

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision dated May 9, 2014 wherein the ministry denied the appellant’s request for funding for medical equipment and devices in the form of a hospital bed and bariatric mattress (the “Requested Items”). The appellant is a recipient of disability assistance, and the ministry determined that the appellant was not eligible for the Requested Items on the bases that:

- the Requested Items were not medically essential to facilitate transfers of the appellant to and from bed or to adjust her positioning in bed, as required by section 3.6(1) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”);
- the Requested Items were not the least expensive appropriate medical equipment or device, as required by section 3(1)(b)(iii) of Schedule C of the EAPWDR.

PART D – Relevant Legislation

EAPWDR, Schedule C, sections 3(1)(b)(iii) and 3.6(1)

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- An assessment report on the appellant completed by an occupational therapist (“OT#1”) on August 30, 2013;
- A Medical Equipment Request and Justification form (“MERJ”) completed by the appellant’s physician and OT#1;
- A quotation from a supplier for the Requested Items in the amount of \$5,226.55.
- A prescription from the appellant’s physician, dated May 15, 2013, stating that “This person needs an electric hospital bed, due to restricted mobility issues.”
- An assessment report on the appellant completed by a second occupational therapist (“OT#2”) on March 11, 2014;
- A letter from a disability case management student dated April 5, 2014;
- A letter from OT#2 dated April 29, 2014; and
- The appellant’s Request for Reconsideration dated April 7, 2014.

Admissibility of New Information

On May 28, 2014 the appellant made a written submission to the Employment and Assistance Appeal Tribunal (the “Tribunal”) in conjunction with her Notice of Appeal. On June 10, 2014 the appellant submitted to the Tribunal a letter from OT#2, providing additional detail with respect to the appellant’s need for the Requested Items.

The ministry had no objection to admissibility of the June 10, 2014 letter from OT#2.

The panel assessed the above-noted documents as tending to provide corroboration of information that was before the ministry at the time of reconsideration. The panel admitted them as supporting testimony in accordance with section 22(4) of the *Employment and Assistance Act*.

The panel assessed the evidence as follows:

- In the MERJ, the appellant’s physician described the appellant as “severely overweight, unable to move without difficulty.”
- In his report of August 30, 2013, OT#1 wrote that:
 - the appellant is diagnosed with morbid obesity (weight 433 pounds); hypertension, hypothyroidism, type 2 diabetes, depression.
 - she is independently mobile with walker and her automobile, and mobilizes for short distances such as from her house to her car.
 - in her home the appellant uses furniture and the walls for support while walking, and she sits on her walker when in the kitchen.

