

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 M Corpus VS power wheelchair with upgraded components.

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

- The Appellant does not have other resources to pay for the cost of or to obtain the requested wheelchair;
- The Permobil M Corpus VS power wheelchair with upgraded components is the least expensive appropriate for the Appellant’s needs; and
- The requested upgraded components and accessories that are medically essential to achieve and 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 relevant legislation is provided in Appendix A.

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

- An assessment from an Occupational Therapist who recommends the Permobil M Corpus VS mid wheel drive power wheelchair with power tilt, power recline, power standing, power seat elevation, power elevating and articulating leg rests. Also recommends joystick and hardware attachments for midline joystick use with the left thumb and index finger, adjustable lap tray for feeding needs, midline phone mount, Power Buddy for charging devices, LED safety lights for when driving outdoors in the evening, custom leash hook for service dog, and mounted switch box on backrest for attendant controls as needed.
- Medical Equipment Request and Justification Form which states there may be funding through private insurance.
- Physician order by a doctor stating that the Appellant “requires a Permobil M Corpus VS power wheelchair with the features of power tilt, power recline, power standing, power seat elevation, power articulating and elevating leg rests along with custom rehab seating and components outlined by the occupational therapist to meet [his] complex functional needs”.
- Quote (\$40,275.05) from Ability Health Care for a Permobil M3 (\$9272.95 for the base) with retractable joystick and positioning, power tilt and recline (\$14601.50), multi seat function, custom seat cushion, lateral support pad, removable knee supports, hip belt, adjustable tray (\$361.95), and seating.
- Quote (\$68,951) from Ability Health Care for a Permobil M Corpus VS (\$13313 for base) with retractable joystick and positioning, power adjustable seat height (\$4241), Batteries (\$1064), enhanced steering (\$1349), tilt and recline (\$15665), power standing (\$8049), multi seat function, Backrest, headrest, lateral hardware and supports, custom seat cushion, power legrest elevation (\$4140), Stand and Drive (\$1538), knee supports, hip belt, adjustable tray (\$381), side view safety lights (\$460), Phone mount (\$101), Power buddy (\$238), bag hook (\$110), leash hook for service dog (\$65), and seating.
- On October 31, 2023, the Ministry received a copy of approval for funding for the requested chair from the secondary insurance benefit provider. The approval indicated that the Appellant is covered for \$56,396.17 at 100%, and \$878.83 at 80% (\$703.06). The Appellant was denied funding for \$7806 although the letter does not specify what was denied funding.
- Request for reconsideration, dated January 5, 2024, which included the following information:
 - A letter from an Optometrist related to accommodations needed in an educational setting. It is helpful for the Appellant to have a scribe or books on tape, since is very difficult to read words in a smooth and efficient manner.

- An optical prescription from February 2023.
- An email from the Optometrist to the Appellant's advocate supporting additional lighting for the wheelchair for low light conditions.
- A letter from the Appellant's advocate which states, in part, the following:
There is another extended health provider, but they will not provide pre-authorization. The extent of the coverage with them is unknown until they are provided with an invoice after purchase. The power wheelchair is an assistive device and all the specialized equipment, material, and features are designed and built into the wheelchair to support needs. While the chair is not the least expensive, it is the most appropriate, as it is the only product sufficiently adaptable and durable to meet gross and fine motor challenges. The Appellant's advocate expects this chair to perform "continuously and flawlessly through constant daily cycles of use...must work seamlessly under all conditions, indoors and outdoors, with minimal maintenance and repairs." They believe that "Cheaper products breakdown frequently and often at the most inconvenient time" and queries who will pay for the more costly repairs or help when the chair breaks down outside in the winter. The ministry discount was not included, but the Appellant's advocate believes that the supplier provided the maximum discount they were able to. The upgraded components (safety lights, bag hooks, phone mount, dog leash hook) are needed ensure safe independent travel in the community and at home. The Appellant will not be able to access the community in the wheelchair at night if is not sufficient lighting to guide the path and travel with the assurance that the assistance dog is securely attached outdoors. Power standing, active power height, power elevating leg rests, power stand and drive are all integrated components and required for the chair design. The Appellant needs a great deal of support to stand and when standing a very sturdy and well-designed frame to help maintain standing is needed. To propose a standing frame is a suitable alternative is to not know the challenges these pose for parents and staff, the physical labour and work required to transfer the Appellant to and from a standing frame 6- 8 times a day. The power elevating leg rests are required for the legs' tone and constant need to be stretched. Enhanced steering is required for joystick while standing. The joystick is a necessary component, like wheels. Power adjustable seat height is needed for standing. Power stand and drive is needed for many items, objects, and opportunities for social engagements. Dog leash is needed as the Appellant does not have sufficient gross and fine motor strength to hold onto the dog's leash. The dog needs to be attached to the Appellant and the chair in a manner that supports the chair's design, and when all features are

