

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") Reconsideration Decision of July 11, 2024. In the Reconsideration Decision the Ministry determined that the Appellant was not eligible for a health supplement for the purchase of an attendant joystick for her power wheelchair.

The Ministry determined that the Appellant met some of the criteria for a health supplement under the Employment and Assistance for Persons with Disabilities Regulation:

- The Appellant is a recipient of disability assistance and is, therefore, eligible to receive health benefits.
- The Appellant is requesting pre-authorization for the medical equipment requested.
- The Appellant does not have resources available to pay the cost of the medical equipment.
- An assessment by an occupational therapist or physical therapist confirms the medical need for the equipment or device.

The Ministry determined that the Appellant did not meet the remaining criteria:

- The Ministry cannot confirm that the requested medical equipment is the least expensive alternative appropriate for the Appellant's needs.
- The Ministry is not satisfied that the Appellant requires an attendant control joystick to mobilize and complete her daily living activities.

Part D – Relevant Legislation

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

Relevant sections of the Regulation can be found in the Schedule of Legislation at the end of this document.

Part E – Summary of Facts

A hearing was held, and attended by all parties, via teleconference on August 12, 2024. The Appellant's mother was, with the Appellant's permission, on the call and assisted the Appellant with communication.

Background

- The Appellant has been designated as a Person with Disabilities ("PWD") and is in receipt of disability assistance.
- The Appellant was provided with a power wheelchair in 2020 and a manual wheelchair in 2024.
- On February 27, 2024, the Ministry received the Appellant's request for a Proportional Attendant Control Joystick for her power wheelchair.

Information before the Ministry at the time of reconsideration

- An estimate dated January 19, 2024, from a home medical equipment supplier for an Invacare joystick in the amount of \$1,014.90.
- A Medical Equipment Request and Justification form and attached assessment dated February 27, 2024, both completed by an Occupational Therapist.
 - The Appellant has been diagnosed with
 - Cerebral palsy, spastic quadriplegia;
 - Dysphagia, g-tube feed in place; and
 - Wheelchair dependent mobility.
 - The Appellant spends most of her day in her power wheelchair. It is a TDXSP tilt power wheelchair funded in 2020 with Custom Silhouette seating (2019). The system includes a head array, single function switch for drive/tilt, mounted for operation with her elbow, and her ACCESS Augmentative Communication Device.
 - She has an attendant joystick mounted on the back of the wheelchair. The on/off and speed controls for the joystick are a twist knob on the bottom of the hardware, which has broken off and cannot be repaired.
 - For safe operation of the power wheelchair, in the context of the Appellant's limited endurance driving with her head array, especially in the community, she requires replacement of her attendant control mounted Invacare joystick.
 - Impacted by a tendency to high tone in her trunk and all limbs, the Appellant depends on her power wheelchair with custom seating. Between rooms inside her home, she can drive her wheelchair herself through her head array system. As she is aging, she has become increasingly dependent on the support of the attendant drive control, as her neck fatigues more quickly. The attendant control is especially

an important backup safety feature in the community where the distances are usually longer and less predictable.

- During 2023, the Appellant started experiencing repeat episodes of severe sternal / right neck pain. During her acute pain with these flareups, she is unable to tolerate driving herself at all. Her doctor and her physiotherapist determined that this was most likely sternocostal inflammation. Avoiding overuse of these muscles, used for driving her power wheelchair, was the recommended treatment. Doing so has made a difference for her pain control.
 - The Appellant is still a safe and functionally independent power wheelchair driver. She benefits from the attendant control to preserve her strength for her means of speech and self-driving, within the medical team's recommended time restrictions.
- A subsequent letter from the same Occupational Therapist dated June 19, 2024, submitted with the Request for Reconsideration. The Occupational Therapist repeats the points from the previous letter and adds the following information:
 - The Appellant's decreasing endurance poses a safety risk in the community because a support person cannot take over driving control through the head array in an emergency. An attendant joystick is required for this.
 - The Appellant can operate the power wheelchair herself. However, it is not reasonable to expect that the smaller muscles and tendons that control neck movement can perform with comparable endurance to that of large muscles, such as those of the arms and legs.
 - The physiotherapy notes report that, over the past year, the Appellant has twice sustained subluxated sternocostal joints from the repetitive strain of neck muscle overuse. The physiotherapist reports, from driving for extended periods of time, especially in busy public places, the Appellant experiences cervical strain and inflammation, extending into her chest and sternocostal joints. The recommendation to preserve her overall functional capacity for head array driving is to drive less and allow some attendant support, especially on outings.
 - Replacement of the attendant joystick will prevent further overuse injuries and allow the Appellant to engage in being out in the community as she enjoys.
 - In the Reasons for Request for Reconsideration, the Appellant writes:
 - "I'm writing to ask for a reconsidered decision on providing an attendant control for my power wheelchair. Because of my spastic quadriplegia, I drive my power wheelchair by using a head array. This also controls my augmentative communication device, which is my primary method of communication. The

attendant mounted joystick I have requested will allow a worker to drive my power wheelchair in an emergency or when my neck muscles need a break. After consulting with several medical professionals, I strongly believe this accessory is medically necessary to maintain my basic mobility and access to the community for several reasons.

