

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("Ministry") reconsideration decision dated January 17, 2018 in which the Ministry found that the appellant was not eligible for a health supplement to repair her Freedom Bed (by ProBed) ["Freedom bed"] under sections 3 and 3.6(3)(a) of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"), Schedule C.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - section 62 and Schedule C

## **PART E – SUMMARY OF FACTS**

The evidence and documentation before the minister at the reconsideration consisted of:

1. A Request for Reconsideration (“RFR”), signed by the appellant on January 4, 2018, with typed submission that contained the appellant’s argument as well as the following information:

- The appellant indicated she has had a Freedom bed “hospital bed” since 2005.
- The appellant has tried sleeping in a “standard hospital bed”, numerous times, both in her home and while admitted to hospital. She stated that her body is very sensitive to positioning and she has had many pressure sores as well as pain in her shoulder and tail bone, and pain and numbness in her hip in a regular hospital bed.
- The appellant described the Freedom bed’s features which include the capability to take weight off certain areas to relieve pressure, help prevent pressure sores, and maintain a safe position in bed.

The appellant attached the following document to the RFR:

• A letter from an Occupational Therapist (“OT”) dated January 8, 2018, in support of the appellant’s argument and containing the following information:

- The appellant has an extensive history of pressure sores on multiple locations on her body.
- The appellant has a very limited ability to independently re-position herself in bed.
- The appellant has had a Freedom bed since 2005, which has reduced her incidence of pressure sores as she can program and re-position her body throughout the night.
- Ongoing use of a Freedom bed is recommended for the appellant to maintain her skin integrity and overall health.

2. Information from the Ministry’s record of decision which included:

• A letter dated January 17, 2018 in which the Ministry advised the appellant that her request for funding for repairs to her Freedom bed was denied.

• A letter dated December 7, 2017 in which the Ministry advised the appellant that her request for funding for repairs to her Freedom bed was denied. The Ministry noted that the cost of the repair was \$2,666.20 and that the bed was not originally funded by the Ministry but was privately funded.

• The reconsideration decision which stated:

- The appellant receives disability assistance and meets the basic eligibility to receive health supplements under the EAPWDR.
- On October 10, 2017, the appellant submitted an application for repairs to her Freedom bed.
- On December 7, 2017, the Ministry denied the appellant’s request for repairs.
- On December 14, 2017, the appellant submitted her RFR

- The appellant's application for repairs to her Freedom bed was accompanied by the following documents:
  - A price quotation from a home health care company dated September 12, 2017, indicating the total cost to repair the appellant's Freedom bed is \$2,666.60 and the total available discount is \$226.24.
  - A Medical Justification Request and Justification signed by a medical practitioner on October 4, 2017, and an OT on October 3, 2017. The medical practitioner described the appellant's medical condition as cerebral palsy and recommended "leg strap for wheelchair; repair to hospital bed controller."
  - A letter from an OT dated October 2, 2017 which described the appellant's medical and social history; functional status and functional issues; goals and justification of requested equipment, and recommended equipment (specifically, repairs to the appellant's "existing hospital bed"). The OT listed the appellant's medical conditions including spastic cerebral palsy; chronic back and shoulder pain from motor vehicle accidents; and other physical and mental health conditions. The appellant is wheelchair dependent and lives with caregivers. The OT indicated that the appellant's Freedom bed was funded by the Ministry "over 10 years ago" and is currently in need of repairs as the hand control does not work and the batteries need replacing, "putting (the appellant) at higher risk for of skin breakdown and causing difficulty with her transfers." The OT indicated the appellant "requires all of the features of this bed and uses them on a daily basis...for positioning and...skin breakdown prevention."

#### *Additional information*

On February 1, 20 and 21, 2018, the Tribunal received the following material from the appellant:

- A Notice of Appeal which contains the appellant argument and indicated that additional submissions would follow.
- A prescription pad note from a medical doctor dated February 1, 2018, in which the doctor stated that the appellant has a "severe disability secondary to cerebral palsy." Her symptoms include chronic pain, anxiety, and insomnia and her Freedom bed is in need of repair. The doctor indicated that "a hospital bed is not suitable for her and she would not do well emotionally or physically in a hospital bed." The doctor stated that the appellant's health will suffer unless she has her Freedom bed repaired.
- A letter from an advocate dated February 20, 2018, in support of the appellant's argument,

The Ministry did not object to the copies of documents that the appellant submitted for the appeal. To the extent that these submissions contain evidence, the panel finds that the information is admissible under section 22(4) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister when the decision being appealed was made. The panel finds that the information regarding the appellant's medical conditions and the recommendation for repairs to her Freedom Bed were before the minister at reconsideration.

