

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision, which found that the appellant is not eligible for funding for a Permobil F3 power wheelchair with upgraded components.

The ministry found that the information provided did not show that:

- the medical equipment or device (Permobil F3 power wheelchair with upgrade components) is the least expensive appropriate medical equipment or device.
- a medical practitioner (occupational therapist) prescribed the Permobil F3.
- an occupational therapist confirmed the need for manual recline, enhanced steering, multi-seat function, custom leg rest option or power elevated seat (the components).
- the Permobil F3 and the components are medically essential to achieve or maintain basic mobility.

Part D – Relevant Legislation

Employment and Assistance Persons with Disabilities Regulation (the Regulation) - Schedule C sections 3(1)(b), 3(2) and 3.2(2).

The Regulation is in Appendix A

Part E – Summary of Facts**Evidence at Reconsideration**

Request for Reconsideration signed and dated March 13, 2023. The request for reconsideration included the following information:

- Medical Equipment Request and Justification completed by an occupational therapist who was employed by a health authority (original occupational therapist). The document was dated December 8, 2022 and requested a “power wheelchair”.
- Request for Funding for renewal of power wheelchair and cushion from the original occupational therapist dated December 8, 2022. The document described the appellant’s diagnosis, social situation, why the client requested the Permobil F3, the appellant’s physical ability and needs, affective state, cognition, hearing, vision, and equipment recommendations. The original occupational therapist stated that the appellant is dependent on a power motive device for all her indoor and outdoor mobility, the appellant wishes to have the Permobil F3 power wheelchair as it is the closest to her previous one that lasted about 11 years, there is a medical need for a tilt system and a seat width of 17 inches with custom cushion, and the appellant requested power elevating leg footplates for positioning her feet and to swing the legs out and up [away from] a long term L lower leg wound. The original occupation therapist stated that the Permobil F3 power wheelchair with tilt system was trialed and the appellant is able to operate it effectively and it meets her basic mobility needs.
- Quote for the Permobil F3 power wheelchair for \$27, 202.52.
- Revised request for funding from the original occupational therapist dated January 3, 2023. The original occupational therapist updated the information regarding the tilt system and power features. Also, the anterior tilt system is necessary for transfers and the elevation function is needed to communicate with others at eye-level.
- New quote for the Permobil F3 power wheelchair for \$32, 941.44, which includes additional features.
- The appellant’s reasons for the request for reconsideration are stated as follows:
 1. The elevation function is not necessary to socialize at eye-level. The function is necessary because the retrofitted aspects of her apartment are not accessible without it.
 2. The appellant requires the elevation function to safely conduct transfer procedures in a manner that complies with WorkSafe BC guidelines and protects the wellbeing of the assistant and appellant.
 3. “I no longer enjoy the upper extremity mobility I had previously and the elevation feature remains more crucial than ever. I require this function to complete eating, hygiene related activities, as well as utilizing my electronics”. The appellant further stated, “the angles at which my forearms are braced may have to be adjusted by changing the height of my chair as a measure of combating the natural progression of fatigue”.
 4. The enhanced steering “feature is crucial in allowing for me to operate the tilt, elevation, leg and footplate functions on the chair through the joystick”. She cannot operate it without a joystick due to nerve damage.
 5. The recline function is necessary to preserve trunk control; as a result of her degenerative condition, she cannot engage her core muscles indefinitely. “When I can no longer hold the position, I am able to then readjust the backrest through the

recline function. Actively engaging these muscle groups throughout the day works towards maintaining [that] strength”.

