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AMENDMENTS TO YORK REGION TRANSIT MOBILITY PLUS ELIGIBILITY APPEAL PANEL – TERMS OF REFERENCE

The Transit Committee recommends the adoption of the recommendation contained in the following report, April 24, 2008, from the Commissioner of Transportation Services and Regional Solicitor:

1. RECOMMENDATION

It is recommended that:

1. Regional Council approve amendments to the York Region Transit Mobility Plus Eligibility Appeal Panel Terms of Reference as follows:
 - (a) Amend the definition of “appeal” to clarify that applicants may appeal the denial of eligibility and any restrictions placed on eligibility.
 - (b) Amend the definition of “conventional transit” to incorporate all of the services that comprise the family of services within York Region Transit.
 - (c) Amend section 3.1 to clarify the application of eligibility criteria as it relates to persons with cognitive disabilities.

2. PURPOSE

This report presents amendments to the Terms of Reference for the York Region Transit Mobility Plus Appeal Panel to ensure that the Terms of Reference are consistent with the eligibility criteria approved by Regional Council.

3. BACKGROUND

Eligibility criteria approved by Regional Council in January 2006

In January 2006, Regional Council approved eligibility criteria for Mobility Plus services, based on a “functional” model. An applicant is eligible for Mobility Plus services if he/she is unable to use conventional transit services due to a physical or functional limitation, defined as “any condition, either short term or long term (e.g. paraplegia), that prevents the individual from using conventional public transit services and may include physical, visual, sensory, and cognitive disabilities, as well as individuals undergoing dialysis treatments.” The eligibility criteria are based on five guiding principles:

1. Mobility Plus service is a public transportation service for those persons who are unable to use an accessible public transportation system, not for those who find it more difficult or who are reluctant or unwilling to use an accessible public transportation system.
2. Mobility Plus is not an attendant care service.
3. Eligibility is not based on a particular disability and persons are approved on a case by case basis.
4. Eligibility is not based on income level.
5. Eligibility is not based on the unavailability of accessible conventional transit in the area in which the person resides.

Eligibility for Mobility Plus is approved on the basis of “levels of eligibility” falling into three categories:

1. Unconditional – all trip requests at all times;
2. Temporary – limited duration (i.e. Temporary physical limitation preventing use of conventional transit); and
3. Conditional eligible under certain conditions (i.e. must be accompanied).

Day and Work Program shuttle programs were grandfathered into the Mobility Plus program

In adopting the eligibility criteria adopted in 2006, Regional Council also approved the “grandfathering” of services provided by several local municipal transit services prior to amalgamation to transport individuals with cognitive disabilities to and from day programs and work placements, provided they are registered with a placement agency, despite the fact that they may otherwise be ineligible for Mobility Plus because they can use accessible conventional transit with an attendant. The requirement for an attendant is waived for the purposes of transportation to and from approved programs because the program agency ensures that the passenger is suitable for such unattended travel and arranges for an attendant to be present at the point of departure and arrival.

Regional Council approved Appeal Panel in May 2007

In addition to approving the eligibility criteria, Regional Council also authorized the introduction of a formal Eligibility Appeal Process and Quality Assurance Process to ensure fair and equitable application of the Eligibility Criteria. In May 2007, the York Region Transit Mobility Plus Eligibility Panel was appointed by Regional Council and Terms of Reference for the Appeal Panel were adopted.

Although the panel was established in May 2007, there has been no eligibility applications referred to the Appeal Panel since that time. Eligibility matters have been resolved at the staff level. York Region Transit has received two complaints pursuant to the Ontario *Human Rights Code* involving eligibility for persons with cognitive disabilities. These complaints were resolved; however, in the course of resolving these

matters, staff consulted extensively with the Human Rights Commission and the York Region Community Legal Clinic regarding the disputed eligibility criteria and appeal process. As a result of this consultation, it is apparent that there is confusion within the community regarding the application of eligibility criteria to persons with cognitive disabilities, and much of the confusion arises as a result of the “grandfathered” day/work program transport provisions. The recommendations contained in this Report reflect those consultations and are intended to clarify the application of the eligibility criteria as approved by Regional Council in 2006.

Efforts are ongoing to improve the accessibility of conventional transit services

It should be noted that there is a program in place to improve the accessibility of conventional transit services so they can be used by greater numbers of disabled individuals. All new buses are of low floor design, and there is an ongoing program to retrofit bus stops to ensure they meet all accessibility requirements. In addition, a travel training pilot program is being launched this year to enable more Mobility Plus customers to use conventional transit services.

