

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (“the ministry”) dated 09 June 2014 that denied the appellant’s request for an overbed table under section 62 of the Employment and Assistance for Persons with Disabilities Regulation. The ministry determined that an overbed table does not fall under any of the defined medical supplies or therapies under section 2 of Schedule C of the Regulation or any of the medical equipment or devices in sections 3.1 to 3.12 of Schedule C of the Regulation. In particular, the ministry was not satisfied that a overbed table meets the requirements of section 3.6, as being medically essential to facilitate transfers of a person to and from bed or to adjust or maintain a person's positioning in bed and is not an upgraded component of a hospital bed, an accessory attached to a hospital bed or a positioning item on a hospital bed as set out in paragraphs (b), (c) or (d) of subsection 3.6(1) of Schedule C.

The ministry also determined that the appellant’s request did not meet the requirements under section 69 of the Regulation for the same reason and because it had not been established that the appellant faces a direct and imminent life-threatening health need for an overbed table.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 61.1, 62 and 69, and Schedule C, section 3 to 3.12.

PART E – Summary of Facts

The information before the ministry at reconsideration included the following:

1. From the ministry's files:

- The appellant is eligible for medical services only (MSO) pursuant to section 61.1 of the EAPWDR.
- On 16 April 2014, the ministry received a request from the appellant for an overbed table. The request was completed by a health authority occupational therapist (OT), stating that the appellant has muscular dystrophy and uses a ceiling lift for transfers, a power wheelchair for mobility and a hospital bed. He explains that the hospital bed overbed table is required in order to perform tasks such as eating or washing. A quote from a medical equipment supplier for \$94.50 was attached.
- In a letter dated 26 April 2014, the ministry denied the appellant's request, giving as specific details of the reason for this decision: "This item is not considered medically essential."

2. The appellant's Request for Reconsideration, dated 21 May 2014, to which was attached a submission signed by the appellant and his advocate. In the submission, the appellant states that he has muscular dystrophy. He requires an overbed table in order to perform daily activities such as eating. He is unable to maneuver himself so it is not possible for him to get up/down or reach over/twist to a table beside the bed. Hospitals use these tables for people who are unable to maneuver. They are essential for people who have mobility issues. He requires a ceiling lift to get in/out of bed and then would use the overbed table to place over the bed to perform daily living activities like eating/medications/reading. He is in bed most of the time and has care aides and family who assist him on a daily basis.

The appellant filed 2 Notices of Appeal. The first one, dated 12 June 2014 and requesting a written hearing, gives as reasons for appeal that the reconsideration decision did not seem to understand his illness and its progressive nature. He did not know an overbed table would be necessary until his hospital bed was put to use. A hospital bed is not usable without such a table – otherwise some physical pain is inflicted whenever movement is necessary. He is using one provided by a charitable organization, but must return it and he cannot function without one.

The second notice of appeal, also dated 12 June 2014, requests an oral in person hearing. The appellant gives as reasons for appeal that he has a severe progressive muscle disease, he has no other resources to pay for the requested an overbed table, it is the least expensive appropriate equipment and that it is required to prevent direct and imminent death.

After reconsideration and before the hearing, a constituency assistant to the appellant's MLA submitted an e-mail dated 17 June 2014. She writes that the appellant has a progressive disease and is now in pain when he moves or tries to sit up, which is why the hospital bed was deemed necessary despite its cost of close to \$3000. He did not realize he would need an overbed table until after he received the bed and began trying to use it. He soon realized that despite being able to sit himself up with the bed he was unable to rotate and get his needed medications, etc. He was able to get a table on loan and it has made all the difference. While his OT wrote that the overbed table was necessary, it does not fit the typical concepts of what might be medically required and so it has been denied and denied again. The appellant does not feel that the person who did the reconsideration decision

understands his illness. It was implied that because he never asked for the table in the first place then he must not need it. He did not request it to begin with because he was unaware it would be necessary.

Before the hearing, the appellant also submitted 2 documents:

- a Medical Certificate in which the appellant's medical practitioner states"
"[The appellant] has a chronic **PROGRESSIVE** mobility issue, namely Muscular Dystrophy with ongoing worsening status. He would greatly benefit from having a hospital type overbed table for his hospital bed in order to cut down on the painful and circumstantial movements he makes to carry out daily activities whilst in his bed."
- An addendum provided by the appellant's current OT, providing further information on the appellant's physical endurance and functional ability and the targeted outcomes of being provided an overbed table. The targeted outcomes for the appellant are: a) ability to eat, drink and take medications independently with the table over the bed, b) ability to move this out of the way if required, c) ability to use his laptop as it will be properly supported by the table in front of him, and d) a decreased risk of falls from not having to reach over to a static table.

