

APPEAL NUMBER  
2020-00215

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated August 21, 2020 in which the ministry determined that the appellant was not eligible for full funding of the specific (Group 24 Gel NH) batteries because they had not met all of the requirements of the legislated criteria under the Employment and Assistance for Persons with Disabilities Regulation, section 3 and 3.2 of Schedule C.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Regulation, section 62.

Employment and Assistance for Persons with Disabilities Regulation, Schedule C, sections 3(1), 3.2.

## **PART E – SUMMARY OF FACTS**

Evidence before the ministry at reconsideration consisted of the following:

- On July 27, 2020, the appellant submitted a request for specific (2 - 24 GEL) replacement batteries for a Quickie Model S646 power wheelchair provided by the ministry to the appellant in 2014 with a quoted price of \$912.46 (including \$45 labour) from a ministry approved supplier. The request noted that the existing batteries were not lasting a full day and that the appellant was staying home because the batteries were draining so quickly.
- On July 30, 2020, the ministry approved specific (2 - 22NF) replacement batteries costing up to the ministry policy limit of \$600.
- On August 17, 2020, a request for reconsideration was received by the ministry which included an invoice for \$267.46 from the supplier. That amount represented the difference between the cost of the 2 - 24 GEL NH batteries requested by the appellant and the \$600 ministry policy limit the ministry was applying to this request.

### **Request for Reconsideration**

The appellant signed the request for reconsideration on August 15, 2020 and referred to a letter attached from the appellant's advocate. The advocate noted that the power wheelchair is no longer holding a charge and was severely restricting the appellant's ability to get groceries and attend medical appointments. The advocate noted that the wheelchair supplied to the appellant in 2014 came equipped with 2 - 24GEL batteries but that the ministry agreed to approve 2 - 22NF batteries. The advocate further stated that the appellant's wheelchair has multiple power functions and requires a certain battery to run effectively and that the appellant disputes that "larger batteries were a luxury or convenience which they cannot determine since they are not the service provider and that is why the ministry has contracted a service provider to determine what is needed. The appellant takes offense to the determination by the agents that he has a luxury, this just shows that the disabled are not to be considered inclusive to everyone else in these times. The appellant's chair does run but is not safe and could fail completely at any time thus leaving him in a position where he may not be able to retrieve his emergency back-up manual chair. It would be in my determination, and medically necessary to supply the larger batteries to the appellant's chair so that the equipment continues to run as it is intended."

### **Notice of Appeal**

On September 11, 2020, the appellant signed a Notice of Appeal and attached a note from the appellant's advocate. The note from the advocate was dated September 12, 2020 and indicated that the advocate was a former service coordinator with the supplier. The note is as follows:

"The Ministry decision to deny the appellant the larger batteries was determined based on information that they say they lacked showing that the appellant's Quickie S646 SE S64B-053197 DOP 12/17/2014 had 8G24NH batteries at the time of delivery. Please find attached the invoice supplied to the ministry when the chair was billed by Advanced Mobility Products. On the bottom of page 1 it clearly shows that the chair was supplied with (8G24NH) Group 24 Batteries. The Ministry denial was based on the assumption that the request was for upgraded batteries, but this is not the case and is only requesting the replacement of the originally supplied batteries as the chair was delivered. While it is understood that the ministry only supplies batteries up to a maximum of \$600 for batteries including labour it is already determined that the Appellant would not be able to pay the difference in cost as stated on page 4 of 8 of the ministry decision. It is then requested that the Tribunal rule that the appellant be supplied the batteries that were originally installed in his chair as he currently is extremely limited to the distance he can travel from his home due to the current state of his batteries which are currently over 5 years old. He has been in this position since the quote was submitted to the ministry on July 27th, 2020 over 2 months ago. A speedy decision would be greatly appreciated."

Attached to the advocates letter is an invoice (# BBY 108373) from the supplier to the appellant dated December 19, 2014 for the power wheelchair showing a total cost of \$30,358.14 which is noted as approved by funding sources and contains the following excerpt specifically relating to the battery supplied:

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Code	Description	Quantity	Price	Disc.	Total
105A48	Quickie 5646 SE- Battery GP-24 Gel Pair (Best for Range)	1 EA	390.00	12%	343.20

### Appellant Submissions

On September 18, 2020, the appellant signed a Release of Information authorizing the advocate to act on the appellant's behalf. On September 22, 2020, the appellant signed a Request to Change the Type of Hearing from an oral to teleconference hearing.

