change position so the appellant does not develop blood clots in legs due to no movement.
- Knee support- required to support knees and stabilize. The appellant requires a pommel between legs to keep them separate.
- Power stand is medically required for digestion and bowel, improve respiration and independence and mental well-being.
- The appellant is a happy, outgoing adult and requires this wheelchair to meet needs for independence and safe mobility around the environment and community to meet friends and in the work environment.

At the hearing, the advocate provided the following additional documents:

- 1) Letter dated February 20, 2020 in which a physical therapist (PT) wrote about the appellant's need for equipment, including:
 - The appellant has CP, hypoparathyroidism, and profound hearing impairment. The appellant presents with a significant mixed movement disorder, spastic dystonia. The appellant's movement disorder prevents the appellant from being able to walk or stand, and to sit requires moderate to maximal support.
 - In spite of the appellant's many medical conditions, the appellant has learned to be very independent and is hampered only by the limitations of the equipment.
 - When the equipment breaks down, it is like an able-bodied person having a broken leg or back injury, i.e. totally sidelined and unable to participate in daily tasks until the injury is resolved.
 - When the appellant's wheelchair breaks, it is like the appellant's legs being taken away, and the appellant is totally handicapped.
 - The appellant is in the wheelchair up to 15 hours a day so position changes are required, which the appellant is able to do with the power functions of the chair which saves the caregivers as well as giving the appellant a feeling of self-confidence and independence.
 - The appellant is a heavy user of the wheelchair, using it to go on transit, to parks, or to the mall, to visit friends. Because of this, the wheelchair requires more maintenance repairs than it would if it was only used lightly.
 - The F5 wheelchair is a "purpose built" wheelchair and was tried by the appellant. There were no other wheelchairs with the standing feature available for trial as the standing feature is an "add-on" and these wheelchairs are custom-ordered as was the appellant's current wheelchair.

- Research has shown the benefits of all of the features requested on the F5 wheelchair, with an emphasis on the standing component. The cost of a stand-alone standing frame (\$5,000 to \$6,000) is within the range of costs of the add-on standing features on the power wheelchairs. Clients do not use the stand-alone standing frames often because of the difficulty of transferring clients into them.
 - The appellant's current wheelchair has been in the shop for programming and major and minor repairs a total of 62 times since it was purchased in 2014, including the 2 years that the wheelchair was covered by warranty.
 - At least 13 of the repair calls were related to the joystick and the external switches on the chair. On the F5 wheelchair, the switches are all integrated and enclosed which reduces the possibility of damage.
 - The appellant does not take the specialized commode out into the community and, therefore, requires a urinal and the ability to use this with the position change options.
 - The functions requested in the wheelchair (standing, recline and tilt) are methods of preventing a long-term developing disability such as hip dislocation, pressure sores, respiratory infection, etc.
 - The F5 is a purpose-built wheelchair, with front wheel drive and a stable base that can better handle the weight distribution when the client is in standing. All the other chairs are mid-wheel drive.
 - The PT has discussed the F5 with the technicians and they feel that in the long term the repair costs would be far less than other models.
 - Additional quotes obtained were for a Rovi X3 with standing, tilt and recline with elevating leg rests for \$39,415.68; the Quickie Experience with elevation, tilt, recline, with elevation leg rests for \$34,896.96, requiring an add-on for standing for an additional \$5,000 to \$7,000.
- 2) Sales Quotation dated February 20, 2020 for a TDX-SP power wheelchair and components for a total cost of **\$30,740.54**, including the base wheelchair for \$7,272 plus custom standing frame including power tilt, recline, elevation and power legs for \$16,759.10 and various switches, cushions, straps and pads;
 - 3) Sales Quotation dated February 20, 2020 for a Quickie Q700 M power wheelchair and components for a total cost of **\$33,670.18**, including the base wheelchair for \$7,968 plus custom standing frame for \$16,088.74 and various switches, cushions, straps and pads;
 - 4) Sales Quotation dated February 20, 2020 for a Levo C3 power wheelchair and components for a total cost of **\$50,199.36**, including the base for \$20,556.00 and power standing system for \$11,185.92, and various switches, cushions, straps and pads;
 - 5) Sales Quotation dated February 20,2020 for the power wheelchair standing feature and associated straps and handles for a total of **\$5,528.64**;
 - 6) Undated statement by the PT of the benefits of standing frames, including the psychological effect of being upright, maintain ROM [range of motion] of hips, knees and ankles, improved functional independence such as standing transfers, cardiovascular function, change of positions stimulates respiratory health, bowel function improvement, muscle strengthening, urinary function with improved bladder drainage, and bone development/ bone mineral content; and,
 - 7) Advocate's undated written submission on behalf of the appellant.

