

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 October 25, 2023, in which the ministry determined that the appellant is not eligible for reimbursement for his power wheelchair nor a blanket approval for all future repairs.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities (EAPWD) Regulation (the Regulation):

- Section 62
- Schedule C, sections 3(1), 3.2 and 3.3

See Appendix for full text of the legislation.

Part E – Summary of Facts

The hearing took place via telephone on November 16, 2023.

The evidence provided to the ministry at reconsideration is set out below.

- The appellant is designated as a person with disabilities (PWD) and receives disability assistance.
- On September 2, 2022, the ministry received the appellant's request for a power wheelchair including the following:
 - September 2, 2022, assessment completed by the health authority occupational therapist (HA OT). The HA OT noted the appellant needs a Big Bounder power wheelchair with 1000-pound weight capacity to replace his Ranger wheelchair. This wheelchair is manufactured in the US. The Ranger wheelchair's weight limit is inadequate. It requires repairs and parts that are no longer available as the chair has been discontinued. The HA OT included justification for the following components for a new wheelchair:
 - Power recline system to facilitate air entry. This allows for weight shifting and relief of back and leg pain.
 - Power tilt system for weight distribution as the appellant is unable to lift his body weight or fully weight shift. This will prevent skin breakdown and encourage the appellant to stay out of bed.
 - Power seating extra heavy duty upgrade required for users over 450 pounds.
 - Power seating system booster - part of package to make it more robust.
 - Offset back post and rear wheel offset to accommodate change of centre of gravity.
 - Power elevating articulating center mount foot bar to relieve appellant's continuous leg and back pain and reduce edema.
 - F/L adjustable articulating arms. These armrests were recommended by the manufacturer because they can make the chair narrower.
 - Custom key lock switch box to lock up chair when appellant is away from it.
 - Midline hand control mount and extension slide. This is needed due to issues reaching the controls with the regular swing away joystick.
 - Electronics required for the power functions; Bluetooth is standard.
 - Omni special control interface. The appellant has been using a secondary screen as he is unable to clearly read the display on the regular joystick. This allows the appellant to see the controls. The appellant has tried removing the Omni but could not safely operate the chair without this display.

- Headrest: gel addition for comfort when chair is lifted.
 - Blake Bold 25 X 20 cushion. This has worked well for the appellant.
 - August 12, 2022, Canadian supplier's estimate for the chair, accessories, components, and seating (\$72,201.81).
- On September 28, 2022, the ministry contacted the manufacturer to discuss the requested electronics. The manufacturer confirmed that standard controls do not have the ability to operate any power functions. The Expandable model is required for power functions. The Multifunction model is required for two power features, including the joystick.
- On September 28, 2022, the ministry advised the HA OT that the quote must show the USA manufacturer's suggested retail price. The battery should also be included in the ministry quote for power chairs and not a separate charge.
- Three people were involved in reaching a decision regarding the original preauthorization of the power wheelchair. The HA OT who worked directly with the appellant, the ministry contracted occupational therapist (ministry OT), and the ministry adjudicator for power wheelchairs (adjudicator).
- The ministry sought information about the medical necessity of the requested upgrades and components including information from the appellant, the manufacturer, and the occupational therapist. By November 22, 2022, the following information had been gathered:
 - The appellant's information:
 - The appellant has no other treatment for his edema as he is unable to wear compression stockings.
 - The joystick mount requested is the same as the one on the appellant's current chair. It is custom mount because he cannot reach the regular one due to his size.
 - The appellant requires the large second display as he cannot see the joystick and to see his speed and the battery life. The appellant notes he has had problems with his eyes since childhood.
 - The appellant understands the ministry cannot fund the custom color as this is not considered medically necessary for basic mobility or positioning.
 - The appellant has a custom foot plate pad on his current chair because he is unable to wear shoes or socks and is on a blood thinner.
 - The manufacturer's information:
 - The 2 HD (heavy duty) upgrades are needed anytime the power feature is requested.

- The offset is required despite the weight capacity to adjust his center of gravity in the chair. Otherwise, there is too much weight over the front of the chair.
- The curved powder coat seat metal pan is the actual backrest. The cushion is not separate.
- The appellant does not use transit. The transit tie down is to secure the chair only.
- The stealth link hardware ball flip is part of the headrest mount and required for comfort.
- HA OT's information:
 - The batteries are coming from the manufacturer and the ministry should discuss this with the supplier.
 - A booster for the motor is a requirement from the manufacturer for the 1000-pound user weight.
 - The appellant requires the power elevating leg rest as he needs his legs raised quite high at all times for positioning of body weight.
 - The appellant does not yet have approval for Choices in Supports for Independent Living (CSIL). Even if approved, he will still require this power feature.
 - This request must be expedited as the power wheelchair is central to the appellant getting out of hospital and there is no other way to transport him.
- On December 5, 2022, the ministry received confirmation from a second Canadian supplier that they do not have a wheelchair to accommodate up to 1000 pounds.
- On December 12, 2022, the ministry received more information from the HA OT. She noted his functioning changed since the request was submitted. The appellant is unable to turn himself in bed. The power wheelchair is the only way the appellant can get out of his home and to the hospital. The appellant had been remaining in bed 24/7.
- On December 15, 2022, the ministry continued to consider the appellant's request for joystick mount and the requested displays, transit tie down, and foam covering on the footplate. The adjudicator discussed these upgrades with the HA OT, supplier, and the manufacturer.
- On January 11, 2023, the ministry was informed the appellant was in hospital. His long-term placement needed to be established before medical equipment needs could be confirmed.

