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PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "ministry"), reconsideration decision dated August 22, 2013 wherein the ministry denied the appellant's request for funding for modification of a bed ("adaptation of the veil bed"). In particular, the ministry found that the bed is required to meet the safety of the appellant and the proposed modification is to address the ergonomic needs of his caregivers. The ministry was not satisfied that the bed is to facilitate transfers of the appellant to and from his bed or to adjust his position in bed. The ministry further found that the appellant is seeking funding for a "containment type bed", which is not a health supplement for the purposes of section 3 of Schedule C of EAPWDR. Therefore the ministry determined that the appellant's request does not meet the eligibility requirements of subsections 3.6 (1) and 3.6 (3) (b) of Schedule C of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPDR) – section 62, and Schedule C section 3 and section 3.6

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PART E – Summary of Facts

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

1. A Medical Equipment Request and Justification Form dated May 16, 2013 from the appellant requesting funding for modification of a bed i.e. "adaptation of the veil bed";
2. A letter dated May 16, 2013 from an occupational therapist stating that: (a) the appellant is a young man having a medical condition that has resulted in severe physical and cognitive challenges for him; (b) the appellant has recently transitioned from his home into an adult program at a care facility; (c) to avoid the risk of falling and injury at night-time, the appellant has to sleep in a "veil bed"; (d) the appellant will require an overhead lift system to safely transfer him in to his wheelchair; (e) the appellant's bed will need to be adapted to allow the overhead lift to be used;
3. A quotation dated April 23, 2013 from a healthcare equipment supplier which states that the cost of alterations to a "safety bed" (an "existing es300 enclosed bed"), which include retrofitting the bed with custom front padded entry doors with mesh windows (for overhead lift), is $2930.00;
4. A medical equipment and devices decision summary dated June 12, 2013 that denies the appellant's request for funding for alteration of his bed on the grounds that the proposed modifications are not eligible as the appellant's "containment bed" is not listed as an eligible item under sections 3.1 to 3.11 of Schedule C of the EAPWDR and therefore the ministry does not have the legal authority to provide the item requested by the appellant;
5. A Request for Reconsideration dated July 22, 2013 which requests extension of the reconsideration period as the relevant documentation was not received by the appellant until July 17, 2013;
6. Reasons for Request for Reconsideration from the appellant dated August 2, 2013, which makes reference to a letter dated August 2, 2013 from the appellant's nurse clinician and a quotation dated August 13, 2009;
7. A letter dated August 2, 2013 from the appellant's nurse clinician that notes that the appellant's request for the funding was denied due to the ineligibility of the type of bed used by the appellant. It also makes reference to a quotation (attached to the said letter) that describes a bed the purchase of which was originally funded by the ministry when the appellant was a child. The said letter goes on to state that (a) the transition of the appellant into the adult program at the care facility has raised issues that require the same bed to be modified to meet the needs of the appellant; and (b) the modification is essential to facilitate appellant's transfers to and from his bed as stated in section 3.6 of the regulation (EAPWDR) for medical equipment and devices; and
8. A quotation dated August 13, 2009 from the same healthcare equipment supplier (mentioned above), which describes the cost a full enclosure bed ("model es300") with top enclosure and snap on cover with netting window as being $6278.00.

Subsequent to reconsideration and together with his Notice of Appeal dated September 5, 2013, the appellant has submitted a letter dated September 5, 2013 from his care facility that, among other things, states that: (a) the modification of the appellant's bed is critical to his safety; (b) the appellant's current bed does not allow for a lift system to be used; (c) no modifications could be made to the lift system; (d) currently, the appellant requires two persons to lift him and transfer him in and out of his bed, which puts him at great risk; (e) the risk of the caregivers potentially dropping the appellant is

very high; (f) because of his medical condition, it is very awkward to try to position the appellant and get him in and out of the bed safely; (g) the caregiver staff worry about the difficult ergonomic factors of trying to get the appellant into his bed and also have difficulty ensuring that the appellant is safe while transferring him as his arms and legs are moving as well at the same time; (h) a member of the OHS Committee that visited the appellant at the care facility on July 22, 2013 assisted with the lifting of the appellant and got almost got hurt in the process; (i) if the caregiver staff become injured due to difficulties with the appellant's bed, this will affect the care being provided to the appellant; and (j) a copy of the quotation dated April 23, 2013 from a healthcare equipment supplier, which states that the cost of alterations to the appellant's current bed is $2950.00, and the ministry's reconsideration decision gave an incorrect quote of $5278.00 .

