

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”), reconsideration decision dated February 25, 2014, which denied the appellant a crisis supplement for a bed. The ministry relied upon section 5 of the Employment Assistance Persons with Disability Act (EAPWDA) and section 57(1) of the Employment Assistance for Persons with Disabilities Regulation (EAPWR) and specifically determined that it was not satisfied that failure to obtain another regular bed would result in imminent danger to the appellant’s physical health.

### PART D – Relevant Legislation

-Employment and Assistance Persons with Disability Act (EAPWDA) –section 5  
-Employment and Assistance Persons with Disability Regulations (EDPWDR) –section 57(1) and Schedule C Health Supplements

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision comprised of the ministry's original decision dated February 11, 2014 and the appellant's Request for Reconsideration dated February 13, 2014 in which the appellant states that: (a) she has multiple health issues; (b) her bed fell apart one month after receipt of it; (c) she has been sleeping on concrete floor as her bed has not been fit to sleep on for sometime; (d) she wakes up very sore, painful and have had to increase her pain medicine as a result thereof (e) her doctor has sent letters to the ministry to explain why and what she needs; and (f) in view of the several serious medical conditions enumerated by her in the Reasons for Reconsideration, she is willing to accept any bed – "*better than nothing*"; (g) a ministry worker had suggested a foam mattress for her, but that did not work out; (g) her doctor has recommended an orthopedic mattress to alleviate her aches and pain; (h) she was told by a ministry worker to go and buy a bed and then he "*hung up*" (the phone) after saying "*goodbye*"; (i) she would not be groveling for a bed from the ministry if she could buy the bed herself: and (h) she has been requesting a bed for a period over a year and she does not believe that the ministry is listening to her, her doctor or knows the pain she endures.

In her Notice of appeal, filed on March 13, 2014, the appellant states that she disagrees with the ministry's reconsideration decision on the grounds of the "interpretation of legislation".

The panel finds the contents of the Request for Reconsideration relate to the following facts that were before the ministry at the time of reconsideration: (1) the appellant had complained to the ministry in August 2013 that her double foam bed was too low and thin, and was hurting her hips and body; and (2) in September 2013, she had provided a doctor's note to the ministry to the effect that the appellant had osteoporosis and osteoarthritis, which resulted in "severe chronic pain" and stiffness". The panel finds that the contents of the Request for Reconsideration, among other things, elaborate upon and support the information and records that were before the ministry at the time of reconsideration and admitted them as additional evidence pursuant to the provisions of section 22(4) of the Employment Assistance Act.

The panel notes that the reconsideration decision makes a specific reference to an OT assessment completed in November 2013, which was submitted by the appellant to the ministry in support of her separate Schedule C Health Supplement request for an orthopedic mattress. A copy of OT assessment is not in the record of appeal. However, the ministry representative made a special request to the panel at the beginning of the appeal (before the hearing of the appellant's arguments) to take note that a separate request from the appellant, under Schedule C Health Supplements, for an orthopedic mattress had been approved by the ministry around the same date as the date of ministry's reconsideration decision that denied the appellant's crisis supplement under Section 57(1) of EAPWDR for a regular bed. That separate application of the appellant for a Health Supplement under Schedule C, and the decision relating thereto, is not a matter of concern for this appeal.

However, with the approval of the ministry representative, the appellant's advocate read into the record an extract of the OT assessment, which amongst other matters, indicated that the appellant has severe medical conditions that require her to have an orthopedic mattress to protect her immediate physical health. The panel notes that the medical information in the OT assessment relating to the risks to the physical health of the appellant corroborate the evidence that was before the ministry at the time of reconsideration (discussed above in the context of the contents of the Request for Reconsideration) and also supports the contents of the appellant's Request for Reconsideration, which has been admitted by the panel as being additional evidence in support of the

information and records that were before the ministry at the time of reconsideration.

At the hearing, the appellant and her advocate collectively stated that the appellant is an individual with several medical conditions and does not have a proper bed to sleep upon. The appellant had received a double bed through the ministry in January 2013, but it is no longer useable as the springs in the double bed mattress came through the mattress and the box spring had bugs on it. It is therefore not useable. Subsequently, the appellant received another double foam bed in May 2013, which, with the legs attached to it, was merely a foot or so above the floor. The medical conditions of the appellant also made it difficult to use this bed as it continued to affect her physical health.

The ministry's reconsideration decision states that: "*Not enough information was provided why the bed 'fell apart' and is no longer suitable to sleep on*". The panel finds the foregoing oral evidence of the appellant at the hearing of the appeal explains how the beds provided in January 2012 and May 2013 "fell apart" and were infested with bugs, and therefore is no longer suitable for use. All of these issues are directly highlighted in the reconsideration decision and hence were before the ministry at the time of reconsideration. The panel therefore admits them as additional evidence pursuant to the provisions of section 22(4) of the Employment Assistance Act.

In conclusion, the appellant and her advocate argued that the appellant has not received approval for a regular bed that includes a wooden/mental frame and a box spring mattress for a single bed upon which she can place the orthopedic mattress, which was approved for her by the ministry on April 17, 2014.

The Ministry argued that the appellant's appeal is in respect of a denial of a crisis supplement in the form of a regular bed. She acknowledged that generally a regular bed does include a bed frame as well as a box spring mattress. However, the appellant's request for the regular bed did not specify that the appellant also needed a bed frame and/or a box spring mattress, and, in any event, it would have been financially imprudent on the part of the ministry to approve a regular bed for the appellant, as at the time of the reconsideration decision, the ministry already had in its possession an OT assessment indicating a need for an orthopedic mattress for the appellant. The ministry therefore concluded that, notwithstanding the fact that the appellant's need for a different bed was unexpected and the appellant had no resources to purchase the bed on her own, a crisis supplement in the form of a regular bed would not address the needs of the appellant. The ministry further concluded that it is not satisfied that the denial of a regular bed would result in imminent danger to the physical health of the appellant, particularly as the appellant had not complained about the bed to the ministry until August 2013.

