

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated November 4, 2014 which denied the appellant's request for a supplement to cover the cost of customization of a mattress under Section 3.7 of Schedule C of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) for the purposes of pressure relief.

**PART D – Relevant Legislation**

*Employment and Persons with Disabilities Regulation* (EAPWDR), Section 62 and Schedule C, Sections 3, 3.6 and 3.7

## PART E – Summary of Facts

The appellant did not attend the hearing but was represented by an advocate who he had previously authorized to attend the hearing on his behalf, being the Occupational Therapist who supported his request.

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

- 1) Medical Equipment Request and Justification signed by the appellant on September 27, 2013 with the medical equipment recommended by the medical practitioner being a hospital bed with mattress as prescribed by Occupational Therapist (OT);
- 2) Undated Health Needs Request requesting a “mattress for fully electric hospital bed at an estimated cost of \$1,251.32;
- 3) Product information sheet for an LTC 2500 basic comfort mattress, which is designed for clients with muscle weakness who find it difficult to move in bed;
- 4) Quote from a health product company dated April 15, 2014 for a Custom LTC 4000 Ultra 55 Mattress with incontinent cover (custom top memory foam layer thickness and transition layer density) for the total amount of \$1,251.31;
- 5) Letter dated May 12, 2014 from the OT ‘To Whom It May Concern’ requesting funding for a hospital bed mattress. The OT wrote that that:
  - The appellant has severe spinal stenosis, Parkinsons, heart failure, renal failure, prostate cancer, diabetes, legal blindness and left hemiparesis from two cerebral vascular accidents.
  - The appellant has severe back pain caused by spinal stenosis and wears a custom back brace. He requires a very firm mattress.
  - The targeted outcomes are improved safety of transfers to and from bed, improved bed mobility, reduced falls, and improved sleep so physical function during the day can be maximized.
  - The equipment trialed included an LTC 3500, which was unsuccessful as the appellant’s back pain aggravated and he could not tolerate it for an entire night. He slept poorly and he was up much of the night which disturbed his wife’s sleep and she is his primary caregiver.
  - The LTC 4000, Ultra 55 was trialed and the appellant found this mattress better than the LTC 3500 but still requested a firmer mattress because of back pain. The manufacturer reports that this is their firmest mattress but they can make some customization to make it firmer.
  - The recommended equipment is the custom LTC 4000 with Ultra 55 Mattress with incontinent cover, customizations to increase the firmness of the mattress include reducing the top memory foam layer from 2” to 1.5” and increasing the thickness of the middle core foam to 2.5.”
  - The appellant requires a firm mattress to minimize his back pain and improve his physical function.
- 6) Fax dated July 23, 2014 from the OT to the ministry stating in part that:
  - The LTC 2500 is the most basic foam mattress and is designed for those who are not at risk for pressure sore development at all. It is not appropriate for the appellant.
  - The appellant has the following risk factors for pressure sore development: urinary incontinence, poor mobility and chronic pain which limits positions he can sustain to offload. The appellant has Parkinson disease which is a progressive condition and his mobility is expected to decline.

- It is essential the appellant has a mattress that he can tolerate as his back pain is so severe that it can impair his mobility and his sleep and that of his wife. The appellant takes high dosage of analgesic and he has discussed the issue with his physician who has told him that it would not be safe to take any more analgesic.
  - It is the OT's professional opinion that the custom LTC 4000 Ultra 55 mattress is the most appropriate mattress for the appellant.
- 7) Purchase Authorization dated August 26, 2014 indicating that basic funding was provided as this mattress is the manufacturer's best choice for individuals at risk for pressure sore development and individuals requiring a firm mattress. The LTC 4000 Ultra 55 mattress, "less upcharge for modification" is approved at a total cost of \$1,088.10.
- 8) Ministry file notes indicating that additional justification was received for the LTC 4000 Ultra 55 as the appellant requires a firm mattress and this is the supplier's firmest mattress. Based on the appellant's medical condition and need for a mattress for his hospital bed, it seems reasonable to fund the LTC 4000 Ultra 55, less the upcharge for the modifications to make it firmer; and,
- 9) Request for Reconsideration dated October 16, 2014 with attached Prescription dated September 4, 2014 which indicates a primary diagnosis for the appellant of Parkinsons, spinal stenosis, heart failure , diabetes and prostate cancer. The physician orders "customization to increase firmness of hospital bed mattress; the customization is medically necessary." Also attached is a letter dated October 22, 2014 in which the OT wrote:
- The appellant has severe back pain caused by spinal stenosis and wears a custom back brace.
  - He requires a very firm mattress. This request is not simply for the appellant's "comfort" but it is also to improve the appellant's physical function during the day. He sleeps better on a firmer surface because his back pain is minimized and thus his mobility is better during the day and he is less likely to fall.
  - The appellant also wakes his wife up less throughout the night resulting in less caregiver burn out.

