

APPEAL NUMBER  
2021-0167

### **Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision dated August 3, 2021, wherein the ministry denied the appellant’s request for a power seat elevation for his power wheelchair because he does not meet the following eligibility requirements;

- There is insufficient evidence that power seat elevation is the least expensive appropriate medical equipment or device pursuant to section 3(1)(b)(iii) of Schedule C of the Employment and Assistance for Persons with disabilities Regulation (EAPWDR); and,
- The ministry is not satisfied that power seat elevation is medically essential to achieve or maintain basic mobility pursuant to section 3.2(2) of Schedule C.

### **Part D – Relevant Legislation**

EAPWDR section 62 and Schedule C section 3.

## Part E – Summary of Facts

The appellant has been designated as a person with disabilities (PWD) and is in receipt of disability assistance.

- On March 17, 2021, the appellant submitted a request to the ministry for a power wheelchair with upgrades including power seat elevation.
- On March 17, 2021, the ministry received a request and justification from the appellant's Occupational Therapist (OT) for a power wheelchair including power seat elevation. A quote from a mobility provider was included.

The OT reported:

○ Past Medical History:

- Bilateral upper and lower extremity gangrene after vaso suppressor support for urosepsis.
- Gangrene in 10 fingers – in the process of auto-amputation.
- Insulin- dependent diabetes
- Hyperlipidemia
- OSA on CPAP
- COPD

○ Physical Status:

Upper limbs:

Within functional limits; Gangrene on 10 fingers

Lower limbs:

Bilateral below knee amputation.

Sensation and skin care:

- Sensation and skin intact; the appellant has voiced concerns about discomfort in the buttocks area due to prolonged wheelchair sitting.

Transfers:

- Sliding board transfer

Mobility:

- Wheelchair bound

- Currently self-propelling a manual wheelchair from the Medical Equipment Provision Program - on loan.

○ Justification:

Power Adjustable Seat Height:

The adjustable seat height allows the appellant to be independent with this ADLs and IADLs by increasing his reach and accessibility around his apartment suite.

The adjustable seat height also promotes safety and improves independence with his sliding board transfer by allowing a level transfer to the different surface heights around his apartment suite – bed height, toilet height and bathtub height all vary in seat to floor height.

The adjustable seat height also increases safety and efficiency of his sliding board transfer by allowing transfers from a higher to lower surface – which is gravity assisted.

The power adjustable seat elevation also allows the appellant to have eye contact with others and reduced cervical strain and pain from poor positioning. The vertical rise provides psychosocial benefits of being on peer level and [s]peaking eye-to-eye.

- Between April 20 and August 3, 2021, the ministry attempted to gather information regarding the appellant's height and weight, and why the Q6 rather than the more affordable Rovi VR2 was requested. The ministry also denied the appellant's request for power seat elevation.

- On June 24, 2021, the OT contacted the ministry requesting that the appellant be formally denied his request for power seat elevation so that he can pursue his right to reconsideration.
- On June 25, 2021, the ministry approved the request for a power wheelchair [which one?....], but denied the request for power seat elevation.
- On July 19, 2021, the ministry received the appellant's Request for Reconsideration; the appellant wrote:  
"The following reasons will clearly demonstrate why I think I need the chair:  
1. If the government is all about saving money then why give me a chair where the government would supply a bed, poles, bars (handicap) and anything else to provide comfort or basic needs. Now over the past 6 months I have been provided everything to have my basic needs met except a chair. Once I have the lowest price chair, I will still need a special bed or toilet accessories as well as special tables. What doesn't make sense is the government will pay for that all, which I assure you is more than a 1500 difference.  
2. Take your kitchen chair and place it in front of your sink. Now try to get anything out of your cabinets without standing up. I can only use my bottom cabinets, so half a kitchen. Try washing dishes sitting. This chair (Q6) would allow me the freedom to use any chair, bed, toilet, and kitchen. I urge you to reconsider your decision."

In his Notice of Appeal dated August 20, 2021 the appellant wrote: "They won't help me meet the basic needs of my life. I cannot do dishes or make my own food without the elevation seat."