6. The leg-rest and foot-pedal adjustment function is necessary to “facilitate an improved ability to off shift weight when in an upright seated position”, which is “important for the prevention of skin breakdown as well [as] relieving back pain”.
 7. The appellant notes that reluctance to trial other PMDs was related to ongoing pain and suffering from an ill-fitting wheelchair but states “I will undertake further trials, despite the fact that this course would prolong and exasperate my distress”. She then describes quality and longevity and that she has demonstrated that the Permobil F3 power wheelchair with the components is the best option and the least expense in the long term due it is durability; the previous chair lasted 11 years.
- Letter from the appellant to the original occupational therapist dated February 23, 2023. In the letter the appellant expressed her frustration with the process and delays experienced. The appellant also describes what she believes are inaccuracies and deficiencies in the original occupational therapist’s assessment dated December 8, 2022. The appellant clarifies that her apartment is not accessible without an elevation feature on the power wheelchair, the diagnosis of her condition was incorrect, she does not suffer from PTSD, the tilt feature is not used for transfers but the elevation function is, and that she would be willing to trial other power wheelchairs but was not informed that it was necessary.
 - Letter from the appellant to the original occupational therapist dated March 7, 2023. In it the appellant describes her frustration with her telephone interactions with the ministry worker and requests the worker’s email and mail contact information, requests that the original occupational therapist work with her to meet her needs or refer her to someone else and describes the pain and discomfort she is experiencing due to using an inappropriate power wheelchair.

Evidence on Appeal

Notice of Appeal dated April 19, 2023. The notice of appeal included the following documents:

- 3-page letter from the appellant (dated April 19, 2023) which, in part, stated the following:
 1. The original occupational therapist’s assessment was deficient and inaccurate.
 2. The December 9, 2023 assessment details the need for the elevation feature which is required to perform transfers. However, the January 3, 2023 assessment indicated the need for a tilt function for transfers. This information is inconsistent and faulty.
 3. She did not refuse to trial other power wheelchairs. The trial of other wheelchairs was not offered nor was there an emphasis by the original occupational therapist on the need to trial other products. The appellant believes she is being penalized for the failures of the occupational therapist.
 4. She has never been treated by the doctor mentioned by the original occupational therapist.
 5. She expressed frustration and exacerbation that the ministry has not rectified the issue of insufficient information directly with the Ministry of Health so that she does not have to navigate these systems.

6. She expressed frustration with a lack of and slow communication from the ministry and that the process has been unfair to her.
- Assessment from a second occupational therapist (undated). The assessment, in part, stated that following:
 1. Mobility: Reliant on full support when ambulating, i.e., needs power mobility
 2. Sitting Balance: Reliant on back support due to weakness in core and trunk.
 3. Posture: Leaning to the left side, difficulties sitting upright without proper ergonomic seating – needs support of backrest and armrests, unable to reach forward in sitting.
 4. Elevation Function: “Her dependency on the elevation function to navigate everyday life has increased after an accident in 2017 causing her to have brachial-plexopathy. The nerve damage resulting from this accident has meant that she can no longer use her left upper extremity for functional range of motion. Thus, the elevation feature remains more crucial than ever. Without this function, she would be completely reliant on assistance for all self care tasks, self feeding, accessing items and electronics around her home, as well as being able to engage in leisure activities”. And “She requires elevation to access various surfaces in her apartment. She also requires the elevation function to safely conduct transfer procedures in a manner that complies with WorkSafe BC guidelines and protects the wellbeing of herself and her caregiver”.
 5. Tilt Function: “the tilt function [is required] to intermittently offload pressure from the coccyx in order to subvert the potential development of pressure sores.
 6. Enhanced Steering: “this feature is crucial in allowing [the appellant] to operate the tilt, elevation, leg and footplate functions on the chair through the joystick. Without this feature she would be unable to operate any seating functions”.
 7. Recline Function: the appellant requires a “backrest in order to get into a more upright position, i.e., requires the support of a backrest for sitting. Second, to be able to then remove the support of the backrest which facilitates free sitting so that she can practice engaging muscles that are then as a result less likely to deteriorate”.
 8. Leg-rest and Foot-pedal Adjustment Function: “the power leg/elevation function and power adjustable footplates are necessary for [the appellant] to be able to reposition herself independently and achieve an ergonomic position to maintain skin integrity, prevent pressure sores and decrease back pain. It has already been determined that the power leg rest is necessary. The power foot rests are also necessary in conjunction with the power leg rest to achieve optimal positioning”. Also, “The power adjustable footplates also facilitate an improved ability to off shift weight when in an upright seated position. This off shifting allows for her to subtly reposition throughout the day which is important for the prevention of skin breakdown as well relieving back pain”.
 - Assessment from the original occupational therapist dated December 9, 2023.

