APPEAL #

PART C – Decision under Appeal

The decision under appeal is the February 24, 2012 reconsideration decision of the Ministry of Social Development (the ministry) refusing the appellant's request for a supplement in the form of a pressure relief mattress. The reason given by the ministry for the refusal was that three legislative criteria had not been satisfied, as follows:

- that the pressure relief mattress must be medically essential to prevent skin breakdown and maintain skin integrity, as required by section 3.7(1) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).
- that the pressure relief mattress must be the least expensive appropriate medical equipment or device, as required by section 3(1)(iii) of Schedule C of the EAPWDR.
- that the 5 year time period specified for replacement of a pressure relief mattress in section 3.7(2) of Schedule C of the EAPWDR must have elapsed.

PART D – Relevant Legislation

EAPWDR Schedule C sections 3(1)(iii), 3(3)(b) and 3.7 (1) and (2)

PART E – Summary of Facts

The information before the ministry at the time of the reconsideration decision included the following:

- The appellant's Medical Equipment Request and Justification form (the MERJ) signed on behalf of the appellant on October 5, 2011, with an attached assessment from the appellant's occupational therapist (OT).
- A quotation for a Thevo Sleeping Star mattress in the amount of $2,785.20, and a quotation for a LTC 4000 Sensus mattress in the amount of $967.12.
- The ministry's original decision refusing the pressure relief mattress, dated January 27, 2012.
- A February 15, 2012 "To whom it may concern" memo from the appellant's OT.
- The Request for Reconsideration signed on behalf of the appellant on February 17, 2012.
- A February 22, 2012 memo from the ministry to the OT requesting clarification on the quotations.

At the hearing the appellant's representative – her mother – introduced as evidence a letter from the appellant's physician dated March 22, 2012. Upon being asked, the ministry representative did not object to admission of the new evidence. The letter contains the physician's opinion with respect to the appellant's needs with respect to a new mattress. Accordingly, the panel determined that it is written testimony in support of the information and records that were before the minister at the time of the reconsideration decision, and admitted it into evidence.

Section 2 of the MERJ was signed by the appellant's physician on September 11, 2011 recommending a medical mattress and incontinence cover. The MERJ also contains a section specifying the medical equipment necessary to meet the applicant's needs as being a Thevo Sleeping Star mattress. This section was signed by the appellant's OT on November 3, 2011. In the attached assessment the OT states that the appellant suffers from microcephaly, spastic quadriplegia and a seizure disorder that are congenital and ongoing. The appellant is completely dependent on her caregiver for all personal care and daily living activities. Her current mattress has pancaked, necessitating a new mattress for provision of adequate support, pressure relief, and protection from nightly incontinence. In her follow up memo of February 15, 2012 the OT clarified that the new mattress "is necessary to maintain skin integrity and prevent skin breakdown". The OT also noted that the current mattress is in extremely poor condition, and beyond repair as it has already been repaired several times. The OT expressed her view that the present mattress is putting the appellant at considerable risk for skin breakdown.

In the Request for Reconsideration, the appellant's caregiver wrote that the appellant is always on her hands and knees, when awake or asleep. The bed has flattened, is not supposed to be cleaned with anything but water as other cleaning solutions will break down the material, and in the last year the mattress has been exposed to urine and emesis on several occasions.

On February 22, 2012 the ministry wrote the OT asking whether, to the OT's knowledge, the appellant has a history of bed sores, skin lesions or skin breakdown in the past. The ministry also asked why the Thevo Sleeping Star is preferred over the LTC 4000 Sensus, and what features in the Thevo mattress are not provided in the LTC mattress. The OT was not available to respond to the ministry's questions until after the ministry was required to make its reconsideration decision, so the ministry made its decision without the benefit of hearing from the OT on these points.

In its reconsideration decision, the ministry held that it was not satisfied that the pressure relief mattress is medically necessary to prevent skin breakdown and maintain skin integrity as required by EAPWDR Schedule C section 3.7(1), as there was no reported history of bed sores, skin lesions or skin breakdown.