At the hearing, the appellant stressed that he has a progressive disease, and described how his condition had deteriorated: 10 years ago he was able to walk, then he needed a wheelchair, and now he requires a hospital bed, in which he spends most of his day. Two health authority care aides come to his home 3 times a day for transfers in/out of his bed for toileting, bathing and spending some time out of bed. His sister also does one transfer a day. He explained that with his condition and the medication he takes, he needs to drink lots of water. Reaching for water, his medications or anything else he needs on the table beside his bed poses a risk of falling out of bed; the twisting and bending involved cause him great pain and puts stress on his already compromised heart.

The appellant's advocate made submissions regarding the meaning of the wording in the legislation of "maintaining position in bed" and "upgraded component." (See Part F, Reasons for Panel Decision, below).

The ministry stood by its position at reconsideration.

The ministry did not object to admitting as evidence the information provided before or at the hearing. The panel finds that the information provided in the constituency assistant's email, the physician's medical certificate, the OT's report and the testimony of the appellant is in support of the information and records before the ministry at reconsideration, as it corroborates the information provided in the appellant's submission at reconsideration and in the original OT's request. Accordingly, the panel admits this evidence under section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant's request for an overbed table is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. In particular, the issue is whether the ministry was reasonable in determining that an overbed table does not fall under any of the defined medical supplies and therapies under section 2 of Schedule C or as medical equipment or devices in sections 3.1 to 3.12 of Schedule C of the EAPWDR and more specifically whether an overbed table meets the requirements of subsection 3.6(1), as being medically essential to facilitate transfers of a person to and from bed or to adjust or maintain a person's positioning in bed and is not an upgraded component of a hospital bed, an accessory attached to a hospital bed or a positioning item on a hospital bed as set out in paragraphs (b), (c) and (d) of subsection 3.6(1).

The ministry also determined that the appellant's request did not meet the requirements under section 69 of the Regulation for the same reasons as above and because it had not been established that the appellant faces a direct and imminent life-threatening health need for an overbed table.

The relevant legislation is from Schedule C of the EAPWDR:

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.

And

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.

And from the EAPWDR:

Health supplement for persons facing direct and imminent life threatening health need

69 The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
- (b) the health supplement is necessary to meet that need,
- (c) the person's family unit is receiving premium assistance under the *Medicare Protection Act*, and
- (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
 - (i) paragraph (a) or (f) of section (2) (1);
 - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

In the reconsideration decision, the ministry did not dispute that the appellant met the requirements set out section 3(1) of Schedule C of the EAPWDR. The ministry recognized the opinion of the appellant's OT that he would benefit from an overbed table for some of his daily living activities. The panel understands this to mean that the appellant's request met the requirements of section 3(2) of Schedule C of the Regulation.

The ministry canvassed the possibility that the requested overbed table met the eligibility requirements of any of the medical supplements listed as medical supplies and therapies under section 2 of Schedule C and as medical equipment and devices under sections 3.1 to 3.12 of Schedule C. The ministry determined that an overbed table did not meet the legislative requirements under any of these sections.

In particular, the ministry focused on whether overbed table met the requirements under section 3.6 of Schedule C. The ministry cited a definition from *Roget's Thesaurus* of "component": one of the individual entities contributing to a whole: "building block, constituent, element, factor, ingredient, part." The ministry found that an overbed table is detached and separate from a hospital bed. Therefore it cannot be considered "an upgraded component of a hospital bed." For the same reason, the ministry found that an overbed table cannot be considered "an accessory attached to a hospital bed." In addition it is not a "positioning item on hospital bed." The ministry was also not satisfied that the overbed table was "medically essential to.... maintain a person's positioning in bed," as required in the introductory sentence of section 3.6 (1). At the hearing, the ministry representative argued that, unlike, say, a pillow wedge used to maintain a person in a certain position, an overbed table does not provide active support, as required in the legislation.