On October 2, 2020, the advocate filed a submission of 6 pages consisting of:

- An email dated October 2, 2020 accompanying two emails and a document submitted for consideration in the appeal.
  - Copy of the Invoice (# BBY108373) from the supplier already submitted and noted above.
  - Email from the advocate to an individual **listed** as Senior Service Tech / Tech Trainer with the manufacturer of the Quickie wheelchair which requests confirmation of the build or order form received. The reply of the same date contains the following relevant excerpt with the note that: "Hi, this is as much as I cannot send the PDF – but it is officially coming from my Email – the original build details as Group 24 MK batteries on chair. "

Line	Item	Description	QTY
1.021	105A48	GP 24 MK Gel Flat Bat PR W/STR	

### Admissibility

The panel finds that the information contained in the advocates email of October 2, 2020 contained information not before the ministry at the time of reconsideration. However the panel considers this information to be directly relevant to the matter at hand and so is considered admissible under section 22(4) of the Employment and Assistance Act as being required for full and fair disclosure of all matters related to the appeal. The ministry did not object to the introduction of the evidence.

### Hearing

The panel conducted a teleconference hearing on October 13, 2020. Attending were the panel, the ministry representative and a ministry observer (the appellant did not object to the observer attending) as well as the appellant and advocate acting under a Release of Information form dated September 18, 2020.

At the hearing, the appellant stated that the batteries requested are 2 - 24 Gel batteries that were originally supplied by the ministry. The wheel chair has never had any other batteries and the wheelchair would not function properly without them. The batteries require a specific tray to hold them and a new tray would be required to accommodate the 22NF batteries the ministry will fund. Responding to a question from the panel concerning the different amounts and specific wheelchair options including batteries between the invoice the appellant supplied as evidence and the sales quotation entered into evidence by the ministry, the appellant suggested the sales quote was early in the process and did not represent the chair actually supplied by the ministry after an appeal by the appellant. There was additional funding required at the time of the purchase for two relatively minor items (pedals and lights) the ministry would not fund. These were funded by a foundation. The appellant suggests the requirement of a limit of \$600 for batteries is a question between the ministry and their approved supplier. If the ministry has an agreement with a supplier limiting the cost, this should not affect the appellant who simply asks the ministry to replace the batteries they originally agreed to provide, which are 24 Gel batteries.

The ministry reiterated several of the points in the reconsideration decision in its presentation and during questioning:

- The ministry could not explain the fact that the sales quotation they entered into evidence was different in total amount and description of battery included from the sales invoice the appellant provided. The representative could not confirm either the amount paid for the wheelchair by the ministry or the type of battery provided.
- The ministry representative pointed to the fact that the sales invoice item for the 24 Gel batteries included the phrase "best for range" which indicated to the ministry they were optional rather than necessary.

- In response to a question from the panel as to whether the wheelchair would work properly with 22 NF batteries, the ministry representative pointed to the wording “best for range” as indicating this was an option rather than a requirement.
- The ministry confirmed the reconsideration decision states they are allowed by the legislation to replace batteries that are worn out but are restricted to the least expensive which are medically necessary and there is no evidence of medical necessity here for anything other than those 22NF batteries provided. Upgrades are not medically necessary.
- The ministry representative pointed the section of the reconsideration decision which quotes the ministry Procedure Manual in which there is a limit to the cost of batteries the ministry will pay batteries replaced for scooters and wheelchairs, out of the warranty period, to an amount of \$600 based on an agreement with the ministry supplier.

**PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the ministry reconsideration decision, in which the ministry determined the appellant was not eligible for the full funding of the request for 2 - 24 Gel batteries at a cost of \$912.46 as the request did not meet all of the legislated criteria of section 3 and 3.2 of the EAPWDR, was reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

**Ministry Position**

The ministry in it's reconsideration decision notes that the general requirements that must be met for the provision of medical equipment and devices are set out EAPWDR, Schedule C, sections 3(1) to (6). EAPWDR Schedule C, sections 3.2 and 3.3 set out the specific eligibility criteria the appellant must meet to be approved for replacement components of a power wheelchair.