In the Notice of Appeal, the appellant disagreed with the ministry's reconsideration decision and wrote:

- The appellant requires a power wheelchair for everything: going out in community, getting employment, independence, to pee independently, to relieve pressure areas by standing, by changing position, legs elevated, recline.
- The OT and PT have researched and this power chair meets the appellant's physical and emotional needs.

At the hearing, the appellant's support worker stated:

- The goals with working with the appellant have been focused on independence.
- The biggest goal over the last while was for the appellant to urinate independently. The appellant would like to go to school and to not be accompanied into the washroom.
- In the last couple of months, the appellant has accomplished independent urination.
- The appellant relies on the power wheelchair to go out into the community and to be visible in the community.
- The appellant has been anxious because the battery on the current power wheelchair is not working. The appellant knows who to call when there is a problem, but it still makes the appellant very anxious.

At the hearing, the appellant and the appellant's caregiver stated:

- The appellant is not incontinent and gets very upset if there is a problem.
- The caregiver made a urinal that the appellant can take into the community and use independently in the washroom.
- There was no same gender interpreter at the school that the appellant attended and this made going to the washroom uncomfortable for the appellant.
- The appellant is not currently going to the school because the appellant needs to achieve more independence.
- The appellant wants to volunteer and currently spends a lot of time on the computer researching where to volunteer.
- The appellant's current wheelchair is not dependable. Once when the wheelchair broke down, the appellant called the fire department. The fire department did not know what to do. The appellant was able to call the caregiver, who can communicate with the appellant through sign language, and they were able to get the wheelchair fixed.
- The appellant tries to do as much as possible on the appellant's own. The appellant tries to eat independently but currently needs some help.
- The appellant would like to pursue a romantic relationship.
- There are many straps required to hold the appellant into the chair with the standing feature and the appellant would like to apply the straps independently.
- The appellant meets people for lunch, goes to the park with a sibling, goes out to captioned movies, goes out for walks.
- The appellant demonstrated how the appellant could independently operate the standing feature on the current wheelchair.
- The stand-alone standing frame is a large system that is heavy and not useable in the appellant's environment.
- None of the other power wheelchairs compare to the F5.

- The appellant's wheelchair has been in for repairs too many times. The appellant really needs a new power wheelchair.

At the hearing, the PT stated:

- The PT has known the appellant for many years. The PT has 35 years of experience in working with assessing equipment needs for clients.
- The F5 power wheelchair is an excellent wheelchair for use of the standing feature and has been around for years. The F5 is the power wheelchair recommended as most suitable and appropriate for the appellant when considering the combination of medical conditions and the appellant's past usage of the power wheelchair with standing feature.
- Since the appellant's current wheelchair had the standing feature "added on," there has been the need for many repairs and it has been in the "wheelchair hospital" (repair shop) more than it has been out of the shop.
- The PT does not recommend the Quickie Q700 M wheelchair as it has issues with the suspension and it would be risky to add the standing feature to it. The base of the chair needs to be sound to be able to put any components on to it.
- The Levo C3 wheelchair base is more expensive than the F5 base and this chair is not recommended as it has issues with the motor and is extremely noisy. It also cannot be repaired locally, which makes it impractical.
- The PT does not recommend the Rovi X3 and has not provided a Sales Quotation for this power wheelchair as it has "motor issues."
- A stand-alone standing frame is separate from the wheelchair and cannot be used by the appellant alone. The appellant requires assistance to transfer from the wheelchair to the standing frame. The standing frame is stationary and must be moved by the caregiver for use by the client in a particular location, by the kitchen counter for example. Every change in the location of the standing frame requires assistance.
- The stand-alone standing frame would be too big to get into the appellant's bathroom.
- The ministry of children and family development (MCFD) provided the appellant's current power wheelchair in 2014. In 2014, MCFD provided funding for a standing frame and this amount was applied towards the cost of adding the standing feature to the power wheelchair.
- Both the stand-alone standing frame and the standing feature in a power wheelchair are considered "standing frames."
- The quote for the standing frame as a feature of a wheelchair is for \$5,528.64.
- The appellant's current power wheelchair (TDX-SP) is not reliable with all the added components. It has required 62 repairs over 6 years and each visit costs a minimum of \$80 to start.
- The ministry pays for all the repairs to the wheelchair after the 2-year warranty period has expired, but each request for the cost of repairs has to be approved by the ministry.

