

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“the Ministry”) Reconsideration Decision dated January 9, 2024, which found that the Appellant is not eligible for funding for reimbursement of a mobility scooter, bed assist rail, grab bar, and cane as the request does not meet the required criteria set out in section 3 of Schedule C of the Employment and Assistance Person with Disability Regulation (“the Regulation”).

**Part D – Relevant Legislation**

Employment and Assistance Persons with Disabilities Regulation – Schedule C.

The relevant legislation is provided in Appendix A.

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

- Medical Equipment Request and Justification Form dated October 8, 2023. The form requested an electric scooter. The form is signed by the Appellant's doctor. Only 1 of 3 pages was included.
- A prescription for an electric scooter signed by the Appellant's doctor and dated October 8, 2023.
- A letter from the Appellant signed and dated October 8, 2023. In part, the letter stated that he was discharged with no plan for moving back into his home. He was on his own to figure out how to survive. He took out a high interest loan to get the scooter.
- A letter from the Appellant's doctor signed and dated October 8, 2023. In part the letter stated that the doctor supports the Appellant's application for funding for an electric scooter. The Appellant has had a number of strokes that have impacted his independence and the electric scooter will enable him to maintain some level of independence.
- An ICBC report indicating that the Appellant's driver's licence has been cancelled.
- A personal loan agreement in the Appellant's name.
- A receipt for a bed assist rail for \$53.99 and dated September 30, 2023.
- A receipt for a set of grab bars for \$29.99 and dated October 5, 2023.
- A receipt for a folding cane with lights for \$21.09 and dated August 5, 2023.
- A receipt for a mobility scooter for \$2,794.40 and dated September 25, 2023.
- Request for Reconsideration, dated December 20, 2023, which was left blank. The request also included a photograph of the doctor's prescription for a scooter and a photograph of a list containing the following: build steps, build railing, build ramp that he can negotiate, door to RV – check railing , bars inside RV, working shower with bars, air conditioning – as a motor was put in and [one] cannot have air conditioner without motor, access to fridge/freezer, working hot water, handicap access to hot tub., proper chair for computer table (now just a stool), and cell phone holder or charging cable, long, or wireless charger, battery powered.

**Evidence on Appeal**

Notice of Appeal dated January 9, 2024. The 'reason for appeal' section of the form was left blank.

**Evidence at the Hearing**

At the hearing, the Appellant described the situation and circumstance that lead to the need for a scooter, bed assist rail, grab bar and cane. He had suffered a stroke and then

multiple mini strokes to follow. There was a delay in getting medical attention which caused long-term medical impacts. He also stated, in part, the following:

- He has experienced multiple strokes.
- There was an inability to use his left arm and leg. He worked diligently in the hospital, on his own, to regain some movement in his arm and hand. There was no occupational therapist available at the hospital to help him.
- He faced the possibility of having to move into assisted living as he did not have the supports at home. He did not want this as he is too young and wants his independence. He has always tried to overcome his disabilities.
- The Ministry's denial is based on not getting pre-approval. Due to the medical emergency at the time, his mind was on his medical condition and on how to manage life moving forward.
- He was not aware that pre-approval was necessary.
- He was not aware that he would ever require the medical equipment.
- He was driving and now his licence has been cancelled by ICBC due to his strokes.
- He lives far from the bus stop (1.5km) so he needs the scooter to get to the bus stop and to get around.
- The doctor supports the need for the scooter.
- The doctor provided an itemized list of all the equipment he needed upon discharge from the hospital but because the doctor did not sign it the Ministry did not accept.
- The Ministry and the hospital let him down.
- It's impossible to get preauthorization during a medical emergency.
- He does not care about the regulations. His life is on the line and that's all that should matter.
- Doctors do not know how to word information to the Ministry's satisfaction.