- On January 17, 2023, the ministry requested clarification on the R-net wiring harness for the R-net expandable module and requested a quote for the Blake Bold cushion from Canada. The ministry requested a revised quote without the items deemed not medically essential for basic mobility so that a decision could be made.
- On February 1, 2023, the ministry was informed the appellant had paid for the wheelchair in full (January 27, 2023) and it was on order. The ministry and the HA OT attempted to contact the appellant three times to gather information about how he paid for the wheelchair.
- On February 16, 2023, the ministry closed the appellant's request as he had made no further contact despite multiple attempts to contact him.
- On March 13, 2023, the supplier submitted an invoice to the appellant for items to be used with the chair including articulating arm rests, sheet metal extension and cushion, custom midline extension and various cables for \$3,7???.?? (last four digits illegible).
- On April 24, 2023, the appellant wrote to the ministry's Health Assistance Branch giving his mother authority to speak on his behalf regarding the request for reimbursement for the power wheelchair.
- On April 24, 2023, the appellant requested that the ministry reimburse his power wheelchair, reporting his mother paid for this chair with a bank loan as his mental health was deteriorating from being bedbound. The appellant also requested a blanket approval for future repairs for the chair. The appellant included a letter from his mother and himself. Other documents were included:
 - Copy of the HA OT's September 2, 2022, assessment.
 - New quote from the supplier (\$78,657.19) dated November 25, 2022.
 - February 24, 2023, invoice from the US manufacturer for the power wheelchair and all components for \$54,098.70 USD, on which it is handwritten "Paid Canadian \$73,080.51."
 - February 24, 2023, invoice from the US manufacturer for \$457 USD for additional accessories, on which is handwritten "Paid Canadian \$694.18."
 - March 13, 2023, invoice from the supplier for items to be used with the chair for \$3,7???.?? (last four digits illegible).
 - April 13, 2023, email from his mother to HA Manager for Clinical Operations requesting she contact the ministry on his behalf to request reimbursement for the power wheelchair. In this email, the mother indicated that the HA OT had spoken to the appellant on January 17, 2023. She wrote that the HA OT had told the appellant that the ministry was getting close to finalizing the decision about the chair but wanted clarification on further items.

- April 21, 2023, email from the appellant to HA Manager for Clinical Operations.
- April 24, 2023, email from HA Leader for Risk Management Services to his mother.
- May 3, 2023, the ministry denied the appellant's request. It determined the appellant was not eligible for reimbursement for his power wheelchair and upgraded components and accessories, nor was the appellant eligible for a blanket approval for all future repairs to this power wheelchair. Key concerns from the denial letter are set out below.
 - The initial quote received on August 12, 2022, was not in the acceptable format. The prices needed to be in USD with the manufacturer's suggested retail price, and additional 0.15% for additional costs.
 - The original quote had \$1,670.19 in items not determined to be medically essential and \$4,109.79 in items which were denied as not being medically essential.
 - The appellant had included a November 25, 2022, quote from the supplier. The ministry did not have this on file and some of the items on this quote were added after the original request and did not have medical justification.
 - In their request for reimbursement, the appellant included invoices from the US manufacturer. The ministry took exception to this as it was not the ministry's contracted supplier and therefore could not provide the best price.
- The appellant was advised his request for reimbursement of \$78,657.19 for a Big Bounder power wheelchair was denied because:
 - the appellant did not receive preauthorization of the Minister for the medical equipment or device requested;
 - it had not been determined that all the requested items are medically necessary for basic mobility; and,
 - it had not been determined that the requested items are the least expensive appropriate item.
- The ministry added that the appellant had requested the Big Bounder wheelchair with many upgraded components designed to hold his weight. This chair is manufactured in the USA and was not familiar to ministry staff. The request required much consulting time with the manufacturer, the supplier, the appellant's HA OT, the ministry OT, and the adjudicator. There were multiple upcharges for power features that the ministry was required to determine were medically essential for basic mobility as well as which components were required to support these power features.
- On July 10, 2023, the appellant's mother contacted the ministry stating that the appellant only received the denial package on June 22, despite this being mailed on May 3. She requested the reconsideration brochure be mailed as this was not included in the package. This was mailed on the same day.