The panel finds the that the contents of the said letter dated September 5, 2013 are in support of the information and records that were before the minister at the time of reconsideration and admitted the letter as new additional evidence pursuant to the provisions of section 22 (4) (b) of the Employment Assistance Act

The appellant did not participate in the teleconference hearing nor did he submit a Release of Information Form signed by him. However, the Director of Quality Care of the appellant's caregiving institution participated in the hearing and confirmed that she: (a) had the appellant's copy of the Record of Information and (b) was participating to represent the appellant as the appellant's medical condition did not enable him to do so. The said individual also provided to the panel an electronic copy of a Form entitled "Consent To Provision of Health Services & Release of Health Care Information" (the "Consent") signed by the mother/guardian of the appellant in favor of the appellant's caregiving institution. The Form is dated April 7, 2013 and is stated to be valid until April 2014. The said Form, amongst other things, states that the objective of the Consent is to provide comprehensive and safe health services for the appellant. Based on the foregoing the panel finds that the said individual has the appellant's implicit consent to represent the appellant and was therefore permitted to remain and represent the appellant at the hearing.

The ministry did not participate at the hearing. After confirming that the ministry was notified of the time and the manner of the hearing, the hearing proceeded under section 86 (b) of the EAR.

The appellant's representative introduced two witnesses who were allowed to participate in the hearing. The first witness was the appellant's actual caregiver on a day-to-day basis; and the second witness was the Staff Liaison, OHS Committee Member of the caregiving institution.

At the hearing, the appellant's representative argued that the ministry's decision was unreasonable as the existing bed of the appellant created an unsafe hazard for the appellant's caregivers. The appellant was receiving care as a child under the "At Home" care program and on becoming an adult, moved to the caregiving institution in April of this year. The caregiving institution could not do anything with the appellant's existing bed, as it does not allow for a mechanical lift to be used to move the appellant to and from his bed without great risk to the appellant. The ministry funded the cost of the existing bed in 2009.

The evidence of the appellant's caregiver was that the caregiving staff had difficulty ensuring that the appellant is safe while transferring him to and from his "containment" bed to his chair due to a lot of movements of his arms and legs. The appellant's physiotherapist and the occupational therapist had

both experienced this difficulty.

The appellant's second witness, the Staff Liaison, stated she had visited the appellant to witness the lifting of the appellant from bed and found it to be "extremely awkward" and "unsafe" for the caregivers and could result in injury to them. In such circumstances, it would be difficult for the caregiving institution to continue to provide care for the appellant.

The appellant's representative and the witnesses agreed that the modification to the existing bed would not destabilize or create any safety hazard for the appellant. The existing bed did not meet the safety need of the caregivers and was "high risk" for the appellant, as he could be dropped. The "WorkSafe" regulations have a no-lift policy for the caregiver's staff and therefore the existing bed needs to be modified to enable the staff to adhere to that policy. The difficulty for the staff is that they have to adopt a stooping position to transfer the appellant to and from the existing bed. They also acknowledged that the appellant could be safe in a containment hospital bed, but the cost thereof could be as much as $15,000.00 (or more) as opposed to the requested modification of the existing bed, which would cost less than $3000.00. The existing bed is a full size bed, which would be satisfactory for a considerable amount of time as the appellant is not likely to grow out of it. The original supplier of the existing bed is used to carrying-out the proposed modifications and the caregivers are satisfied that the proposed modifications would be satisfactory to meet the current needs of the appellant.

Based on the foregoing, the panel makes the following findings of fact:

- The appellant is a person with disabilities who is eligible for general health supplement under section 62 of EPWDAR;
- The appellant's existing bed was funded by the ministry in 2009;
- The appellant's existing bed is a stationary containment bed. It does not appear that the height of the entire bed, the head or the foot is replaceable;

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PART F – Reasons for Panel Decision

The decision under appeal is the reasonableness of the ministry's reconsideration decision dated August 22, 2013 wherein the ministry denied the appellant's request for funding for modification of a bed ("adaptation of the veil bed"). In particular, the ministry found that the bed is required to meet the safety of the appellant and the proposed modification thereof is to address the ergonomic needs of his caregivers. The ministry held that the appellant's containment bed is not a "hospital bed" and the ministry was not satisfied that the bed is to facilitate transfers of the appellant to and from his bed or to adjust his position in bed. The ministry further found that the appellant is seeking funding for a "containment type bed", which is not a health supplement for the purposes of section 3 of Schedule C of EAPWDR. Therefore the ministry determined that the appellant's request does not meet the eligibility requirements of subsections 3.6 (1) and 3.6 (3) (b) of Schedule C of the EAPWDR.