The ministry then notes that the appellant's request does meet some of the eligibility requirements of the legislation:

- The family is eligible to receive health supplements set out in EAPWDR, Schedule C, section 3.
- The appellant is requesting pre-authorization of the ministry for the medical equipment needed.
- The appellant does not have resources available to pay the cost of the medical equipment.

The ministry goes on to list the specific areas where the request does not meet the requirements of the legislation:

- EAPWDR, Schedule C, section 3(1)(b)(iii) has not been met. It requires information provided to confirm the appellant has requested the least expensive appropriate medical equipment or device and that information has been provided by a known health professional or service provider to confirm the medical necessity of the battery requested.
- EAPWDR, Schedule C, section 3(2) has not been met as the specific batteries requested have not been prescribed by a medical practitioner and an assessment by an occupational therapist has not confirmed the medical need of the specific batteries requested.
- EAPWDR, Schedule C, section 3(3) has not been met because the appellant is requesting 2 – 24 Gel NH batteries which are not the specific batteries originally provided by the ministry.
- EAPWDR, section 3.2 has not been met which require the ministry to be satisfied the item is medically necessary to achieve or maintain basic mobility.

Appended to the reconsideration decision was an invoice to the appellant marked "Original Sales Quotation" and dated April 17, 2014 for a wheelchair with a total cost of \$15,318.16 which contains the following relevant excerpt:

Code	Description	Quantity	UoM	Price	Disc	Total
22NFBATTERY	22 NF battery (on chair)	1	PR	550.00	100	0.00

The panel notes that this sales quotation is at substantial variance to the sale invoice form submitted by the appellant and discussed below.

**Appellant Position**

The appellant position is:

- Evidence presented shows that the wheelchair was originally supplied with 2 – 24 Gel NH batteries which are required to optimize performance given the number of power options the wheel chair possesses.
- The batteries being requested are the batteries originally supplied by the ministry and to replace them with the 22 NF batteries would require replacement of other components and make the wheelchair likely to fail.
- The 2 – 24 Gel batteries cost \$912.46 (including labour) which exceeds the \$600 the ministry is prepared to pay is based on an agreement with their supplier and should not affect the appellant's need for replacement of the wheelchair's original batteries.
- The existing batteries are 5 years old and require replacement. The batteries hold insufficient charge for the appellant to travel to necessary appointments.

**Panel Decision**

The reconsideration decision addresses the various legislated provisions which are relevant to the request for replacement of wheelchair batteries. The panel agrees with the ministry that the general requirements of EAPWDR

Schedule C, sections 3(1) to (6) and the specific requirements of EAPWDR Schedule C, sections 3.2 and 3.3 must be met for a request to be approved.

The panel agrees with the ministries determination that the appellant is:

- Eligible to receive health supplements (EAPWDR, Schedule C, section 3 (1) (a)).
- Is requesting pre-authorization of the ministry (EAPWDR, Schedule C, section 3 (1) (b)(i)).
- There are no resources available to the family to pay the cost (EAPWDR, Schedule C, section 3 (1) (b)(ii)).

The ministry then notes the areas where the appellants request does not meet the required legislative requirements:

- EAPWDR, Schedule C, section 3(1)(b)(iii) has not been met because information has not been provided to confirm the appellant has requested the least expensive appropriate medical equipment or device. This information is to be provided by a known health professional or service provider to confirm the medical necessity of the battery requested.
- EAPWDR, Schedule C, section 3(2) has not been met as the specific batteries requested have not been prescribed by a medical practitioner and an assessment by an occupational therapist has not confirmed the medical need of the specific batteries requested.
- EAPWDR, Schedule C, section 3(3) has not been met because the appellant is requesting 2 – 24 Gel NH batteries which are not the specific batteries originally provided by the ministry.
- EAPWDR, section 3.2 has not been met It requires the ministry to be satisfied the item is medically necessary to achieve or maintain basic mobility.