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

1. The beds provided to the appellant by or through the ministry in January 2012 and May 2013 are irretrievably broken down and/or are unusable based upon the new admitted evidence of the appellant; and
2. The evidence relating to medical conditions described by the ministry in the reconsideration decision (as discussed above) as well as that described by the appellant in her Request for Reconsideration (also as discussed above) highlight clear and continuing risks that are imminent danger to the physical health of the appellant.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant's request for crisis supplement for a bed was reasonably supported by evidence, or a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry determined that the appellant was not eligible to receive a crisis supplement under section 57(1) of the EAPWR, as it was not satisfied that failure to obtain another regular bed would result in imminent danger to the appellant's physical health.

In arriving at its reconsideration decision, the ministry relied upon the following legislation:

### Employment Assistance Persons with Disability Act

#### Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

#### Employment Assistance

#### Crisis supplement

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,

(ii) removal of a child under the *Child, Family and Community Service Act*.

(2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.

(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.

### 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.

#### 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.

#### 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.

(B.C. Reg. 61/2010)

The appellant's position is that, on the recommendation of the ministry workers, she made application for for a regular bed by way of a crisis supplement to address continuing risks to her physical condition. In her view the bed generally includes a bed frame as well as a box spring mattress. The two beds provided to her in January 2012 and May 2012 were either broken down or unusable due to various reasons discussed earlier in Section E of this decision.

The ministry's representative sympathized with the medical predicament of the appellant and also acknowledged that there has been an inordinate delay in addressing the needs of the appellant. However, she contended that the current appeal relates to a denial of a crisis supplement to the appellant. The appellant meets only two of the three criteria for a crisis supplement (i.e. unexpected

expense and lack of resources) but did not meet the third criterion (imminent danger to physical health of the appellant).

Section 3 of Schedule C Health Benefits EAPWDR provides that: (1) hospital beds (to facilitate transfers in/out of bed and for positioning) described in section 3.6; and (2) pressure relief mattresses (to prevent skin breakdown and maintain skin integrity) described in section 3.7 are "*health supplements*" for applicants who are eligible for such supplements under section 62 of the EAPWDR. The ministry has acknowledged in the reconsideration decision that the appellant is eligible for such "health supplements" notes that her request is for a "*crisis supplement*" under section 57 of EDPWDR and not for not for "*health supplements*" under Schedule C.

The panel notes that an application for a "*health supplement*" requires fulfillment of several additional conditions described in section 3.1, information relating to which was not before the minister at the time of reconsideration. Therefore the panel finds that the ministry reasonably determined that the "*health supplements*" described in section 3 of schedule C cannot be considered as part of the appellant's request for a "*crisis supplement*" under section 57.

The relevant legislation, in the context of this appeal, envisages two major types of supplements for eligible applications. The first is for a "crisis supplement", which under section 57 of EAPWDR prescribes the three criteria mentioned above (i.e. unexpected expense, item unexpectedly needed, no resources available and imminent danger to physical health) and expressly prohibits grant of a supplements described in Schedule C of EAPWDR for supplements considered under section 57.

The Schedule C supplements expressly refer to specific types of medical equipment e.g. hospital beds and pressure relief mattress, which require a set of criteria to be met, including a prior approval of the ministry and the cost of the relevant equipment being the least expensive and most appropriate.

The ministry has acknowledged that the appellant meets two of the three criteria prescribed under section 57 for a crisis supplement. However, it denied the crisis supplement on the grounds the grounds that:

*-“You (the appellant) received the foam bed May 2013 and did not complain about the bed to the ministry until August 2013. The ministry is not satisfied that the bed received in May causes danger to your health, or that failure to provide another bed immediately, that is not a pressure relief bed or hospital bed, would prevent danger to your health. Not enough information was provided to explain why the bed “fell apart” and is no longer suitable to sleep on”*

The panel considered and accepts the new the evidence of the appellant at the hearing to the effect, that: (a) the springs in the double mattress obtained from the ministry in January 2012 came through the mattress; (b) the bed frame of that bed had bugs on it; and (c) double foam mattress obtained by the appellant from the ministry in May 2013 was merely a foot or so above the floor and she constantly fell into the crevices of the foam, provide clear and adequate explanation as to why the said two beds are no longer suitable to sleep on. In the circumstances the panel finds that the ministry was not reasonable in concluding that there is no information as to why the bed is no longer suitable to sleep on.

With regard to the issue of the imminent danger to the health of the appellant, the panel has

considered the contents of the reconsideration decision that acknowledge that (a) the appellant had advised the ministry in August 2013 that the foam bed obtained by her in April 2013 was very thin and hurting the appellant's hips and body; (b) in September 2013, the appellant had provided a doctor's note to the ministry to the effect that the appellant had osteoporosis and osteoarthritis, which resulted in "severe chronic pain" and stiffness"; and (c) the appellant's evidence in the Request for Reconsideration dated 13<sup>th</sup> February 2014 to the effect that she wakes up very sore, painful and have had to increase her pain medicine as a result thereof. Based thereon, the panel finds that lack of a bed has continued to pose an imminent threat to the physical health of the appellant. As noted earlier, the ministry's representative sympathized with the medical predicament of the appellant and also acknowledged that there has been an inordinate delay in addressing the needs of the appellant. She has apparently been complaining about the threat to her physical health for over a year. In the circumstances, the panel finds that the ministry was not reasonable in determining that failure to provide a regular bed would not result in continuing and imminent danger to the physical health of the appellant, and rescinds the reconsideration decision.