The position of the appellant is that there is sufficient medical evidence to establish that an overbed

table is necessary to maintain the appellant in a comfortable and safe position by keeping him from having to twist and bend to reach things on a side table. An overbed table is an integral and essential part of any hospital bed system: you cannot go into a hospital ward without seeing an overbed table being available or being used.

Panel findings

There is ample and persuasive evidence that the appellant would benefit from an overbed table for his hospital bed; indeed, due to his medical condition he requires such equipment for his health and well-being. The issue for the panel is whether the ministry decision to deny his request for an overbed table was reasonably based on the evidence and the wording of the legislation. Schedule C of the EAPWDR sets out the health supplements that the minister is authorized to provide. The legislation does not confer to the minister the discretion or authority, either under unique or exceptional circumstances or in cases of compelling need, to provide any health supplement that is not set out in Schedule C. The panel's jurisdiction is limited to the reasonableness of the ministry's decision as explained above and therefore the panel cannot make a decision that would have the minister provide a supplement not authorized by legislation.

The panel finds that the ministry was reasonable in determining that the requested overbed table did not fall into any of the categories of health supplements set out in sections 2 and 3.1 to 3.5, and 3.7 to 3.12 of Schedule C. The panel will focus on the ministry's determination that the requested item did not meet the requirements of the "hospital bed" section, specifically subsection 3.6(1) of Schedule C. There are two aspects to the test under subsection 3.6(1), both of which must be met. First, the minister must be satisfied that the overbed table is medically essential to facilitate transfers of the person to and from bed or to maintain the person's position in bed. Secondly, the overbed table must be one of the items listed in paragraphs (b), (c) or (d) of subsection 3.6(1).

With respect to the first part of the test -- whether the requested item is "medically essentialto maintain the person's position in bed" -- the panel does not consider the term "maintain" to be limited to meaning providing active support, as argued by the ministry. The term has a broader, more general meaning, in the sense of enabling a condition or situation to continue. Indeed, the legislation uses "maintain" in that more general sense elsewhere, as in sections 3.1 and 3.2 of Schedule C regarding canes/crutches/walkers/wheelchairs being "essential to achieve or maintain basic mobility." As the medical evidence shows that an overbed table is medically essential to keep the appellant from having to twist and bend to reach for his water, medications and other needs, and would thus allow him to keep his torso in a flat position against his mattress, the panel finds that the ministry was not reasonable in determining that an overbed table did not meet the description of an eligible health supplement in the opening sentence of section 3.6(1) of Schedule C.

As to whether an overbed table is one of the eligible items listed in section 3.6(1), the panel will address each in turn:

- *(b) an upgraded component of a hospital bed:* While it can be reasonably argued that an overbed table is a "component" of a hospital bed "system" or "suite," these words do not appear in the legislation. The plain meaning of "hospital bed" is of the stand-alone unit -- a bed specially designed for hospitalized patients or others in need of some form of health care, with features such as adjustable height for the entire bed, the head, and the feet, and adjustable side rails. An overbed table, while placed beside and over the bed, is not part of it and

therefore cannot be considered as one of its components.

- *(c) an accessory attached to a hospital bed:* While an overbed can be considered an "accessory," it is a separate unit placed beside and over the bed, not attached to it.
- *(d) a positioning item on a hospital bed:* While in the appellant's circumstances an overbed table serves a positioning purpose, it is not placed on the bed.

Based on the above analysis, the panel finds that the ministry was reasonable in determining that the requested overbed table did not meet the requirements of a health supplement set out under sections 2 or 3 of Schedule C of the EAPWDR.

Section 69 of the EAPWDR authorizes the minister to provide a health supplement set out in sections 2 (1)(a) and (f) and 3 (including section 3.6) of Schedule C of the EAPWDR if the applicant is not otherwise eligible and the person faces a direct and imminent life threatening need and the health supplement is necessary to meet that need. As the panel has found that the ministry was reasonable in determining that the requested overbed table was not an eligible health supplement set out in sections 2 or 3 of Schedule C, and as section 69 authorizes the minister to provide, in direct and imminent life threatening need circumstances, only those health supplements set out in sections 2(a) and (f) and 3 of Schedule C, the panel finds that the ministry reasonably determined that the appellant was not eligible for the requested item under section 69 of the EAPWDR.

Conclusion

On the basis of the foregoing, the panel finds that the ministry's decision to deny the appellant's request for an overbed table was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.