The ministry relied on its reconsideration decision as summarized at the hearing. At the hearing, the ministry clarified that:

- When the ministry considers the cost of equipment the ministry does not look at the cost of future repairs to the equipment. A consideration of the "least expensive" relates to the initial purchase price for the equipment.
- When the ministry acknowledged in the reconsideration decision that the appellant has a

medical need for the standing function on the wheelchair, it is not clear whether the medical need related to maintaining the appellant's mobility.

- The ministry has no specialized knowledge about the equipment described in the Sales Quotations provided and had no further comments.

Both the ministry and the appellant referred to the Ministry Policy and Procedure Manual as Guidelines for Determining Medically Essential to Achieve or Maintain Basic Mobility as follows:

Effective: April 1, 2010

The following guidelines outline factors considered by the ministry when determining if medical equipment requests for canes, crutches, walkers, manual wheelchairs, power wheelchairs, or scooters are medically essential to achieve or maintain basic mobility. These guidelines assist ministry staff when reviewing the assessment provided by the client's Occupational Therapist (OT) or Physical Therapist (PT) and/or the prescription provided by the client's medical practitioner or nurse practitioner.

"Medically essential to achieve or maintain basic mobility" refers to a client's need for equipment due to a mobility impairment which is necessary to perform their day-to-day activities in their home and/or community.

Each equipment request is reviewed on an individual basis and the client's needs are taken into consideration. If the factors suggest that the equipment is medically essential to achieve or maintain basic mobility, and all other eligibility requirements have been met, the client is eligible for the requested equipment.

Note: the information to be considered under each factor is not all-inclusive as it is important to preserve the discretion of the ministry decision maker and allow for flexibility to assess uncommon or unexpected circumstances.

When assessing the information provided to determine if the equipment is medically essential to achieve or maintain basic mobility, the two factors to be considered are:

Factor 1: The client's mobility impairment

Information regarding the client's mobility impairment provides the medical basis for the equipment and the reason why it is being requested. The mobility impairment may result from a number of different medical conditions that restrict the client's functional ability.

When considering this factor, the following information is reviewed:

- The diagnosis provided by the medical practitioner or nurse practitioner to assist in determining if it is reasonable to expect that there are limitations to mobility and whether the medical condition presented is likely to need equipment.
- The assessment provided by the OT or PT to assist in determining the applicant's level of functioning. This includes information regarding:
 - The cause of the equipment request.
 - How the client mobilizes and performs day-to-day activities in their home and/or community.
 - The client's ability to mobilize once reaching a destination point.
 - Whether the medical condition would deteriorate without the equipment.
 - Physical skills or limitations (e.g., head control, range of motion, vision, ambulation, endurance, coordination and strength) in relation to the equipment requested. Safety issues may also be identified such as a risk of falling

without a walker or not having sufficient hand functional ability to operate a power wheelchair.

-Cognitive skills (e.g., visual spatial skills, judgement) in relation to the equipment request to identify if the client can safely use the equipment recommended.

Factor 2: The equipment requested

The type of equipment requested is reviewed to confirm that due to a mobility impairment, the product and components are required for the client's basic mobility.