4. ANALYSIS AND OPTIONS

AMENDMENTS TO APPEAL PANEL TERMS OF REFERENCE

(a) Clarify scope of Appeal Panel’s jurisdiction to include “levels of eligibility”.

When an applicant is approved for Mobility Plus, they are approved for one of nine levels of eligibility depending upon the information contained in their application. Applications are reviewed every 5 years to ensure that the level of eligibility remains appropriate. The Appeal Panel may hear appeals on the denial of eligibility and/or the level of eligibility for which the applicant has been approved; however the definition of “appeal” does not expressly refer to levels of eligibility.

Recommendation

To ensure that the scope of Appeal Panel’s jurisdiction is clear, it is recommended that the definition of “Appeal” be amended to include reference to a review of the level of eligibility. In addition, it is recommended that the Terms of Reference be amended to include a definition of “level of eligibility”.

(b) Revised definition of Conventional Public Transit to include the YRT Family of Services.

In considering eligibility for Mobility Plus, YRT staff and the Appeal Panel consider the full range of services offered by York Region Transit, collectively referred to as the “family of services”. In addition to Mobility Plus, the “family of services” includes the accessible fixed route public transit, Community Bus, Dial-a-Bus, Transit Training. The Terms of Reference should include a definition of conventional transit that reflects the

family of services. An Applicant will be deemed eligible for Mobility Plus only if they are unable to use the family of services due to a physical or functional limitation.

Recommendation

To ensure consistency in the Application of the Eligibility Criteria, it is recommended that the definition of “conventional transit” be amended as follows:

“Conventional Public Transit means accessible fixed route public transit and includes the family of services offered by York Region Transit, including Viva as set out in Attachment 1.”

(c) Clarifying the Application of the Eligibility Criteria particularly as it applies to Cognitive Disabilities.

As a result of the “grandfathering” of programs previously offered by local municipal transit services prior to amalgamation, Mobility Plus offers services to persons with cognitive disabilities who are otherwise ineligible for Mobility Plus because they can use the accessible conventional public transit services with an attendant, for transportation to and from approved day programs and work placements. The current wording in the Terms of Reference is considered by some members of the public to be discriminatory as it may be interpreted as excluding cognitive disabilities from eligibility as a function limitation preventing the use of conventional public transit.

Recommendation

To ensure that the Eligibility Criteria are applied by the Appeal Panel in the manner intended by Regional Council when the criteria were approved in 2006, and to address confusion with respect to the application of the criteria to persons with cognitive disabilities, it is recommended that Section 3.1 of the Terms of Reference be amended to read as follows:

3.1 Eligibility Criteria

Decisions of the Eligibility Appeal Panel must be based on the following Eligibility Criteria as approved by Regional Council:

An individual is eligible for Mobility Plus if he or she is unable to use conventional public transit due to a physical or functional limitation. Eligibility is considered on a case by case basis and is not based on a particular disability nor is it based on income level or lack of accessible conventional public transit in the Applicant’s area.

Applicants with cognitive disabilities but no physical limitations, who are otherwise ineligible for Mobility Plus, may be eligible for trips to and from approved day programs and work placements. Written confirmation from a placement agency is required.

The level of eligibility is to be determined based on the information in the Application.

5. FINANCIAL IMPLICATIONS

There are no costs associated with the recommended amendments to the Terms of Reference as they are intended to clarify eligibility criteria previously approved by Regional Council.

6. LOCAL MUNICIPAL IMPACT

There are no local municipal implications associated with this report.

7. CONCLUSION

Although no appeals have been referred to the Eligibility Appeal Panel since it was established in May 2007, staff have had an opportunity to consult extensively with the Ontario Human Rights Commission and the York Region Community Legal Clinic regarding the eligibility criteria, specifically as it relates to persons with cognitive disabilities. It appears that there is confusion within the community with respect to eligibility for Mobility Plus for persons with cognitive disabilities. The amendments to the Terms of Reference recommended in this report are intended to clarify the eligibility criteria to avoid such confusion and ensure consistency in the eligibility application and appeal process.

Similar clarification will be made to York Region Transit procedures regarding eligibility and appeals.

For more information on this report, please contact Don Gordon at Ext. 5625 or Joy Hulton at Ext. 1417.

The Senior Management Group has reviewed this Report.

(The attachment referred to in this clause is attached to this report.)