

Appeal Number 2025-0252

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) Reconsideration Decision dated June 25, 2025, in which the Ministry found that the Appellant did not qualify for a carbon fiber manual wheelchair (the “Custom Wheelchair”) under Section 3, 3.2 and 3.3 of the Employment and Assistance for Persons with Disabilities Regulation.

While the Ministry determined that the Appellant does not have the resources to pay for a wheelchair and that an occupational therapist has confirmed the need for a wheelchair in the Appellant’s circumstances, the Ministry was not satisfied that the Custom Wheelchair is required by the Appellant to achieve and maintain her basic mobility and that the Custom Wheelchair is the least expensive appropriate medical equipment or device.

Part D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Act (the “Act”) Section 2(1)

Employment and Assistance for Persons with Disabilities Regulation (the “Regulation”), Sections 2(1)(a) and 62, and Schedule C, Sections 3(1), 3(2), and 3.2(2)

A full text of the relevant legislation is provided in the Schedule of Legislation after the Reasons in Part F below

Part E – Summary of Facts

An in-person hearing of this appeal took place on August 13, 2025. The hearing was attended by the Appellant and her representative. The Appellant's representative was the Occupational Therapist who had provided the Justification Letter. A Ministry representative also attended the hearing by conference call.

According to information provided by the Ministry in the Reconsideration Decision:

- The Appellant has been designated as a person with disabilities (PWD) and is receiving disability assistance;
- On March 17, 2025, the Appellant submitted a request for a Custom Wheelchair, a bath pad, and wheelchair seating;
- On May 22, 2025, the Ministry approved the Appellant's request for a bath pad and wheelchair seating, but denied her request for a Custom Wheelchair.

The evidence the Ministry had when it made the Reconsideration Decision included:

- An undated Ministry Medical Request and Justification Form, made out in the name of the Appellant, to which has been attached a letter of justification, dated March 27, 2025, which is signed by the Appellant's Occupational Therapist (the "Justification Letter"). The Justification Letter includes:
 - Medical information and the past medical history of the Appellant;
 - The height and weight of the Appellant;
 - The Appellant's place of residence and a description of the dwelling in which she lives;
 - The Appellant's mobility, including her ability to transfer to use a shower, to use a toilet, and to get into and out of a wheelchair and a car; and,
 - A list of the specialized equipment that the Appellant has to aid her in mobility (including a padded bath bench, a shower grab bar, a shower chair, threshold ramps, and her current wheelchair).

The Justification Letter also provides an assessment of the Appellant's needs relating to a Custom Wheelchair and recommendations for equipment, including a Custom Wheelchair, a back rest, a deep contour cushion, oval hand rims for the Custom Wheelchair, a bath pad, and a custom outdoor ramp;

- A quote for equipment from a medical supply company, dated January 31, 2025 (the "Custom Wheelchair Quote"). The Custom Wheelchair Quote provides the cost for the basic Custom Wheelchair and various additional components relating to the Custom Wheelchair, totalling \$6,871.50. The Custom Wheelchair Quote also includes the cost of a back support, a cushion, and cushion covers (the "Seating

Components"), totaling \$2,144.70, which the Ministry had approved on May 22, 2025, according to both the Request for Reconsideration and the Reconsideration Decision; and,

- The Appellant's Request for Reconsideration, dated June 10, 2025, in which the Appellant said:
 - She had tested two other models of wheelchairs. One alternate model "*was lower for transferring and felt heavier and more awkward to wheel than the one I have now, I was not able to get (that) wheelchair as close to things (especially a car seat) but also the cupboards, etc. as with the (Custom Wheelchair)*". The other alternate model "*(was a) rigid frame wheelchair, (which) I was not able to lift ... into my car ... I am not able to complete the car transfer with a rigid frame wheelchair because of the specific way I transfer*". The Appellant says that she requires a folding wheelchair and asks the Ministry to see the explanation about how she transfers to a car as explained by the Occupational Therapist in the Justification Letter;
 - She says that for her a wheelchair is not a luxury, and it goes everywhere with her. She says her body is weakening with age, she has been developing arthritis in her hands and has "*shoulder problems*", and she wants to be active outside her home. She says that all of these issues are alleviated with the Custom Wheelchair; and,
 - She says the Custom Wheelchair is the only one available that has "*an L shaped footrest hanger*", adding "*with the (two alternate models) my grip on the footrest hanger was sliding down during my transfer. My understanding is that you can only get the L shaped footrest hanger with Carbon Fiber frame wheelchairs*".

