

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision dated April 5, 2022 where the ministry found the appellant not eligible for a replacement scooter at this time because the appellant does not meet the following eligibility requirements:

- The appellant is not eligible for a replacement scooter until February 2023.
- The ministry is not satisfied that the 5 year replacement period has passed.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)
Schedule C sections 3(3) and 3.4

Part E – Summary of Facts

From ministry file

- The appellant has been designated as a Person with Disabilities (PWD) and is in receipt of disability assistance.
- The ministry provided the appellant with a scooter in February 2018.

A repair invoice dated December 13, 2022 included the following information:

“Scooter is totalled and should be replaced. Scooter has been in a significant accident, possibly tipped over on her. As the entire front tiller is bent laterally and the entire front end (tiller and front axle) of the scooter would need to be replaced, further the scooter will not turn on, batteries read at 2V DC, so new batteries are needed. Further issues could be present but cannot be further assessed until batteries are replaced. Care worker further told me that the client has gained weight and the ... scooter is now too small for her. For these reasons I feel the scooter is unsafe for her as there could be hidden damage to the joints and welds of the scooter that may pose a significant safety issue, for these reasons I believe it would be best to replace it with a more suitable model of scooter for her as cost to repair will exceed worth of scooter and damage to scooter makes it potentially unsafe to drive.”

On January 27, 2022 the appellant’s occupational therapist (OT) faxed a request for a replacement scooter to the ministry. It included the following information:

- A Medical Equipment Request and Justification signed by the appellant’s physician who describes the appellant’s medical condition as
 - “severe lumbar disc disease, arthritis of hips + peripheral neuropathy” and recommends a
 - “replacement motorized scooter”.
- The OT provides the following assessment:
 - The appellant “weighs approximately 200 lbs”
 - “She is currently relying on a manual wheelchair on loan ... for use both indoors and outdoors... She must be pushed in the manual wheelchair.”
 - The appellant “was funded a motorized ... scooter by the Ministry of Social Development in 2019. This scooter is no longer working and has been assessed ... as being unrepairable.”
 - The appellant “reported having an acute episode of double vision which led to the scooter being damaged when it came in contact with a wall. She has had no other known accidents with the scooter. When her scooter was functioning, [the appellant] was independent with her mobility and her instrumental activities of daily living.”
- A quote for a replacement scooter for \$3500

In the Request for Reconsideration dated March 10, 2022 the appellant wrote: “Please reconsider the decision to deny funding to replace my broken and unrepairable scooter. I realize I am asking for a replacement scooter before the 5 year window is up, however, through no fault of mine my scooter is broken and not repairable. Without my scooter I am unable to leave my apartment. So that means I am unable to go to my doctor’s, to get health care I need at the health unit, or go shopping for food, or for medications, or other supplements that support my health. I also can’t see my friends or family which is very hard for me because I need that emotional support. Without my scooter I have lost my independence and it has negatively affected my mental health in addition to all the other practical issues noted above.

Also, please consider the following: I meet the criterion for a new scooter in Section 3 of the Disability legislation. I need this scooter for my basic mobility, and I am unable to purchase it myself. I meet the criterion in section 3... a medical practitioner and OT recommend this scooter as medically necessary. I meet the criterion in section 3(3)(a), my scooter is not repairable, and it is more economical to replace it.”

In the Notice of Appeal dated April 8, 2022 the appellant writes: "Without the scooter, can't go shopping or see family."

A 6 page hospital discharge summary dated June 7, 2022 indicates an admission date of June 4, 2022, a discharge date of June 6, 2022, an "admitting diagnosis" of "Diarrhea NYD", and a list of 18 "chronic problems".

On June 14, 2022 the appellant's OT writes to the appellant's physician that they need to present new medical information so that the appellant can be provided with a replacement scooter. In their response dated June 19, 2022 the physician writes: "... at this time, [the appellant] is facing many health conditions (made worse by her social situation) from which she may not recover. Let us revisit this next month when her situation is clearer."

