

### PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated April 18, 2013 in which the Ministry of Social Development (the "ministry") denied the appellant's request for a hospital bed and mattress. The ministry held that the legislated requirements set out in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) had not all been met. Specifically the ministry held that the requirement in subsections 3, 3.6 and 3.7 of the Regulation had not been satisfied. The ministry determined that:

- a) The hospital bed and mattress requested is not the least expensive appropriate medical equipment or device – s. 3(1)(b)(iii);
- b) There is no confirmation from the appellant's physical therapist that the hospital bed and the mattress is medically needed – s. 3(2)(b);
- c) A hospital bed is not essential for transfers to and from bed or to adjust positioning – s. 3.6(1); and
- d) A pressure relief mattress is not medically essential to prevent skin breakdown and maintain skin integrity – s. 3.7(1).

### PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 62*  
*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C ss. 3(1)(b)(iii), 3(2)(b), 3.6(1), and 3.7(1)*

## PART E – Summary of Facts

The evidence before the ministry on reconsideration consisted of the following documents:

1. Request and Justification for Medical equipment signed by the appellant's physician on December 4, 2012.
2. Ministry's decision (medical equipment and devices decision summary) dated February 27, 2013.
3. From the appellant's family doctor :
4. (a) note dated November 30, 2012; ;  
(b) note dated December 24, 2012;  
(c) note dated March 12, 2013;  
(d) note dated March 21, 2013.
5. An assessment dated January 11, 2013 completed by the appellant's physiotherapist;
6. Estimates for cost of supplying electric hospital bed, gel form mattress, cover and a mattress box in the amount of \$3,207.60 from a supplier dated January 18, 2013.
7. 5-page submission to the reconsideration officer from the appellant's advocate dated March 28, 2013.

The physician in the November 30, 2012 note reported that the appellant has severe fibromyalgia and needs a high tech mattress for sleeping. On December 24, 2012, the physician supported the appellant's application for a more firm supporting bed due to the appellant's multiple soft tissue aches and pains secondary to her ongoing fibromyalgia. The physician further noted that the appellant also has chronic depression.

In the request for reconsideration, the appellant's advocate submitted the appellant's doctor has confirmed that she needs a hospital bed and that the appellant has provided information regarding the cost of a hospital bed

Information subsequently put before the appeal panel included the following:

- 1- Notice of Appeal signed by the appellant in April 24, 2013;
- 2- A copy of the physician note dated May 10, 2013.

In the Notice of Appeal the appellant submitted that she requires a hospital bed and she believes that she has provided sufficient information to support her request.

The appellant's physician on a note dated May 10, 2013 reported that he has been the appellant's physician for the last 10 years and that the appellant has severe advanced fibromyalgia with chronic pain syndrome implicated by major depressive episode for years. The physician reported that the appellant's sleep pattern severely disturbed and she does need a hospital bed to help with her mobility and transfers.

The panel admitted the physician note dated May 10, 2013 under subs. 22(4) of the EAA as being in support of the evidence that was before the ministry on reconsideration.

At the hearing, the appellant's advocate submitted that the only issue on the appeal is that whether the ministry was reasonable denying the appellant's request for a hospital bed. The appellant's advocate stated that the appellant realizes that there is not enough evidence to support her request for a pressure relief mattress and she understands that her request for a mattress does not meet the criteria of the relevant legislation.

The appellant's advocate submitted that the ministry's decision to deny the appellant's request for a hospital bed is unreasonable.

The appellant said that she is not able to sleep on her bed because she can't get on and off the bed. The appellant said that she sleeps on a small couch which is quite low so she can get on and off the couch. The appellant said that the couch is very soft and after a short period of time she has to get up because she sinks into the couch.

The appellant said that her physician who knows her for more than 10 years has prescribed the hospital bed and the physiotherapist has provided additional confirming information that the appellant needs a hospital bed and a mattress.

The ministry relied on the reconsideration decision and stated that as the appellant is no longer requesting to have a relief mattress, she would only address the appellant's request for a hospital bed. The ministry submitted that the notes from the appellant's physician dated December 24, 2012 and November 30, 2012 stated that the appellant requires a firm supporting bed and a high tech mattress for sleeping. There has been no information provided by the appellant's physiotherapist to explain why her existing bed could not be modified to provide adequate support and comfort. The ministry further submitted that the evidence provided by the appellant does not provide information that a hospital bed is the least expensive appropriate medical equipment.

## PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the ministry's reconsideration decision dated April 18, 2013 in which denied the appellant's request for a hospital bed. The ministry held that the legislated requirements set out in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) had not all been met. Specifically the ministry held that the requirement in subsections 3, 3.6 and 3.7 of the Regulation had not been satisfied. The ministry determined that:

- a) The hospital bed requested is not the least expensive appropriate medical equipment or device – s.3(1)(b)(iii);
- b) There is no confirmation from the appellant's physical therapist that the hospital bed is medically needed – s. 3(2)(b);
- c) A hospital bed is not essential for transfer to and from bed or to adjust positioning – s. 3.6(1).

The relevant legislation is as follows:

### EAPWDR, Schedule C

- 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.
- (4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.
- (5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if

(a) at the time of the repairs the requirements in this section and section 3.1 to 3.11 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and

(b) it is more economical to repair the medical equipment or device than to replace it.

(6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

### 3.6

(1) Subject to subsection (3) 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 facilitate transfers of a person to and from bed or to adjust a person's positioning in bed:

(a) a hospital bed;

(b) an upgraded component of a hospital bed;

(c) an accessory attached to a hospital bed.

(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.

(3) The following items are not health supplements for the purposes of section 3 of this Schedule:

(a) an automatic turning bed;

(b) a containment type bed.

### 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.

In this appeal the appellant sought the minister's approval for a hospital bed. At the hearing the appellant submitted that she is no longer requesting to receive a pressure relief mattress. For the hospital bed the criteria that she had to satisfy are set out in Sections 3 and 3.6 of Schedule C of the EAPWDR.

The panel reviewed the Medical Equipment and Devices Decision Summary. The panel notes that the ministry denied the appellant's request because:

- a) The hospital bed and mattress requested are not the least expensive appropriate medical equipment;
- b) There is insufficient information from the appellant's physical therapist that the hospital bed and mattress is medically needed;
- c) The minister is not satisfied that the [hospital bed] is medically essential to facilitate transfers of a person to and from bed or to adjust a person's positioning in bed; and
- d) There is no evidence from the appellant's physician and the physiotherapist that a pressure relief mattress is medically essential to prevent skin breakdown.

### **The position of the parties**

There was considerable discussion at the hearing of the appeal as to whether or not the physician or the physiotherapist had recommended that the appellant have a hospital bed.

The ministry argued that the appellant did not meet the requirement set out in s. 3(1)(b) (iii). The ministry submitted that there has been no information provided by the physiotherapist that other basic positioning equipment has been assessed as being appropriate for the appellant. Furthermore, the physiotherapist did not provide any reasons why the appellant's existing bed could not be modified to assist her in getting on and off the bed. The ministry further submitted that the appellant does not meet the requirement set out in s. 3.6 of the Schedule C. There is no information before the ministry at the reconsideration that provides a hospital bed is essential to facilitate the appellant's transfer to and from bed or to adjust her positioning in bed.

The appellant argues that she provided a quote regarding the requested hospital bed and that the ministry did not request any further information. The appellant submitted that the physiotherapist and her physician both supported her request for a hospital bed.

The appellant's advocate argues that the appellant has serious medical conditions and has pain in her low back. The physiotherapist has provided additional confirming information indicating that the appellant needs the requested items and that the physician reported that the appellant needs the hospital bed in order to transfer on and off the bed at night. The advocate argues that the physiotherapist along with the physician confirmed that the appellant needs a hospital bed.

### **Analysis**

Respecting s. 3(2)(b), the panel notes that the physiotherapist observed that the appellant's sit-to-stand transfer mechanics is altered due to right knee pain and that the appellant requires assistance to transfer from supine lying to sitting position. The physiotherapist also examined and assessed the appellant's range of motion in her shoulder and stated "all shoulder range of motions limited due to upper trapezius pain". The physiotherapist further reported that lumbar range of motion is decreased in all range of movements, particularly lumbar spine extension. The physiotherapist was of the opinion that a medical mattress would assist the appellant and will improve her sleep pattern.