At the hearing the appellant stated that

- he can't stand at all as both his legs are partially amputated.
- He lives in assisted living.
- The maximum elevation of the power seat would be approximately 12 inches.
- It is humiliating to be overlooked or being looked down constantly - in situations such as at check-outs, while shopping, at the library, at Service Canada, or when people are further away a power seat would remedy this and enable eye-to eye contact.
- No one else does his dishes - he has to sit on 3 cushions to do them which is unstable and unsafe.
- He cannot use a seatbelt because the cushions are too high.
- Everyone's basic mobility needs are different - the ministry did not consider this.
- He is in assisted living and somewhat independent.
- He cannot reach the sink to brush his teeth. He can only brush them twice a week because he has to do this from the shower.
- He cannot reach the counter - it is too high.
- He cannot wash his hands after going to the bathroom, brush his teeth, or do his dishes. His basic needs for hygiene are not met.
- He cannot get a secure grip on a plate from his low height.
- He cannot reach his upper counters - for this he would need power elevation.
- He now has a power wheelchair on loan, the ministry approved wheel chair is on its way.
- With a power seat he would not need a hospital bed, a cabode [the appellant spelled the name of this equipment for the panel and described it as a board with a hole in it], a low kitchen table and a low couch.
- He would have the freedom to go to restaurants, visit his parents and sit at their table.

The ministry read out the concluding part of their written decision.

- In addition, the ministry reported that together with the wheelchair it had approved the hospital

bed for a cost of \$5000appx., a cabode for \$230appx., and other equipment such as bars and handles.

- The ministry confirmed that the power chair is approved and its delayed arrival is not related to this reconsideration.

Admissibility of New Evidence:

The panel finds that the information provided by the appellant and the ministry in the Notice of Appeal and at the hearing is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as it contributes to the panel's understanding of the circumstances surrounding the appellant's request for power seat elevation. The panel therefore admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

## Part F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant's request for a power seat elevation because he did not meet the following eligibility requirements was a reasonable application of the legislation or reasonably supported by the evidence.

Specifically, did the ministry reasonably determine that

- there is insufficient evidence that power seat elevation is the least expensive appropriate medical equipment or device and,
- it is not satisfied that power seat elevation is medically essential to achieve or maintain basic mobility?

### **1) least expensive appropriate medical equipment or device - section 3(1)(b)(iii) of Schedule C**

Legislative requirement:

The ministry may provide a medical equipment or device if it is the least expensive appropriate medical equipment or device as set out in the EAPWD Regulation, Schedule C, section 3(1)(b)(iii).

Ministry Position:

The ministry argues it is not clear that seat elevation is the least expensive appropriate medical equipment or device for the appellant's needs. Insufficient information has been provided regarding more affordable ways to meet the appellant's needs, such as reaching equipment or alterations to the appellant's living environment.

#### Panel Decision

When the ministry approved the wheelchair model Q6, the appellant had provided a separate quote for an upgraded component (a power seat elevation) for this model,

While the ministry argues that it is not clear that seat elevation is the least expensive appropriate medical equipment or device for the appellant's needs the panel finds that the OT explained why seat elevation was the appropriate medical device required for the appellant's needs. The panel finds further that there is no evidence of a less expensive power seat elevation component that matches the Q6 model.

Consequently, based on the evidence, the panel finds that the ministry was unreasonable when it determined that it is not clear that power seat elevation is the least expensive appropriate medical equipment or device.

### **2) medically essential to achieve or maintain basic mobility - section 3.2(1) of Schedule C.**

Legislative requirement:

A wheelchair, an upgraded component of a wheelchair, and an accessory attached to a wheelchair are health supplements the ministry may provide if the ministry is satisfied the item is medically essential to achieve or maintain basic mobility as set out in section 3.2(1) of Schedule C.

“Basic mobility” is not defined in the legislation and assessing whether or not equipment is medically essential to meet the appellant’s basic mobility needs is discretionary. The panel notes that in its decision the ministry quoted from their policy manual: ““Medically essential to achieve or maintain basic mobility” refers to a client’s needs for equipment due to a mobility impairment which is necessary to perform their day-to-day activities in their home and/or community.” While the panel is bound by legislation, not ministry policy, the panel finds the ministry policy manual useful in determining what “basic mobility” means when it is used in Schedule C. Determining basic mobility will therefore depend on the specific circumstances of the appellant’s functionality and resulting restrictions to his day-to-day activities, including safety issues. Equipment is necessary to meet basic mobility needs if it is necessary to perform day-to-day activities in the home and the community.

**Ministry Position:**

The ministry wrote: “Based on the information provided, the ministry is satisfied that power seat elevation may be useful to complete some aspects of daily functioning (washing dishes and accessing upper cabinets, eye contact, and transfers). The ministry considered these aspects of daily functioning rather than of basic mobility. Therefore, the ministry is not satisfied that seat elevation is required for the appellant to achieve and maintain basic mobility.”

