

APPEAL NUMBER
2021-0150

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration Decision dated July 14, 2021, which denied the appellant's request for a replacement power wheelchair and seating. The ministry found that the appellant's request did not meet the requirements of sections 3(3), 3.2(3) and 3.3 of the Employment and Assistance for Persons with Disabilities Regulation, Schedule C.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 62: Schedule C, sections 3(1), 3.2 and 3.3

PART E – SUMMARY OF FACTS

Information before the minister at reconsideration included:

- A letter from the ministry to the appellant dated June 9, 2021 advising the appellant of their decision.
- A Request for Medical Equipment dated May 27, 2021 from an Occupational Therapist with a quote for a replacement power chair from a provider dated May 6, 2021 in the amount of \$9,910.33.
- A letter To Whom it May Concern from the appellant's physician dated June 25, 2021 stating that the appellant has been advised to obtain a new scooter and has limited mobility due to amputation of left arm and right leg.
- The appellant's Request for Reconsideration, signed June 30, 2021.

The appellant submitted a statement with the Notice of Appeal to the Tribunal: "It is not good for my mental health being locked up or being difficult to do my every day to day living in my trailer. Also...the wheelchair is not suited for long distance which this chair should not have been assigned to me when I moved into this trailer the OT should have evaluated me."

At the hearing the appellant stated that a new power wheelchair was applied for because of a move to a more rural area, and it is difficult to get anywhere. The appellant is a double amputee, and a manual wheelchair is not suitable. The appellant stated that a ramp was needed at the new residence in a trailer park, but the construction was delayed, and the power wheelchair provided in May 2018 was not used for the first 5 or 6 months. It is being used now, but it has required repairs that exceed the cost of the chair. From April 2019 to February 2020 the chair was in 20 times for repairs, and it is in the shop now awaiting approval for more repairs. This chair is not suited to the individual, the appellant said, and causes a great deal of stress.

In response to questions from the Panel, the appellant stated that the chair was delivered in May 2018, but not used until September. The move to a trailer park in March 2018 was for cheaper accommodation.

The ministry responded that the decision to deny the appellant's request was based on legislation. The ministry received the appellant's request in 2021. The appellant's current power chair was provided in 2018, therefore the replacement period stated in section 3.2 of Schedule C, EAPWDR, 5 years, has not elapsed. When the appellant's current chair was provided, it was assessed as appropriate. The current chair has not been reported to be damaged, worn out or not functioning. There has been no significant change in the appellant's medical condition; this is a change in living circumstances, and there is no legislation to support replacement for these reasons. Replacement is not possible, but the ministry will continue to repair the appellant's current chair. The ministry noted that a scooter was not requested, but it was a term used by the appellant's physician in the letter of support.

In response to questioning by the appellant the ministry responded that there is no provision in the legislation to consider replacement on an individual basis as requested. With respect to a reassessment upon moving to a new home, the ministry stated that this was a matter for the appellant's Occupational Therapist.

In response to questions from the Panel, the ministry responded that the term "scooter" as used by the appellant's physician was probably not a factor in the denial. It was noted that the appellant was not requesting the same equipment. With respect to the term "misuse", which was used in the Reconsideration decision, the ministry stated that when the appellant was provided with the current power wheelchair, it was for basic mobility. If it is used for purposes other than those for which it was provided, it may be considered misuse. It was not a factor in denying the appellant's application because the replacement period under section 3.2(3) of Schedule C, EAPWDR has not elapsed. With respect to the statement in the Reconsideration Decision that the ministry was not able to determine that it is cheaper to replace the wheelchair than to repair it, considering the value of repairs already approved, the ministry stated that the wheelchair was not in the shop when the Reconsideration decision was written and the repairs were all basic in nature – casters, tires, batteries and the like, and the ministry is bound by legislation for the replacement period. The ministry understands that the terrain where the wheelchair is used has changed, but the legislation does not provide for replacement before 5 years have elapsed.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry decision which denied the appellant's request for a replacement power wheelchair and seating. The ministry found that the appellant's request did not meet the requirements of sections 3(3), 3.2(3) and 3.3 of the Employment and Assistance for Persons with Disabilities Regulation, Schedule C.

The applicable legislation is reproduced at the end of this section.

The appellant's position is that the power wheelchair provided is no longer suitable due to a change in living environment to rough terrain for which the chair is not suited. The appellant finds the difficulty using the chair and the frequency of repairs to be very stressful and feels the ministry should provide a power wheelchair that is more appropriate.

The ministry's position is that there is no legislative provision to replace the appellant's current power wheelchair before the replacement period of 5 years has elapsed.

Decision

The Panel notes that the appellant's medical condition is not reported to have changed since the provision of a power wheelchair in 2018. The appellant received the current wheelchair in May 2018 but stated that it was not used until September of that year because of a delay in constructing an access ramp to the new residence. The appellant moved in March 2018. The ministry provided the requested power wheelchair based on the appellant's request, which reflected circumstances as they were at that time. The ministry acknowledges that the current wheelchair may require further repairs in the future.

The Panel notes an inconsistency in the ministry decision between the list of repairs totalling \$4,250 and a finding of "misuse" by the appellant. Although the ministry decision was not affected by the finding that the appellant was ineligible for a replacement wheelchair under section 3(6) of Schedule C, EAPWDR due to the statutory 5-year replacement period, the Panel finds that this determination by the ministry was unreasonable. The frequency of repairs to the wheelchair can more logically be attributed to the terrain around the appellant's residence than to any action on the appellant's part.

The operative section of the legislation in this appeal is section 3(3) of Schedule C, EAPWDR, which states that the minister may provide a replacement of medical equipment previously provided if the period of time set out in sections 3.1 to 3.12 has passed. The period of time for replacement of wheelchairs as stated in section 3.2(3) of Schedule C, EAPWDR is 5 years. Regardless of other considerations, such as the frequency of repairs or the suitability of the equipment to the appellant's new living circumstances, there is no provision in the legislation that allows for discretion in this case. Consequently, the Panel finds that the ministry reasonably determined that the appellant's request does not meet the legislative requirements for approval of a replacement power wheelchair before the 5-year period has elapsed.

The ministry decision is confirmed. The appeal is not successful.

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.

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

Reece Wrightman

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021 AUG 13

PRINT NAME

Dawn Wattie

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 AUG 13

PRINT NAME

Kim Read

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 AUG 13