In his Notice of Appeal dated November 26, 2014, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that the mattress approved is too soft and results in back pain and poor sleep.

At the hearing, the appellant's advocate stated:

- The appellant has had trials of two mattresses at home. The appellant still has an uncustomized LTC 4000 Ultra 55 at home, which is on loan from the health product supplier, as it was the best of the two tried.
- During the day, the appellant wears a custom back brace, which is like a corset with many tight bindings, since he experiences significant chronic pain and takes lots of analgesics.
- The ministry seemed to get hung up on the issue of the incontinent cover with the mattress, but the appellant did not request an additional incontinent cover other than the one that comes standard with the LTC 4000 Ultra 55 mattress. The appellant did not request an additional amount of funding for an incontinent cover.
- The appellant requires customization to make the mattress even firmer and there is an upcharge of \$160 for the manufacturer to make these alterations. This additional amount is only for the customization work and does not include an extra amount for an incontinent cover.
- The manufacturer will reduce the thickness of the top foam layer and increase the thickness of

the foam in the middle of the mattress to make the mattress extra firm.

- The appellant is very frail and lives at home. His wife is his main caregiver. They are trying to keep the appellant at home and out of residential care.
- When the appellant does not have a restful sleep, he wakes up in pain and requires more analgesics. The appellant's physician has said that it is not safe for him to take any more analgesics than he already takes.
- The advocate and the appellant were confused by the ministry's decision because it seemed to both approve and deny the customization for the LTC 4000 Ultra 55 mattress and they completed the paperwork because the appellant needs that additional customization to support his back and they thought this was the only way to clear up any confusion.
- The original Purchase Authorization provided by the ministry dated August 26, 2014 was for approval of the LTC 4000 Ultra 55 mattress, "less upcharge for modification," at a total cost of \$1,088.10.

At the hearing, the appellant's wife stated:

- She has a hard time sleeping when her husband cannot sleep.
- Her husband suffered an attack many years ago where he was hit and had to have surgery on his back.
- She sees her husband in pain the next day when he has not slept well. He grimaces.
- They receive one hour of home care in the morning but otherwise she is caring for her husband and she sees the need for the mattress to be firmer.
- The mattress the appellant is currently sleeping on has been lent to them and had previously been used by others. Her husband finds it too soft and she feels it is becoming urgent that he get the customization to make it firmer.
- Her husband has been to a rehabilitation specialist who said that there is nothing more that can be done for him. There are no exercises or massage therapy or surgery that will help him.

### ***Admissibility of New Information***

The ministry did not raise an objection to the oral testimony on behalf of the appellant or the information provided in his Notice of Appeal, which consisted of additional information regarding the appellant's need for customization of the subject mattress. The panel admitted this additional information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4)(b) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision. At the hearing, the ministry clarified that:

- The appellant has been found eligible for the customization of the approved mattress, the LTC 4000 Ultra 55, under Section 3.6(1)(b) of Schedule C of the EAPWDR as the ministry considers the customization to make the mattress firmer as an "upgraded component of a hospital bed." While the original decision only approved the LTC 4000 Ultra 55 mattress without the customization, the ministry also approved the customization at reconsideration based on the additional information provided by the physician in the prescription and the letter from the OT. If the total amount for the LTC 4000 Ultra 55 mattress with customization to make it firmer is \$1,251.31, as set out in the Quote from a health product company dated April 15, 2014, then that is the amount for which the ministry will issue a new Purchase Authorization.
- The ministry wants to ensure that all the legislation which may be applicable is considered in

the reconsideration decision and this is the reason that Section 3.7 of Schedule C of the EAPWDR was considered. The ministry found that the appellant was not eligible for the customization to make the mattress firmer under the section which relates to pressure relief mattresses.

