

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated April 5, 2017, which denied the Appellant's request for a custom wooden bed and mattress. The Ministry found that the Appellant is eligible to receive health supplements; however his request did not meet the criteria for approval of a custom wooden bed under sections 3(1) to 3(6), 3.6 and 3.7 of Schedule C, Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) or for provision of the bed as a crisis supplement under section 57, EAPWDR. In addition, the Ministry found the Appellant's request did not meet the criteria in section 69, EAPWDR for provision of the bed due to a life-threatening health need.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 57, 62, 69; Schedule C, sections 3, 3.6, 3.7

PART E – Summary of Facts

The Ministry was not in attendance at the hearing. After confirming that the Ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

Information before the minister at reconsideration included:

- A quotation for a walker from a health care product provider, dated July 29, 2016.
- A letter from a physiotherapist to the Ministry dated September 14, 2016, stating that the Appellant requires a walker.
- A Medical Equipment Request and Justification form in the Appellant's name, dated July 5, 2016, requesting a custom bed, with a Letter of Justification from an occupational therapist dated November 2, 2016, recommending the Appellant be provided with a pressure relieving foam mattress with a specialty waterproof breathable mattress to maintain his safety and minimize the health risks associated with his current bed, as his skin is at risk due to incontinence, a quote for a custom wooden bed in the amount of \$2,400.00 and a diagram of the proposed bed.
- A copy of the Ministry Medical equipment and devices decision summary dated February 17, 2017.
- A copy of the Ministry's letter to the Appellant advising him of their decision, dated February 17, 2017.
- A letter from the Appellant's group home director dated March 10, 2017, stating that the Appellant is diagnosed with Autism, Developmental Delay and mental health issues, that he is incontinent and at risk for skin break down, that his current mattress is no longer suitable and that a hospital bed would not be suitable as the Appellant is able to move the bed and injure himself and that a bed is required that can be secured to the wall. In addition, the mattress must be able to be disinfected due to constant exposure to urine.
- A letter from staff at the Appellant's group home, dated March 10, 2017, stating that the Appellant's bed is more than 10 years old and that he would benefit from a new suitable bed.
- The Appellant's Request for Reconsideration, signed March 16, 2017.

At the hearing the witness, who is a program supervisor at the Appellant's group home, stated that the Appellant is severely Autistic, and he sleeps in a custom bed that has been repaired many times. She stated that the Appellant can throw furniture around and in the past has pulled a cabinet off the wall, therefore his bed must be secured fastened. She stated that a hospital bed would not be suitable because they are metal, which the Appellant could grasp and move, so a custom bed is required. She stated that the Appellant's mattress has been replaced many times but now the bed frame, which is approximately 13 years old, is unable to be repaired any further. In response to questions from the Panel, the witness stated that the Appellant's current bed frame is wood, and it is starting to rot due to constant exposure to urine. The witness stated that a second quote had been obtained at twice the price of the one submitted to the Ministry.

The Appellant's group home director, acting as advocate, gave oral evidence that the Appellant had surgery in January and March, 2017 due to abdominal injuries related to moving his bed. This statement was not admitted by the Panel as evidence under section 22(4) of the Employment and Assistance Act because it is not testimony in support of the information and records that were before the minister when the decision being appealed was made. There is no reference to surgery in any of the information provided to the Ministry in support of the Appellant's request.

The Appellant is unable to communicate; therefore his advocate spoke. She stated that she has known the Appellant for approximately 26 years. She stated that he is able to move heavy objects, which he often attempts to do, and everything must be secured to the wall, including his bed. In response to questions from the Panel, she stated that the Appellant has some skin breakdown due to pressure and urine, therefore he requires a memory type of foam mattress.

The Panel relied on the Ministry's Reconsideration Decision as they were not present.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision which denied the Appellant's request for a custom wooden bed and mattress. The Ministry found that the Appellant is eligible to receive health supplements; however his request did not meet the criteria for approval of a custom wooden bed under sections 3(1) to 3(6), 3.6 and 3.7 of Schedule C, Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) or for provision of the bed as a crisis supplement under section 57, EAPWDR. In addition, the Ministry found the Appellant's request did not meet the criteria in section 69, EAPWDR for provision of the bed due to a life-threatening health need.

Legislation

EAPWDR

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, or
 - (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.
- (4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:
- (a) if for food, the maximum amount that may be provided in a calendar month is \$20 for each person in the family unit;
 - (b) if for shelter, the maximum amount that may be provided in a calendar month is the smaller of
 - (i) the family unit's actual shelter cost, and
 - (ii) the maximum set out in section 4 of Schedule A or Table 2 of Schedule D, as applicable, for a family unit that matches the family unit;
 - (c) if for clothing, the amount that may be provided must not exceed the smaller of
 - (i) \$100 for each person in the family unit in the 12 calendar month period preceding the date of application for the crisis supplement, and
 - (ii) \$400 for the family unit in the 12 calendar month period preceding the date of application for the crisis supplement.
- (5) The cumulative amount of crisis supplements that may be provided to or for a family unit in a year must not exceed the amount calculated under subsection (6).
- (6) In the calendar month in which the application or request for the supplement is made, the amount under subsection (5) is calculated by multiplying by 2 the maximum amount of disability assistance or hardship assistance that may be provided for the month under Schedule A or Schedule D to a family unit that matches the family unit.
- (7) Despite subsection (4) (b) or (5) or both, a crisis supplement may be provided to or for a family unit for the following:
- (a) fuel for heating;
 - (b) fuel for cooking meals;

- (c) water;
- (d) hydro.