- she struggles severely to get to a sitting position from lying position on her couch.
- the appellant reported going up 14 steps in her home once a day to bathe and shower and use her sewing machine, and she reported sometimes sleeping in her bed in her bedroom on the second floor of her home.
- the appellant stated she is independent and safe on the stairs.
- he trialed the appellant on different beds and mattresses. He recommended the Requested Items as they would afford the opportunity for the appellant to get her feet flat on the floor and to hold a railing for safe transfers and for improved bed mobility.
- In her report of March 11, 2014, OT#2 wrote that:
 - the appellant has difficulty with all transfers and must use a very wide base of support and a forward rocking momentum to get up from her toilet, bed and low couch.
 - the appellant uses a tub transfer bench and grab bar for safe transfers into her tub.
 - she ambulates slowly without a walking aid in her home, and uses a 4-wheel walker and car for outings.
 - she has great difficulty with bed mobility, at times requiring her son to per her into a sitting position. She was observed to manage all aspects of bed mobility with effort, momentum, and using a bedside table to push up from.
 - the appellant's beds break due to her weight.
 - OT#2 referred to OT#1's report in recommending the Requested Items in order to enable independent bed mobility consistently, and facilitate safe transfers; to maintain control of lower extremity edema, to prevent ulcers of the buttocks, to improve breathing with a CPAP mask at night through upright, dynamic positioning; and to provide more suitable/comfortable bladder positioning and ease of transfers, potentially reducing bladder incontinence.
- In her letter of April 29, 2014, OT#2 wrote that:
 - the appellant's bed broke under her weight, and community health workers can no longer safely perform personal hygiene treatments on the appellant because the couch that the appellant has been sleeping on is too low.
 - it may be possible for the appellant to get a short term loan of a bariatric hospital bed from the , but the health care team is reluctant to initiate this plan if there is no long term plan or funding secured for a permanent bed and mattress.
- In her letter of June 10, 2014, OT#2 wrote that:
 - with respect to the less expensive mobility devices suggested by the ministry in its reconsideration decision (bed wedge, foot pillows, floor-to-ceiling pole, triangle bar, bed leg extensions) the appellant would not have the upper body strength to lift her body and simultaneously reposition herself if she needed to change position in the night. OT#2 stated the opinion that the appellant requires a bed that offers multi and dynamic positioning rather than the static positioning offered by wedges and bolsters.
 - OT#2 agreed that bed mobility devices such as a pole and trapeze would be beneficial in enabling increased ease and independence with moving in bed, but stated that the appellant currently has no bed to attach them to, and that they do not address the other identified issues around positioning – difficulty breathing, need for an appropriate and adjustable surface to provide care from, and ease of donning CPAP mask.
 - at least 2 regular beds have collapsed under the appellant's weight. She is currently using a bariatric bed and mattress on loan from the Red Cross which must be returned after 3 months, with no extensions on the loan.
- In her letter of April 5, 2014, the disability case management student supported the appellant's

application for the Requested Items, expressing (among other things) the opinion that an adjustable bed will help the appellant to transfer in and out of bed independently, which will help reduce the occurrence and severity of urinary incontinence the appellant experiences when trying to lift herself out of a regular bed.

- In her Request for Reconsideration, the appellant wrote that she is not able to use a regular bed because it does not provide enough support to transfer independently in and out of bed.
- In her written appeal submission, the appellant wrote that;
 - the momentum required for her to be able to transfer herself (when she is able) is what is causing her beds, reclining chairs, and couch to break.
 - her mobility limitations do not allow her to maneuver freely enough to adjust pillows, a bed wedge or other devices suggested by the ministry.
 - a ceiling pole or triangle would not be appropriate as she does not have the strength required to pull up her own weight.
 - she lives in subsidized housing and cannot affix permanent devices.
- In her oral testimony, the appellant stated that:
 - she does not have a bed or the money to buy one.
 - the Recommended Items would reduce or avoid pressure sores.
 - the less expensive medical devices and equipment suggested by the ministry sound alright but are very difficult to use. She said that she cannot put a wedge on her narrow couch and she doesn't have the mobility to put a pillow under her knees.
 - her landlord would not permit the less expensive medical devices to be affixed in her residence.
 - her health condition has worsened since the original assessment done by OT#1, and is likely to continue to deteriorate.
 - it is not always possible for her to get out of bed by herself. Some days she is too weak.
 - her son has a mental health condition and is not always available to help her.
 - in response to a question from the panel, the appellant stated that she would usually brace her legs on the floor, and pull herself up by grasping the drawer on the bedside table. She said that because she no longer has a bed, she can't use the bedside table.

The ministry relied on its reconsideration decision and provided no new information.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's decision to deny the appellant the requested items on the bases that:

- the Requested Items were not medically essential to facilitate transfers of the appellant to and from bed or to adjust her positioning in bed, as required by section 3.6(1) of Schedule C of the EAPWDR;
- the Requested Items were not the least expensive appropriate medical equipment or device, as required by section 3(1)(b)(iii) of Schedule C of the EAPWDR.

The relevant legislation is as follows:

EAPWDR, 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...

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...