being used, in a way that allows the dog to perform her trained duties. This is one example of improving the rights of people using assistance dogs, as highlighted in the 2021/22 Accessibility Report. Denying the wheelchair accessories that are required for the assistance dog conflicts with the overall Accessibility Plan.

Evidence on Appeal

Notice of Appeal dated January 29, 2024 which stated, "I disagree because I do not have sufficient funds to cover the remaining amount that is required".

The Notice of Appeal also included a letter from the Appellant's advocate which, in part, stated the following:

- The Appellant "is eligible for this funding based on the profound physical disability, complex medical needs and eligible status".
- The Appellant is "completely dependent on basic mobility for independent living".
- The Appellant "has sought and is currently utilizing funding from all other sources available to him at this time, to which he has exhausted these sources".
- The Appellant "has sought a product that is appropriate and least expensive based on his knowledge and experience with suitable and appropriate assistive devices and mobility products".
- The requested power wheelchair is "designed to be uniquely specialized and suitably customized to be the best appropriate choice for [the Appellant's] disability and mobility needs. The power wheelchair requires an engineering design, with features and technology that are complex and integrated in order to meet the Appellant's profound disability, medical needs and basic mobility. No other power wheelchair is suitable and appropriate.

The panel considers the Notice of Appeal and the letter from the Appellant's advocate to be argument and has admitted it as such.

Evidence at the Hearing

At the hearing, the Appellant submitted the following information:

- Letter from the Appellant's doctor dated February 10, 2024. The letter stated, in part, that the Appellant "relies on his wheelchair for mobility and to optimize his independence. He requires a standing wheelchair as he is unable to safely use a separate standing frame. He requires additional lights on his wheelchair so that he [can] safely go out at night. He requires an attachment on his wheelchair for his dog".

- Quote dated February 11, 2024 for a separate standing frame and the necessary components for \$14, 695.26.
- Quote dated February 11, 2024 for the Permobil M Corpus VS power wheelchair and upgraded components (the requested item at this appeal) for \$64,495.95. This quote differs from the original quote dated July 11, 2023 for \$68,951.00 as it includes at 5% discount that is typically provided to Ministry clients.
- Letter from the Appellant's Occupational Therapist dated January 29, 2024. The letter, in part, stated the following:
 - A) a standing frame is not appropriate for the Appellant needs as it would not provide adequate support that is required for his complex seating and positioning needs.
 - B) the standing frame would require multiple transfers per day which he cannot endure, are time consuming and cause extra wear and tear on his skin.
 - C) the standing frame cannot be transported to other locations in the community.
 - D) the power standing feature is required to allow for full extension and stretching of the hamstring and hip flexor muscles, bear weight through the legs and improve bone density.
 - E) the components (power recline, power seat elevation, power articulating, elevating leg rests and enhanced steering) work together to achieve the standing position. Standing will improve bladder and bowel function, reduce spasticity and contractures, and improves breathing function and blood flow for pressure relief.
 - F) due to poor vision and poor head position the Appellant requires a LED safety light package on the wheelchair to brighten surrounding areas to maneuver outdoors at night.
 - G) a custom leash hook is necessary for the Appellant's guide dog to escort him.

At the hearing, the Appellant and his advocate stated, in part, the following:

- The request is for the balance of the cost after extended benefits cover the partial costs and they are seeking a commitment from the Ministry as such.
- There is a potential that the entire cost may be covered by the two extended health providers but that is unknown at this time.
- Providers will not pay out for the wheelchair until the chair is purchased.
- They have looked a bank loan as an alternative option.
- The wheelchair may not be the least expensive but it is the most appropriate.
- There will be less maintenance and therefore less expense in the long run.
- The other wheelchair, and the one the Ministry thinks is a better option, is not the most appropriate but is less expensive.