- On July 26, 2023, the ministry closed the reconsideration request as the appellant had not returned the signed reconsideration within the legislated timelines.
- On September 25, 2023, the appellant's mother wrote to the ministry's medical equipment supervisor discussing reimbursement for the power wheelchair in the amount of \$78,657.19. She notes that after receiving the HA OT records "I see that approval was finalized on everything except \$6,139.34" (from January 17, 2023, HA OT Case Note) so finalization was very close. The mother goes on to say she requests an exception be made under emergency circumstances for the funding of \$78,657.19 less \$6,139.34 that is \$72,517.85. She says she will cover the difference in amount for the purchase of that power chair.
- The appellant's mother goes on to report that she was waiting on documentation to show how "tardy" the HA OT was. The lack of availability of the professionals the appellant was working with caused further delays. The appellant's mother notes she funded all previous scooters and power wheelchairs. However, she is now on a fixed pension income and can no longer afford to purchase these. She discusses the history of the appellant's requests for wheelchairs. The appellant's mother notes that she was told in January by the HA OT that the ministry was "now so close" and "only a few more questions" and all would be approved. However, the appellant's mother felt he could not wait longer and funded the wheelchair through a bank loan.
- On September 29, 2023, the appellant submitted a signed reconsideration request.
- The following documents were included in the package:
 - Page one of a two-page HA OT Casenote Report of January 17, 2023, confirming that the ministry requested a quote without the items not deemed medically necessary (lavender powder coat, custom key lock switch box, R-Net Omni 12 Specialty Controls Interface, 4 point wheelchair transport tiedowns, batteries (as the supplier needs to provide), LED safety light package, 2nd LED headlamp, and LED amber safety flashers). Information about the Expandable R-net 120 A power module was required, as was information about the wiring harness, and Blake bold cushion. Also, the quote must be in US dollars, with the exchange rate used to get the Canadian cost. The HA OT stated the ministry "WILL fund" the power features including tilt, recline, power elevating articulating footboard, midline control mount, and extension for the joystick. The last two lines of page one of the report are "Client has been emailing regularly to f/u re chair. Writer has updated clt as soon as there is new info, and advised clt that, as he is..."
 - July 6, 2023, email from the appellant's mother to the appellant regarding his denial.
 - June and July 5 emails between the appellant's mother and a second HA OT.

In the reconsideration decision request, the ministry indicated that the ministry was satisfied that the requested power wheelchair was medically essential for basic mobility and appropriate, but they had not confirmed that some of the upgraded components were medically essential.

In the reconsideration decision request, the ministry said it received notification that the appellant had fully paid for the wheelchair on January 27, 2023.

In the decision, the ministry indicated that when the appellant purchased the wheelchair, they were waiting for a final quote on the items deemed medically essential. "At the time you purchased your power wheelchair, the ministry was waiting for a final quote of the components deemed medically essential. The final quote was requested on January 17, 2023.

On October 25, 2023, the ministry completed its decision. It found that the appellant was not eligible for reimbursement for the power wheelchair, nor a blanket approval for future repairs.

Appellant's Submissions

New Evidence

As part of his appeal, the appellant submitted new documents. These included:

- A letter "To Whom it May Concern" dated October 31, 2023, from a third HA OT discussing the appellant's status.
- A line of credit statement dated January 31, 2023, confirming the appellant's mother borrowed \$80,000 on January 27, 2023.
- The mother's bank statement dated January 31, 2023, showing that \$73,080.51 (Cdn) was wired to customer on January 27, 2023, and a handwritten note indicating this was for the US manufacturer of the power wheelchair.
- A wire payment agreement dated January 27, 2023, in the amount of \$54,108.70 (USD), with wire recipient being the US manufacturer.

The appellant's mother appeared as a witness on behalf of the appellant. The mother said she is 80 years old. She is on a basic income of \$1,350/month which is fixed old-age pension. At the end of January 2023, she took a loan of \$80,000 (to pay for the appellant's wheelchair). She notes the financial hardship stemming from this loan. She has cut everything to the bare bones, her son has had to cut back on everything as well. It has put her financial planning "out of whack." She commented that while waiting for the chair, the appellant was grumpy, depressed, angry and bed-bound. Since getting it, he has lost the weight gained while waiting for the chair, and staff note that now the appellant has a more pleasant attitude. The mother commented on

the lengthy process followed by the health authority and ministry staff in approving the chair. She noted that staff reviewing the application were away from work multiple days a week and had difficulty communicating with each other. She expressed frustration with the adjudication process, noting the multiple questions, need for additional quotes and need for a Canadian product when the only company that makes an appropriate chair with 1000-pound weight capacity is the manufacturer in the US.

When asked, the appellant's mother provided the following additional information.

- She secured her loan by borrowing the money against her property.
- She noted a couple of times that they had been advised that the process is very nearly complete with almost everything approved.
- In response to being asked if anyone had told her she would be reimbursed for paying for the chair, she did not confirm that the ministry or the health authority said they would reimburse her.
- Instead, she noted "you expect something you bought will be paid for". She noted that as soon as they had bought the chair, the health authority closed the file.

The appellant provided the following evidence during the hearing. He stated he is seeking reimbursement for the portion of the chair costs that the ministry had approved. He is not seeking reimbursement for various upgrades and add-ons that the ministry had reviewed and determined were not medically necessary. The sum for these components is \$6,139.34. Nonetheless, he queries some of the items which the ministry did not approve for payment including the upgraded battery and tie-downs for the chair. Batteries are needed to ensure sufficient power, and the chair tie-downs are a safety issue. Rightfully, he should also be reimbursed for these items.

