

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (Ministry) Reconsideration Decision dated June 5, 2024, which determined the Appellant was not eligible for Seating Dynamics leg rests as the Ministry could not confirm this was the least expensive, medically essential option for the Appellant’s needs.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (Regulation), section 62 and Schedule C, sections 3(1), 3.2, and 3.3

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

Part E – Summary of Facts

The hearing was held by videoconference on July 15, 2024.

Relevant Evidence Before the Minister at Reconsideration

Ministry Records show the Appellant has been designated as a person with disabilities and is in receipt of disability assistance. On December 14, 2023, the Ministry received a request for a replacement power wheelchair and custom wheelchair seating system.

Upon reconsideration the Ministry determined the Appellant is eligible for a TDX-SP2 power wheelchair but stated it is unable to provide the Appellant with Seating Dynamics leg rests.

Medical Equipment Justification Form (November 15, 2023) – signed by the Appellant’s Occupational Therapist

The Appellant’s occupational therapist provided the information below.

Current Seating

Custom seating provided in 2018 on the Appellant’s previous wheelchair was moved to her current wheelchair. The last set of custom dynamic leg rests provided in 2018 broke quickly and the Appellant did not receive new ones on her current wheelchair.

Custom Seating Justification

The Appellant’s current seating system no longer meets her needs. Not only is the foam breaking down and metal edges exposed, but her scoliosis has become more severe and there is not enough control within the system to hold her in place.

Component/Feature	Justification
Seating dynamics leg rest system	– required to allow telescoping and controlled knee extension movement during knee extension spasms and then return to neutral position without pulling pelvis forward. The Appellant has previously broken both Miller and locally made custom options very quickly and therefore this more durable option is recommended.

Estimate from Custom Wheelchair Vendor (November 27, 2023)_

Seating Dynamics

Dynamic leg rest system -\$10,222.30
Dynamic backrest \$1,580.00
Custom mounting to Motions Concepts frame - \$350.000

Total - \$12,152.00

Email Between the Ministry and the Appellant's Occupational Therapist (January 27, 2024)

Re: Dynamic components – dynamic back and dynamic leg rest system – over \$12,000

The Ministry writes that although the client's previous dynamic leg rests (Miller) broke within a short period of time in 2018, the Appellant seems to have managed without them for the past few years. The two dynamic features together are extremely costly and questions if a dynamic backrest would suffice to begin with as this may help to maintain her positioning on its own. The Ministry also states it is doubtful that it would fund both since the Appellant seems to have managed without dynamic leg rests thus far.

The Appellant's occupational therapist responded by saying the Appellant has not been managing well at all. She fell through the cracks a bit during COVID and they are quite worried about her from a skin risk perspective. They add that most of the time the Appellant's leg rests have been broken and she doesn't use any or if she does, she slides forward and often doesn't let anyone know they are broken. It doesn't always show up as a repair because the Appellant lets it go for so long.

The occupational therapist adds that the Appellant had another set of custom dynamic leg rests made after the Miller springs and believes she also broke these. At that time, they considered the Seating Dynamics but opted for custom to reduce the price. They state the Appellant absolutely needs some dynamic movement built into her seating system at both legs and back. Her spasticity is one of the most severe they have worked with in terms of the force required to inhibit her extension once it is triggered.

In addition, the occupational therapist states that the only thing they can think of is trying the Miller leg rests. The Appellant has only had the Miller springs, not their full leg/knee extension leg rests. They are hesitant because they know they don't hold up as well as the Seating Dynamic ones, but know they are less expensive. They add that they spoke with the equipment vendor and the vendor agrees the Miller leg/knee extension leg rests are not durable enough for the Appellant, but agreed to do a comparison quote.

Estimate from Custom Wheelchair Vendor (February 6, 2024)

Miller Dynamic - \$7,219.42
Dynamic backrest \$1,580
Custom mounting to Motions Concepts frame - \$350.00

Total - \$9,149.42

Request for Reconsideration (May 15, 2024)

The Appellant writes that in discussion with her occupational therapist and the equipment vendor, she was informed that the Miller leg rest system is lower quality and less durable than the Seating Dynamics leg rests and in their experience the Miller leg rest system does not hold up to forces on it. The equipment vendor even stated they were not comfortable selling the Miller option to her based on their experience with other clients.

The Appellant adds that a less durable system would likely have to be replaced early in its lifespan resulting in extra costs to the Ministry. Some previous systems have had to be replaced more than once. As well, there will be periods of time when she will be without functioning leg rests, which are important for her physical health and safety. When she's not able to be comfortably secured for long periods, her feet stick out and are left vulnerable to injury from bumping into objects and being tripped over by others.

The Appellant adds that her occupational therapist informed her that they had originally requested the Seating Dynamics leg rests and although they provided the Miller comparison quote at the request of the Ministry, they did not endorse this option and did say they would not be durable enough.

Relevant Information Received after the Reconsideration Decision

Notice of Appeal (June 21, 2024)

The Appellant writes that the Seating Dynamics leg rest system was denied at reconsideration because of the need for evidence that a less expensive alternative will not meet her needs. She will provide more evidence to support her claim that the approved Miller leg rest system is not sufficient.