At the Hearing

The appellant repeated information previously given and stated that

- The appellant cannot walk because of foot sores.
- The appellant's health is deteriorating.
- Diabetes temporarily impaired the appellant's eye sight - that's why the crash happened.
- The appellant currently uses the damaged scooter indoors but cannot use it outdoors - it is not safe, lights and brakes are not working.
- Due to hip pain the appellant cannot use the wheel chair.
- The appellant was hoping the ministry would make an exception.

The OT confirmed that the scooter is only marginally functioning; brakes and lights do not work. The wheelchair is foot propelled.

The ministry said they would support an exception. This can probably be done within 2-5 business days.

- There is no exception set out in the legislation but the ministry can make an exception due to the appellant's extreme health condition. This would also be cheaper than a repair.
- The appellant has demonstrated that there was no misuse of the scooter.
- The ministry will take care that the appellant gets the replacement scooter; the appellant does not have to do anything now.

Admissibility of New Evidence

The panel finds that the information provided on appeal and at the hearing by the appellant, the OT, the physician and the ministry is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. It contributes to the panel's understanding of the circumstances surrounding the appellant's health and the request for a replacement scooter. 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 find the appellant not eligible for a replacement scooter at this time was a reasonable application of the legislation or reasonably supported by the evidence.

Legislation

A replacement scooter may only be provided to the appellant whose existing scooter is damaged and not functioning if both of the following criteria are met:

- 1) it is more economical to replace than to repair the existing scooter [The ministry determined that this criterion has been met.], and
- 2) 5 years have passed since the ministry provided the existing scooter.

Appellant's Position

The appellant argues that due to multiple health issues the appellant depends on a motorized scooter to be independent with mobility and daily living activities. Without a functioning scooter the appellant cannot leave the apartment. The current scooter is unsafe and too damaged to be repaired. The accident happened because of a health condition, not because of misuse. The ministry should make an exception and approve a replacement scooter.

Ministry Position

The ministry determined that the appellant was not eligible for a replacement scooter because the eligibility requirements set out in the EAPWDR Schedule C section 3(3)(b) and 3.4(4) have not been met. The appellant has not had the current scooter for over the legislated five-year replacement period and therefore is not eligible for a replacement scooter until February 2023 under the applicable legislation. However, at the hearing the ministry indicated that they would support an exception due to the appellant's extreme health condition and because the appellant has demonstrated that there was no misuse of the scooter. The ministry has the ability to fund a replacement scooter in the circumstances of the appellant. The ministry representative noted that this was outside the scope of the legislation and was based on internal ministry policies not the applicable legislation.

Panel Decision:

The panel finds that the appellant received the scooter in February 2018 therefore the 5 year replacement period will end in February 2023. Accordingly, the panel finds the ministry was reasonable when it determined that the appellant is not eligible for a replacement scooter because the 5 year replacement period set out in the EAPWDR has not yet passed.

While the ministry indicated at the hearing that the appellant is eligible for a replacement scooter when internal ministry policy is relied on, the panel finds that ministry policy as stated at the hearing is outside of the panel's jurisdiction as the panel is bound by the applicable legislation.

Consequently, the panel finds that the ministry's determination that the appellant is not eligible for a replacement scooter at this time is reasonably supported by the evidence and is a reasonable application

of the legislation in the circumstances of the appellant. The ministry's reconsideration decision is confirmed and the appellant is not successful on appeal.

Employment and Assistance for Persons with Disabilities Regulation

Schedule C

Medical equipment and devices

3

(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.

Medical equipment and devices — scooters

3.4

(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.

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) and 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)
 2022/06/23

Print Name
 Bob Fenske

Signature of Member

Date (Year/Month/Day)
 2022/06/24

Print Name
 Erin Rennison

Signature of Member

Date (Year/Month/Day)
 2022/06/24