

APPEAL NUMBER
2020-00082

PART C – DECISION UNDER APPEAL

The decision under appeal is the ministry's reconsideration decision dated March 2, 2020, which held that the ministry is unable to provide funding over \$3500 for supply of a scooter to the appellant. The ministry relied on section 3.4(3)(b) of Schedule C of the EAPWDR in reaching its reconsideration decision.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") Section 62 and EAPWDR Schedule C Sections 3 and 3.4.

PART E – SUMMARY OF FACTS

The evidence before the ministry at reconsideration was that the appellant is a Person with Disabilities eligible for Medical Services only as a continued person under the legislation. In December of 2014, the appellant was previously approved for funding of a mobility scooter to a maximum of \$3500.00. The appellant received delivery of a funded scooter on January 22, 2015.

The appellant applied to the ministry for funding for a replacement scooter on October 17, 2019. The appellant's funding application was supported by:

- a) A detailed Occupational Therapist Assessment dated October 17, 2019 (the "OTA"), which outlined the appellant's circumstances and requirements. Specifically, the OTA identified the appellant's need for a three wheeled scooter with pneumatic tires and heavy duty suspension (the "Special Needs");
- b) A Medical Equipment Request and Justification Form completed by a Medical Practitioner and dated July 5, 2019;
- c) A letter dated June 21, 2019 from an Osteopathic Practitioner supporting the appellant's need for a three wheeled scooter; and
- d) An estimate from a Medical Supply Company dated October 9, 2019 quoting \$4,237.00 for a scooter suitable to the appellant's Special Needs.

On January 22, 2020, the ministry approved the appellant's request for funding of a new scooter limited to \$3500.00.

In the submission for reconsideration dated February 14, 2020, the appellant asserted that it was medically essential to have the scooter which the appellant had sourced in order to address the appellant's Special Needs.

The appellant outlined the extensive research done to secure an appropriate scooter at a reasonable price – 20% lower than MSP. There was no evidence before the Ministry to contradict the appellant's position that the sourced scooter was appropriate to the Special Needs of the appellant, and that it was reasonably priced.

PART F – REASONS FOR PANEL DECISION

The issue on this appeal is whether the ministry reasonably applied the legislation in limiting funding for the appellant's replacement scooter to \$3500.00.

The appellant's written submission on this appeal is dated March 25, 2020 (the "Submission"). The Submission states that the appellant's Special Needs are medically essential. The Submission quotes from the ministry's own Policy and Procedural Manual in regards to mobility equipment including:

- that "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" [emphasis added by appellant].
- that "..... 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." [emphasis added by appellant]

The appellant submits that this language in the Ministry Policy Manual affords the ministry discretion to provide funding above the \$3500.00 stipulated in the EAPWDR Schedule C, Section 3.4, in order to meet the appellant's Special Needs.

The ministry did not make submissions on this appeal, except to rely on the reconsideration summary provided in the reconsideration decision.

Section 3.4 of Schedule C of the EAPWDR reads as follows:

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.

The above legislation clearly states that the amount available in the appellant's circumstances for funding of a medically essential scooter is limited to \$3500.00. This panel finds that the language in Ministry Policy referenced in the appellant's Submission provides discretion and flexibility limited to determining whether, or not, a scooter is medically essential. There is no question that a scooter, in the appellant's circumstances, is medically essential. That said, ministry policy does not, and in any event could not, override the clearly stated limitation of scooter funding to \$3500.00 in the appellant's circumstances which is contained in the legislation.

This panel finds that the ministry's decision was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the ministry's reconsideration decision. The appellant is not successful in this 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

Chris McEwan

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/04/21

PRINT NAME

Sarah Bijl

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/21

PRINT NAME

Edward G. Wong

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/21