The appellant noted that his mother had to secure the \$80,000 loan against her home. The stress of this has been hard on her mental well-being. The appellant said that between June and December 2022, he put on 242 pounds. He says this would not have happened if he had a chair. He got depressed as he had to lie in bed and there was nothing to do but eat. He notes that he was completely bed-bound between September 22, 2022, and April 23, 2023. He says he was effectively bed-bound beginning in June 2022 as he became afraid to use the chair other than when he absolutely had to as his weight had exceeded its capacity, and it was over 10 years old.

Between December 22, 2022, and April 22, 2023, he was depressed, very down and very angry. He would just use a sheet as he didn't get dressed. He reports that since he got his chair, he's lost 170 pounds and he's doing very well. He says his attitude is different and he is a totally different person. He is now more pleasant to deal with while before he had been very argumentative and depressed. The appellant noted that the person he was working with often said he was very close to receiving approval. He also noted, however, that the person from the

ministry only worked one day a week. He expressed frustration at this as anyone only working one day a week would, of course, take a long time to complete anything. He noted that the HA OT working on his file at the health authority took that same day off, so they could never communicate with each other directly. He says his biggest point is the ministry person working only one day a week contributed significantly to the two-month delay.

The appellant remarked on the meeting with the adjudicator that took place in December, and wanted to know what happened between November when the quote was received and January when he was advised that the decision was very close. He repeated that a two-month delay is unacceptable, especially when he was bed-bound with no basic mobility. He emphasized that by January 23, 2023, he was "climbing the walls" and mentally breaking down. The appellant said that if he had to endure even one more week's delay it would have severely affected his mental state for the rest of his life.

The appellant drew the panel's attention to a letter provided by a third HA OT (See reference to October 31, 2023, letter from third HA OT above). He asked that the letter be read into the record. The letter confirms that the appellant is non-ambulatory and requires a power wheelchair for basic mobility. The third HA OT notes the adverse effects on the appellant during the period in which he was without the new wheelchair. She states he was bed-bound, during which time he gained considerable weight. Since getting the new chair, he has lost weight, and his mental health has improved notably.

The appellant told the panel that it was an emergency in January that he get the new wheelchair. He said that it was a dire need and therefore it was a dire emergency.

The panel drew the appellant's attention to the HA OT Casenote Report of January 17, 2023, which states "The ministry WILL fund all the power features including tilt, recline, power elevating articulating footboard, the midline control mount & extension for the joystick". He was asked if he took this information to mean the ministry would refund money should he choose to purchase the chair. The appellant says all he was told was that he could not speak to the ministry directly. The appellant noted they (he and his mother) were thinking that it might be another two weeks before they would get the ministry's final approval. However, the appellant did not feel he could wait two more weeks. When asked whether it was made clear to the ministry that he was suffering, the appellant noted that the file was updated, and the ministry was aware in November.

When asked about the missing second page of the Casenote Report, the appellant said he did not know where this second page was or what information it contained. The panel notes the last two lines of the report are "Client has been emailing regularly to f/u re chair. Writer has updated clt as soon as there is new info, and advised clt that, as he is..."

When asked if the ministry had asked him to supply evidence of his financial situation, the appellant replied that they are aware of his financial situation as his only resource is the funding he receives on disability assistance. He commented that you can't afford clothes or anything in a month.

The appellant noted that it was an emergency that he got the chair. The ministry knew he was bed-bound. He was not able to move. He noted he's not 90 years old. He wants to get outside and enjoy life.

When asked, the appellant noted that the delay between when he or his mother paid for the chair and when they sought reimbursement was due to his mother being at the hospital with the appellant. She was preoccupied with comforting the appellant who continued to be in the hospital and bed-bound.

Ministry submission.

The ministry provided no new documentation as part of the appeal process. During the hearing the ministry representative reviewed the decision. The representative noted that the client was denied funding under Regulation, Schedule C Sections 3(1)b, 3.2 and 3.3. These provisions require preauthorization, that no resources are available to fund the equipment, and that the items are medically essential..

The representative reviewed key dates pertaining to the case.

- September 2, 2022, the ministry received a request for a power wheelchair.
- September 28, 2022, the ministry began looking for information on the most cost-effective alternatives to what is identified in the request for funding.
- December 5, 2022, manufacturer confirmed that this was the only product suitable to meet the medical need.
- January 11, 2023, the ministry was advised the appellant was in hospital.
- February 1, 2023, the ministry was advised that the chair was paid in full. The HA OT made three attempts to contact the appellant to discuss how the chair was paid for.
- April 24, 2023, the appellant requested payment for the funds used to pay for the chair. May 3, 2023, the ministry provided its decision denying the request.

When asked, the representative said between September 28 and December 5, 2022, the ministry was taking steps to determine the need for the equipment. That is, whether it was appropriate, medically necessary and the cheapest available alternative.