At the hearing, the Ministry relied on its Reconsideration Decision. The Ministry also added the following in response to questions:

- Information regarding the application process and requirements for medical equipment is available online and in the Ministry's offices.
- The denial for medical equipment in this case is not solely based on the failure to obtain pre-authorization for the equipment. The Appellant failed to meet the remaining criteria as well.
- To meet the criterion of least expensive appropriate medical equipment, the Appellant needed to provide a minimum of 2 quotes for the equipment.
- The bed assist rail is an item the Ministry is not authorized to provide.
- Those with Persons With Disability ("PWD") designation have access to the medical equipment the Ministry is authorized to provide as long as the legislative requirements are met. For those who are not designated as PWD, access to the

medial equipment the Ministry is authorized to provide is possible under the Ministry's policy and if it can be demonstrated that there is a life-threatening need. Even those with PWD designation can have access to medical equipment, without having to meet all of the legislative requirements, if it can be determined that there is life-threatening need. In the case of the Appellant, it has not been demonstrated by the doctor that the requested medical equipment was needed due a life-threatening need.

- The Appellant may re-apply once he is able to obtain all the required information.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the Ministry's decision to deny the Appellant funding for reimbursement of a mobility scooter, bed assist rail, grab bar, and cane 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 he was in the middle of a medical emergency and did not think to get pre-authorization from the Ministry as his mind was on his medical condition. He was only concerned about getting movement back in his arm and leg. He also argued that he was not aware that a pre-authorization was required.

The Ministry's Position

The Ministry argued that the request for reimbursement of a mobility scooter, bed assist rail, grab bar, and cane does not meet all eligibility requirements set out in the Regulation, Schedule C.

**The Panel's Decision**

The legislation sets out requirements that apply to all requests for medical equipment and services. These are:

- there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
- the item is the least expensive, appropriate medical equipment or device;
- the item must be prescribed by a medical practitioner or nurse practitioner; and/or the medical need must be confirmed by the assessment of a relevant therapist (occupational or physical therapist); and
- the request must be pre-approved by the ministry prior to purchase.

We discuss these requirements with the appellant's specific requests below.

Mobility Scooter

The Ministry found that the Appellant did not request nor receive pre-authorization of the Ministry for the mobility scooter as is required by schedule C section 3(1) of the Regulation. The Ministry added that there is an exemption in the policy which clarifies that the ministry will not accept payment responsibility, except in cases of a life-threatening emergency. The Ministry added that the Appellant did not provide any medical information or assessments to establish that he had to purchase the mobility scooter prior to seeking approval due to a life-threatening emergency.

The Ministry argued that there was no information provided to confirm that the mobility scooter purchased by the Appellant was the least expensive appropriate for his needs as required by schedule C, section 3(1) of the Regulation.

The Ministry argued that the Appellant did not provide an assessment from an occupational therapist or a physical therapist to confirm that it is unlikely that the Appellant will have a medical need for a wheelchair during the 5 years following the assessment.

The Ministry argued that a medical assessment was not provided regarding mobility needs to confirm that the Appellant requires a scooter to achieve and maintain basic mobility as required by schedule C, section 3.4 of the Regulation. The Ministry noted that the doctor reported the scooter provides the Appellant with some independence and quality of life. However, this does not confirm it is medically essential to achieve or maintain basic mobility. For these reasons, the Ministry denied the Appellant funding for a mobility scooter.

The panel considered the evidence, including the Appellant's testimony at the hearing, and finds that the Ministry's decision to deny funding for mobility scooter is reasonable. The panel finds that the evidence does not establish that the Appellant met the legislative requirements. Specifically, the evidence does not establish that:

- The Appellant received pre-authorization for the mobility scooter;
- The mobility scooter, which was purchased, was the least expensive appropriate scooter for the Appellant's needs;
- There is an assessment from an occupational or physical therapists which confirms that the Appellant will likely not need a wheelchair in the next 5 years; and
- The mobility scooter is necessary to achieve or maintain basic mobility.