**Appellant’s Position:**

The appellant argues that a power elevated seat is essential for the basic needs of his life; he needs it to make his own food, access his sink, wash dishes and reach the upper kitchen cabinets. Power seat elevation would allow him the freedom to use any table, bed, toilet, and kitchen. Everyone’s basic mobility needs are different - the ministry did not consider this.

**Panel Decision:**

Based on the following evidence the panel finds there is sufficient evidence that the appellant experiences significant restrictions in his day-to-day activities in the home and in the community; power seat elevation is necessary to perform day-to-day activities and thus necessary to meet basic mobility needs.

- The appellant’s OT reports that both legs of the appellant are amputated below the knee. He is wheelchair bound and uses sliding board transfers. Currently he is self-propelling a manual wheelchair that is on loan. He has gangrene in his upper and lower extremities.
- The OT reports further that an adjustable seat height would allow the appellant to be independent with his daily living activities by increasing his reach and accessibility around his apartment suite.
- The appellant clarifies that the increased reach and accessibility will allow him to reach the sink and do his dishes. No one else does his dishes. He has to sit on 3 cushions to reach the sink which makes his position unstable and unsafe. With the sink out of reach the appellant can only brush his teeth 3 times a week when he has a shower. He cannot wash his hands after going to the bathroom. Without a power elevation seat he can’t reach his upper kitchen cabinets to access utensils he needs for cooking and eating. Power elevation would enable him to reach the sink and upper kitchen cabinets. He cannot stand up on his own legs, even for a short while, because they are amputated below the knee.

The panel finds that the appellant’s personal hygiene and self-care is severely restricted without being able to reach the sink, as he can only brush his teeth 3 times a week, cannot wash his hands after using the bathroom. His food preparation is restricted; he has no clean utensils available because he is unable to wash them in the sink. In addition, the appellant has no access to half of his utensils because they are stored on the upper shelves. Under these conditions eating food is unsafe and unhygienic for

the appellant; in general, and having dirty dishes around permanently renders a home unsanitary.

- The OT reports that seat elevation promotes safety and improves independence from the appellant's sliding board transfer by allowing a level transfer to the different surface heights around his apartment suite; bed height, toilet height and bathtub height all vary in seat to floor height. The appellant confirms that power seat elevation would allow him the freedom to use any bed, toilet, and kitchen without a sliding board.
- The OT also reports that a seat elevation increases safety and efficiency of his sliding board transfer by allowing transfers from a higher to lower surface – which is gravity assisted.

The panel finds that under these circumstances power elevation would increase the appellant's safety and independence in his day-to-day activities.

- The OT reports that a seat elevation allows the appellant to have eye contact with others and reduce cervical strain and pain from poor positioning. The appellant explains that having to look up consistently to talk to others brings on this cervical pain and strain. For example, he experiences this strain and pain when he is sitting at the table with his parents or at interactions with Service Canada. He avoids going to restaurants for this reason.

The panel finds that without the seat elevation many of the appellant's activities in the community are restricted or inhibited by cervical strain and pain that comes from consistently having to look up.

- The OT reports that the vertical rise provides psychosocial benefits of being on peer level and speaking eye-to-eye. The appellant adds that it is humiliating to be looked down upon constantly, for example in stores, in the library or at Service Canada. At greater distances he often gets completely overlooked. Power seat elevation would remedy this and enable eye-to-eye contact. Without power seat elevation he often avoids community interactions.

The panel finds that without seat elevation the appellant's community activities are restricted; seat elevation would enable the appellant to face his peers eye-to-eye without being looked down upon; he would not have to avoid these interactions in order to be spared the feeling of humiliation.

In conclusion, the panel finds that the ministry's determination that the appellant is not eligible for power seat elevation is not reasonably supported by the evidence; the ministry was unreasonable when it determined that a raised seat is not medical essential to achieve basic mobility. The ministry's reconsideration decision is rescinded and the appellant is successful on appeal.

## 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.

...

#### **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.



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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)

Section 24(2)(a)  or Section 24(2)(b)

**Part H–Signatures**

Print Name

Inge Morrissey

Signature of Chair

Date (Year/Month/Day)

2021/09/16

Print Name

Carman Thompson

Signature of Member

Date (Year/Month/Day)

2021/09/16

Print Name

Jan M. Broocke

Signature of Member

Date (Year/Month/Day)

2021/09/16