The panel drew the representative's attention to the documentation stating that a final quote was still needed. Some pieces weren't going to be funded, the final quote was to remove these pieces. The eligibility decision could not be made until that point. When asked regarding ministry practices, the representative said the ministry may agree to purchase what is medically essential and the person on assistance may agree to pay for things that are not essential.

The representative was asked how the ministry provides preauthorization for equipment purchase. For example, does the ministry work through the health authority or is it provided directly by the ministry? The representative said that purchase authorization is provided to the supplier. When asked, the representative stated that the client would be advised before the pre-purchase authorization. The health authority is consulted, and the authorization would also be sent to the HA OT. The representative said in determining the available resources of the client there is no expectation for family to fund the equipment for the client. The ministry must meet medically essential needs, however, family members may pay for any upgrades the ministry does not authorize.

When asked, the representative said that an additional reason the request for funding for the equipment was denied was it did not meet the criteria of a life threatening emergency. The ministry makes provision in the Ministry Policy and Procedure Manual for accepting payment for medical equipment purchased without prior authorization in cases of life-threatening emergency. Although the appellant considered being bed-bound and his mental health decline as an emergency, the ministry determined there was insufficient evidence to conclude this. (Note that the representative cited Regulation Section 69 which authorizes the minister to provide funding for a health supplement for a person who is facing a direct and imminent life-threatening need but is otherwise not eligible for the health supplement under the Regulation. The ministry said that the appellant's medical devices were available to him under Section C and therefore Section 69 does not apply to the appellant. The panel notes that for those to whom section 69 applies, which includes persons not receiving disability assistance, requirements for a wheelchair set out in Schedule C, including the need for pre-authorization must still be met.)

Admissibility of Additional Evidence:

There was no objection to the admissibility of the additional written and oral evidence provided.

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 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 decision was reasonable in determining that the appellant was not eligible to receive reimbursement for his power wheelchair nor a blanket approval for all future repairs.

Appellant's Position

The appellant states that the process that was required to secure approval for the new power wheelchair was unreasonably long and burdensome to him. He notes it would not be fair to anyone. He argues that his situation should have been at the forefront of ministry considerations, that he was bed-bound without this chair, and both his mental and physical health were badly compromised. His situation was unbearable, and these were emergency circumstances. He had been advised by the HA OT that many elements of the power chair were approved, and he believed he was within two weeks of receiving a final approval for all items. He felt he could not stand to wait any longer. He ordered the chair on his own, relying on his mother's borrowed money.

In the appellant's original application for health supplements, dated April 27, 2023, he requested reimbursement of the power wheelchair in the amount of \$78,657.19. In his request for reconsideration this amount was modified to \$72,517.85 to be funded under emergency circumstances. The appellant states that he is seeking reimbursement for the portion of the chair costs that the ministry had approved and some items that they had not yet reviewed such as batteries and tie downs. He is not seeking reimbursement for the various modifications that the ministry had determined were not medically essential.

He argues that his financial situation and his mother's financial situation are such that continuing to owe this large sum of money is creating considerable stress and hardship which should be taken into account.

Regarding the appellant's request for future repairs of the chair, he clarified that he is not asking for a blanket approval for all repairs, rather his request is that this chair be treated as if it were a chair that had been purchased by the ministry. In his understanding, this means the chair would automatically be eligible for repairs as they arise.

Ministry's Position

The ministry held that the appellant did not meet the requirements set out in the Regulation Schedule C, sections 3, 3.2 and 3.3 to be eligible for a power wheelchair and seating equipment. The appellant did not have prior authorization to purchase this wheelchair and accessories and is not eligible for reimbursement.

The representative noted that under section 3, the ministry may provide a health supplement in the form of medical equipment and device if the following criteria are met.

- The family unit has received the preauthorization of the minister for the medical equipment or device;
- There are no resources available to the family unit to pay the cost of or obtain the medical equipment or device; and
- The medical equipment or device is the least expensive appropriate medical equipment or device.
- The family unit provides a prescription from a medical or nurse practitioner for the medical equipment or device and/or an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

Regulation Section 3.2(1) requires that the minister must be satisfied the item is medically essential to achieve or maintain basic mobility for a wheelchair, upgraded component of a wheelchair, and an accessory attached to a wheelchair to be health supplements for the purposes of section 3 of Schedule C. Similarly, section 3.3 provides that a wheelchair seating system, or an accessory to this is only a health supplement if the minister is satisfied that it is medically essential to achieve or maintain a person's positioning in a wheelchair.

The ministry submitted that in this case, the appellant did not meet the legislated criteria for funding for the wheelchair:

- The appellant did not receive preauthorization for the purchase of the power wheelchair.
- The ministry did not confirm that all components of the wheelchair were medically essential to achieve or maintain basic mobility as required under section 3.2.
- The ministry did not confirm that all wheelchair seating items purchased were medically essential to achieve or maintain the appellant's positioning in the wheelchair as required under section 3.3.
- The ministry had not yet confirmed that all components requested were the least expensive appropriate for the needs of the appellant.
- Insufficient information was provided to establish the appellant did not have resources to obtain the requested wheelchair, as the mother had purchased the wheelchair on his behalf. The appellant did not provide evidence he is under obligation to repay his mother for the purchase of the chair.