Additional Information Submitted After Reconsideration

In the Appellant's Notice of Appeal, dated July 22, 2025, the Appellant writes "*Ministry declined the (Custom Wheelchair) because they said there were more affordable options to achieve basic mobility needs. However, the other wheelchairs I trialed were not effective options for me. The (Custom Wheelchair) made it easier to propel, decrease pain in my shoulders, made my home transfers easier and I was able to complete transfers*".

Evidence Presented at the Hearing

At the hearing, the Appellant explained why she thought the Ministry's Reconsideration Decision was not reasonable as expressed in the written evidence provided to the panel before the hearing.

The Appellant said that she tried one of the wheelchairs recommended by the Ministry, and it was inappropriate because it could not be folded, it was too heavy, and it did not have an L-shaped footrest which she required to avoid "*pain in her neck and body*". She

also said "*if the footrest goes straight down (instead of being L-shaped) my hand slips when trying to grab it*".

The Appellant also said that the Custom Wheelchair, which the Occupational Therapist said weighs 11.98 lbs including the footrest, "*can be lifted with one finger*", whereas the wheelchair recommended by the Ministry, which the Occupational Therapist said weights 14.45 lbs with the add-ons, was "*awkward and felt sluggish*", and "*adding that the additional 2.5 lbs can make a significant difference*".

The Appellant explained in detail how she gets in and out of her vehicle. She said she pulls herself up from the wheelchair and into the passenger seat, she then folds the wheelchair and raises it over her head into the rear seat of the car before sliding over into the driver's seat. The Appellant also said that this is the technique she uses to get into and out of bed.

In response to a question for the Ministry representative, the Appellant said she has had her current wheelchair for nine years. The Ministry Representative asked if the Appellant had tried the other of the two wheelchairs recommended by the Ministry in its original decision. In response, the Occupational Therapist said that the other recommended wheelchair was also much heavier than the Custom Wheelchair and could also not be folded.

In response to a question from a member of the panel, the Occupational Therapist said that an electrically powered wheelchair typically costs about \$15,000, and the Appellant said she was "*not ready for an electric wheelchair*".

The Ministry representative relied on the Reconsideration Decision. In response to a question from a member of the panel, the Ministry representative said that Ministry policy allows the Ministry to fund the cost of an electrically powered wheelchair if it is medically essential.

In response to a question from the panel, the Appellant said that she is unable to use the services of Handy Dart for all of her daily living activities, as the Handy Dart service in her home community does not allow her to travel to destinations outside her community's city limits, which she needs to do in order to perform daily living activities from time-to-time.

Admissibility of New Evidence

Section 22(4) of the *Employment and Assistance Act* says that a panel can consider evidence that is not part of the record when the Ministry made its decision. But first the panel must consider if the new evidence is relevant to the decision. If a panel determines that any new evidence can be admitted, it must decide if the decision was reasonable considering the new information.

There is no new evidence contained in the Notice of Appeal as it comprises a summary of arguments made in the evidence provided before the Reconsideration Decision.

New evidence provided at the hearing comprises:

- A written quote for one of the two other wheelchairs recommended by the Ministry, and for additional equipment from the same medical supply company that provided the Custom Wheelchair Quote (the “Other Wheelchair Quote”). The Other Wheelchair Quote is dated January 31, 2025, and provides the cost of the wheelchair and various additional components relating to the other wheelchair, totalling \$4,756.50. The Other Wheelchair Quote also includes the Seating Components, which total \$2,144.70. (The same amount for the Seating Components quoted in the Custom Wheelchair Quote that was paid by the Ministry.);
- Additional verbal information provided by the Appellant and the Occupational Therapist at the hearing regarding:
 - The method by which the Appellant’s places her wheelchair in her vehicle and gets in and out of bed;
 - The Appellant’s current physical condition and other physical constraints (e.g. several years ago she suffered a torn rotator cup);
 - The unavailability of public transportation (i.e. Handy Dart service) for the Appellant to use to do some of her daily living activities; and,
 - The average cost differences between a manually powered wheelchair (a “Manual Wheelchair”), and a fully electrically powered wheelchair (a “Power Wheelchair”).