First, driving my power chair and talking with my communication device takes a lot of effort and puts strain on my neck muscles. I've experienced terrible pain in my neck, shoulders and chest; this pain forced me to stay at home and in bed for the better part of a month. I was not able to take part in my regular activities during this time. I'm very active in the community – I volunteer with the Girl Guides, participate in clubs, and have a rich social life. These activities bring a lot of joy and meaning to my life. I feel worried that I'll re-injure myself if I can't ask my worker to drive my power chair so I can give my muscles a rest periodically. This means that again I would be stuck at home and in pain until my muscles heal.

Second, I do have a manual chair that I can use for short outings, but it is not set up to support my body for long periods in the same way that my power wheelchair is. This means it can be uncomfortable for periods longer than a couple of hours. I'm usually out and about for longer than this during the day.

Third is the safety issue of driving my power wheelchair. Because I use my head array to drive, I have to keep my head up at all times. This makes it very challenging to navigate in busy environments or in tight pace that are less accessible (like much of the world around us). For example, I really enjoy going to the mall, but store aisle can be crowded with objects and people. If I turn my head to look at something that catches my interest, my chair turns with me. This can cause me to drive into objects or people, which is a real safety concern for me. In these cases, I need to be able to ask my worker to take over navigating with the attendant control for a period of time.

Finally, my power wheelchair gives me independence and allows me to communicate with family, friends, workers, and people in my community. As much as I can, I take care of my body and my muscles so I can retain my ability to drive my own power chair and talk via my communication device for as long as possible. Having an attendant control so I can periodically have a worker drive my power wheelchair while I rest my muscles will let me keep my mobility and my communication ability for a long time.

My physiotherapist, occupational therapist, and doctor have all strongly recommended that I drive less overall and have my worker support me in driving, especially when I'm out in the community."

Information submitted after the Reconsideration Decision

In the Reasons for Appeal section of the Notice of Appeal, the Appellant stated, "I am appealing the Ministry's decision because my case is rare. I'm the only head array user in the (Appellant's location) area and my attendants can't use my head array to help me navigate in dangerous or difficult situations. Pushing me and my 300lb chair is too much to ask my attendant to do."

Testimony at the hearing

- The Appellant
 - The Appellant stressed that this was a unique situation. She is the only user of a head array in her part of the province. Unlike a regular power wheelchair that is operated with a joystick that an attendant can use when necessary, an attendant cannot take over control of a wheelchair controlled by a head array unless there is an attendant joystick.
 - The attendant joystick was not funded by the Ministry. It was funded via the Appellant's mother's extended health plan. That option is no longer available.
 - When asked whether a support person could push the Appellant in the power wheelchair, the Appellant responded that they had pushed the wheelchair when the battery died, for a very short distance but it is not feasible for a support person to push the Appellant for any distance in her power wheelchair, and never uphill. The total weight (chair and Appellant) is approximately 400 pounds.
 - When asked whether the manual wheelchair could be used instead of the power wheelchair, the Appellant said that the manual wheelchair provided is like a stroller. It is only applicable for use when the Appellant is not required to communicate and for areas where power wheelchair access is not viable, such as getting a haircut. Nothing has been customized so it is not designed for extended use.
 - The Appellant was asked whether returning home when tired was an option. The answer was that, yes, it was, but how does she get there without further aggravating her neck muscles? She is active in the community. She is a SPARK leader and has many friends she socializes with. But being tired is not the only

issue. She needs to be able to relinquish control of her power wheelchair to someone else when in tight or crowded areas. This is a safety issue because, if she is in a crowded area and is startled, for example by someone coming up quickly from behind, or if she turns to look at something, the chair turns with her and could easily strike someone or something.

- The Ministry
 - The Ministry Representative reiterated that the Policy and Procedure Manual provides guidance in how to interpret the requirement of being “medically essential to achieve or maintain basic mobility”. In response to questions, she clarified that:
 - When making the assessment, safety, user’s pain, and potential attendant needs are not considered.
 - The Ministry will provide one way for the wheelchair to be controlled – in this case a head array. By policy, they do not fund multiple ways of control.
 - Less expensive alternatives might be available, such as the caregiver pushing the wheelchair manually or the Appellant going home before she becomes tired.
 - The knowledge that the weight of the wheelchair and the Appellant is approximately 400 pounds is not relevant. The joystick would be considered an aid to the caregiver, not the Appellant.