Appellant Submission - Letter from the Appellant's Occupational Therapist (July 3, 2024)

The occupational therapist writes that the Appellant has been her client since 2018 having prescribed her last custom seating system as well as custom seating modifications since

then. They reassessed her on February 6, 2023 and prescribed new power and dynamic leg rests, as outlined in the letter of justification.

The occupational therapist agreed to request a comparison quote but expressed concern at that time, and continues to stand by this clinical opinion, that the Miller option is not durable enough. The Appellant's extensor spasticity is extremely high. This results in a large amount of

force against the footrests, which have previously broken, including dynamic springs, and the custom-made dynamic leg rests that were tried in 2018 in order to save cost. Although they agreed to submit the Miller dynamic leg rests quote for comparison, as requested, they did not support or prescribe this option. Their research and knowledge of the Miller dynamic leg rests is that they are much less durable than the Seating Dynamics. They are very concerned that the force of the Appellant's spasms will quickly damage them and she will then frequently be without working leg rests while awaiting parts and repairs. It is unhealthy and unsafe for the Appellant to be spending days in her wheelchair without working foot support. She is at high risk of skin breakdown due to her spasticity and asymmetrical posture, and the Dynamic leg rests are a necessary component of her seating system to prevent sliding out of position and to absorb the forces of the spastic movement and reduce pressure on her skin.

The occupational therapist adds that the equipment vendor provided support to their opinion that the Miller option is insufficient for the Appellant and would quickly be broken.

In an email communication from the vendor to the Appellant and the occupational therapist, dated June 26, 2024, they stated:

- The initial experience with the Miller leg rest system left them never wanting to work with it again.
- For the past few years, the Miller funding has been used as a stepping stone to the Seating Dynamics leg rests.
- They have sold roughly 10 pairs of the Seating Dynamics leg rests over the past few years. None have come back needing major repairs. The precision in their manufacturing far surpasses the Miller product.
- The tolerances are very small on the Seating Dynamics compared to the Millers. When you have large tolerances in manufacturing of items with multiple moving parts, excessive wear occurs. The small tolerances of the Seating Dynamics leg rests are a must to ensure the product lasts. With the strength of the Appellant's tone, she would destroy the Millers very quickly.
- The vendor indicates they would likely refuse selling the Millers to the Appellant as they would be constantly broken.

In summary, the occupational therapist states they strongly support the Appellant's funding of the Seating Dynamics leg rest system and their clinical opinion is that this item is in fact the least expensive and most reliable option that meets the Appellant's medical need, based on the options available. In addition, the repeated repair costs to the Miller option item would quickly surpass the additional cost of the higher quality option. An item that is less expensive but repeatedly breaks and is therefore frequently not useable, does not meet basic medical need.

At Hearing

At the hearing, the Appellant stated that her leg rests have not been appropriate since approximately 2021 or 2022. She has had some weight gain since, and her scoliosis has become worse. Although it was still morning, she stated she was already in pain as she is unable to use her current footrests, because they are not secure enough.

At the hearing, the Ministry relied on the information in its record. The Ministry also stated the Appellant's submission does not provide enough evidence. It doesn't address the "what ifs?". In other words, the Ministry can't predict that the Miller system would fail as it can't determine what the future holds.

As well, the Ministry clarified that it denied the Appellant's request primarily under section 3(1)(b)(iii) of Schedule 3 of the Regulation - not the least expensive appropriate option and also under sections 3.2 and 3.3 of Schedule C of the Regulation – not medically essential.

Admissibility

The Ministry did not object to the Appellant's submission.

The panel determined all the Appellant's evidence at the hearing, in the Notice of Appeal and in the letter from the occupation therapist (July 3, 2024) is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

The panel determined all the information from the Ministry at the hearing is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

The issue on appeal is whether the Ministry's Reconsideration Decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

Specifically, did the Ministry reasonably determine that the Appellant was not eligible for Seating Dynamics leg rests as it could not confirm it was the least expensive, medically essential option for the Appellant's needs?

Appellant Position

The Appellant submits that in discussion with her occupational therapist and the equipment vendor, she was informed that the Miller leg rest system is less durable than the Seating Dynamics leg rests and in their experience the Miller leg rest system does not hold up to forces on it. A less durable system would likely have to be replaced early in its lifespan resulting in extra costs to the Ministry.

The Appellant adds that some previous systems have had to be replaced more than once. As well, there will be periods of time when she will be without functioning leg rests, which are important for her physical health and safety.

Ministry Position

The Ministry finds the request meets the eligibility requirements set out in the Regulation, Schedule C, sections 3(1)(a), 3(1)(b)(i) and (ii). The Appellant is requesting pre-authorization for the medical equipment and does not have resources available to pay for the equipment.

However, the Ministry states request does not meet the eligibility requirements of section 3(1)(b)(iii) as the Ministry cannot confirm the Appellant is requesting medical equipment that is the least expensive, appropriate option for her needs. While the Appellant explained that she has tried Miller products before and that she does not believe the Miller leg rest system will be durable enough for her medical condition, there is no information to show that it will not meet her needs. Her occupational therapist confirmed that the Miller system was comparable to the Seating Dynamics system requested.

