

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

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated October 11, 2022, which determined the appellant was not eligible for funding of a power wheelchair as per section 62 and Schedule C, sections 3 and 3.2 of the Employment and Assistance for Persons with Disabilities Regulation.

Specifically, the ministry determined that a power wheelchair was not the least expensive appropriate medical equipment or device and the item was not medically essential to achieve or maintain the appellant's basic mobility.

### **Part D – Relevant Legislation**

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

**Part E – Summary of Facts****Relevant Evidence Before the Minister at Reconsideration**

Ministry records show:

- On July 14, 2022 the appellant submitted a request for funding of a power wheelchair.
- The appellant is designated as a person with disabilities (PWD), in receipt of Medical Services Only. Therefore, she would be eligible to receive health supplements if all other requirements were met.

**Ministry Medical Equipment Request and Justification form**

Client Information (signed by appellant June 10, 2022)

When asked to list any additional resources that could assist in meeting her needs (e.g. ICBC, WorkSafe BC, Department of Veteran Affairs, Non-insured Health Benefits, Private Insurance), the appellant stated none of these resources were available to her.

Medical or Nurse Practitioner Recommendation (signed by appellant's doctor June 22, 2022)

Medical conditions

- severe bowel incontinence
- hips/back, osteoporosis
- chronic obstructive pulmonary disorder/asthma/vertigo.

Type of medical equipment recommended

- power wheel chair

**Quote for Wheelchair (June 16, 2022)**

\$4,584 (not including taxes)

**Two Invoices for Powerchair Rental**

June 1 – July 1, 2022 - \$150.00

July 1 – August 1, 2022 - \$150.00

**Occupation Therapy Report (signed by Occupational Therapist (OT) July 4, 2022)**

*Diagnosis*

- severe fecal incontinence as a result of female reassignment surgery with post-operative complications, chronic obstructive pulmonary disease, osteoarthritis and congenital high hip dysplasia resulting in arthritis

*Equipment Requested*

- basic power wheelchair

*Functional Assessment*

The OT states the appellant has a complex medical history. Over 30 years ago she underwent female reassignment surgery, which resulted in many postoperative complications including a colostomy followed by a colostomy reversal years later. Unfortunately, she now experiences severe fecal incontinence, which affects every aspect of her daily life. The appellant schedules all her daily activities to help accommodate her fecal incontinence, as she is limited in the amount of time she can be away from a bathroom. This makes using public transportation very difficult. The appellant does wear incontinence pads; however, they are not always effective. In addition, she has limited mobility due to pain as a result of osteoarthritis. This osteoarthritis particularly affects her right hip (as a result of congenital hip dysplasia). The appellant has seen a physiatrist who administers cortisone injections to help minimize her right hip pain.

The appellant is able to walk in her small suite using a cane for support. She attempted to use a scooter for outings. However, this has been a struggle due to the size and lack of maneuverability of the scooter, resulting in an inability to access small spaces particularly many public restrooms. As a result, the appellant is now renting a small power wheelchair, which she is using for all mobility outside her suite.

The appellant's doctor is recommending a power wheelchair for mobility outside of her suite in order to increase safety as well as to assist with the limitations imposed by her fecal incontinence.

*Power Mobility Assessment:*

The appellant has been safely operating a rented power wheelchair over the past few weeks with no concerns. The OT also states they have completed a power wheelchair assessment on the road with the appellant. No concerns were identified. The appellant demonstrated safe driving skills throughout the downtown including managing sidewalks crosswalks and a grocery store. The appellant does not require rehabilitation seating.

**Letter from Ministry to Appellant (August 8, 2022)**

Requested Health Supplements:

*Power Wheelchair and Reimbursement of Rental of Power Wheelchair*

The ministry writes that the appellant was provided funding for a scooter in August 2019 and as this is less than five years from the current date, the appellant is not eligible for a replacement at this time.

In the ministry's opinion, the request for a power wheelchair is not medically essential to achieve or maintain basic mobility as the appellant is currently mobile using a cane and the scooter funded in August 2019.

The letter submitted by the appellant's occupational therapist (July 4, 2022) does not indicate a change in the appellant's medical condition to justify her transition to a power wheelchair. The letter stated the same medical conditions as the 2019 letter.

As the appellant has not been deemed eligible for a power wheelchair and did not receive the pre-authorization of the ministry for rental of a power wheelchair, it is also unable to reimburse funding for this item.

### **Letter from Appellant's Landlord to Whom It May Concern (August 22, 2022)**

The landlord states that scooter access is not allowed into the building. The building tried scooter access a few years ago and found it was too congested and not safe for their tenants. The building has a scooter shed, which houses the scooters and the tenants walk from the shed to the building.

### **Request for Reconsideration (August 23, 2022)**

### **Letter from the Appellant's Doctor To Whom It May Concern (October 10, 2022)**

The doctor confirms the appellant suffers from fecal incontinence, which has become worse over the last two years. The appellant requires a power wheelchair, which has great maneuvering capacity, in order to access her basic daily necessities (grocery, pharmacy etc.). In this way she is able to get to a washroom in a safe and timely manner. The appellant also requires power wheelchair access for her apartment as it is not possible to use the scooter inside the building.