When considering this factor, the following information is reviewed:

- Description of the recommended equipment that is being requested.
- The type and condition of the client's present equipment (if applicable) to determine its appropriateness and why it is no longer meeting the needs of the client. This may indicate if repairs or modifications can be done to the existing equipment or if a replacement is needed.
- The product specifications of each piece of equipment that has been trialed and the outcome of the trial to provide information regarding if the equipment recommended meets the client's needs and is the most cost effective.
- Details of the client's immediate environment if it contributes to the need for the equipment or the type of equipment requested (e.g., narrow door frames may necessitate a specific model of walker or wheelchair; hilly terrain may necessitate a walker with brakes).
- The adaptability of the equipment if the client's functional status is likely to change to determine if the equipment is sustainable in meeting their anticipated needs. For example, is the requested mobility equipment able to accommodate future modifications such as specialized seating or upgraded electronics for sip and puff control?
- Upgraded components may be considered if they are medically essential to achieve or maintain basic mobility.

Admissibility of Additional Information

The ministry did not object to the admissibility of the additional documents. The panel considered the testimony on behalf of the appellant and the additional documents provided by the appellant as relating to the ministry's denial of a supplement to cover the cost of a new power wheelchair with upgraded components and, therefore, as being reasonably required for a full and fair disclosure of all matters related to the decision under appeal pursuant to Section 22(4) of the *Employment and Assistance Act*.

The advocate's arguments on the appellant's behalf will be addressed in Part F- Reasons for Panel Decision, below. The advocate provided arguments from a medical perspective, having a Bachelor of Kinesiology, Bachelor of Nursing, MSc in physiology and kinesiology, and is a RN.

PART F – REASONS FOR PANEL DECISION

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of a new power wheelchair with upgraded components as the request did not meet the requirements of Schedule C of the EAPWDR, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Pursuant to Section 62 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), in order to receive general health supplements or medical equipment and devices as set out in Schedule C, the applicant must be a recipient of disability assistance, or be a dependent of a person in receipt of disability assistance in a variety of scenarios.

Section 3(1) of Schedule C of the EAPWDR sets out additional criteria that must be met for medical equipment and devices, as follows:

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. . . .

Section 3.2(1) of Schedule C of the EAPWDR sets out additional criteria that must be met for wheelchairs and an upgraded component of a wheelchair, as follows:

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.

Section 3.5 of Schedule C of the EAPWDR sets out additional criteria that must be met for toileting, transfers and positioning aids as follows:

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.

Section 3(1)(b)(iii) of Schedule C of the EAPWDR- Least Expensive appropriate medical equipment or device

In the reconsideration decision, the ministry wrote that the appellant's request for a supplement to cover the cost of a new power wheelchair with tilt and custom seating does not meet all of the applicable criteria of Section 3 of Schedule C of the EAPWDR. The ministry wrote that the requirements in Section 3(1)(b)(iii) of Schedule C have not been met as it has not been shown that the F5 power wheelchair is the least expensive appropriate power wheelchair to meet the appellant's needs. The ministry wrote that the appellant did not provide additional quotes to that for the F5 base that costs \$15,041, and the ministry has information that there are less expensive standing wheelchairs available such as the appellant's current chair, which is the TDX at a cost of \$7,575, as well as the QM series at a cost of \$6,995, and the Corpus M3 at a cost of \$8,853. The ministry acknowledged that the appellant has a medical need for the standing function on the power wheelchair.

In the notice of appeal, the appellant wrote that the OT and PT have researched and this power

chair meets the appellant's physical and emotional need. In the Request for Reconsideration, the appellant's caregiver wrote that the wheelchair requested (F5) is necessary to meet the appellant's specific needs. The caregiver wrote that the appellant is a happy, outgoing adult and requires this wheelchair to meet needs for independence and safe mobility around the environment and community. At the hearing, the caregiver stated that the appellant's current wheelchair is not dependable. The caregiver stated that once when the wheelchair broke down, the appellant called the fire department, they did not know what to do, and the appellant needed to contact the caregiver, who can communicate with the appellant through sign language, to get help with the wheelchair.

At the hearing, the PT stated that the F5 is the power wheelchair recommended as most suitable and appropriate for the appellant when considering the combination of medical conditions and the appellant's past usage of the power wheelchair with the standing feature. The PT stated that the appellant's current power wheelchair (TDX-SP) is not reliable with all the added components and it has required 62 repairs over 6 years and each visit costs a minimum of \$80. The PT stated that the Quickie Q700 M wheelchair is not recommended as it has issues with the suspension and it would be risky to add the standing feature to it as the base of the chair needs to be sound to be able to put any components on to it. The PT stated that the Levo C3 wheelchair base is more expensive than the F5 base and this chair is not recommended as it has issues with the motor, is extremely noisy and it cannot be repaired locally, which makes it impractical. The PT stated that a Sales Quotation was not provided for the Rovi X3 wheelchair as it has "motor issues" and is not recommended.