The Ministry did not object to the panel admitting any of the new evidence. The panel admits all of the new evidence as it is reasonably required for a full and fair disclosure of all matters relating to the appeal. The panel gives full weight to the evidence contained in the Other Wheelchair Quote because it is from the same source as the evidence in the Custom Wheelchair Quote, the accuracy of which is not questioned by the Ministry.

Regarding the verbal evidence provided by the Appellant and the Occupational Therapist at the hearing, the panel also admits this but assigns that evidence moderate weight because, while the panel has no reason to question the veracity of that information, it is not supported by reliable written evidence.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's decision that the Appellant did not qualify for the Custom Wheelchair was reasonably supported by the evidence, or a reasonable application of the legislation in the Appellant's circumstances.

Appellant's Position

The Appellant's position is that neither of the models of wheelchair recommended by the Ministry are appropriate to her needs. She needs a wheelchair that is light enough to be lifted into her car while sitting in the passenger seat of her vehicle, and which can be folded and placed in the back seat of her vehicle. The Appellant also needs a wheel chair that has an L-shaped foot rest.

Ministry's Position

The Ministry's position is that it is not satisfied that the Custom Wheelchair, which the Ministry says costs \$3,000 more than the recommended models, is required by the Appellant to achieve and maintain her basic mobility and to do her basic daily living activities.

Panel Decision

Section 62 of the Regulation says that a family unit in receipt of disability assistance may be eligible for a wheelchair if the requirements set out in Schedule C, Section 3 are met.

Schedule 3(1)(b) of Schedule C of the Regulation says that the family unit must have received the Ministry's pre-authorization for a wheelchair, the family unit must not have the resources to pay for it, and the wheelchair must be the "*least expensive appropriate medical equipment or device*".

Schedule 3(2) of Schedule C of the Regulation, says that the family unit must provide the Ministry with an assessment by an occupational therapist or physical therapist confirming the medical need for a wheelchair.

In the Reconsideration Decision, the Ministry said that it was satisfied that the Appellant does not have the resources to pay for a wheelchair, and that an occupational therapist has confirmed the need for a wheelchair in the Appellant's circumstances, as set out in Sections 3(1)(b)(ii) and 3(2)(b) of Schedule C of the Regulation respectively. In addition, the Appellant has not yet acquired the Custom Wheelchair, which must also be a condition under Section 3(1)(b)(i) of Schedule C of the Regulation. Therefore these requirements are not at issue in the appeal.

Ministry policy distinguishes between a Manual Wheelchair and a Power Wheelchair, and allows for the provision of a Power Wheelchair to a disability assistance recipient if it is

satisfied that a Power Wheelchair is medically essential. As the Appellant has not requested a Power Wheelchair, Ministry policy regarding the provision of a Power Wheelchair is not at issue in this appeal. In any event, Ministry policy does not dictate the requirements that must be met for a family unit to qualify for a health supplement; the legislation does. What is solely at issue in this appeal is whether the Custom Wheelchair is the *least expensive appropriate* wheelchair as provided under Section 3(1)(b)(iii) of Schedule C of the Regulation, and, if it is the least expensive appropriate alternative, whether the Custom Wheelchair is necessary for the Appellant to achieve or maintain basic mobility.

Least Expensive Appropriate Medical Equipment or Device

What constitutes “*appropriate*” equipment or an “*appropriate*” medical device is not specified in the legislation. Oxford Languages defines “*appropriate*” in the adjective form to mean “*suitable or proper in the circumstances*”. The panel notes that the Appellant and the Occupational Therapist have explained that the Appellant is not able to use her personal vehicle, which would allow her to perform daily living activities, without a light-weight, folding wheelchair. The panel also notes that the Appellant is unable to stand and has suffered a rotator cup injury and has arthritis, both of which further limited her lifting abilities.