### **Additional Information**

#### Appellant

#### **Notice of Appeal (October 27, 2022)**

The appellant writes that mobility is not just limbs. Bowel incontinence is also a major disability that has not been manageable, in the last two years. Also, the scooter that the ministry bought for her was one inch too long to use with the public transit for people

with disabilities. With the power wheelchair, the appellant states she can get to washrooms easily to clean up and use public transit, which she could not with the scooter.

She believes she is falling between the cracks with the ministry's legislation (i.e. the way it is worded with only arms and legs or brain function ( or loss of ).

At the hearing, the appellant stated her fecal incontinence has become worse and is very unpredictable. It has become an "everyday thing". If she has to sit in the incontinence, this can

create bleeding, which drains her energy. However, if she is able to remain in a sitting position, without having to get up, at least she has more control. Having accidents while walking is of course more problematic than sitting. The appellant stated that walking to retrieve and replace her scooter in the shed takes her approximately five to seven minutes. If she has an accident, she can clean up in her home. However, it is much more difficult to clean up in public places. This is why a scooter/cane combination isn't adequate. As well, a manual wheelchair would be insufficient as she needs to access washrooms quickly. And, as the appellant needs to access stores not near her place of residence, she needs to use public transportation; however, scooters are not allowed on the public buses, but wheelchairs are.

#### Ministry

At the hearing, the ministry relied on its record and added that the ministry determined that a scooter was appropriate for the appellant's disability at this time. As well, the ministry stated it doesn't include the environment in making its decision. It only considers basic mobility.

The panel determined all the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore 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's reconsideration decision that determined the appellant was not eligible for funding of a power wheelchair as per section 62 and Schedule C, sections 3 and 3.2, of the EAPWDR was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, did the ministry reasonably determine that a power wheelchair was not the least expensive appropriate medical equipment or device and the item was not medically essential to achieve or maintain the appellant's basic mobility?

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

**Appellant Argument**

The appellant's advocate argues that although the ministry purchased a scooter in 2019 and normally a replacement would not be available for five years, the appellant's medical condition has changed significantly, and she requires a power wheelchair.

1. The severity of the condition is not contested by the ministry, but it concluded that there has not been a significant change that would necessitate a power wheelchair rather than a scooter.
2. The letter from the appellant's doctor confirms that her incontinence has become worse over the last two years, such that the power wheelchair is required for daily necessities and to access her apartment. The physician also notes the need for safety with the power wheelchair.
3. The ministry contends the report from the OT does not show significant change from the original condition in 2019; however, the OT noted significant fecal incontinence that cannot be managed through incontinence pads, as well as notes the complications with using the scooter. The OT noted the improvement with the rented power wheelchair and added that she can operate it safely.
4. The apartment that the appellant lives in has changed the rules for scooters requiring that all scooters be parked outside the building and lobby. This requires scooter users to walk. There are no such rules for power wheelchairs.
5. The smaller size and greater turning capacity of the power wheelchair allows it to be ridden into the appellant's apartment as well as to maneuver it in small places such as public washrooms. It is also much easier to back into spaces.
6. Both the appellant's OT and doctor have confirmed that the appellant's incontinence requires access to washrooms when doing very basic shopping and other tasks in the community. Aids such as incontinence pads are not sufficient to manage the appellant's

condition. The appellant also notes she still has bleeding from past surgery which also requires her to access public washrooms.

The appellant argues further that the additional information from the doctor confirms that, contrary to the ministry's conclusion that the medical condition does not justify the transition to a power wheelchair, the change with severe incontinence is significant and a power wheelchair is essential in meeting those needs.

In addition, the appellant argues that as her incontinence is very unpredictable, having accidents while walking is more problematic than sitting. Although she can clean up at home, it is much more difficult to clean up in public places. This is why a scooter/cane combination isn't adequate. As well, a manual wheelchair would be insufficient as she needs to access washrooms quickly. As well, the appellant argues as she needs to access stores not near her place of residence, she needs to use public transportation. And, scooters are not allowed on the public buses, but wheelchairs are.

### **Ministry Argument**

The ministry argues the appellant's request does not meet the eligibility requirements set out in the EAPWDR, Schedule C, subsections 3(1)(b)(iii) and 3.2(2).

Subsection 3(1)(b)(iii) - states the ministry will fund the least expensive appropriate medical equipment or device.

