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PART C – DECISION UNDER APPEAL

This is an appeal of a reconsideration decision ('the decision') issued by the Ministry of Social Development ('the Ministry') on January 10, 2012.

In the decision, the Ministry denied the Appellant a crisis supplement for the purchase of a new mattress, finding that it was not an unexpected expense nor that failure to obtain a new mattress would result in imminent danger to the Appellant's health. The Ministry did find that the Appellant had no alternate resources. The Ministry relied on Section 57(1) of the Employment and Assistance for Persons With Disabilities Regulation.

The Ministry noted that a crisis supplement may not be provided for a hospital bed. Rather, it must be adjudicated under Schedule C of the Employment and Assistance for Persons With Disabilities Regulation.

PART D – RELEVANT LEGISLATION

Employment and Assistant for Persons with Disabilities Regulation (EAPWDR), Sections 57(1) & (3)

EAPWDR Schedule C, Section 3.6.

PART E – SUMMARY OF FACTS

The Ministry and the Appellant were both in attendance at the teleconference hearing. The Appellant spoke first and at length regarding the mattress in question, as well as matters regarding his relationship with the Ministry and others he has been involved with during the progress of his case. The Panel provided extensive leeway to the Appellant to state his position for approximately 50 minutes. The Panel made it clear that it understood his frustrations with the Ministry and others but that it was constrained to making a determination of reasonableness regarding the Ministry's denial of a crisis supplement to pay for a new mattress. Despite the best efforts of the Panel, however, the Appellant elected not to allow the Ministry to speak nor to focus his remarks on the issue at hand. The Appellant accused the Panel of being biased against him and hung up on the conference call. The hearing proceeded without the Appellant and the Panel received the Ministry's arguments in his absence.

Pursuant to Employment and Assistance Act section 86(b) the Panel continued the hearing in the absence of the appellant.

The evidence before the Ministry at reconsideration was as follows:

- A checklist entitled "Medical equipment and devices decision summary – Pressure Relief Mattresses." In it the Ministry determined that the mattress was not medically essential nor that the Appellant was at risk of skin breakdown or lack of skin integrity.
- A Ministry decision dated September 28, 2011, denying a queen-sized mattress under Schedule C of the EAPWDR.
- A form entitled "Medical Equipment Request – Tracking Sheet," dated September 28, 2011, regarding the queen-sized mattress and noting that it is requested for pain relief and that there was no indication the client was at risk of skin integrity of breakdown problems, therefore the regulatory requirements had not been met.
- A quote for a queen-sized mattress for an adjustable bed from a medical supplier for \$1571.92.
- A letter from a Ministry supervisor requesting information from the Appellant's physiotherapist. He asked the following questions:
 1. What is the client's medical condition that would require a new mattress?
 2. What kind of mattress does the client require?
 3. Would the client's medical condition be aggravated or worsened should he not replace the mattress?
 4. What would be the result of not having the prescribed mattress?
- A memo dated December 13, 2011 from the Appellant's physiotherapist in reply to the Ministry's questions:
 1. What is the client's medical condition that would require a new mattress?
Acute low back pain, neck pain (likely precipitated from improper mattress), and recent abdominal surgical repair (Nov 29/11).
 2. What kind of mattress does the client require?
Queen size medical mattress.

3. Would the client's medical condition be aggravated or worsened should he not replace the mattress?

Yes. The client has already had aggravation of the low back due to using a wornout medical mattress (purchased from [X surgical supply] on his bed. He said his acid reflux would also be aggravated. This increase in low back aggravation has led to an increase in medication, and decrease in function. In addition his neck pain was either brought on from use of the worn out mattress, or at very least aggravated. According to [the Appellant] surgery may be required.

4. What would be the result of not having the prescribed mattress?

[The Appellant] would have an increase in aggravation of his low back condition, his neck condition and his acid reflux. This would result in an increase in medication use, doctors' visits, and possible surgical interventions (neck). In addition there would be an overall decline in function, and therapy would progress much slower. (Italics added)