With regard to the request for “blanket approval” of all future repairs, the ministry held there was no provision in legislation that would enable the ministry to provide blanket approval for all future repairs. Instead, it would consider Regulation Section 3(5) which states that unless damaged by misuse, the minister may provide as a health supplement repairs of medical equipment or a device that was not provided by the minister. The requirements of Sections 3.1 to 3.12, as applicable, would need to be met.

In addition to considering the legislated requirements, the ministry also considered the Ministry Policy and Procedure Manual regarding the appellant’s purchase of the power wheelchair prior to receiving formal ministry approval. The Manual states that “the ministry will not accept payment responsibility, except in cases of a life-threatening emergency, for medical equipment purchased without prior approval.” The ministry noted no information was provided to establish that the appellant was in a “life-threatening emergency” necessitating the immediate provision of this medical equipment.

Panel Reasons:

It is the responsibility of the panel to determine whether the decision being appealed is reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. In this case all panel members agree respecting the resources criterion, the panel’s authority to consider eligibility under the ministry’s “emergency” policy, and the ministry’s ability to provide blanket authorization for future repairs. Following the panel’s reasons respecting these issues, the majority panel reasons are set out followed by the dissenting panel member’s reasons.

Person with disability

Under Regulation Section 62 to be eligible for a health supplement the applicant must be designated as a person with disability. This is not in question.

No resources available to pay for or obtain the medical equipment.

Under Section 3(1)(b)(ii) the applicant for this medical supplement must have no resources to pay for the equipment requested. The ministry held that it did not have evidence that the appellant did not have resources to pay for or obtain the equipment. The ministry argued that there was insufficient evidence about available financial resources because the mother had paid for the wheelchair.

The panel notes the evidence of the representative. Specifically, the ministry is responsible for paying for all authorized medically essential equipment. Neither the ministry nor the legislation indicates that family members must make financial

contributions for health supplements. As the appellant had to borrow money from his mother to pay for the chair, who in turn had to borrow the money using her house as collateral, the panel finds the appellant did not have resources available to pay for the chair. The ministry's finding about available resources is not reasonably supported by the evidence.

No evidence the appellant owes money to his mother for the wheelchair.

The panel finds that copies of the invoice for the chair with the appellant named as recipient, combined with the bank statements of the mother showing she had borrowed the funds and a wire payment agreement with the wheelchair's American vendor are evidence that the appellant owes these funds to his mother.

The panel notes that the ministry considered its policy Manual as possibly authorizing the ministry to accept payment responsibility for medical equipment in cases of "life-threatening emergency". The panel notes that it does not have the authority to consider eligibility under ministry policy that directly contradicts the legislative requirements. The panel's authority is limited to determining the reasonableness of the ministry's application of the evidence to the legislation.

Regarding the appellant's request for future repairs of the chair, the panel notes that this point is moot. Repairs to any wheelchair, whether provided by the ministry or not, would be subject to the requirements of section 3 of Schedule C, including pre-authorization of the repairs.

Majority Panel Reasons

Pre-authorization for the purchase of the power wheelchair

In its reconsideration decision, the ministry held that it had not given pre-authorization for the purchase of the chair as required by Section 3(1)(b)(i). The majority finds that the ministry is reasonable in this determination. As evidence that it had not provided pre-authorization the ministry noted it was still in process of gathering information from the supplier and considering the HA OT reports regarding what was considered medically essential and the least expensive alternative.

Although the HA OT advised the appellant that the ministry would fund the chair, with certain components excepted, the majority finds this cannot be construed as the ministry giving pre-authorization. The HA OT understandably communicated ongoing developments to the appellant, and it was her understanding of the adjudicator's current thinking that it would be approved, pending finalization of some elements. This progress

report only provides second hand evidence of the adjudicator's future intention. It cannot be given the weight of written evidence of the adjudicator. Nor can it be considered evidence that a decision regarding preauthorization had been completed. The panel was provided with no evidence from the ministry's perspective regarding what it had communicated to the HA OT regarding what it intended to approve.

Both the appellant and his mother believed the decision regarding the chair was pending and might be made in the near future, perhaps within two weeks. The majority finds the appellant did not purchase the chair based on a belief that it had been pre-authorized. Rather he believed the process could be the subject of additional delays, that his mental and physical health were suffering and that he could not endure life without an appropriate chair any longer. He felt it was an emergency, so he purchased the chair relying on funds borrowed from his mother.

Pre-authorization by the minister must mean that an individual within the ministry, with delegated authority from the minister to make such a preauthorization, had done so. No such evidence was put forward.

Wheelchair and components are medically essential to achieve or maintain basic mobility and seating items are essential to maintain positioning in the wheelchair.