As a result, the panel finds that the ministry was reasonable in its determination that the evidence did not demonstrate the Appellant meets the legislative criteria to receive funding for a mobility scooter.

#### Bed Assist Rail and Grab Bar

The Ministry found that the Appellant did not request nor receive pre-authorization from the Ministry for the bed assist rail and grab bar as is required by schedule C section 3(1) of the Regulation. The Ministry added that there is an exemption in the policy which clarifies that the Ministry will not accept payment responsibility, except in cases of a life-

threatening emergency. The Ministry added that the Appellant did not provide any medical information or assessments to establish that he had to purchase the bed assist rail and grab bar prior to seeking approval due to a life-threatening emergency.

The Ministry also argued that there was no information provided to confirm that bed assist rail and grab bar purchased by the Appellant were the least expensive appropriate for his needs as required by schedule C, section 3(1) of the Regulation.

The Ministry argued that the Appellant did not provide a prescription for a bed assist rail and grab bar from a medical/nurse practitioner or an assessment by an occupational/physical therapist confirming the medical need for the bed assist rail or grab bar as required by schedule C, section 3(2) of the Regulation.

The Ministry argued that the Appellant did not provide medical information or assessment to confirm he requires the bed assist rail or grab bar to facilitate transfers of his person or achieve or maintain positioning, as required by schedule C, section 3.5(1) of the Regulation. The grab bar for the bathroom is included in the list of items which may be provided in section 3.5 (1). However, the bed assist rail is not included in the list of health supplements which may be provided for transfers, toileting, or positioning. No other area of the Regulation discusses bed assist rails. For these reasons, the Ministry denied the Appellant funding for a bed assist rail and grab bar.

The panel considered the evidence, including the Appellant's testimony at the hearing, and finds that the Ministry's decision to deny the funding for a bed assist rail and grab bar is reasonable. The panel finds that the evidence does not establish that the Appellant met the legislative requirements. Specifically, the evidence does not establish that:

- The Appellant received pre-authorization for a bed assist rail or grab bar;
- The bed assist rail and grab bar which were purchased, were the least expensive appropriate for the Appellant's needs;
- There is prescription for a bed assist rail and grab bar from a medical/nurse practitioner or an assessment by an occupational/physical therapist confirming the medical need for the bed assist rail or grab bar;
- There is medical information or assessment to confirm that the bed assist rail or grab bar are needed to facilitate transfers of the person or achieve or maintain positioning; and
- A bed assist rail is an item that Ministry is authorized to provide.

As a result, the panel finds that the Ministry was reasonable in its determination that the evidence did not demonstrate the Appellant meets the legislative criteria to receive funding for grab bars.

The panel also finds that the Ministry was reasonable in its determination that it cannot provide funding for a bed assist rail as it is not an item for which the Ministry is authorized to approve funding.

### Cane

The Ministry found that the Appellant did not request nor receive pre-authorization of the ministry for the cane as is required by schedule C section 3(1) of the Regulation. The Ministry added that there is an exemption in the policy which clarifies that the Ministry will not accept payment responsibility, except in cases of a life-threatening emergency. The Ministry added that the Appellant did not provide any medical information or assessments to establish that he had to purchase the cane prior to seeking approval due to a life-threatening emergency.

The Ministry argued that the Appellant did not provide a prescription for a cane by a medical/nurse practitioner or provide an assessment by an occupational/physical therapist confirming the medical need for the cane as required by schedule C, section 3(2).

The Ministry argued that there is no medical assessment was provided regarding mobility needs to confirm that the Appellant requires a cane to achieve and maintain basic mobility as required by schedule C, section 3.4 of the Regulation. For these reasons, the Ministry denied the Appellant funding for a cane.

The panel considered the evidence, including the Appellant's testimony at the hearing, and finds that the Ministry's decision to deny funding for a cane is reasonable. The panel finds that the evidence does not establish that the Appellant met the legislative requirements.