Admissibility of Additional Information

A panel may consider evidence that is not part of the record that the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The panel found that the information submitted on appeal (April 19, 2023 letter from the appellant and assessment from the second occupational therapist) provided additional detail or disclosed information that was required for a full and fair disclosure of all matters related to the decision under appeal. Accordingly, the panel has admitted this additional information in accordance with s. 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision to deny the appellant funding for a Permobil F3 power wheelchair with components was reasonably supported by the evidence or was a reasonable application of the legislation in the case of the appellant.

The Appellant's Position

The appellant has made lengthy submissions throughout this process. These submissions outlined frustrations with the process, delays experienced and inaccuracies and deficiencies. At appeal, the appellant provided new evidence addressing the medical need for the requested components and how the components are required for basic mobility.

Although the Panel has not summarized in detail each submission of the appellant in the appeal record, the Panel has reviewed these submissions and will address those necessary for its decision.

Specifically, the appellant argued that the Permobil F3 with components is the least expensive appropriate medical device in the long run as her previous Permobil power wheelchair lasted 11 years, they are medically needed and medically essential to achieve and maintain basic mobility.

The Ministry's Position

The ministry argued that insufficient information has been provided to confirm that the request for the Permobil F3 with manual recline, enhanced steering, power seat height/elevate, and custom option leg rest assembly is the least expensive appropriate medical equipment, medically required to achieve and maintain basic mobility. Therefore, the request does not meet the requirements set out in sections 3 and 3.2.

The Panel's Decision

Schedule C Section 3(b)(iii) requires that the requested medical equipment or device is the least expensive appropriate medical equipment or device. The evidence demonstrates that the information provided at reconsideration and at appeal did not provide any comparative pricing. The appellant argued that the original occupational therapist did not emphasize the need for trial of other products. However, the panel notes that in the request for reconsideration, the appellant writes "I will undertake further trials, despite the fact that this course would prolong and exacerbate my distress". In the letter dated April 19, 2023, the appellant writes "I was never expressly asked to do so [trial other products] and as such never refused to do so—certainly no communication to this effect took place around the time that the adjudicator requested this information from the [occupation therapist] in January [2023]". The panel acknowledges that: (1) the appellant is in pain dealing with a wheelchair prescribed & provided in childhood; and (2) the appellant did submit that as someone who has been in a wheelchair since childhood, she is familiar with various offerings in the industry.

The panel finds that at the time of reconsideration and at the time of the appeal, the appellant was aware of the need to demonstrate that the Permobil F3 power wheelchair and components was the least expensive appropriate medical equipment or device. At appeal, the appellant submitted a second assessment from a different occupational therapist but did not provide any

information to demonstrate that the Permobil F3 power wheelchair and components was the least expensive appropriate medical equipment or device. The panel finds that the ministry was reasonable in its determination that the appellant failed to demonstrate that the Permobil F3 and components is the least expensive appropriate medical equipment or device.

Schedule C Section 3(2) requires that the requested medical equipment or device is medically necessary. The ministry found that the evidence did not confirm that the Permobil F3 power wheelchair was medically needed. The medical equipment request and justification form indicated that a power wheelchair is required but did not indicate that the Permobil F3 was specifically required. The assessment from the original and second occupational therapists did not indicate that only the Permobil F3 will fulfill the medical requirements of the appellant. The panel finds that the ministry was reasonable in its determination that the occupational therapists failed to confirm that the Permobil F3 is the only power wheelchair that is medically necessary.

The ministry found that the assessment from the original occupational therapist did not confirm that the components requested are medically needed. However, the panel finds that the information submitted by the second occupational therapist and the appellant confirms that the requested components (namely: the manual recline, enhanced steering, multi-seat function, custom option leg rest assembly, tilt function and Power seat elevate) are medically needed. For example, the second occupational therapist established that the elevation function is essential to safely conduct transfer procedures in a manner that complies with WorkSafe BC guidelines and protects the wellbeing of the appellant and her caregiver. The panel finds that the ability to transfer from a bed to a wheelchair and back safely is a medical need. Furthermore, the elevation function is necessary otherwise the appellant would be “completely reliant on assistance for all self-care tasks, self-feeding, accessing items and electronics around [the] home, as well as being able to engage in leisure activities”. Similarly, the second occupational therapist confirmed that:

