

Part C - Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) decision dated August 10, 2023, denying the right to a reconsideration.

Specifically, the Ministry determined that because a decision of the Tribunal has already been exercised regarding the Appellant's request for the same Permobil F3 power wheelchair with the same components, and no change in circumstances has occurred, they cannot offer a reconsideration of this matter.

Part D - Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (Act) - Sections 16 and 17

Part E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

Evidence Before the Ministry at Reconsideration:

The information the Ministry had at the time of the decision included:

- Medical Equipment and Justification form completed by the Appellant's current Occupational Therapist (OT) dated June 7, 2023. This form contained a detailed explanation of the Appellant's current situation and their justifications for recommending the Permobil F3 chair.
- Cost estimate for an F3 MPO Power wheelchair noted as \$32,863.68.
- Ministry Health Assistance Branch letter dated June 22, 2023, denying the Appellant's request for the Permobil F3 chair, and offering the right to reconsideration of their decision.
- Request for Reconsideration (RFR) form dated June 23, 2023, with July 24, 2023, being the day the form must be submitted by. Section 3 of the RFR included five pages of reasons from the Appellant, explaining why they are requesting a review of the Health Assistance Branch adjudicator's denial decision.
- A second RFR form, also dated June 23, 2023, that includes the same background and decision, along with the addition of an addendum. The addendum indicates the Appellant has no right to a reconsideration because a Tribunal decision was already made regarding the request for a Permobil F3 power wheelchair, which upheld the Ministry's decision to deny. The current request is for the same wheelchair and components and because there has been no change in circumstances there is no right to a reconsideration.
- The Appellant also submitted, as part of their RFR, a copy of an Employment and Assistance Appeal Tribunal Decision dated May 17, 2023 regarding their request for a Permobil F3 power wheelchair.

Also included in the Appeal Record were:

- Reconsideration Decision dated March 27, 2023, denying the Appellant's request for a Permobil F3 power wheelchair.
- Request for Reconsideration of denial of the power wheelchair dated February 10, 2023.

- Medical Equipment and Justification form, completed by the Appellant's original OT, dated December 8, 2022.

Additional Evidence:

On the Notice of Appeal form, the appellant wrote:

- I disagree with the Ministry's decision to decline to perform a reconsideration with respect to section 17 of the Act.
- My circumstances have changed since the initial December 8 request: a competent OT has been retained to report on my situation and they have submitted additional information justifying their recommendation.
- Section 3 of the July 24th reconsideration package outlines key aspects of their disagreement.

The Appellant made an additional submission on September 15, 2023. They wrote (summarized):

- They had a new OT assessment form dated June 6, 2023, that they wished to submit to the Appeal Tribunal Chair, however, because the Tribunal Decision had already been made on May 17, 2023, this new assessment could not be considered as part of that Decision.
- They were informed the new assessment should be submitted to the Ministry for consideration.
- The June OT assessment contained "new" information outlining the reasoning behind the recommendation of the specific device being requested.
- The Ministry's adjudicator did not grant credence to the OT's assessment that the larger size of alternate devices on the market, which similarly performed the necessary seat functions, would preclude them from effectively utilizing the device in their living environment.
- The Ministry also denied the necessity of the upgraded components that the Tribunal Decision previously determined the Ministry had been unreasonable to deny.
- Long after the Ministry initially issued the Reconsideration Package, a mere few days prior to the submission date of July 24, they received a voicemail from the Health Assistance Branch supervisor letting them know that they could expect to receive another document in the mail, further explaining why the request was denied. The appellant called and requested this document be uploaded to My Self Serve so they could be made privy to its contents prior to submitting the Reconsideration Package. They were hung up on, and the new document was never uploaded. They did not learn of the document's contents until after it was received through the mail, after they had already submitted the completed Reconsideration Package on July 24.

- The additional document turned out to be another Reconsideration package, nearly identical to the first, with the addition of an Addendum, which asserted they had no right to a Reconsideration as there had been no change to their circumstances.
- They disagree that their circumstances have not changed; since the initial service request of December 8, 2022, they have discovered that the OT originally assigned to them committed to the record a number of inaccuracies, which the Appellant feels has amounted to prejudicial language.
- They have secured the services of a far more competent, private OT, who has submitted a more robust justification for their medical recommendations.
- They disagree with the Ministry's adjudicator's refusal to consider the new information presented to them by a relevant medical professional, who has clearly stated that the requested device is the only device capable of meeting their medically essential need for basic mobility.
- The OT provided a thorough explanation as to her reasoning, she performed an in-person assessment in the applicable environment and she determined that comparable devices are too large in footprint to be operated in the narrow confines of the Appellant's residence.
- Although the Tribunal decision did previously uphold the Ministry's decision to deny funding for the requested Permobil F3 chair, it also determined the Ministry had been unreasonable to deny funding for the upgraded components that had been requested. The Ministry, in their June 22 decision, denied that the components are a medical necessity, entirely ignoring the Tribunal's May determination that it was unreasonable to deny them. They are requesting clarification as to how Section 17(c) of the Act could have been satiated if the Ministry never implemented the Tribunal's determination that these upgraded components were medically required.

The Ministry's written submission on this matter is the reconsideration summary provided in the Record of Ministry Decision.

Admissibility of Additional Information

The Ministry did not object to, nor provide a rebuttal to the Appellant's written submission. The Panel finds that this additional information is reasonably required for the full and fair disclosure of all matters in the appeal. Therefore, the Panel finds that the additional evidence is admissible under Employment and Assistance Act s. 22(4).