Sections 3.2 and 3.3 require that the minister is satisfied that wheelchair components and seating items are medically essential. The majority panel notes that "the Minister was satisfied that the 1000-pound capacity power wheelchair was medically essential for basic mobility and appropriate, however some of the requested upgraded components were not confirmed to be medically essential for basic mobility." A determination on at least three components remained outstanding and more information had been requested including a revised quote excluding items not deemed medically essential. As the ministry had not reached a final determination on what was medically essential for basic mobility and essential to maintain positioning in the chair, the majority finds it reasonable that the ministry held this requirement had not been met.

Equipment is the least expensive appropriate medical equipment or device.

Section 3(1)(b)(iii) requires that the medical equipment or device is the least expensive appropriate medical equipment or device. Based on the information available at reconsideration, at the time the appellant purchased the chair, the ministry was in process of finalizing this requirement. The ministry was seeking a revised quote with a number of items removed from the original quote and additional information on three items. The ministry also required the revised quote to be made in USD, with the exchange rate to

get the Canadian cost. The majority panel finds it reasonable that the ministry considered this element of the criteria for funding as not being met.

The legislation requires all elements to be met before funding can be approved. In the case of a split decision, the appeal is decided by the majority of the panel members. While the majority panel is sympathetic to the situation of the appellant, the majority finds that the ministry is reasonable to decide that not all eligibility requirements were met..

Dissenting Panel Member Reasons

This dissenting member agrees with the opinion of the majority where it determined the ministry decisions were not reasonably supported by the evidence. However, the dissenting member disagrees with the majority as set out below. The dissenting member would overturn the ministry decision as both not reasonably supported by evidence nor a reasonable application of the appellant in the circumstances of the appellant. The equipment and devices that the ministry had pre-authorized should be reimbursed when the final quote is received. Those items that were not yet pre-authorized should not be reimbursed.

Pre-authorization for the purchase of the power wheelchair, components, and accessories
Schedule C, Section 3(1)(b)(iii) sets out that the minister may provide a supplement for medical equipment and devices if the family unit has received the pre-authorization of the minister for the medical equipment or device requested. The ministry indicated that while a third party had said the ministry was close to a decision, no decision on pre-authorization had been made, so pre-authorization had not been given.

Ministry pre-authorization of the medical equipment and devices.

The intent of this section of the legislation is to provide needed medical equipment, and the items must be pre-authorized. However, the legislation does not define pre-authorization. A straightforward and broad interpretation of the term would be that the ministry agreed that they would fund an item before it was purchased.

The reconsideration decision and documents in the appeal record indicate that the ministry was going to fund the wheelchair itself and some of the components. The reconsideration decision itself indicates that that the ministry was waiting for a final quote for items they had deemed medically essential when the chair was purchased. Because some medically necessary items were to be funded before the appellant purchased the chair, the minority panel finds it is sufficient to say that those items were, under a large

and liberal sense of the term, pre-authorized. There was an agreement to fund some of the items even if some had not been decided upon.

The minority panel determines that that ministry was unreasonable in saying pre-authorization for some items was not made. The minority notes that Section 3.2 addresses a wheelchair, an upgraded component, and an accessory separately. Section 3.3 addresses a wheelchair seating system and an accessory separately. If one item in a section is not going to be funded, or is the process of being assessed, it does not mean all the items are not. The minority determines that the ministry was unreasonable in saying no pre-authorization was made to fund the requested medical equipment in part by denying all the items under a blanket decision for all items.

This minority panel acknowledges that cost details were being worked out. However, reimbursement based on the pending final quote would address that issue and a final overall quote is not necessary for pre-authorization of some items. The minority panel notes that there might have been final quotes and approval in place for the chair and some of the components much earlier if the ministry had not sought a final quote for all items together.

The family unit receiving pre-authorization.

Even if pre-authorization had been made, the legislation says that the family unit must receive that pre-authorization. The ministry decided that although a third party had indicated that a decision was coming, the ministry had provided no decision to the appellant, so had not given the appellant pre-authorization.

There is no form specified in the legislation as to how pre-authorization is given to the family unit. At the hearing, the ministry stated that pre-authorization is given to the equipment supplier and the Health Authority. The appellant agreed that his communication was not directly with the ministry but with the HA OT. Some quotes were provided by the supplier. The only way the appellant could receive pre-authorization was through the Health Authority and supplier. It is unreasonable for the ministry to call the Health Authority and equipment supplier third parties but then only relay legislated pre-authorization to those parties. The family unit must be able to receive pre-authorization.

A Health Authority Casenote Report of January 17, 2023, confirmed that the ministry requested a quote without the items deemed not medically necessary. The report stated that "The ministry WILL fund the power features including tilt, recline, power elevating

articulating footboard, midline control mount, and extension for the joystick." The report also listed items for which the ministry sought a revised quote.

It is unclear from the evidence whether the appellant had seen the Casenote before purchasing the chair on January 27, 2023. However, the January 17 Casenote also indicates "Client has been emailing regularly to f/u re chair. Writer has updated clt as soon as there is new info, and advised clt that, as he is..." The dissenting member finds this last sentence indicates that the writer had updated the client—the appellant--- with the information in the Casenote very quickly.