- The tilt function is necessary to “to intermittently offload pressure from the coccyx in order to subvert the potential development of pressure sores”.
- Enhanced Steering is necessary to “to operate the tilt, elevation, leg and footplate functions on the chair through the joystick. Without this feature [the appellant] would be unable to operate any seating functions”.
- Recline Function is necessary to “to adjust the backrest in order to get into a more upright position”, and “to be able to then remove the support of the backrest which facilitates free sitting so that she can practice engaging muscles that are then as a result less likely to deteriorate”.
- Leg-rest and Foot-pedal Adjustment Function is necessary to “to reposition herself independently and achieve an ergonomic position to maintain skin integrity, prevent pressure sores and decrease back pain”, and “the power footrests are also necessary in conjunction with the power leg rest to achieve optimal positioning”.

Given the entirety of the evidence at appeal, the panel finds that the ministry was not reasonable in its determination that the occupational therapists failed to confirm that the power wheelchair components requested are medically necessary.

Schedule C Section 3.2(2) requires that the requested medical equipment or device is medically essential to achieve or maintain basic mobility. The ministry found that the evidence did not establish that the Permobil F3 power wheelchair was medically essential to achieve or maintain basic mobility. The medical equipment request and justification form indicated that a power wheelchair is required but did not indicate that the Permobil F3 was specifically required. The assessment from the original and second occupational therapists did not indicate that only the Permobil F3 will achieve or maintain basic mobility for the appellant. The panel finds that the ministry was reasonable in its determination that the appellant failed to demonstrate that the Permobil F3 is the only power wheelchair that is medically essential to achieve or maintain basic mobility.

The ministry found that the assessment from the original occupational therapist did not confirm that the components requested are medically essential to achieve or maintain basic mobility. The panel finds that the information submitted by the second occupational therapist and the appellant demonstrates that the requested components (namely: the manual recline, enhanced steering, multi-seat function, custom option leg rest assembly, tilt function and Power seat elevate) are medically essential to maintain mobility for the appellant. For example, the second occupational therapist established that the elevation function is essential to safely conduct transfer procedures in a manner that complies with WorkSafe BC guidelines and protects the wellbeing of the appellant and her caregiver. The panel finds that the ability to transfer from a bed to a wheelchair and back falls within the ministry's definition of mobility. Furthermore, the second occupational therapist established that the enhanced steering function is necessary for the appellant to safely operate a wheelchair as she suffers from nerve damage. Similarly, the panel finds that second occupational therapist established that the rest of the mentioned components are necessary to maintain basic health, support the body and allow positioning (as indicated previously in this decision) which ultimately *maintains* basic mobility. The panel finds that the ministry was not reasonable in its determination that the appellant failed to demonstrate that the power wheelchair components are not medically essential to achieve or maintain basic mobility.

Conclusion

The panel finds that the new evidence submitted on appeal establishes that the ministry was not reasonable in determining that the requested components were not medically essential to maintain mobility. In other words, the new evidence establishes that manual recline, enhanced steering, multi-seat function, custom option leg rest assembly, tilt function and power seat elevate are medically essential to maintain mobility.

Further, the new evidence submitted on appeal establishes that the requested components (manual recline, enhanced steering, multi-seat function, custom option leg rest assembly, tilt function and power seat elevate) are medically necessary.

However, the panel has found that the ministry reasonably concluded that the appellant had not demonstrated that the specific power wheelchair requested, the Permobil F3, and the components requested are the least expensive appropriate medical device.

The panel finds that the ministry reasonably concluded that the evidence establishes that all of the required criteria set out in section 3 of Schedule C of the Regulation have not been met. The panel therefore finds that the ministry's decision to deny the appellant's request for funding for a Permobil F3 power wheelchair and components was a reasonable application of the legislation and was supported by the evidence. Thus, the panel confirms the ministry's reconsideration decision, and the appellant is not successful at appeal.

Appendix A

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 2023-0112

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

Neena Keram

Signature of Chair

Date: 2023/05/17

Print Name

Shelly McLaughlin

Signature of Member

Date: 2023/05/17

Print Name

Carmen Pickering

Signature of Member

Date: 2023/05/17