Part F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's decision, denying the right to a reconsideration because a Tribunal decision has been already made regarding the Appellant's request for the same Permobil F3 power wheelchair with the same components, and no change in circumstances has occurred, is reasonably supported by the evidence or is a reasonable application of the legislation.

Appellant's Position

The Appellant's position is that they disagree with the Ministry's refusal to conduct a Reconsideration because they believe their circumstances have changed. They argue that the second OT assessment provided more robust justification for their medical recommendations, as compared to the first OT assessment, which contained a number of inaccuracies. The Appellant disagrees with the Ministry's adjudicator's refusal to take into account the new information presented to them by the relevant medical professional who has clearly stated that the requested device is the *only* device capable of meeting their medically essential need for basic mobility.

Ministry's Position

The Ministry's position is that a decision of the Tribunal has already been made regarding the Appellant's request. Therefore, in accordance with section 17 of the Act, if a person reapplies for a supplement after their eligibility has already been determined under legislation, and right of appeal has been exercised, no right to reconsideration or appeal exists unless there has been change in circumstances relevant to the determination. The Appellant's request is for the same wheelchair with the same components from the same company for the same reasons, and no change in circumstances has occurred, therefore the Ministry cannot offer a reconsideration of this matter.

Panel Decision

The Ministry has determined the Appellant is not entitled to the right to a reconsideration because of section 17 of the Act. This legislation states that if a person is applying for a supplement after the eligibility has already been determined under the Act, and a right of appeal has been exercised, and a decision of the Tribunal has been implemented, no right of reconsideration or appeal exists unless there has been a change in circumstances relevant to the determination referred to.

In the Appellant's circumstance, a previous Tribunal decision determined that the Ministry was reasonable to deny the Appellant's request for a Permobil F3 power wheelchair. After that Tribunal decision, the Appellant submitted to the Ministry a second OT assessment and a Medical Equipment Request form. The Assessment provided more detail and analysis specific to the Appellant's situation than what had been included in the original OT assessment, which the Tribunal's decision had been based on. The Ministry's Health Assistance Branch denied the second request and offered the Appellant the right to appeal the decision.

The Appeal Record contains two Requests for Reconsideration, both dated with the same due date of July 24. One confirms that the denial was based on the second OT assessment, and the other also contains the same denial reasons, but has an addendum that informs the Appellant that they have no right to a reconsideration because the request was for the same chair, same components and there had been no change in the circumstances relevant to the determination of eligibility.

The Panel notes that the reasons cited by the Appellant in Section 3, prior to a Reconsideration Decision being made, addressed only the denial of the wheelchair and did not reference the "no right to reconsideration". In the Appellant's written submission, they write that they did not receive the second Request for Reconsideration form until after the due date of July 24, and they then provide their argument about why they should have had a right to a reconsideration. The Panel finds the Ministry did not provide administrative fairness to the Appellant when the adjudicator made an eligibility determination, offered the right to Appeal, provided a Reconsideration form, and then weeks later mailed the Appellant the same form, using the same dates, with an addendum informing the Appellant of no right to appeal. This caused confusion and did not provide the Appellant with the appropriate time to submit her argument to the Reconsideration Adjudicator.

The Ministry argues that the second OT assessment provided only additional "argument" as to why they are requesting the same wheelchair, that it is not a change in circumstance. The Panel reviewed the original OT Assessment and compared it to the second OT Assessment and found that there was a change in the information provided because it gave additional specifics that were not included in the original OT Assessment. The panel finds that, although the request is for the same chair, the second OT Assessment provides information that should be considered because the new assessment does represent a change in circumstances relevant to the determination. In fairness to the Appellant, the Panel finds they should have the right to reconsideration and express their argument regarding the Health Assistance Branch's decision to deny.

Conclusion

The panel finds the Ministry's decision not to allow a reconsideration decision was not reasonably supported by the evidence and rescinds the Ministry's decision. The appellant is successful in their appeal to have their request for the Permobil F3 power wheelchair reconsidered.

RELEVANT LEGISLATION**Reconsideration and appeal rights**

16 (1) Subject to section 17, a person may request the minister to reconsider any of the following decisions made under this Act:

- (a) a decision that results in a refusal to provide disability assistance, hardship assistance or a supplement to or for someone in the person's family unit;
- (b) a decision that results in a discontinuance of disability assistance or a supplement provided to or for someone in the person's family unit;
- (c) a decision that results in a reduction of disability assistance or a supplement provided to or for someone in the person's family unit;
- (d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of
 - (i) the maximum amount of the supplement under the regulations, and
 - (ii) the cost of the least expensive and appropriate manner of providing the supplement;
- (e) a decision respecting the conditions of an employment plan under section 9 [*employment plan*].

No appeal from decision based on same circumstances

17. If a person reapplies for disability assistance, hardship assistance or a supplement after

- (a) the eligibility of the person's family unit for the disability assistance, hardship assistance or supplement has been determined under this Act,
- (b) a right of appeal under section 16 (3) has been exercised in respect of the determination referred to in paragraph (a), and
- (c) the decision of the tribunal in respect of the appeal referred to in paragraph (b) has been implemented no right of reconsideration or appeal exists in respect of the second or a subsequent application unless there has been a change in circumstances relevant to the determination referred to in paragraph (a).

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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
Janet Ward

Signature of Chair

Date (Year/Month/Day)
2023 September 28

Print Name
Kevin Ash

Signature of Member

Date (Year/Month/Day)
2023 September 28

Print Name
Carla Tibbo

Signature of Member

Date (Year/Month/Day)
2023 September 28