Admissibility of New Evidence

Neither party objected to the new evidence of the other party.

The Panel finds that the Appellant’s Notice of Appeal, and the oral testimony of both the Appellant and the Ministry at the hearing, clarify issues related to this appeal. The Panel admits this information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's Reconsideration Decision that the Appellant was not eligible for an attendant control joystick was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

The relevant sections of the Regulation are:

- Section 62, which says that the Ministry may provide any health supplement set out in section 2 or 3 of Schedule C for a family in receipt of disability assistance. The Ministry has stated that this criterion was met. The Panel concurs with this determination and the criterion will not be addressed further.
- Medical equipment is addressed under section 3 of Schedule C. Section 3(1) adds three additional criteria before the Ministry may provide medical equipment and devices:
 - The family unit has received pre-authorization of the Ministry for the medical equipment or device.
 - The family unit does not have the resources to acquire the medical equipment or device.
 - The medical equipment or device is the least expensive appropriate medical equipment or device.

The Ministry has determined that the first two criteria have been met. The Panel concurs and they will not be addressed further. The Ministry found that the third criterion has not been met. That criterion will be address in the analysis below.

- Section 3(2) requires either a prescription of a medical practitioner or nurse practitioner for the medical equipment or device, or an assessment of an occupational therapist confirming the medical need. The Ministry has found that this criterion has been met. The Panel concurs and the criterion will not be discussed further.
- Section 3.2 states wheelchairs, upgraded components of a wheelchair, and an accessory attached to a wheelchair are health supplements that can be provided if the Ministry is satisfied that the item is medically essential to achieve or maintain basic mobility.

Based on the above, the two outstanding questions are:

- Is the requested attendant joystick the least expensive and most appropriate way for the Appellant's attendant to help the Appellant achieve basic mobility?
- Is an attendant control joystick required for the Appellant to have her basic mobility needs met at this time?

Ministry's Position

A wheelchair, an upgraded component of a wheelchair, and an accessory attached to a wheelchair are health supplements for the purposes of section 3 of Schedule C of the Regulation if the Ministry is satisfied the item is medically essential to achieve or maintain basic mobility.

The Ministry's Policy and Procedure Manual, which is available for public review online, states that "medically essential to achieve or maintain basic mobility" refers to a client's need for equipment due to a mobility impairment which is necessary to perform their day-to-day activities in their home and/or community. Wheelchairs are an "assistive device," which is defined in section 2 of the *Employment and Assistance for Persons with Disability Act* as a "device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform". Therefore, to determine if these components and accessories meet the requirement of being "medically essential to achieve or maintain basic mobility", the Ministry must consider if these components and accessories of an assistive device are required to allow the Appellant to mobilize/move to complete her daily living activities.

The Ministry is not satisfied that the Appellant requires a Proportional Attendant Control Joystick to mobilize and complete her daily living activities.

The Ministry will provide one way for the wheelchair to be controlled – in this case a head array. By policy, they do not fund multiple ways of control.

The knowledge that the weight of the wheelchair and the Appellant is approximately 400 pounds is not relevant. The joystick would be considered an aid to the caregiver, not the Appellant.

There is no information provided to confirm that the power wheelchair cannot be moved manually by the Appellant's attendant, or that her environment (for example: steep inclines or rough terrain) would require power steering capability for anyone assisting her. As it has not been confirmed that the Appellant's power wheelchair cannot be moved through manual propulsion by her attendant when the Appellant is unable to operate it, the Ministry is unable to establish that a Proportional Attendant Control Joystick would be the least expensive and most appropriate way for the attendant to help her achieve mobility.

Less expensive alternatives might be available, such as the caregiver pushing the wheelchair manually or the Appellant going home before she becomes tired.

Appellant's Position

The Appellant's situation is rare. She is the only head array user in her region. A regular power wheelchair is operated with a joystick that an attendant can use when necessary. An attendant cannot take over control of a wheelchair controlled by a head array unless there is an attendant joystick. They cannot use the head array to help navigate the wheelchair in difficult and dangerous situations. Pushing the Appellant and her 300-pound wheelchair is too much to ask of her attendants.

The Appellant is active in the community. She is a SPARK leader and has many friends she socializes with. This often results in her navigating crowded or tight areas. In addition to times when her neck muscles start to tire, she needs to be able to relinquish control of her power wheelchair to someone else in these conditions. This is a safety issue because, if she is in a crowded area and is startled, for example by someone coming up quickly from behind, or if she turns to look at something, the chair turns with her and could easily strike someone or something.