The ministry also was not satisfied that the Thevo mattress is the least expensive appropriate medical equipment as required by section 3(1)(iii) of the EAPWDR, as it found there was no known justification for this particular mattress.

Finally the ministry held that the 5 year replacement criterion in EAPWDR Schedule C section 3.7(2) had not been satisfied. The appellant's current LTC 4000 Sensus mattress had been approved on June 4, 2007, so the appellant is not eligible for a replacement until June 2012.

At the hearing before this panel, the appellant's mother stated that the appellant is developing new complications on an ongoing basis. Last year she was on a trial drug regime which caused her to be agitated and to bounce on her bed. The drug changes also caused increased vomiting and loose stools. The mattress pancaked and the cover tore, and it is now impossible to keep clean. The appellant has subsequently developed severe and frequent seizures. The appellant's mattress must be on the floor because the appellant won't stay on it if it is higher, and she cannot protect herself if she falls.

Part way through the hearing the appellant was removed from the hearing room by her caregiver's helper as the appellant was demonstrating agitation. The hearing continued in her absence.

The appellant's caregiver testified that the appellant's knees bleed because the mattress is so pancaked. The appellant is aging. She is not as mobile as she once was and her knees are her weight-bearers. The appellant became subject to extreme movements as a result of the new medications last year and she has not settled down with a return to her regular medication regime. Virtually any time the appellant is not in her wheelchair she is on her mattress.

The panel accepted the appellant's mother's and caregiver's evidence as oral testimony in support of the information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*.

In the letter of March 22, 2012 the appellant's physician expressed the opinion that she should get the "very best of mattresses" to prevent skin breakdown and development of pressure sores, as this could pose serious medical consequences and even death. The LTC 4000 Sensus mattress was inadequate because the appellant did develop skin breakdown and the mattress did not stand the test of a 5 year period because it broke down itself, being torn and having significant loss of support. The physician strongly recommended the Thevo Sleeping Star mattress as being of superior quality and more likely to stand the test of time.

The ministry representative observed that it was unfortunate that the ministry had not had all of the information from the OT. If it had, she thinks the decision may have been different.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision which denied the appellant's request for a supplement in the form of a Thevo Sleeping Star pressure relief mattress was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant legislation is as follows:

EAPWDR 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 3.11 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, 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.

(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 3.11 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

Medical equipment and devices – pressure relief mattresses

3.7 (1) A pressure relief mattress is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that the pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity.

(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.

Regarding the criterion of section 3.7(1), the evidence of the OT describes the risk of skin breakdown and skin integrity posed by the current mattress. The consistent evidence of the physician, the appellant's mother, and the appellant's caregiver is that the appellant has suffered skin breakdown and bleeding as a result of the collapsed condition of the current mattress. The OT specified the Thevo Sleeping Star mattress in her assessment, and her recommendation is strongly supported by the appellant's physician. The panel is aware that not all of this evidence was before the ministry at the time of reconsideration. However, considering all of the evidence the panel finds that the ministry's decision that the Thevo mattress is not medically essential is unreasonable.

Regarding the criterion of section 3(1)(iii), the evidence is clear that while the appellant's current LTC 4000 Sensus mattress is the least expensive mattress, it did not stay intact for the duration of the replacement period provided for in the legislation. In her particular circumstances the appellant spends a significant portion of her life on her mattress, yet she is sufficiently active on the mattress that it must be able to stand up to a higher-than-normal amount of wear. The physician confirms the risk of life-threatening medical complications posed by skin breakdown such as that already experienced by the appellant because of the premature loss of support and integrity of the cheaper mattress. Considering all of the evidence, the panel finds that the ministry's decision that the Thevo mattress is not the least expensive appropriate medical equipment or device is unreasonable.

With respect to the 5 year replacement time criterion in section 3.7(2), the evidence is that the appellant's current mattress was approved by the ministry on June 4, 2007 so the 5 year replacement period does not expire until June 2012. This panel is bound by the legislation, and finds that the ministry's decision with respect to this criterion is reasonably supported by the evidence.

Accordingly, the panel confirms the decision of the ministry.