- The ministry had originally considered the incontinent cover as a separate item for which the appellant is not eligible but clarified in the reconsideration decision that the approved mattress, the LTC 4000 Ultra 55, comes standard with an incontinent cover.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which denied the appellant's request for a supplement to cover the cost of customization of a mattress under Section 3.7 of Schedule C of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) for the purposes of pressure relief, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Pursuant to Section 62 of the EAPWDR, the applicant must be a recipient of disability assistance, or be a dependant of a person in receipt of disability assistance in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has not disputed that the requirement of Section 62 has been met in that the appellant has been approved as a recipient of disability assistance.

At issue is whether the appellant's request for customization of a mattress meets the requirements under Schedule C of the EAPWDR.

Section 3 provides in part:

### **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 a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device. ...

Section 3.6 of Schedule C provides:

### **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.

Section 3.7 of Schedule C provides:

**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.

***Ministry's position***

The ministry's position is that the appellant is eligible to receive health supplements under Section 62 of the EAPWDR and the appellant is eligible for a supplement to cover the cost of customization of a mattress under Section 3.6(1)(b) of Schedule C, as an upgraded component of a hospital bed, but his request does not meet all of the applicable criteria of Sections 3 and 3.7 of Schedule C of the EAPWDR. In particular, the ministry stated that the OT did not maintain a position that the appellant requires customization of the mattress for the purposes of pressure relief but, instead, to alleviate the appellant's severe chronic back pain. The ministry stated that the requirement in Section 3(1)(b)(iii) has not been met as the ministry is not satisfied that the customization is the least expensive 'appropriate' medical equipment or device as the appellant's needs have been met through the approval of the LTC 4000 Ultra 55 mattress.

***Appellant's position***

The appellant's position is that the approved LTC 4000 Ultra 55 mattress is the best mattress of those tried but he requires customization of the mattress to make it much firmer to alleviate his severe back pain. The appellant did not maintain a position that the customization to the subject mattress is medically essential to prevent skin breakdown and maintain skin integrity. The appellant's advocate clarified that the appellant did not request a separate incontinent cover and the additional upcharge, in the Quote from a health product company dated April 15, 2014 for the total amount of \$1,251.31, is only for the customization to make the mattress firmer.

***Panel decision***

The ministry clarified at the hearing that the appellant is eligible for a supplement to cover the cost of customization of a mattress under Section 3.6(1)(b) of Schedule C, as an upgraded component of a hospital bed and, if the total amount for the LTC 4000 Ultra 55 mattress with customization to make it firmer is \$1,251.31 as set out in the Quote dated April 15, 2014, then that is the amount for which the ministry will issue a new Purchase Authorization. The appellant's advocate clarified at the hearing that the appellant did not request an additional incontinent cover other than that which comes standard with the approved LTC 4000 Ultra 55 mattress. The ministry stated that the appellant's

request for the customization of the approved mattress does not meet all of the applicable criteria of Sections 3 and 3.7 of Schedule C of the EAPWDR and the appellant's advocate did not dispute this position at the hearing.

*Conclusion*

In conclusion, the panel finds that the ministry reasonably determined that the appellant's request for a supplement to cover the cost of customization of a mattress meets the requirements of Section 3.6(1)(b) of Schedule C and, in consideration of this determination, does not meet all of the requirements under Sections 3 and 3.7 of Schedule C of the EAPWDR for the purposes of pressure relief, and is a reasonable application of the applicable enactment in the appellant's circumstances.