Specifically, the evidence does not establish that:

- The Appellant received pre-authorization for a cane;
- There is prescription for a cane from a medical/nurse practitioner or an assessment by an occupational/physical therapist confirming the medical need for the bed assist rail or grab bar; and
- There is medical information or assessment to confirm that the cane needed to achieve or maintain basic mobility.



As a result, the panel finds that the Ministry was reasonable in its determination that the evidence did not demonstrate the Appellant meets the legislative criteria to receive funding for a cane.

#### Life-Threatening Need

The Appellant argued that his situation at the time was an emergency. He needs the equipment to remain independent of assisted living.

The Ministry stated that there is a provision in the Ministry's policy which allows funding for the purchase of medical equipment due to a life-threatening need. The Ministry argued that the doctor did not confirm that there was a life-threatening need for the requested equipment.

The panel does not have the jurisdiction to make any determination regarding Ministry policy. It is entirely the Ministry's discretion to determine if the exemption in policy can or cannot be applied in the case of the Appellant. There is no provision in the legislation itself that outlines the scope of this exception and the panel has found above that the Ministry's decision was reasonably applied in the circumstances of the Appellant.

#### **Conclusion**

The panel finds that the Ministry reasonably concluded that the evidence establishes that the required criteria set out in section 3 of Schedule C of the Regulation has not been met. The panel *confirms* the Ministry's decision and the Appellant is not successful at appeal.

## Appendix A

### 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

### 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.

(2.1)For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section 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 a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(3)Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if

(a)it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and

(b)the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

(4)Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.

(5)Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if

(a)at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and

(b)it is more economical to repair the medical equipment or device than to replace it.

(6)The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a

medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

### **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 — scooters**

**3.4** (1) In this section, "**scooter**" does not include a scooter with 2 wheels.

(2) Subject to subsection (5) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (3) of this section are met:

- (a) a scooter;
- (b) an upgraded component of a scooter;
- (c) an accessory attached to a scooter.

(3) The following are the requirements in relation to an item referred to in subsection (2) of this section:

- (a) an assessment by an occupational therapist or a physical therapist has confirmed that it is unlikely that the person for whom the scooter has been prescribed will have a medical need for a wheelchair during the 5 years following the assessment;
- (b) the total cost of the scooter and any accessories attached to the scooter does not exceed \$3 500 or, if subsection (3.1) applies, \$4 500;
- (c) the minister is satisfied that the item is medically essential to achieve or maintain basic mobility.

(3.1)The maximum amount of \$4 500 under subsection (3) (b) applies if an assessment by an occupational therapist or a physical therapist has confirmed that the person for whom the scooter has been prescribed has a body weight that exceeds the weight capacity of a conventional scooter but can be accommodated by a bariatric scooter.

(4)The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years after the minister provided the item being replaced.

(5)A scooter intended primarily for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

### **Medical equipment and devices — toileting, transfers and positioning aids**

**3.5** (0.1)In this section:

**"positioning chair"** does not include a lift chair;

**"transfer aid"** means a transfer board, transfer belt or slider sheet.

(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 facilitate toileting or transfers of a person or to achieve or maintain a person's positioning:

- (a)a grab bar in a bathroom;
- (b)a bath or shower seat;
- (c)a bath transfer bench with hand held shower;
- (d)a tub slide;
- (e)a bath lift;
- (f)a bed pan or urinal;
- (g)a raised toilet seat;
- (h)a toilet safety frame;
- (i)a floor-to-ceiling pole in a bathroom or bedroom;
- (j)a portable commode chair;
- (k)a standing frame for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;
- (l)a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;

(m) a transfer aid for a person for whom the transfer aid is medically essential to transfer from one position to another.

(2) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is 5 years from the date on which the minister provided the item being replaced.

**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: 2024/03/15

Print Name

Jan Broocke

Signature of Member

Date: 2024/03/15

Print Name

Mimi Chang

Signature of Member

Date: 2024/03/15