The requirement in Section 3(1)(b) of Schedule C of the EAPWDR also applies to Section 3.2 of the Schedule so that the requested new power wheelchair with upgraded components must be the least expensive appropriate medical equipment or device and the panel finds that an assessment of all the types of equipment appropriate to the appellant's medical condition and the associated cost is relevant and necessary to this analysis. In the reconsideration decision, the ministry acknowledged that the appellant has a medical need for the standing function. At the time of the reconsideration decision, the appellant had not provided additional quotes to that for the F5 power wheelchair and the ministry wrote that there is information that "there are less expensive standing wheelchairs available" and, therefore, the requested F5 power wheelchair with standing feature is not the least expensive appropriate power wheelchair with standing function.

On the appeal, the appellant provided additional detailed quotes for the alternative wheelchairs with the standing function that the ministry proposed, specifically the appellant's current standing wheelchair (TDX), the QM7 series (Quickie Q700 M) and the Corpus M3 (Levo C3). The Sales Quotation for a TDX-SP power wheelchair and components included the cost of the base wheelchair for \$7,272 plus custom standing frame including power tilt, recline, elevation and power legs for \$16,759.10, for a total cost of these two components of **\$24,031.10**; the Sales Quotation for a Quickie Q700 M power wheelchair and components included the cost of

the base wheelchair for \$7,968 plus custom standing frame for \$16,088.74, for a total cost of these two components of **\$24,056.74**; and the Sales Quotation for a Levo C3 power wheelchair and components included the base for \$20,556.00 and power standing system for \$11,185.92, for a total cost of these two components of **\$31,741.92**. The Sales Quotation dated August 7, 2019 for a F5 power wheelchair and components included the cost of the base wheelchair for \$14,439.36 plus the Power Standing Function at \$7,008.00, for a total cost of these two components of **\$21,447.36**. While all of these quotes also included itemized costs for various switches, cushions, straps and pads, the ministry previously provided a Purchase Authorization dated November 25, 2019 in which the ministry approved funding totalling \$7,212.47 for a swing to side armrest hardware for a power wheelchair and custom wheelchair seating. At the hearing, the ministry clarified that the consideration of the “least expensive” relates to the initial purchase price for the equipment and does not include the prospective cost of repairs. Considering the quoted cost for the power wheelchair base and the standing feature alone, the panel finds that the F5 with the standing feature is the least expensive of the various standing wheelchair options quoted.

In the Occupational Therapy Seating Report dated July 5, 2019 the OT wrote that there are very few wheelchairs with the standing feature and there were no others available for trying. In the letter dated February 20, 2020, the PT, who has over 35 years of experience in working with assessing equipment needs for clients, clarified that the F5 wheelchair is unique in the category of power wheelchairs because the standing feature is built into the chair whereas the other power wheelchairs “add-on” the standing feature, and the process of adding components make the wheelchairs less reliable and more likely to break down and require repairs. The PT stated that the appellant is a heavy user of the wheelchair, using it to go on transit, to parks, or to the mall, and to visit friends. The PT stated that the appellant’s current power wheelchair had the standing feature as an add-on and the wheelchair has spent more time in the repair shop over the years since 2014 than it has out of the repair shop. The ministry stated at the hearing that it has no specialized knowledge about the equipment described and had no further comment, and the panel placed significant weight on the evidence of the PT due to the PT’s long history of working with medical equipment and the knowledge and expertise demonstrated.

At the hearing, the appellant’s advocate emphasized that the appellant has many medical conditions including CP, hip dysplasia, absent pituitary gland, visual impairment (wears glasses) and deafness. At the hearing, the appellant’s support worker stated that recently the appellant has been anxious because the battery on the current power wheelchair is not working and, although the appellant knows who to call when there is a problem, this situation still makes the appellant very anxious. The appellant and the caregiver described a situation where the appellant’s wheelchair broke down in the community and the appellant felt vulnerable when he was not able to communicate with the emergency response.

