

APPEAL NUMBER
2020-00246

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated October 8, 2020, which held that, while the appellant was eligible to receive a scooter as a health supplement, the appellant was not eligible for more than the legislated limit of \$3500 for that purchase.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disability Regulation (EAPWDR) section 62
EAPWDR Schedule C, sections 3 and 3.4

PART E – SUMMARY OF FACTS

The appellant's representative did not attend the hearing. The appellant chose to go ahead with the hearing without the representative because of the change in circumstances since the reconsideration decision, which will be set out below.

Background Information:

The appellant is a recipient of disability assistance from the ministry. On August 11, 2020, the ministry received a request for funding up to \$4500 for a Pride Pursuit XL scooter ("Pride Pursuit") to replace the Pride Pursuit the ministry provided for the appellant in 2012. On August 13, 2020, the ministry approved the request for a replacement scooter up to a cost of \$3500. The ministry went on to deny a request for a bariatric scooter, stating that the appellant did not meet the criteria for funding of \$4500 for a bariatric scooter because there was no confirmation from an occupational or physical therapist that the appellant's weight exceeded the limits for a conventional scooter.

On September 24, 2020, the appellant submitted a Request for Reconsideration, stating that:

- the appellant was asking for a conventional scooter, not a bariatric scooter;
- the ministry had approved the cost of \$4295.12 for the same conventional scooter in 2012;
- the cost of a replacement scooter was \$4764.68, and the appellant would pay the amount over \$4500.

On October 8, 2020, the ministry issued its reconsideration decision, again approving the request for a replacement scooter but denying funds in excess of \$3500.

Evidence Before the Ministry at Reconsideration:

As a result of physical limitations arising from leg and hip injuries, the appellant needs to use a scooter for mobility outside the home. Because he cannot tolerate flexion of his left knee and hip, when the appellant uses a scooter he must keep his left leg straight, resting his foot on the front wheel well. Therefore, he cannot use a conventional scooter, and requires an extra-long scooter.

The lowest price quote from a supplier for the recommended model, the Pride Pursuit, as of September 22, 2020, was \$4764.68.

The appellant received a Pride Pursuit scooter, funded by the ministry, in 2012. At that time, a quote from a supplier dated December 11, 2011, gave the price of the Pride Pursuit as \$4295.29. In a letter to the appellant dated March 26, 2012, the ministry approved the purchase of a Pride Pursuit at a cost of \$3500. The appellant did not pay any additional money for the purchase of the Pride Pursuit.

The supplier that gave the price quote in 2011 does not have records going back as far as 2012 to confirm the amount the ministry paid for the Pride Pursuit. However, the supplier told the ministry that a price quote is different from an invoice, which would show the price paid, and it is common for the supplier to sell equipment for less than the quoted price. The supplier said that it is possible that this is what happened with the purchase of the appellant's Pride Pursuit in 2012, because the supplier does not release equipment until it has received full payment, and the appellant says he did not pay anything in addition to the ministry funding.

The Pride Pursuit that was purchased in 2012 is no longer functional. In a letter dated August 20, 2020, an occupational therapist repeated the request for funding for a replacement Pride Pursuit scooter up to a cost of \$4500, stating that the appellant had been approved for funding of \$4295 for a scooter in 2012. At the time of the reconsideration decision the appellant weighed 217 lbs, which is within the weight capacity for a conventional scooter.

Additional Evidence:

The day before the hearing, the ministry submitted a Purchase Authorization for the Pride Pursuit at a cost of \$3500, dated October 27, 2020. The appellant did not object to the Purchase Authorization being admitted as evidence.

The appellant advised that, in November 2020, he received the new Pride Pursuit, funded by the ministry, and that he did not pay any additional money for the purchase. He did pay \$180 out of his own funds for an upgraded battery. He does not have receipts for the purchase of either the Pride Pursuit or the battery.

The ministry explained that, after the Reconsideration Decision, the ministry and the appellant had located a different supplier who would provide the Pride Pursuit at a cost of \$3500, as shown in the Purchase Acquisition dated October 26, 2020. The ministry has a record of purchase of the Pride Pursuit for that amount, dated November 17, 2020.

Under section 22(4) of the Employment and Assistance Act (EAA), the panel may consider evidence that was not before the ministry at the time of reconsideration, if the panel considers it “reasonably required for a full and fair disclosure of all matters related to the decision under appeal.” On this basis, the panel admitted the Purchase Authorization dated October 27, 2020 and the additional information provided by the appellant and the ministry at the hearing, under s. 22(4) of the Employment and Assistance Act (EAA), all of which relates directly to the appellant’s request for funding for the replacement scooter.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision that the appellant was not eligible for funding in excess of \$3500 for a scooter as a health supplement was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances.

Appellant's position:

The appellant says that the ministry should pay the full cost of the Pride Pursuit in excess of \$3500 because the ministry supplied the appellant with the same scooter in 2012, and the price quote from the supplier in 2011 was \$4295.29. The appellant did not pay the difference between \$3500 and \$4295.29 in 2012, therefore he concludes that the ministry paid the full amount. The appellant says that the Pride Pursuit is mobility equipment previously provided to him by the ministry under s.3 of the EAPWDR in 2012 and therefore he is entitled to have the same equipment replaced by the ministry even though the cost may be more than \$3500. The appellant emphasized to the panel that he wanted the decision to state that, because the Pride Pursuit was provided to him in 2020, he should be entitled to have it replaced by the ministry in future, as "equipment previously provided by the ministry".

Ministry's Position:

The ministry says that it is bound by the funding limit of \$3500 set out in EAPWDR s. 3.4(3)(b) and it has no discretion to pay more than \$3500 for a scooter that is not a bariatric scooter.

Panel Decision:

Section 3.4(3)(b) of Schedule C of the EAPWDR is clear that the cost of a scooter provided by the ministry as a health supplement cannot be more than \$3500.

If an applicant meets the requirements for a bariatric scooter, the ministry can fund up to \$4500. However, the appellant has not asked for a bariatric scooter. There was some confusion because the occupational therapist who made the requests in August 2020 asked for funding up to \$4500, the funding limit for a bariatric scooter. The appellant's weight does not exceed the weight capacity for a conventional scooter, therefore would not meet the requirement for a bariatric scooter in any event. Therefore, the panel finds that the ministry's decision that the appellant is not eligible for funding up to \$4500 for a bariatric scooter was a reasonable application of the legislation in the circumstances.

While s. 3(3) allows the ministry to replace medical equipment that was previously provided by the ministry, the funding limit in s.3.4 (3)(b) still applies to the replacement scooter. The ministry does not have discretion to pay more than the amount set out in the legislation. In fact, the ministry has been successful in replacing the Pride Pursuit for \$3500 in November 2020.

Conclusion:

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for funding for a scooter in excess of \$3500, was a reasonable application of the legislation. Therefore the panel confirms the decision. The appellant is not successful on appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Regulation

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....

Schedule C – Health Supplements

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 — 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.

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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

Susan Ferguson

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/12/10

PRINT NAME

Jeanne Byron

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/12/10

PRINT NAME

Adam Shee

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/12/10