- Subsequent to the reconsideration decision but prior to the Hearing, the Appellant submitted two sets of documents which included the following:
 - A quote for a non-medical queen-size mattress in the amount of \$894.88. (The Appellant advised that this quote was superseded by the request for a medical mattress for \$1571.92.)
 - Three letters from a Ministry supervisor indicating that the Appellant has had DB2 disability status since February 1994, PWD designation since June 19, 2003, (the Appellant stated that this should have been stated as February 1994), and Handicapped status since November 1994. (The Appellant stated that this should have been stated as February 1994. At the hearing, the Ministry did not dispute the date corrections.)
 - A note from the Appellant's physician indicating that the Appellant suffers from neck pain with no neurological deficit.
 - A "Medical Equipment Request and Justification" form dated April 20, 2011, signed by the Appellant's physician, stating the he needed an "orthopaedic/chiropractic bed" for neck pain and chronic low back pain.
 - A memo from the Appellant's physiotherapist dated July 12, 2011 indicating that the queen-sized medical bed mattress is required as the Appellant's mattress is no longer usable and cannot be repaired.
 - A note from a chiropractor indicating the Appellant suffered problems with his left T6 rib due to "sleeping on a bad motel bed August 21-22."
 - A memo dated October 18, 2011 from the Appellant's physiotherapist reporting neck pain requiring surgery due to a non-functioning chiropractic bed as well as additional lumbar pain. A new mattress is requested.
 - A memo dated October 25, 2011 from the Appellant's physician indicating that the Appellant's condition was worsened by sleeping on a soft bed while travelling to another city.

No information was obtained at the hearing in amplification of the evidence at hand.

PART F – REASONS FOR PANEL DECISION

The issue to be decided is whether the Ministry's reconsideration decision, which denied the Appellant a crisis supplement for the purchase of a new mattress, is reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

The Appellant argues that mistakes were made at the Ministry office regarding when his mattress became unusable. His bed did not wear out but rather gave out (springs and mattress). Therefore he had no time to put money away. The money he receives from the Ministry goes towards bills and sometimes he doesn't have money for food. His back and neck problems are getting very painful and more surgeries will be required if he cannot have his mattress replaced.

The Ministry argues that a hospital bed mattress cannot be provided under the crisis supplement provisions of the regulations.

Section 57(1) of the EAPWDR states:

- 57 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if
- (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and
 - (b) the minister considers that failure to meet the expense or obtain the item will result in
 - (i) imminent danger to the physical health of any person in the family unit, or
 - (ii) removal of a child under the *Child, Family and Community Service Act*.

Section 57(3) of the EAPWDR states:

- (3) A crisis supplement may not be provided for the purpose of obtaining
- (a) a supplement described in Schedule C, or
 - (b) any other health care goods or services.

With respect to the first test in sub-paragraph (a) (referred to as "Crisis Supplement Criterion #1 in the reconsideration decision), the Ministry concluded that the need for the mattress was not unexpected, as his current mattress "wore out." The Appellant argued rather that it broke. No evidence was provided in the written record nor at the hearing to challenge the Ministry's finding that it wore out. In fact, his physiotherapist discussed a "worn out mattress," as opposed to a broken one. Therefore, the Ministry's conclusion that it was not unexpected was reasonable.

Regarding second test in sub-paragraph (a) (Crisis Supplement Criterion #2), the Ministry found that the Appellant had no alternative resources, therefore that test was satisfied.

The third criterion is contained in sub-paragraph (b) (Crisis Supplement Criterion #3). The Ministry determined that the Appellant's neck and back may be aggravated by his current mattress but no evidence existed to conclude that his health was in "imminent danger." A review of the medical evidence on file indicates that the mattress was an aggravation to the client's condition but not that his health was in imminent danger. The physiotherapist's December 13, 2011 letter states:

"The client has already had aggravation of the low back due to using a wornout medical mattress

(purchased from [X surgical supply] on his bed. He said his acid reflux would also be aggravated. This increase in low back aggravation has led to an increase in medication, and decrease in function. In addition his neck pain was either brought on from use of the worn out mattress, or at very least aggravated."

In the same letter, the physiotherapist stated:

"[The Appellant] would have an increase in aggravation of his low back condition, his neck condition and his acid reflux. This would result in an increase in medication use, doctors' visits, and possible surgical interventions (neck). In addition there would be an overall decline in function, and therapy would progress much slower."

This evidence supports the Ministry's conclusion that the Appellant's health was not in imminent danger from the existing mattress.

The final point made by the Ministry was that, in accordance with section 57(3), a crisis supplement may not be provided to obtain a supplement described in Schedule C of the EAPWDR.

Section 3.6 of Schedule C refers to hospital beds and accessories attached to hospital beds. The hospital mattress requested by the Appellant clearly falls in this category as an accessory. The Ministry was reasonable to conclude this.

With respect to this last finding, the Ministry suggested that the Appellant apply specifically for a hospital-bed mattress as a health supplement.

The panel finds that the Ministry's decision was reasonably supported by the evidence and confirms the reconsideration decision.