The panel finds that the appellant has a particular combination of medical conditions, including deafness, that makes the reliability of the power wheelchair with a standing feature an important

consideration when evaluating the appropriateness of the medical equipment for the appellant. The panel finds that based on the additional evidence before the panel at the hearing, the ministry was no longer reasonable to conclude there is insufficient information to show that the requested medical equipment, the F5 power wheelchair with the standing feature, is the least expensive appropriate medical equipment or device, as required in Section 3(1)(b)(iii) of Schedule C of the EAPWDR.

Section 3.2(1) of Schedule C of the EAPWDR- Medically essential to achieve or maintain basic mobility

In the reconsideration decision, the ministry wrote that the ministry is satisfied that the appellant requires a power wheelchair to achieve and maintain basic mobility; however, the ministry is not satisfied that the appellant requires the F5 power wheelchair with upgraded components to achieve and maintain basic mobility. The ministry wrote that the OT reported that the appellant required the F5 as it is one of the few wheelchairs that offers both power driving, standing and tilt and is also suitable for the appellant's custom seating system. The ministry wrote that information has not been provided to establish that the appellant requires a standing wheelchair, or upgraded components related to the standing function, to achieve or maintain basic mobility.

At the hearing, the appellant's advocate argued that the appellant has highlighted mobility goals to go out in the community independently to work and volunteer. The advocate referred to the ministry's definition of "medically essential to achieve or maintain basic mobility" as set out in the Policy and Procedure manual to be the "client's need for equipment due to a mobility impairment which is necessary to perform their day-to-day activities in their home and/or community." The advocate stated that the appellant remains in the wheelchair more than 15 hours per day and the appellant is unable to sit independently, unable to shift position independently, unable to straighten legs independently, unable to stand independently, unable to get out of the wheelchair independently, and has limited reach, limited trunk control and very dystonic movements. The advocate argued that due to the appellant's mobility impairments, the appellant is unable to independently mobilize the appellant's body to offset and distribute the body weight on the appellant's hips, causing pain and the potential for pressure sores. The advocate stated that the appellant does not have the ability to independently mobilize the appellant's legs and, due to the dystonic nature of the appellant's CP, the appellant must have the appellant's feet strapped into the wheelchair at a constant flexed 90 degrees, causing medical risks for lower extremity edema and DVT [deep vein thrombosis], especially in the appellant's situation with an absent pituitary gland, and the appellant experiences hypertonia and shortening of the hamstrings for which the appellant is being treated with Botox.

The advocate stated that the purpose of the standing frame is to provide the appellant with the ability to stand or sit to perform the day-to-day activities, including to be able to stand to void in the appellant's home and in the community. The advocate argued that the ability to void independently allows the appellant to go out into the community without an attendant and opens

up opportunities for work and volunteering. The advocate stated that the standing feature improves bladder function, reduces the risk of UTI's [urinary tract infections], improves blood circulation, reduces the risk of DVT, provides positional changes that help loosen up muscles and decrease the risk of hypertonia, prevents constipation, prevents pressure sores, increases cognition by improving blood circulation and respiration, increases bone density, and promotes skin health. The advocate stated that there are also psychological and social improvements from use of the standing feature on the wheelchair, including furthering self-reliance by being able to perform tasks like taking an item from a top cupboard, reducing the feeling of lack of independence and of feeling different, and being able to make eye contact with people in the community.

In the reconsideration decision the ministry was satisfied that the appellant requires a power wheelchair to achieve and maintain basic mobility but was not satisfied that the appellant requires the F5 power wheelchair with upgraded components to achieve and maintain basic mobility. The ministry also wrote in the reconsideration decision that the ministry acknowledges that the appellant has a medical need for the standing function, although at the hearing the ministry stated that it is not clear whether this applied to achieving or maintaining mobility.

In the reconsideration decision, the ministry referred to the ministry policy manual as providing guidelines in determining what "basic mobility" means when it is used in the Schedule, and the appellant argued that not all the factors were considered in the appellant's case. The guidelines state that when considering the client's mobility impairment, the information to be reviewed by the ministry includes "how the client mobilizes and performs day-to-day activities in their home and/or community." In the Occupational Therapy Seating Report dated July 5, 2019, the OT reported that the appellant's current wheelchair/ seating equipment is the TDX SP power wheelchair with tilt and D & D standing system and the appellant requires replacement of the appellant's current wheelchair and custom seating system. The OT wrote that the wheelchair being used by the appellant for the past several years allows the appellant to stand at the appellant's discretion throughout the day, which has helped manage hip pain, leg cramps, spasticity in legs and helped maintain independence.