Unlike a regular power wheelchair that is operated with a joystick that an attendant can use, when necessary, an attendant cannot take over control of a wheelchair controlled by a head array unless there is an attendant joystick.

Panel Findings

Least Expensive and Most Appropriate Solution

Section 3(1) of Schedule C of the Regulation says, "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. (emphasis added)

The Ministry has suggested a less expensive and appropriate solution would be to have the Appellant's attendant push the wheelchair when necessary.

The Panel finds that the power wheelchair weighs approximately 300 pounds, not counting the weight of the Applicant and it is reasonable to expect that this was not designed to be pushed manually. The Panel finds that it would not be reasonable to expect the Appellant's attendant to push the wheelchair as a normal activity.

The Ministry has also suggested that the Appellant can return home when she can no longer use the neck array. If she can no longer use the neck array, she has no way of controlling the wheelchair to get home. To continue to operate the power wheelchair after her neck is tired would aggravate the problem. Previously, aggravating her neck muscles has resulted in her having to remain home for a month. Given that the Appellant does not know when her neck muscles will become weakened, her only option would be to stay at home. This would be an unreasonable limitation of her mobility and greatly reduce her quality of life.

The panel finds that these are not reasonable alternatives and the joystick is the least expensive and the appropriate medical equipment or device at this time.

Basic Mobility Needs

Section 3.2(2) of Schedule C of the Regulation says, "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** (emphasis added):

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

The Ministry states that, when applying this section of the legislation, they are guided by the Policy and Procedure Manual, which says:

- "Medically essential to achieve or maintain basic mobility" refers to a client's need for equipment due to a mobility impairment which is necessary to perform their day-to-day activities in their home and/or community.
- Wheelchairs are an "assistive device," which is defined in section 2 of the *Employment and Assistance for Persons with Disabilities Act* as a "device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform".
- To determine if these components and accessories meet the requirement of being "medically essential to achieve or maintain basic mobility", the Ministry must consider if these components and accessories of the Appellant's assistive device are required to allow her to mobilize/move to complete her daily living activities.

The Panel finds that these guidelines are a reasonable interpretation of the Regulation and are appropriate means for the Ministry to satisfy itself that a request for a health supplement for a wheelchair, an upgraded component of a wheelchair, or an accessory attached to the wheelchair satisfies the requirement in section 3.2(2) of Schedule C of the Regulation – “medically essential to achieve or maintain basic mobility.”

The Ministry has also stated that safety, muscle tolerance, and pain are not considered when assessing the ability to complete daily living activities. The Panel finds that these factors are very relevant to the circumstances of the Appellant and, to exclude them from the assessment would not be reasonable. Such a restriction does not exist in the legislation.

The Panel also finds a policy that says an attendant control joystick is an aid to the attendant, without considering the size, weight, and means of control of the wheelchair, would place an unreasonable restriction on the application of the legislation.

In the circumstances of the Appellant, who is using a head array to control her power wheelchair, the Panel finds that a backup attendant control joystick is an essential part of the solution to allow the Appellant to achieve her basic outdoor mobility needs in a safe manner by relinquishing control to an attendant when necessary.

The Panel notes that the Ministry did not challenge the quotation provided as not being the least expensive medical device. However, the Panel also notes that the quotation was provided on January 19, 2024, and was valid for only 45 days.

Summary

The Panel finds that the less expensive alternatives suggested by the Ministry were not reasonable in determining the Appellant did not meet the requirements of section 3(1)(b)(iii) of Schedule C of the Regulation - that the attendant control joystick is not the least expensive medical device in the circumstances of the Appellant.

The Panel also finds that the Ministry was unreasonable in determining that the Appellant did not meet the requirements of section 3.2 of Schedule C of the Regulation – that the attendant control joystick was not necessary to allow the Appellant to achieve her basic outdoor mobility needs.

Conclusion

The Panel finds that the Ministry decision that the Appellant was not eligible for an attendant control joystick for her power wheelchair is not a reasonable interpretation of the existing legislation and is not supported by the evidence in the circumstances of the Appellant.

The Panel rescinds the Reconsideration Decision, and the Appellant is successful on appeal.

The Panel returns the decision to the Ministry to determine the least expensive means of providing an attendant control joystick for the Appellant's power wheelchair.

SCHEDULE OF LEGISLATION

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 – 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 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.

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.

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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
Wes Nelson

Signature of Chair

Date (Year/Month/Day)
2024/08/18

Print Name
Jan Broocke

Signature of Member

Date (Year/Month/Day)
2024/08/19

Print Name
Katherine Wellburn

Signature of Member

Date (Year/Month/Day)
2024/08/15