

**Part C – Decision Under Appeal**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated September 21, 2022. The ministry denied the appellant a health supplement to replace a stolen scooter because less than 5 years had passed since the ministry provided the scooter.

**Part D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), section 62 and Schedule C, sections 3 and 3.4

Full text of the legislation is provided in the Schedule of Legislation after the reasons.

**Part E – Summary of Facts**

The appellant attended the hearing with an advocate.

Evidence at the Reconsideration:

The appellant is a recipient of disability benefits under the Employment and Assistance for Persons with Disabilities Act. Due to her disabilities, the appellant needs a scooter for mobility.

The ministry provided the appellant with funding for a scooter on October 22, 2020. The appellant purchased the scooter, but it was stolen in July 2022. The appellant reported the theft to the police, but the scooter has not been recovered.

The appellant asked the ministry for funding to purchase a replacement scooter.

In support of her request, the appellant provided letters from her family doctor and a registered nurse stating that the appellant needs a replacement scooter urgently to be able to attend medical appointments and maintain activities of daily life such as going to the grocery store. In her written submission, the appellant said that she cannot do daily tasks, or get up the driveway of her home, without a scooter.

Additional Evidence:

*Doctor's letter dated October 3, 2022:*

The appellant provided a letter from a second doctor confirming that the appellant urgently requires a scooter because of poor balance, chronic back and leg pain, which puts her at risk of falling.

*Evidence at the Hearing:*

At the hearing, the appellant's advocate stated that the appellant's physical and mental health have suffered because she does not have a scooter. She has fallen and suffered a fractured wrist and abrasions on her hands and knees. Without a scooter, the appellant is confined to her house, which leaves her isolated. As a result, she has experienced depression.

The advocate also stated that they have researched other options besides ministry funding to try to obtain a replacement scooter, but the device is not available on loan, and a rental would cost \$225 per month, which the appellant cannot afford.

The appellant confirmed that she has suffered from depression because of being isolated and unable to leave her house. It takes her 20 minutes to get to the top of her driveway using a walker. She cannot afford the monthly rental of a replacement scooter.

Admissibility of Additional Evidence:

The ministry did not object to the admission of the additional written or oral evidence.

The doctor's letter and the oral evidence of the appellant and her advocate at the hearing confirm the appellant's need for a replacement scooter. The panel finds that the additional evidence is reasonably necessary for the full and fair disclosure of all matters relating to the decision under appeal, and therefore it is admissible under section 22(4) of the Employment and Assistance Act.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry was reasonable in its decision to deny the appellant a health supplement to replace her stolen scooter.

Appellant's position:

The appellant acknowledges that, under the legislation, the ministry may provide funding for a replacement scooter every 5 years, and the appellant's scooter was purchased less than 5 years ago. However, the appellant says that there should be an exception to the 5 year rule because her scooter was stolen, through no fault of hers, and she is suffering physical and mental harm without one. The appellant points out that she has tried to find other ways to replace the scooter, either on loan or as a monthly rental, and neither are possible.

Ministry's Position:

The ministry acknowledges that the appellant needs a scooter, or other mobility device. However, the ministry says that the legislation limits replacement of the scooter to once every 5 years, and there is no discretion to make an exception and replace it sooner. If the scooter is ever recovered, no matter what condition, the ministry may repair it, or replace it if that is more economical. There is no provision in the legislation for replacement of stolen medical equipment. If another mobility device, such as a motorized wheelchair, might give the appellant the safety and mobility she needs, the ministry could consider a new request for different equipment.

Panel Decision:

Under Schedule C, section 3(3) and 3.4 of the EAPWDR, the ministry may provide a health supplement for replacement of a scooter previously provided by the ministry, if at least 5 years have passed since the ministry provided the scooter, and other legislated requirements are met. In the appellant's case, the ministry provided funding for the scooter in October 2020. Less than 5 years have passed. Therefore, under the EAPWDR, the ministry is not authorized to replace the scooter. There is no discretion under the legislation for the ministry to make an exception and provide a replacement scooter sooner than October 2025.

Therefore, the panel finds that the ministry's reconsideration decision was a reasonable application of the legislation in the appellant's circumstances. The appellant is not successful in the appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Regulation

**General health supplements**

Section 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

**Health Supplements**

**Medical equipment and devices**

Section 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**

Section 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.

**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  
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)  
2022-10-17

Print Name  
Diane O'Connor

Signature of Member

Date (Year/Month/Day)  
October 17, 2022

Print Name  
Peter Mennie

Signature of Member

Date (Year/Month/Day)  
2022/10/17