In the ministry policy, the guidelines state that when considering the client's mobility impairment, another factor to be considered is "the client's ability to mobilize once reaching a destination point." The appellant's support worker stated at the hearing that the goals with working with the appellant have been focused on independence and the biggest goal was for the appellant to urinate independently since the appellant would like to go to school and to not be accompanied into the washroom. The support worker stated that in the last couple of months, the appellant has accomplished independent urination with the use of the standing power wheelchair. Another factor to be considered by the ministry as part of the client's mobility impairment is "whether the medical condition would deteriorate without the equipment," and the appellant's advocate reviewed the medical risks without the upgraded components, including the risk of

UTI's, DVT, hypertonia, constipation, and pressure sores.

The guidelines in the ministry policy also state that the type of equipment requested is reviewed, including information about the type and condition of the client's present equipment to determine its appropriateness and why it is no longer meeting the needs of the client. In the Follow Up Occupational Therapy Seating Report dated August 12, 2019, the OT reported that a new standing wheelchair continues to be an appropriate wheelchair for the appellant. Although the ministry wrote that replacement of the appellant's current power wheelchair with standing feature (TDX) is a potentially less expensive appropriate option, the panel previously found that the F5 with standing feature is the least expensive appropriate medical equipment.

The panel finds the ministry policy manual useful in determining what "basic mobility" means when it is used in the Schedule. Specifically, in determining what constitutes basic mobility, the panel has considered the appellant's day-to-day activities and how the appellant mobilizes upon reaching a destination. The panel finds that the upgraded components are necessary for the appellant's basic mobility to manage and prevent further pain and complications to his medical conditions and generally maintain independence. Therefore, the panel finds that based on the additional evidence before the panel at the hearing, the ministry was no longer reasonable to conclude that information had not been provided to establish that the appellant requires a standing wheelchair, or upgraded components related to the standing function, to achieve or maintain basic mobility.

Section 3.5 of Schedule C of the EAPWDR- Toileting, transfers and positioning aids

In the reconsideration decision, the ministry wrote that Section 3.5 provides eligibility requirements for medical equipment related to toileting, transfers, and positioning and an upgraded component to a power wheelchair that enables a person to toilet independently is not included on the list of eligible items. The ministry wrote that a standing frame may be provided for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility; however, the appellant is not requesting a replacement standing frame but rather a power wheelchair that has a standing functionality.

At the hearing, the PT stated that the MCFD provided the appellant's current power wheelchair with standing feature in 2014 by providing funding for a standing frame, which amount was applied towards the cost of adding the standing feature to the power wheelchair. The PT stated at the hearing that both the stand-alone standing frame and the standing feature in a power wheelchair are considered "standing frames." The appellant's advocate, caregiver, and support worker all stated at the hearing that the standing feature of the appellant's power wheelchair allows the appellant to urinate independently. The panel places significant weight on the evidence of the PT given the expertise relating to medical equipment and, based on this additional evidence, finds that the ministry was no longer reasonable to conclude that the standing frame in the requested power wheelchair is not a standing frame for a person for whom

a wheelchair is medically essential to achieve or maintain basic mobility and the standing frame in the power wheelchair is not medically essential to facilitate toileting or to achieve or maintain a person's positioning.

Conclusion

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a supplement to cover the cost of a new power wheelchair with upgraded components, was not reasonably supported by the evidence. Therefore, the panel rescinds the ministry decision and the appellant is successful in the appeal.

The panel decision is referred back to the ministry for a decision as to amount for the F5 power wheelchair with standing feature and the upgraded components necessary for the operation of the standing feature.

APPEAL NUMBER

2020-00034

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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

PRINT NAME

Susan Ferguson

NATURE

DATE (YEAR/MONTH/DAY)

PRINT NAME

Roy Wares

DATE (YEAR/MONTH/DAY)

SIGNATURE OF MEMBER