In considering an analysis of the specific areas where the ministry reconsideration decision determined the request did not meet the legislated requirements, the panel notes that the issue of what batteries the wheelchair was originally supplied with should be addressed. The ministry relies upon a sales quote marked "Original Sales Quotation" dated April 17, 2014 which indicates the batteries supplied were 22 NF batteries while the appellant has supplied evidence in the form of an invoice (# BBY 108373) dated December 19, 2014 which indicates that the batteries supplied were the GP 24 Gel batteries. This evidence is further supported by communication originated by the advocate with a manufacturer's representative who stated that the GP 24 Gel batteries were supplied. The panel finds this evidence supports the appellant contention and notes the ministry is unable to explain the discrepancy or confirm based on the evidence which batteries were actually provided. This is significant the panel believes because of the legislation wording in EAPWDR, Schedule C, section 3(3) which allows the: "replacement of medical equipment or a medical device, previously provided by the ministry". The panel believes this wording is the controlling provision for the replacement of the batteries for a wheelchair. These facts suggest that the ministry will replace the GP 24 Gel batteries if they were originally provided. The panel thus finds that the appellant evidence (sales invoice and correspondence with manufacturer) suggests the balance of probabilities favor the 2-24 Gel batteries as being those originally supplied.

In light of this finding, the panel further finds that:

- EAPWDR, Schedule C, section 3(1)(b)(iii) has been met. The panel has concluded based on the evidence available that the 24 Gel NH batteries were originally supplied and it seems reasonable to conclude therefore that these batteries were originally determined by the ministry to be "appropriate" batteries. As to whether these are the least expensive batteries, the panel suggests the ministry should look to the supplier to ensure these are the least expensive 24 Gel batteries and should not require the appellant to accommodate different batteries which require wheelchair modification and may not provide satisfactory performance.
- EAPWDR, Schedule C, section 3(2) does not apply as the specific batteries originally supplied and now requested do not require, in the panels view, to be prescribed by a medical practitioner and an assessment by an occupational therapist. The panel assumes this was accomplished when originally supplied and required only when batteries not originally provided are requested.
- EAPWDR, Schedule C, section 3(3) has been met because the appellant is requesting 2 – 24 Gel NH batteries which are the specific batteries originally provided by the ministry. It is the panels view that the ministry is not reasonable in relying on the evidence of a sales quote versus the evidence provided by the appellant consisting of a sales invoice and confirmation from the manufacturer of what was supplied.
- EAPWDR, section 3.2 is not applicable. The panel suggests it is not reasonable to require the appellant to submit evidence to satisfy the ministry that the item is medically necessary to achieve or maintain basic

mobility. The panel has found the ministry is being asked to replace the batteries they originally agreed to provide and it is reasonable to conclude they had originally satisfied themselves of that requirement.

- Finally, the panel needs to address the question of the ministry procedure manual which the reconsideration decision and the ministry representative at the hearing suggests limits them to \$600 for battery replacement based on an agreement with suppliers. The panel feels that in the absence of a specific dollar limit in the legislation, the imposition in a procedure manual of a dollar limit for an appellant that seeks replacement of batteries which were originally provided is not reasonable. The legislation dictates that the ministry may replace a battery under EAPWDR Schedule C, section 3(4) that under section 3(1) is (amongst other conditions the ministry concedes are satisfied) the least expensive appropriate alternative selected. The panel has concluded from a weighing of the available evidence that the original batteries supplied were the 24 Gel batteries requested and as the originals provided must surely qualify as appropriate. Least expensive determination, in the panels view, must only restrict the ministry in approval of items not provided by them originally or where it is determined the supplier is more expensive than alternative suppliers.

#### Conclusion

The panel rescinds the ministry reconsideration decision as it was not a reasonable application of the legislation in the appellants circumstances. The appellant is successful upon appeal.

#### Relevant Legislation

## **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.

## **EAPWDR Schedule C**

### **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.

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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

Keith Lacroix

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

October 13, 2020

PRINT NAME

Angie Blake

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

October 13, 2020

PRINT NAME

Carman Thompson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

October 13, 2020