

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (ministry) dated March 6, 2014 in which the ministry denied the appellant's request for medical equipment and devices, namely a hospital bed mattress, an incontinence mattress covering, an elasticized mattress covering and a replacement hand-held pendant for a hospital bed. The ministry held that with respect to the mattress and mattress coverings, the five year legislated period of time for replacement of these items under section 3.7(2) of Schedule C, EAPWDR has not elapsed, and the Appellant is not eligible for replacements until April, 2016. The ministry was not satisfied that the mattress or the incontinence mattress covering are medically essential to prevent skin breakdown and maintain skin integrity as required under section 3.7(1) of Schedule C, EAPWDR or that an occupational therapist or physical therapist has confirmed that the items are medically essential, as required by section 3(2)(b) of Schedule C, EAPWDR. With respect to the hand-held pendant, the ministry held that the Appellant has sufficient funds to purchase this item and therefore she is not eligible under section 3(1)(b)(ii) of Schedule C, EAPWDR, and that she is not eligible for a replacement under section 3.6(2) of Schedule C, EAPWDR until October, 2017.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 62; Schedule C, sections 3(1)(b)(ii), 3(2), 3(3)(b), 3.7(1) and (2), 3.6(2)

## PART E – Summary of Facts

Information before the ministry at Reconsideration included:

- Ministry file notes on the Appellant dated October 26, 2012 to July 25, 2013.
- A ministry telephone log for March 6, 2014, summarizing conversations with a mobility products supplier.
- A copy of a sales quotation for a mattress and two coverings requested by the Appellant dated December 16, 2013 in the amount of \$1,590.30.
- A copy of a sales quotation for emergency repairs to an electric hospital bed and replacement pendant dated January 8, 2014 in the amount of \$227.67.
- The Appellant's Request for Reconsideration, stamped as received by the ministry February 18, 2014, with attachments:
  - A copy of a letter from an Occupational Therapist (OT), signed by a physician, dated January 13, 2014, stating that the Appellant spends 24 hours a day in bed, that she requires total care with the exception of feeding, and that she is at great risk for skin breakdown, of which there has been no evidence since she received a mattress in April, 2011. The OT stated that there is a large tear in the mattress bottom and asked that a replacement pressure mattress be considered. The physician acknowledged that he had read the letter and agreed with the recommendation.
  - A copy of the ministry's letter dated January 16, 2013, stating that the ministry requires a financial review to determine her eligibility for financial assistance with repairs to her bed because the ministry determined that the Appellant has sufficient income to meet many general health supplement costs through her own income.
  - A copy of a letter to whom it may concern from a physician, dated February 2, 2014, stating that the Appellant must purchase a new mattress because her current mattress is worn out and she does not have the funds to do so.
  - A copy of a Medical Equipment Request and Justification signed by the Appellant October 1, 2013.
  - Copies of receipts for various purchases made in the month of December, 2013.
  - A copy of a Monthly Household Budget, undated, stating total income as \$1,465.13, total home expenses as \$923.57, daily living expenses as \$396.60 and health costs as \$123.02, with a note stating that extra expenses occur from time to time, as an example, a water cooler costing \$232.90.
  - A copy of a rent receipt dated January 1, 2014 in the amount of \$850.00.
  - A copy of a receipt from a chiropractic clinic dated December 23, 2013, in the amount of \$25.00.
  - A copy of a statement from a chiropractic clinic for the period January 4 to December 23, 2013.
  - A copy of a bill from Telus dated January 19, 2014 in the amount of \$73.57.
  - A copy of a bank statement dated February 18, 2014, for the period January 3 to January 14, 2014, showing an opening balance of \$126.20 and a closing balance of \$3.81.
  - A letter from the Appellant's caregiver dated February 15, 2014, stating that the Appellant's mattress is in poor condition, causing her discomfort and affecting her sleep, and stating that the bed control device also needs replacement.

The Appellant submitted a note from a chiropractor dated March 25, 2014 with her Notice of Appeal. The note states that the Appellant has been treated by the chiropractor for a number of years, that she has severe rheumatoid arthritis and is confined to bed and that it appears her mattress is breaking down and he has suggested that it is time to look for a replacement. The Panel admits the statements in the Notice of Appeal under section 22(4)(b) of the *Employment and Assistance Act* as testimony in support of information that was before the ministry at the time the decision being appealed was made, as it confirms information previously

provided by health professionals. The ministry had no objection to the admission of this document.

Prior to the hearing, the Appellant submitted three photographs of herself in bed. Although this material was provided to the ministry by fax on April 14, 2014, the ministry representative at the hearing stated that she had not received them and objected to their admission by the Panel. The Panel admitted the photographs as evidence of the Appellant's bedridden state.

In her Notice of Appeal, the Appellant stated that according to her doctor a new bed is required immediately since it is affecting her health and that she is confined to her bed 24 hours a day, seven days a week, therefore a bed does not last the standard length of years.

At the hearing, the Appellant's witness stated that she has been the Appellant's caregiver for 1 ½ years. She stated that the Appellant lives simply, with no luxuries. She stated that the Appellant requires items such as swabs and Tylenol that she must pay for, and she uses the food bank. Her food has to be prepared from scratch due to immune deficiency. With respect to the mattress, she stated that it has sponge coming out and it is concave, which causes pain when the Appellant has to roll over.

The Appellant stated that with respect to her budget, she sometimes needs chiropractic treatment more often, up to five or six times a month, and the ministry's calculations of her expenses do not allow for this or other expenses such as supplements, water, entertainment or prescriptions. She stated that there is no money left at the end of the month, and no excess income. She stated that she must use the local food bank every month. She stated that there is no difference in her spending in December from any other month.