The email of April 13, 2023, from the appellant's mother to the Health Authority Manager for Clinical Operations further corroborates that the pre-authorization information was given to the appellant. In this email, the mother indicates that the HA OT had spoken to the appellant on January 17, 2023. She wrote that the HA OT had told the appellant that the ministry was getting close to finalizing the decision about the chair but wanted clarification on further items. January 17, 2023, is also the date the ministry indicated in the appeal record that they had sought a final quote for medically essential items.

The dissenting member finds that this evidence establishes that the appellant did receive pre-authorization of the minister via the Health Authority for some, but not all, of the prior to the purchase of the wheelchair and additional components on January 27, 2023. The ministry was not reasonable in saying that pre-authorization was not given to the appellant for the items that they said they would fund. Some items were not approved on the date the ministry requested the final quote. It is reasonable to say pre-authorization was not given for those items.

Wheelchair and components are medically essential to achieve or maintain basic mobility and seating items are essential to maintain positioning in the wheelchair.

Sections 3.2 and 3.3 require that the minister is satisfied that wheelchair components and seating items are medically essential. In the reconsideration decision, the ministry indicated that the ministry was satisfied that the requested power wheelchair was medically essential for basic mobility and appropriate. An OT assessment had been provided for that but not all the accessories and components. The ministry then decided that they could not confirm the OT had assessed all the items purchased because medical justification had not been provided for all of them.

As noted above, the legislation addresses medical equipment and devices individually, not en masse. The ministry had been working with an OT to determine which items were medically essential and were now waiting for a final quote on the items deemed essential.

The dissenting member finds it unreasonable to say that the items that had been determined essential would not be because some items had not.

Equipment is the least expensive appropriate medical equipment or device.

Section 3(1)(b)(iii) requires that the medical equipment or device is the least expensive appropriate medical equipment or device. The ministry said that it had not confirmed that the power wheelchair, seating, and accessories the appellant purchased were the least expensive appropriate medical equipment. Therefore, the requirement was not met.

As noted above, when the appellant purchased the chair, the ministry was in process of finalizing this quote. Some items had been approved. The items can be considered separately. As noted above, some of the items had been pre-authorized. The pre-authorization involved an assessment of whether the items were the least expensive appropriate equipment or device. The appeal record addresses these determinations in detail. For one example, the request for reconsideration indicates that the minister was satisfied that the Big Bouncer was medically essential and appropriate. Others were not. The dissenting member finds that the ministry was not reasonable in determining that all the requested equipment should be denied on these grounds. It is reasonable to deny only those items that were not yet assessed as the least expensive appropriate item.

Conclusion:

The majority panel finds that the ministry's decision that the appellant is not eligible for a health supplement under Regulation Schedule C Sections 3, 3.2 and 3.3 is reasonably supported by the evidence. Therefore, the majority panel confirms the decision. The appellant is not successful in the appeal.

Appendix

Employment and Assistance for Persons with Disabilities Act

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

[Last amended April 6, 2023, by B.C. Reg. 99/2023]

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

(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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4; am. B.C. Reg. 161/2017, App. 2, s. 2.]

Schedule C

[am. B.C. Regs. 236/2003, Sch. 2, s. 2; 285/2003, s. 2; 430/2003, s. 4; 9/2004; 10/2004, Sch. B; 94/2005; 153/2005; 159/2005, s. 2; 163/2005; 165/2005; 315/2006; 53/2007, s. 2; 60/2007, s. 2; 75/2008; 317/2008, s. 10; 318/2008, s. 2; 412/2008, App. s. 3; 420/2008, App. s. 3; 421/2008, App. s. 3; 422/2008, App. s. 3; 423/2008, App. s. 3; 4/2010, s. 3; 61/2010, ss. 5 and 6; 64/2010, s. 4; 65/2010, App. 2; 66/2010, s. 2; 68/2010, ss. 3 and 4; 169/2010, App. s. 3; 144/2011, Sch. 2; 85/2012, Sch. 2, ss. 8 to 11; 197/2012, Sch. 2, ss. 16 to 23; 145/2015, Sch. 2, s. 16; 118/2017, App. 2, ss. 2 and 3; 161/2017, App. 2, ss. 3 to 7; 94/2018, App. 2; 123/2019, App. 2, ss. 6 and 7; 270/2019, App. 2, s. 24; 35/2020, App. 2, s. 7; 209/2020, s. 2; 206/2020, s. 6; 208/2022, Sch. 3; 52/2023, App. 2, s. 3; 66/2023, Sch., s. 2.]

Health Supplements

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 preauthorization 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.

Medical equipment and devices — canes, crutches and walkers

3.1 (1) Subject to subsection (2) 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 cane;

(b) a crutch;

(c) a walker;

(d) an accessory to a cane, a crutch or a walker.

(2) A walking pole is not a health supplement for the purposes of section 3 of this Schedule.

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.

(3) 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.

(4)A high-performance wheelchair for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

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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

Corrie Campbell

Signature of Chair

Date (Year/Month/Day)

2023/11/29

Print Name

Gordon Thompson

Signature of Member

Date (Year/Month/Day)

2023/11/18

Print Name

Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)

2023/11/29