General health supplements

62 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) a family unit in receipt of disability assistance,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is a dependent child, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

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) a person in the family unit is eligible to receive 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).

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 a replacement bed is necessary because his current bed has become unusable and can no longer be repaired. The Appellant argued that a hospital bed is not suitable because they are metal and the Appellant could grasp it easily, and any bed for him must be able to be secured to a wall so he cannot move it. The Appellant argued that a mattress and frame must be able to be cleaned due to frequent exposure to urine, and the mattress must be made of a foam material that relieves pressure and breathes in order to prevent skin pressure issues. The Appellant argued that the requested custom mattress is the cheapest suitable solution, and he has no family or others to assist.

The Ministry's position, as written in the Reconsideration Decision, is that the Appellant did not request a hospital bed, and there is insufficient information provided to demonstrate that a custom wooden bed is medically essential. The Ministry found that the Appellant's request does not meet the requirements of section 3.6 for provision of a hospital bed because the Appellant did not request a hospital bed and there is insufficient evidence to demonstrate that a custom wooden bed is medically essential to facilitate transfers to and from bed or to adjust or maintain his positioning in bed, as required under section 3.6(1) of Schedule C, EAPWDR. With respect to approval of the Appellant's request as a pressure relief mattress under section 3.7 of Schedule C, EAPWDR, the Ministry found that the information provided does not establish that a pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity as required in that section, and does not establish that the requested mattress is the least expensive appropriate medical device. In addition, the Ministry determined that the Appellant is not eligible for a crisis supplement under section 57, EAPWDR because the need for the bed is not considered to be unexpected or an item unexpectedly needed. The Ministry determined that the Appellant's request did not meet the requirements of section 69, EAPWDR, health supplement for persons facing direct and imminent life threatening health need, because he is eligible to receive health supplements under Schedule C, sections 2(1)(a) and (f) and 3 to 3.12.

Panel Decision

With reference to Schedule c, section 3.6, the Panel notes that the Appellant did not apply for a hospital bed, and specifically stated that a hospital bed would not be suitable in his circumstances. The Panel finds that the Ministry reasonably determined that a hospital bed is not medically essential to facilitate transfers to and from bed or to adjust or maintain his positioning in bed.

Schedule C, section 3.7 refers to pressure relief mattresses, which may be provided if the minister is satisfied that it is medically necessary to prevent skin breakdown and maintain skin integrity. The Appellant's written request specifies that his skin is at risk due to incontinence and exposure to urine and the need to clean and disinfect the mattress. The panel finds that the Ministry reasonably determined that the Appellant's application does not establish the need for a pressure relief mattress to prevent skin breakdown and maintain skin integrity, as no medical evidence is provided. In addition, section 3(1) of Schedule C requires that the medical equipment or device be the least expensive appropriate equipment or device. The Appellant submitted one quote to the Ministry, although he stated at the hearing that he had obtained two.

Under section 57, EAPWDR, a crisis supplement may be provided if the supplement is required 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, failure to obtain the item or meet the expense will result in imminent danger to the physical health of any person in the family unit or removal of a child under the Child, Family and Community Service Act. The Panel finds that the Ministry reasonably determined that the need for a bed after several years of use due to incontinence and wear and tear is not considered to be unexpected.

The Panel finds that the determination of the Ministry that a person who is eligible to receive health supplements under sections 2(1)(a) and (f) and 3 to 3.12 of Schedule C, EAPWDR is not eligible under section 69, EAPWDR is reasonable. The section states that the minister may provide to a family unit any health supplement set out in the sections listed to or for a person in the family unit who is not otherwise eligible for the health supplement if the supplement is provided to or for a person who is not otherwise eligible for the health supplement. The Appellant is eligible to receive health supplements under sections 2(1)(a) and (F) and 3 to 3.12 of Schedule C, EAPWDR as a person with disabilities, therefore the Ministry reasonably determined that s.69 does not apply to him.

The Panel finds that the Ministry reasonably denied the Appellant's request for a custom wooden bed because the request does not meet the eligibility requirements set out in the EAPWDR Schedule C sections 3, 3.6 or 3.7 and does not meet the requirements for provision of a crisis supplement under section 57, EAPWDR. The Panel finds that the Ministry reasonably determined that the Appellant is eligible to receive health supplements under sections 2(1)(a) and (f), 3 to 3.12 of Schedule C, EAPWDR and therefore is not eligible for a remedy under section 69, EAPWDR.

The Panel therefore confirms the Ministry decision. The Appellant is not successful on appeal.