With respect to the need for a replacement mattress, the Appellant stated that she has had the current mattress for three years, and it has a great deal of wear and tear due to the fact that she is in bed 24 hours a day, seven days a week.

In response to a question from the ministry, the Appellant stated that she believes the mattress had a one year warranty.

In response to questions from the Panel, the Appellant stated that the new bed cover provided by the supplier has nothing to do with the hole in the mattress; the original cover was removed because it was plastic and moisture can cause bedsores. She stated that her family shops for her and that the financial review conducted by the ministry covered one month, which was not necessarily typical, and she could not be precise about her expenses when questioned by the ministry. She stated that she placed the new mattress on top of the old one because her bed does not have a box spring, and this was more comfortable. The Appellant stated that the core of her pendant, which is a control for the raising and lowering of the head and foot of the bed, was severed due to incorrect installation, and that she has already replaced it herself.

The Ministry, in their submission, referred to the Reconsideration Decision and stated that the Appellant is an "MSO" (medical services only) client. The ministry stated that the replacement date for the Appellant's mattress is 2016; five years from the date when it was provided, which is the period prescribed in the legislation. The ministry stated that there is no occupational therapist (OT) or physical therapist (PT) assessment provided with the request for a replacement mattress and no evidence has been provided regarding skin breakdown.

With respect to the financial review conducted, the ministry stated that it was done by telephone based on the documents provided by the Appellant. In the Reconsideration Decision, the ministry calculated that after monthly expenses the Appellant had approximately \$275.00 available. The ministry stated that the Appellant provided expenses for the month of December, which is typically higher for most people.

In response to questions from the Panel, the ministry stated that beds were provided to the Appellant in 2005, 2008, 2009 and a mattress was provided in 2011, but no information was available to explain the reasons or whether the legislated time limits, if any were in effect, were followed.

The Panel makes the following findings of fact:

- The Appellant is an MSO ministry client.
- A mattress was provided to the Appellant in 2011.
- The Appellant purchased a replacement pendant with her own funds.
- The OT's assessment does not specifically state that a replacement mattress is medically essential.

## PART F – Reasons for Panel Decision

The issue before the panel is the reasonableness of the ministry's reconsideration decision of March 6, 2014, in which the ministry denied the appellant's request for medical equipment and devices, namely a hospital bed mattress, an incontinence mattress covering, an elasticized mattress covering and a replacement hand-held pendant for a hospital bed. The ministry held that with respect to the mattress and mattress coverings, the five year legislated period of time for replacement of these items under section 3.7(2) of Schedule C, EAPWDR has not elapsed, and the Appellant is not eligible for replacements until April, 2016. The ministry was not satisfied that the mattress and the incontinence mattress covering are medically essential to prevent skin breakdown and maintain skin integrity as required under section 3.7(1) of Schedule C, EAPWDR or that an occupational therapist or physical therapist has confirmed that the items are medically essential, as required by section 3(2)(b) of Schedule C, EAPWDR. With respect to the hand-held pendant, the ministry held that the Appellant has sufficient funds to purchase this item and therefore she is not eligible under section 3(1)(b)(ii) of Schedule C, EAPWDR, and that she is not eligible for a replacement under section 3.6(2) of Schedule C, EAPWDR until October, 2017.

### Legislation

*EAPWDR*

### 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
- (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,
    - (ii) a pension or other payment under the *Canada Pension Plan* (Canada),
    - (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, or
    - (iv) money or value received by the person or the person's spouse that is maintenance under a maintenance order, maintenance agreement or other agreement, 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 any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,

*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 3.12 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 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:
- (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.
- (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 3.12 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 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) 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.

#### **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:

- (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.

(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.

#### **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.

The Appellant's position is that she is entitled to funding for replacement of the mattress provided by the ministry in 2011 because it is no longer useable because it is worn out and damaged due to the fact that it is in use full-time. The Appellant also argues that the ministry incorrectly assessed her ability to pay for replacement medical equipment and supplies.

The ministry's position is that the Appellant does not meet the requirement for a replacement mattress because the legislated time period for replacement, five years, has not elapsed. In addition, the ministry holds that the OT did not conduct an assessment that establishes that the requested item is medically essential. With respect to the hand held pendant requested, the ministry holds that the Appellant has sufficient funds to pay for a replacement and the legislated time period for replacement by the ministry, five years, has not elapsed.

With respect to the Appellant's request for a replacement hand held pendant for her hospital bed, the Panel

finds that the ministry reasonably concluded that the legislated time period of five years, pursuant 3(3)(b) and 3.6(2) of Schedule C, EAPWDR for replacement has not elapsed since October, 2012 when the Appellant was provided with a pendant. Also, since the Appellant has paid for a replacement, the Panel finds that the ministry reasonably concluded that the Appellant had the financial resources to do so.

With respect to the ministry's denial of a replacement hospital bed mattress, an incontinence mattress covering and an elasticized mattress covering, the Panel finds that the ministry reasonably concluded that the OT's assessment did not establish that these items are medically essential as required under section 3(2)(b) of Schedule C, EAPWDR, as there is no evidence of skin breakdown and the OT has not confirmed that the items are medically essential. The Panel finds that the ministry reasonably determined that there is no evidence that the items are medically essential to prevent skin breakdown as required by section 3.7(1) of Schedule C, EAPWDR. The Panel notes that the ministry previously supplied hospital beds to the Appellant in 2005, 2008 and 2009, and a pressure relief mattress in 2011. The Panel finds that the ministry reasonably determined that the legislated time limit for replacement of the Appellant's current mattress has not passed, and that the replacement date is April, 2016.

The Panel therefore confirms the ministry's decision as reasonably supported by the evidence.