* * *

The appellant's position is that the evidence, including the reports of OT#1 and OT#2, confirms that the appellant satisfies the legislative criteria for the Requested Items. She argued that the Requested Items are medically essential to facilitate transfers as she can't always manage on her own and that she cannot and should not have to rely on her son's help. She said that she requires momentum in order to transfer independently, and that the momentum combined with her weight eventually causes ordinary beds to collapse. The appellant also argued that the Requested Items are the least expensive appropriate medical equipment or devices. She said that the cheaper items suggested by the ministry are not appropriate because she does not have the strength or mobility to utilize them, she has no bed to attach them to, and her landlord would not authorize them being affixed to her rented residence. The appellant argued that the less expensive items suggested by the ministry will not address other positioning problems such as use of the CPAP mask and having a safe platform on which community health workers can provide their services. Finally, the appellant stated that she does not have sufficient funds to be able to purchase her own bed.

The ministry's position is that the occupational therapists have confirmed that the appellant is able to transfer independently with effort, momentum and use of a bedside table. The ministry argued that the appellant currently sleeps on a low couch and is able to sit up independently, for the most part, with occasional assistance from her son. Accordingly, the ministry argued that the Requested Items are not medically essential for transfers or positioning. The ministry also argued that the Requested Items are not the least expensive appropriate medical equipment. The ministry suggested that items such as a bed wedge, floor-to-ceiling pole, and triangle bar would provide the necessary assistance, but that these items were not tested by either occupational therapist. The ministry also suggested that a non-electric bariatric bed would provide sufficient support.

Panel Decision

In the panel's view, the evidence in this case falls short of proving on the balance of probabilities that the Requested Items are medically essential to facilitate transfers of the appellant to and from bed or to adjust or maintain her positioning in bed. The evidence also does not demonstrate that the Requested Items are the least expensive appropriate medical equipment or device in the appellant's circumstances.

In the panel's view, the legislation does not contemplate that the appellant should have to rely on occasional assistance from her son. However, the appellant has not demonstrated that the less expensive medical equipment suggested by the ministry is not appropriate for her. OT#2's statement - in her letter of June 10, 2014 - that the appellant would not have the physical capability to lift her body and simultaneously reposition herself is inconsistent with her acknowledgment in the same letter that the less expensive medical equipment proposed by the ministry would be beneficial in enabling increased ease and independence with moving in bed. It is also inconsistent with the evidence that the appellant is able to lift herself from a low bed with the assistance of a bedside table

and that she is otherwise independently mobile.

The term “medically essential” connotes a significant degree of necessity, such that the Requested Items cannot reasonably be done without. The evidence indicates that for the most part the appellant has the physical strength to manage her own transfers in and out of bed with effort, using a wide base of support, momentum, and a bedside table. For those “occasional” instances where she relies on her son for assistance, OT#2’s letter of June 10, 2014 indicates that the less expensive medical equipment proposed by the ministry would be beneficial in enabling increased ease and independence with transfers and positioning in bed. OT#2 did not provide any basis for her belief that the appellant requires dynamic positioning for ease of donning the CPAP mask rather than the static positioning offered by wedges and bolsters. If the less expensive medical equipment is appropriate for the appellant, then the Requested Items cannot be said to be “medically essential.”

In the panel’s view, the legislative language “to adjust or maintain a person’s positioning in bed” is not so broad as to include the need to provide a platform of a particular height for the provision of services by community health care workers. Even if the legislative language is that broad, the evidence before the panel is insufficient to show that the Requested Items are the least expensive option for providing said platform.

The appellant’s argument with respect to her landlord’s position on affixing the less expensive medical equipment is speculative.

The panel acknowledges that the appellant’s medical conditions affect her mobility, and understands that finances may be problematic for the appellant. However, for the reasons noted above, the panel finds that the ministry reasonably concluded that the evidence falls short of demonstrating that the Requested Items satisfy the legislative criteria of being medically essential to facilitate transfers of the appellant to and from bed or to adjust or maintain a person’s positioning in bed, or of being the least expensive medical equipment or device. Accordingly, the panel confirms the ministry’s decision.