The panel notes that although the physiotherapist has not requested a hospital bed, she assessed the appellant's motion and mobility and concluded that the appellant requires assistance to transfer from supine lying to sitting. The panel notes that the evidence of the physician, repeated by the appellant and incorporated into the physiotherapist's letter, was that the appellant has health problems with chronic pain syndrome that severely disturbed her sleep pattern. Accordingly, the panel finds that the appellant's physical therapist and her physician confirmed that the appellant needs a medical mattress and a firm bed satisfying s.3(2)(b) of Schedule C.

Section. 3.6(1) of Schedule C requires that a hospital bed is a health supplement if the minister is satisfied that the item is medically essential to facilitate transfers of a person to and from bed or to adjust a person's positioning in bed.

The panel accepts the evidence of the appellant that she is not able to sleep in her bed because she cannot get on and off the bed. Furthermore, looking as a whole, it is the opinion of the panel that the assessment of the physiotherapist objectively confirms the appellant's medical need for assistance in getting to and from the bed and also confirms that the appellant requires assistance to transfer from a supine lying to sitting position. The panel further notes that the appellant's physician in the note dated May 10, 2013 reported that the appellant needs a hospital bed to help with her mobility and transfer. Accordingly, the panel finds that the requested bed is medically essential to facilitate transfer to and from bed or to adjust the appellant's positioning in bed. The panel finds that the appellant meets the criteria set out in s. 3.6 of Schedule C.

However, the panel finds that the physiotherapist did not assess the appellant using any basic positioning equipment nor did she assess the appellant's existing bed as being modified to assist the appellant in going to and from the bed. Furthermore, the panel notes that the physiotherapist instructed the appellant to access several medical equipment dealerships in order to receive estimates for the equipment, namely a supportive mattress and a cane, but the appellant provided one estimate for a gel relief mattress and a hospital bed. Accordingly the panel finds that there is insufficient information the hospital bed requested is the least expensive appropriate medical equipment or device and that the appellant does not meet the criteria set in s. 3(1)(b)(iii).

The panel notes that the appellant does not pursue her appeal on the issue of whether a pressure relief mattress is medically essential for her. The panel notes that there is no evidence from the appellant's physician and the physiotherapist that a pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity – s. 3.7(1).

### **Conclusion**

The panel concludes that the appellant is a person with a number of medical conditions that significantly and negatively affect her mobility. The assessment of the physiotherapist included references to all these medical conditions. Read as whole, this assessment satisfied the requirements of Schedule C, ss. 3(2)(b) and 3.6, that it confirms the appellant's medical need for a hospital bed and that the requested item is medically essential to facilitate transfers of the appellant to and from bed or to adjust her positioning in bed.

Therefore, having established that the appellant has a medical need for a hospital bed, it was unreasonable for the ministry to conclude that the hospital bed was not medically essential for the appellant to facilitate transfer to and from bed or to adjust her positioning in bed pursuant to ss. 3(2)(b) and 3.6 of Schedule C of the EAPWDR.

However, the panel further notes that under s. 3(1) (b) (iii) of Schedule C, health supplements may be provided by the minister if the medical equipment or device is the least expensive appropriate medical equipment. In respect to subs. 3 (1) (b) (iii), the panel finds that the physiotherapist did not provide sufficient information to explain why the appellant's existing bed could not be modified to provide adequate comfort. The panel further finds that the physiotherapist did not assess whether other basic positioning equipment are appropriate. The panel notes that although the physiotherapist instructed the appellant to access several medical equipment dealerships in order to receive estimate

for the equipment, the appellant provided only one estimate for a gel relief mattress and a hospital bed. Therefore, the panel finds that there is insufficient evidence to conclude the hospital bed is the least expensive appropriate medical equipment and that the appellant has not met all the legislative requirements.

Overall, the panel finds that the appellant had not satisfied the statutory criteria subs 3 (1) (b) (iii) for being provided a hospital bed. The panel finds that the ministry's decision was a reasonable application of the relevant legislation in the circumstances of the appellant. Accordingly, the ministry decision is confirmed.