The Ministry adds that although the occupational therapist states they are unsure if the Miller leg rest system will be durable enough, they also confirmed that the Appellant only tried the Miller springs, and not their full leg and knee extension leg rests.

As it has not been proven that the durability of the Miller leg rest system will be insufficient to meet the Appellant's needs, this system is the least expensive and appropriate system to meet the Appellant's needs.

The Ministry determined an upgraded component of a wheelchair, and an accessory attached to a wheelchair are health supplements for the purposes of sections 3.2 and 3.3 of Schedule C of the Regulation, but that the requested leg rests were not medically essential.

Panel Analysis

Section 62 Regulation – general health supplements

Section 62 states the minister may provide any health supplement set out in section 3 [*medical equipment and devices*] of Schedule C for a family unit in receipt of disability assistance. Ministry Records show the Appellant is in receipt of disability assistance.

Section 3(1)(b), Schedule C, Regulation – medical equipment and devices

Section 3(1)(b) states, the medical equipment and devices described in sections 3.1 to 3.12 of this Schedule may be provided, if provided to a family that is eligible under section 62 of this Regulation, and all the following requirements are met:

- (i) the family unit has received pre-authorization for the medical equipment requested;
- (ii) there are no resources available to pay the cost of the medical equipment;
- (iii) the medical equipment is the least expensive appropriate medical equipment.

As the Ministry was satisfied that pre-authorization was obtained and no resources are available, the panel will focus on the third criteria (least expensive appropriate equipment).

The panel notes the Systems Dynamics leg rest system is estimated to cost \$12,152.00 and the Miller leg rest System is estimated to cost \$9,149.42, a difference of \$3,002.58.

The panel also notes, the Appellant's occupational therapist recommended a Seating Dynamics leg rest system as both the Miller and locally made custom options broke very quickly. The equipment vendor acknowledged that the Miller leg rests are not durable enough for the Appellant, but agreed to provide a comparison quote. The occupational therapist states that although they agreed to obtain the Miller quote for comparison, they

did not support this option. The equipment vendor indicated they would likely refuse selling the Miller leg rests to the Appellant as they would be constantly broken.

The Ministry submits that it has not been proven that the durability of the Miller leg rest system will be insufficient to meet the Appellant's needs and so has determined the Miller system is the least expensive and appropriate system to meet the Appellant's needs.

The panel notes although the Systems Dynamics leg rests are over \$3,000.00 more expensive than the Miller leg rests, section 3(1)(b)(iii) of Schedule C of the Regulation also states the equipment must be appropriate.

The panel finds although the Miller leg rest system is less expensive and although the Ministry cannot predict with certainty whether the Miller leg rest system will meet the Appellant's needs, there is sufficient evidence to indicate the Miller leg rests will not be appropriate for the Appellant and the Systems Dynamic leg rest system is the least expensive appropriate equipment.

The panel gives full weight to the statements from the Appellant's occupational therapist and equipment vendor that the Miller leg rest system is not durable enough for the Appellant's circumstances, and she requires the Systems Dynamic leg rests. The occupational therapist and equipment vendor have expertise in this area. As well, the occupational therapist has worked with the Appellant for many years, and is well aware of her progressing health condition, equipment needs and history with similar, but less durable equipment.

Therefore, the panel finds the Ministry decision that the appellant was not eligible for Seating Dynamics leg rests as the Ministry could not confirm this was the least expensive appropriate option for the Appellant's needs, unreasonable.

Section 3.2 and 3.3, Schedule C, Regulation - wheelchairs and wheelchair seating systems

Sections 3.2(2) and 3.3(1) states that an upgraded component of a wheelchair, an accessory attached to a wheelchair, a wheelchair seating system and an accessory to a wheelchair seating system are considered health supplements if the Minister is satisfied that the item is medically essential to achieve or maintain basic mobility or maintain a person's positioning. The panel notes the occupational therapist states the Appellant is at high risk of skin breakdown due to her spasticity and asymmetrical posture, and the Dynamic leg rests are a necessary component of her seating system to prevent sliding out of position and to absorb the forces of the spastic movement and reduce pressure on her skin. The panel therefore finds the Dynamic leg rests are medically essential. In addition,

the panel finds, as the wheelchair seating system is part of the Systems Dynamic leg rest system, which the panel has determine is medically essential to meet the Appellant's needs, sections 3.2 and 3.3 of Schedule C of the Regulation have been met.

Conclusion

In conclusion, the panel finds the Ministry's Reconsideration Decision that determined the Appellant is not eligible for Seating Dynamics leg rests as it could not confirm it was the least expensive appropriate option for the Appellant's needs and further that it was not medically essential, was not reasonably supported by the evidence.

The panel rescinds the Ministry's decision. The Appellant's appeal is successful .

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Regulation

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...

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.

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.

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.

(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 2 years from the date on which the minister provided the item being replaced.

APPEAL NUMBER 2024-0240

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

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2024/07/15

Print Name

Kulwant Bal

Signature of Member

Date (Year/Month/Day)

2024/07/15

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2024/07/15