- The requested wheelchair is the only wheelchair that has the standing features and the additional components are necessary for the support and functioning of the standing feature.
- The lighting option is necessary for vision.
- He is in the wheelchair 14-hours per day which impacts circulation and muscles.
- Basic mobility achieves health. He cannot achieve movement to maintain health but the features of the requested chair allow that.
- It is dangerous to perform multiple transfers daily which would be needed if the wheelchair does not have the standing option. Due to his height, transfers without a lift are not safe and there is a greater risk of injury for him and those performing the transfers.
- The doctor and occupational therapist support the standing feature.
- His previous two chairs had the standing feature.
- The Ministry's definition of 'medically necessary' is out of line with the Appellant's reality.
- The difference between the less expensive wheelchair and the requested wheelchair is the standing frame option. With the requested wheelchair, the Appellant will not need assistance to stand.
- His current wheelchair is 10 years old.
- More recent legislation is specifically framed to allow more supports but the legislation the Ministry is working with achieves the opposite.
- The less expensive wheelchair (the M3) cannot accommodate the standing feature and the necessary components for this feature.

At the hearing, the Ministry relied on its reconsideration decision. The Ministry also stated that there is no predetermined amount of funding allotted to wheelchairs. The Appellant's previous wheelchairs were provided by a different Ministry that has different legislative requirements.

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 Ministry did not object to the admission of the information presented at the hearing.

The panel found that the information from the appellant at the hearing (the letter from the doctor, the letter from the occupational therapist, the quote for a standing frame and a quote for the Permobil M Corpus VS power wheelchair and upgraded components)

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 M Corpus VS power wheelchair with upgraded 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 argued that the Permobil M Corpus VS power wheelchair with upgraded components is the least expensive appropriate medical device in the long run and the required components are medically essential to achieve and maintain basic mobility. The Appellant also argued that he does not have the resources to pay for the cost or obtain the requested wheelchair.

The Ministry's Position

The Ministry argued that request for the Permobil M Corpus VS power wheelchair with upgraded components does not meet all eligibility requirements set out in the Regulation, Schedule C.

The Panel's DecisionResources Available

Schedule C Section 3(b)(ii) of the Regulation requires that there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device. The Ministry found that the Appellant has resources available to pay the cost of or obtain the medical equipment as he has a secondary extended health benefits provider who will provide funding. At the hearing, the Ministry stated that the amount covered by the secondary insurer is more than what the Ministry would cover.

The panel finds that the Ministry was not reasonable in its finding that the Appellant had other resources as the basis for that finding was its conclusion that the amount that the secondary insurer had approved was \$56,000.00, which was more than the cost of the wheelchair that the Ministry determined was the least expensive appropriate wheelchair for the Appellant. However, the evidence demonstrates that the secondary insurer will cover costs of approximately \$56,000 of the *requested* wheelchair (the Permobil M Corpus VS power wheelchair with upgraded component). There is no evidence that the secondary insurer will provide \$56,000 for the Permobil M3 wheelchair. Based on the evidence, it is unknown how much of the cost the secondary insurer will cover for the less expensive wheelchair.

Based on the evidence, the panel finds that the Ministry was not reasonable in its determination that the Appellant has other resources to pay the cost of or obtain the Permobil M Corpus VS power wheelchair with upgraded component.

Lease Expensive

Schedule C Section 3(b)(iii) of the Regulation requires that the requested medical equipment or device is the least expensive appropriate medical equipment or device. The Ministry argued that the evidence demonstrates that the Permobil M3 power wheelchair is less expensive than the requested M Corpus VS and appropriate to meet the Appellant's basic mobility needs. The Ministry stated that the Appellant's advocate indicated that the less expensive standing frame is not appropriate but that has not been confirmed by the occupational therapist or other health professional. The lights requested are quoted at \$460, which is a high cost for lights, and not shown to be the least expensive appropriate.