The ministry acknowledges that the OT's assessment stated a scooter lacks maneuverability resulting in an inability to access small spaces when outside the home and the appellant's doctor stated the appellant requires a power wheelchair for greater maneuverability. However, the OT also stated the appellant is able to walk in her suite using a cane for support. Therefore, the ministry argues the information provided does not establish that the appellant's indoor and outdoor mobility needs cannot be met with the combined use of an electric scooter and cane. It is noted that meeting the appellant's mobility needs at home with the use of a cane indicates she is meeting her toileting needs at home with a cane. The ministry argues it is therefore feasible a scooter and cane together could meet the appellant's mobility needs outside the home, with the cane providing support for mobilizing in smaller indoor spaces such as public washrooms. It is also noted scooters can be equipped with specific cane holders.

As well, the ministry argues the OT and doctor have not indicated whether the appellant can make use of a walker or manual wheelchair. Scooters, canes, walkers, and manual wheelchairs are all on average much less expensive than a power wheelchair. Furthermore, the appellant currently has a scooter and cane.

The ministry argues, for the reasons stated above, it cannot be established that a power wheelchair is the least expensive appropriate medical equipment or device required.

Subsection 3.2(2) - states a wheelchair is a health supplement for the purposes of section 3 of Schedule C if the ministry is satisfied the item is medically essential to achieve or maintain basic mobility.

The ministry argues that for the reasons stated above it cannot be established that the appellant requires a power wheelchair specifically to meet her indoor and outdoor mobility needs, as opposed to the combination of a scooter and cane. Therefore, the ministry argues it cannot be established that a power wheelchair is medically essential to achieve or maintain basic mobility.

### **Panel Analysis**

#### Section 62, EAPWDR - general health supplements

Section 62(c) states the minister may provide any health supplement set out in schedule C, section 3 [*medical equipment and devices*] for a family unit, if the health supplement is provided for a person who is a continued person. The panel notes the appellant is designated as a PWD, in receipt of Medical Services Only, and as a "continued person" may be eligible to receive health supplements.

#### Section 3, Schedule C, EAPWDR - Medical equipment and devices

Section 3(1)(b) states all the requirements must be met and subsection 3(1)(b)(iii) stipulates that the medical equipment or device must be the least expensive appropriate medical equipment or device.

The recommendation from the appellant's doctor (June 2022) states the appellant's medical conditions, include severe bowel incontinence, and the medical equipment recommended is a power wheelchair.

The OT Report (July 2022) states the appellant attempted to use a scooter for outings; however, this has been a struggle due to the size and lack of maneuverability of the scooter, resulting in an inability to access small spaces particularly many public restrooms.

The appellant's doctor writes (October 2022) that the appellant requires a power wheelchair, which has great maneuvering capacity, in order to access her basic daily necessities (grocery, pharmacy etc.). In this way she is able to get to a washroom in a safe and timely manner. The appellant also requires power wheelchair access for her apartment as it is not possible to use the scooter inside the building.



The ministry argues that it is feasible a scooter and cane together could meet the appellant's mobility needs outside the home, with the cane providing support for mobilizing in smaller indoor spaces such as public washrooms.

At the hearing, the appellant argued that due to her severe fecal incontinence a scooter/cane combination is not adequate. Her incontinence is very unpredictable and she can have an accident walking to and from her scooter (at home or accessing a small public washroom that doesn't accommodate scooters). With a powered wheelchair she would have more control (remain sitting and access washrooms quicker).

The panel notes section 3(1)(b)(iii) of the EAPWDR requires not only the least expensive medical equipment but the least expensive "appropriate" medical equipment. Because of the appellant's severe fecal incontinence and the need to remain sitting and access public washrooms quickly, the panel finds a scooter is no longer the least expensive "appropriate" medical equipment.

The panel finds the ministry decision that determined the appellant was not eligible for funding for a power wheelchair, was reasonable, with the information the ministry had at the time. However, the panel finds with the additional information provided by the appellant, coupled with the recommendation received from the appellant's doctor and OT, the ministry decision that a scooter is the least expensive appropriate medical equipment, is now unreasonable.

#### Schedule C, EAPWDR, subsection 3.2(2)

Subsection 3.2(2) states the minister must be satisfied that the item is medically essential to achieve or maintain basic mobility.

In addition to the information above, as the appellant argues she needs to access stores using public transportation and public buses don't allow scooters, the panel finds the appellant is not able to achieve basic mobility with a scooter.

The panel finds a power wheelchair is medically essential for the appellant to achieve or maintain basic mobility and finds subsection 3.2(2) of schedule C (EAPWDR) has been met. Because of the issues with the appellant's severe fecal incontinence, without a power wheelchair, the appellant would not be able to access the services she needs.

#### **Conclusion**

In conclusion, the panel finds the ministry decision that determined the appellant was not eligible for funding of a power wheelchair as per section 62 and Schedule C, sections 3 and

3.2, of the EAPWDR was not a reasonable application of the legislation in the circumstances of the appellant.

The appellant is 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

...

(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.

...

#### **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.

APPEAL NUMBER 2022-0259

**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

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2022/11/18

Print Name

Rick Bizarro

Signature of Member

Date (Year/Month/Day)

2022/11/18

Print Name

Cherri Fitzsimmons

Signature of Member

Date (Year/Month/Day)

2022/11/18