

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision (the decision) dated 21 October 2022, which determined that the appellant does not qualify for a replacement scooter as per the Employment and Assistance for Persons with Disabilities Regulation, Schedule C, sections 3 and 3.4.

Specifically, the ministry determined that the appellant was provided with funding for a scooter in September 2020, and as five years have not passed, he is not eligible for funding for a scooter at this time.

**Part D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 62*  
Schedule C, sections 3 and 3.4

**Part E – Summary of Facts****Evidence at the time of reconsideration**

As part of the application for reconsideration, the appellant submitted a letter, which outlined the theft of his scooter on June 24, 2020, and the impact the loss of the scooter has had on his life. The appellant states “the scooter is part of my daily life, because my ability to walk is severely compromised due to the degenerative changes in my spinal column”. He also states that, in denying a replacement scooter, he is being penalized for “actions beyond my control”, and that he has not worked since July 15, 2022, and ended up in the hospital from July 21 to July 30 “due to the level of pain I that I was experiencing”.

The application also included:

- 1) A fax from a social worker that states that the appellant “has mobility concerns and ...frequent falls due to weight loss, peripheral neuropathy, loss of muscle mass and stenosis.” It also states: “without a scooter [the appellant] is having a very difficult time purchasing groceries”...
- 2) A letter from a physician which states that “to maintain a reasonable quality of life”, the appellant “requires a powered medical mobility scooter”.

According to the decision, which is not disputed by the appellant, the following is a chronology of events:

The appellant submitted a request for a replacement scooter on July 11, 2022.

The ministry denied this request on August 28, 2022.

The appellant initiated a Request for Reconsideration on September 22, 2022.

The ministry completed its review of the Request for Reconsideration on October 21, 2022.

In the decision, the ministry found that:

- 1) The appellant is eligible to receive health supplements which are outlined in EAPWDR Schedule C, “provided all other eligibility requirements are met”.
- 2) The appellant meets the requirements outlined in Section 3(1):
  - a. His family unit is eligible to receive health supplements;
  - b. He has requested pre-authorization from the Ministry;
  - c. He does not have the resources to pay the cost or obtain a replacement scooter;

d. The medical equipment is the least expensive and is appropriate for his needs.

- 3) The appellant meets the eligibility requirement outlined in Schedule C Section 3(2): the equipment has been prescribed by a medical practitioner.

However, the ministry found that the requirements outlined in EAPWDR Schedule C Section 3(3) and 3(4) were not met by the appellant, finding that the appellant was “provided with funding for a scooter in September 2020. Therefore you are not eligible for further funding for a scooter until five years have passed (September 2025)”.

The ministry stated that “Sections 3(3) and 3.4 do not provide allowances for replacement scooters outside of the replacement period”. The ministry stated that exemptions to the replacement period may be granted, under its internal policies, if required due to “changes in a person’s medical condition or growth” but found that the exemption did not apply in the appellant’s situation.

The appellant applied for a Notice of Appeal to the EAAT on October 31, 2022, stating that, in his case, the “strict interpretation” of the regulations victimized him “a second time as well as it infringes on my right to mobility”.

### **Additional information**

The appellant provided two submissions to the panel dated November 10, 2022. These submissions were:

- 1) A letter from a social worker which outlined the “serious concerns” the appellant had experienced since his scooter was stolen, including high risk of physical injury, exacerbation of chronic pain, lack of independence in performing everyday tasks, loss of employment and income, and deteriorating mental health. The social worker also provided a timeline of interactions the appellant had had with health care practitioners since his scooter was stolen, and concludes that the appellant’s scooter helps him address his chronic pain, maintain his independence, supplement his income and improve his mental health.
- 2) A prescription from the appellant’s general practitioner, which states “Due to severe mobility issues, this man needs a scooter”.

During the hearing, the appellant provided additional information about the circumstances of the theft of his scooter.

The panel determined that the additional information provided by the appellant supported his argument and found that it would be admitted.

**Testimony at the hearing**

The appellant outlined the issues he has experienced since his scooter was stolen. While at work in June 2020, he locked his scooter and kept the key in his pocket, believing that his scooter was securely parked. The appellant stated that insurance for scooters was not available. Since the loss of his scooter, the appellant's life has been significantly impacted. The pain he experiences affects him to such an extent that he no longer feels comfortable leaving his residence. He can no longer travel to his workplace and worries that his lack of movement makes his joints even worse. He also worries about his mental health. He has always hoped that he would be able to maintain his independence as long as possible, but is concerned that this may not be possible without a scooter.

The appellant's advocate also attended the hearing and provided additional information regarding the appellant's situation. She stated that the appellant's chronic pain would hasten a general decline in the appellant's health. She noted that the appellant's scoliosis of the lumbar and stenosis would only get worse. She noted the number of falls experienced by the appellant and the degenerative changes experienced by the appellant, and that mobility with a scooter would help to address some of the challenges he faces.

**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 for a replacement scooter 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 as the appellant was provided with funding for a scooter in September 2020 (and as five years have not passed), he is not eligible for funding for a scooter at this time.

The ministry found that the appellant was ineligible for a replacement scooter as per EAPWDR Schedule C, Sections 3 (3) and 3.4 (4). Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

Schedule C, Section 3 (3)(b) states that "the minister may provide as a health supplement a replacement of medical equipment or medical device... if (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".

Section 3.4 refers to scooters and subsection 4 states that the time period is "5 years after the minister provided the item being replaced".

The appellant states that the loss of the scooter was beyond his control and he should not be punished for it. The ministry states, according to the regulations, the appellant would be eligible for funding of a replacement scooter in 2025. The regulations state the period between replacement funding for a scooter is five years. The panel finds that, despite the Appellant's clear need for a scooter (which the Ministry also accepts) the denial of funding for a replacement scooter is reasonable under the existing regulations.

The panel finds that, in this case, the ministry applied the relevant regulations and legislation reasonably. The ministry's reconsideration decision was reasonably supported by the evidence. The panel confirms the ministry's decision. The appellant is not successful in the appeal.

**Schedule of Legislation**

**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.

...

(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** (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.

...

(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.

2022-0261

**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

Robert McDowell

Signature of Chair

Date (Year/Month/Day)

2022/11/16

Print Name

Adam Shee

Signature of Member

Date (Year/Month/Day)

2022/11/16

Print Name

Connie Simonsen

Signature of Member

Date (Year/Month/Day)

2022/11/17