The Ministry argued that the Permobil M3 wheelchair is the least expensive appropriate wheelchair to meet the Appellant's basic mobility needs. However, both the doctor and the occupational therapist support the purchase of the Permobil M Corpus VS for the standing feature which they say is medically essential. The evidence outlines that the M Corpus VS accommodates many of the Appellant's medical needs such as full extension and stretching of the hamstring and hip flexor muscles, bear weight through the legs and improve bone density. When the information from the health professionals is considered in its entirety, the panel notes that without the standing frame feature, the Appellant's overall health may deteriorate. The Ministry's own policy indicates that it must consider "Whether the medical condition would deteriorate without the equipment". Though there are other wheelchair models that are less expensive, the evidence indicates that other, less expensive wheelchairs are not appropriate to meet the Appellant's medical needs.

Based on the evidence, the panel finds that the Ministry was not reasonable in its determination that the Appellant failed to demonstrate that the Permobil M Corpus VS power wheelchair with upgraded components is the least expensive appropriate medical equipment or device as this model is considered to be medically essential by prescribed professionals and is therefore the least expensive device to suit the Appellant's medical needs.

Medically Essential

Schedule C Section 3.2(2) of the Regulation requires that the requested medical equipment or device is medically essential to achieve or maintain basic mobility. The Ministry found that the following requested components or features for the Permobil M Corpus VS power wheelchair are not medically essential to achieve or maintain basic mobility: the power standing or stand and drive; power elevating leg rests to assist with stretching; enhanced steering, power elevating seat height; phone mount; power buddy; lighting; and bag hook. The Ministry also found that the requested Permobil M Corpus VS power wheelchair is not medically necessary to achieve and maintain basic mobility, as basic mobility needs can be met through the Permobil M3, or other lower cost chairs.

The legislation does not define the term basic mobility. The panel found that the Ministry's policy also does not define the term basic mobility. When the panel sought out a definition for basic mobility from multiple sites on the internet, it found the following: Basic: forming an essential foundation or starting point; fundamental; and Mobility: a) the quality or state of being mobile or movable; b) ability or capacity to move; c) the ability to move physically; and d) often refers to whether you can move an injured body part. The panel also considered the fact that previous judicial decisions (*Hudson v. Employment and Assistance Appeal Tribunal, 2009 BCSC 1461*) specifically instructed that the legislation is to be interpreted with a broad and benevolent purpose in mind and that any ambiguity in the interpretation of the legislation should be resolved in favour of those seeking the benefit. With all of this in mind, the panel finds that the ability to stand is basic mobility and the standing frame option allows the Appellant to achieve this fundamental part of mobility. However, the panel finds that the lights requested are not necessary for basic mobility.

The panel has previously found that the standing frame feature of the Permobil M Corpus VS power wheelchair is medically essential to achieve and maintain basic mobility. Therefore, the components that support the standing frame structure would also be medically essential to achieve and maintain basic mobility. These components include the power standing or stand and drive, the power elevating leg rests to assist with stretching, enhanced steering, and power elevating seat height. Additionally, in its decision the Ministry agreed that these components are necessary to support the standing frame feature of the requested wheelchair. For these reasons, the panel finds that the Ministry was not reasonable in its determination that the Appellant failed to demonstrate that the Permobil M Corpus VS power wheelchair and the requested upgraded components are medically essential to achieve or maintain basic mobility.

However, the panel finds that the requested accessories, namely the phone mount, power buddy, lighting and bag hook are not medically essential to achieve or maintain basic mobility. The panel finds that the Ministry was reasonable in its determination that the Appellant failed to demonstrate that the accessories for the Permobil M Corpus VS power wheelchair and the requested upgraded components are medically essential to achieve or maintain basic mobility.

Conclusion

The panel finds that the Ministry did not reasonably conclude 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 *rescinds* the Ministry's decision that Appellant has other resources to pay for the cost of or to obtain the requested wheelchair and that the Permobil M Corpus VS power wheelchair with upgraded components is not the least expensive appropriate for the Appellant's needs. The panel also *rescinds* the Ministry's decision that he requested upgraded components are not medically essential to achieve and maintain basic mobility. The panel *confirms* the Ministry's decision that the requested accessories are not medically essential to achieve and maintain basic mobility.

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.

Medical equipment and devices - wheelchair seating systems

3.3 (1) 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 a person's **positioning** in a wheelchair:

- (a) a wheelchair seating system;
- (b) an accessory to a wheelchair seating system.

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: 2024/02/22

Print Name

Kulwant Bal

Signature of Member

Date: 2024/02/22

Print Name

Adam Shee

Signature of Member

Date: 2024/02/22