The relevant applicable legislation is as follows:

Employment Assistance Persons with Disabilities Regulation

General health supplements

62 (1) Subject to subsections (1.1) and (1.2), 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 family unit if the health supplement is provided to or for a person in the family unit who is (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(a) a recipient of disability assistance, (b) a person with disabilities who has not reached 65 years of age and who has ceased to be eligible for disability assistance because of

(i) employment income earned by the person or the person's spouse, if either the person or the person's spouse

(A) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(B) is aged 65 or more and a person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
(B.C.Reg. 67/2010) (B.C. Reg. 114/2010)

(ii) a pension or other payment under the *Canada Pension Plan* (Canada), or

(iii) money received by the person or the person's spouse under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry. (B.C. Reg. 92/2005)

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 (B.C. Reg. 197/2012)

(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:

(1) (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: (B.C. Reg. 197/2012)

(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.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section 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 a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(B.C. Reg. 197/2012)

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or 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 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed. (B.C. Reg. 197/2012)

(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 sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and (B.C. Reg. 197/2012)

(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.

(B.C. Reg. 61/2010)

Medical equipment and devices – hospital bed

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 or maintain a person's positioning in bed: (B.C. Reg. 197/2012)

(a) a hospital bed; (b) an upgraded component of a hospital bed; (c) an accessory attached to a hospital bed;

(d) a positioning item on a hospital bed. (B.C. Reg. 197/2012)

(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.

(B.C. Reg. 61/2010)

The appellant's case is that the appellant's existing containment bed creates an unsafe hazard for the appellant's caregivers. No modifications can be made to the mechanical lift to move the appellant safely to and from his bed and the risk of the appellant's caregivers potentially dropping him is very high. The caregiving staff is concerned about the difficult ergonomic factors of trying to get the appellant in to his existing bed. The caregiving staff experience difficulty ensuring that the appellant is safe while transferring him to and from his "containment" bed to his chair due to a lot of movements of his arms and legs. In these circumstances it would be difficult for the caregiving institution to continue to provide care for the appellant. The cost of a new hospital bed with containment features would be approximately $15,000.00. However, the cost of modifying the existing bed, which was originally funded by the ministry in 2009, would be less than $3000.00

As stated earlier, the ministry representative did not attend the hearing. However, based on the Record of Appeal, the ministry's case is that the appellant's existing bed is not a hospital bed, which is medically essential to facilitate transfers of a person to and from a bed or to adjust a person's positioning in bed. The ministry found that the components of the appellant's existing bed are stationary and is a "veiled bed" designed for individuals, like the appellant, who are at risk for falling and injury at nighttime. There is nothing intrinsic to the existing bed that will facilitate transfers or to adjust a person's position in bed as is in the case of a hospital bed. The ministry further found that existing bed is intended to meet the safety (containment) needs of the appellant and the request for modification of the existing bed is intended to address the ergonomic needs of the appellant's caregivers. The ministry also found that the appellant's request is for modification of a containment bed and section 3.6 (3) (b) of the EAPWDR expressly provides that containment type beds are not health supplements for the purposes of section 3 of Schedule C of the EAPWDR.

The panel accepts that the caregivers of the appellant are in the best position to determine what works on the front line in terms of proper and safe care for the appellant, and acknowledges their submissions and concerns expressed by them at the hearing about the well-being of the appellant.

The panel further notes that:

- section 3.6 (1) of the EAPWDR provides that a hospital bed, an upgraded component of a hospital bed or an accessory attached to a hospital bed are authorized supplements if the minister is satisfied that the *item is medically essential to facilitate transfers of a person to and from a bed or to adjust a person's position in bed;*
- Section 3 (4) of the EAPWDR provides that the minister may provide as a health supplement repairs (modification) 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;
- The panel further notes that section 3.6 (3) expressly sets out that an automatic turning bed and *a containment type bed* are not health supplements for the purposes of section 3 of Schedule C of the EAPWDR.

At the hearing, the appellant's representative and witnesses acknowledged that the existing bed of the appellant is *a containment type bed* and not *a hospital bed*. In view of this undisputed evidence, the panel finds that the appellant's existing containment bed is not an eligible health supplement for the purposes of section 3.6 (1) of the EAPWDR. The panel further finds that as the existing containment bed is not an eligible health supplement, it is also not eligible for repair under section 3 (4) of the EAPWDR.

In the panel's view this as an unfortunate conclusion as a simple modification of the existing containment type bed would have met the needs of the appellant and the appellant's caregivers and at the same time saved government approximately $12,000.00, being the difference between the approximate cost of a new hospital bed (approximately $15,000.00 or more) and the modification of the existing containment type bed (estimated at less than $3000.00). The panel is sympathetic to the circumstances of the appellant's case, but it has no discretion or jurisdiction to override the clear intent and expression of the existing applicable law.

In the circumstances, the panel finds that the ministry's decision that the appellant's request does not meet the eligibility criteria set out in subsections 3.6 (1) and 3.6 (3) of Schedule C of EAPWDR is reasonably supported by evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the decision of the minister.