While it is not a determining factor, the panel notes that the additional cost of the Custom Wheelchair is \$2,115 more than one of the alternative models recommended by the Ministry, not \$3,000 more as indicated by the Ministry in the Reconsideration Decision. In addition, the legislation sets no limit to the maximum amount that can be provided towards the cost of a wheelchair. The panel further notes that, based on the available evidence, the cost of a Power Wheelchair would be more than twice the cost of the Custom Wheelchair. As the Ministry has not identified a carbon fibre folding wheelchair that is less expensive than the Custom Wheelchair, which is what the Appellant requires to maintain her independence, the panel finds that the Custom Wheelchair is both suitable and proper in the circumstances, and thereby satisfies the requirement set out in Schedule C, Section 3(1)(b)(iii) of the Regulation as representing the “*least expensive appropriate medical equipment or device*”.

Achieve or Maintain Basic Mobility

Section 2 of the Act defines “*assistive device*,” as a device that is “*designed to enable a person to perform a daily living activity that, because of a severe ... physical impairment, the person is unable to perform*”.

In its Reconsideration Decision, the Ministry says that it must determine if the prescribed necessary characteristics of the Custom Wheelchair (being light in weight, foldable, and

having a supportive footrest) are required to allow the Appellant to do her daily living activities.

The Ministry was not satisfied that Appellant needed the Custom Wheelchair to achieve and maintain basic mobility. The Ministry determined that the Health Supplement for a Custom Wheelchair was requested so that the Appellant could complete transfers into her personal vehicle more easily. However, while acknowledging that the Appellant might benefit from the Custom Wheelchair by making the transfers into her personal vehicle easier, the Ministry also determined that the Custom Wheelchair's light weight, folding ability, and its L-shaped footrest were *"not required to achieve or maintain basic mobility to enable (her) to complete (her) basic daily living activities"*.

In addition, the Ministry found that the Occupational Therapist had not confirmed that the Appellant would be unable to do daily living activities without her personal vehicle, or that she was unable to make other transfers independently or perform all other daily living activities with another manual wheelchair. The Ministry noted that the Appellant could use Handy Dart and other services available in her local community to run errands or attend social events.

The panel finds that the evidence provided by the Appellant and the Occupational Therapist, both in writing and verbally at the hearing, adequately confirms that the Appellant requires the specifically identified features of the Custom Wheelchair to do some of her other daily living activities. Specifically, the daily living activities confirmed by the Appellant at the hearing for which she needs the Custom Wheelchair are: shopping for personal needs [Regulation, Section 2(1)(a)(iii)], using personal transportation facilities Regulation, Section 2(1)(a)(iv)], and moving about indoors and outdoors [Regulation, Section 2(1)(a)(vi)].

Therefore, based on all of the admissible evidence, the panel finds that it was not reasonable for the Ministry to conclude that the Appellant would:

- Be able to do daily living activities without her personal vehicle, or
- Be able to make other transfers independently or perform all other specific daily living activities with any of the identified alternate manual wheelchairs that were evaluated.

Therefore, the panel finds that the legislated requirements for the Custom Wheelchair have reasonably been met.

Conclusion

Having considered all the evidence, the panel finds that the Ministry's Reconsideration Decision was not reasonably supported by the evidence and was not a reasonable application of the legislation in the Appellant's circumstances.

Accordingly, the panel rescinds the Ministry's decision, and the Appellant is successful in her appeal.

Schedule of Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

Persons with disabilities

2(1) In this section:

"assistive device" means 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 ...

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

Definitions for Act

2(1) For the purposes of the Act and this regulation, **"daily living activities"**,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

- (i) prepare own meals;
- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self care;
- (viii) manage personal medication ...

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.

(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(2) ... 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.

APPEAL NUMBER 2025-0252

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

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

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2025/08/14

Print Name

Kulwant Bal

Signature of Member

Date (Year/Month/Day)

2025/08/14

Print Name

Valeria Lifanova

Signature of Member

Date (Year/Month/Day)

2025/08/16