The Tribunal consented to the Ministry attending the hearing by phone. The Ministry did not submit any new evidence. At the hearing, both parties furthered their arguments on appeal. In response to questions, the appellant clarified that her Freedom bed was funded through a motor vehicle insurance settlement and was not provided by the Ministry.

## **PART F – REASONS FOR PANEL DECISION**

The issue on appeal is whether the Ministry reasonably concluded that the appellant was not eligible for a health supplement to repair her Freedom bed under sections 3 and 3.6(3)(a) of the EAPWDR, Schedule C.

The ministry based its reconsideration decision on the following legislation:

### **EAPWDR - Health Supplements**

#### **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,

### **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

- (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.

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### *Analysis*

The appellant argued that the reconsideration decision compromises her health and well-being. In the submission on appeal, the advocate argued that the Freedom bed is necessary for the appellant's safety and comfort and "it is likely that failure to get funding to repair her Freedom Bed will result in serious negative health outcomes." The appellant noted that the OT's letters as well, reiterate her need for a Freedom bed and her doctor has confirmed that a regular hospital bed, (which the Ministry may fund) is not suitable for her medical conditions.

The appellant indicated that while she understands that the Freedom bed is not a type of equipment that the Ministry funds under the legislation, it is the only bed that gives her the "most comfort" and helps her prevent pressure sores and manage her sleep difficulties, chronic pain, and anxiety. The appellant indicated she has been through both physical and emotional difficulties; has trialed many other options (resulting in increased pain and numbness in her hips); and is "scared I'd end up back in the hospital if there's no funding for repairs."

The appellant stated that her Freedom bed has been very reliable, with no major repairs needed before now. She argued that even trialing the type of bed and mattress that the Ministry provides would be of no benefit at this point, and she would really like to get her Freedom bed repaired and "be able to get to the point where I would be able to manage with a different type of bed, or advances in technology to find one that will work." The appellant argued as well, that repairs to her Freedom bed "would be cheaper than purchasing another hospital bed."

The Ministry argued it has no legal authority to provide funding to repair the appellant's Freedom bed. On the Ministry's interpretation of section 3.6(3) of EAPWDR Schedule C, an "automatic turning bed" is not a health supplement for the purpose of section 3 of the Regulation. The Ministry noted that section 3 "sets out the general requirements that must be met for the provision of medical equipment and devices."

The Ministry argued that a Freedom bed is an "automatic turning bed" for the purposes of section 3.6(3)(a) of Schedule C. The Ministry explained that according to the manufacturer's specifications, a Freedom bed is a "programmable rotating bed which utilizes a mechanical turning system that gently repositions the user on command (manually) or automatically on a program designed to meet the specific needs of the user." When asked at the hearing whether the Freedom bed is an "automatic turning bed", the appellant explained that although she does not use the bed in that capacity, she agrees that "it is considered an automatic turning bed" for the purposes of the legislation.

*Panel's decision - EAPWDR Schedule C, sections 3 and 3.6*

Section 3.6 of Schedule C sets out the specific eligibility criteria that a client must meet to be approved for a "hospital bed." Subsection 3.6(1) sets out that a "hospital bed (and related components) are health supplements for the purposes of section 3 of the Schedule if the minister is satisfied that other specified criteria are met. The requirements for repairs to medical equipment "that was not previously provided by the minister" are set out in subsection 3(5) of Schedule C. In particular, subsection 3(5)(a) states that at the time of the repairs, the requirements in "sections 3.1 to 3.12 of this Schedule, as applicable" must be met in respect of the item being repaired.

The Ministry argued that the requirements in section 3.6 of the Schedule were not met because under subsection 3.6(3)(a), an "automatic turning bed" is not a health supplement for the purposes of section 3 of the Schedule. Based on the manufacturer's specifications and information from the appellant regarding the features of her Freedom bed, the panel finds that the Ministry reasonably determined a Freedom bed is an "automatic turning bed" under subsection 3.6(3)(a) of Schedule C.

While subsections 3(5) and 3.6(1) of Schedule C authorize the Ministry to repair a "hospital bed" that was privately funded (subject to other requirements being met), subsection 3.6(3)(a) of the Schedule specifically excludes an "automatic turning bed" for the purposes of repairs under section 3(5) of Schedule C. The Ministry denied funding for repairs to the appellant's Freedom bed on the basis of having no legislative authority to consider an automatic turning bed as a health supplement under the Regulation. The panel finds that the Ministry reasonably applied the legislation in concluding that the Freedom bed is not an eligible health supplement under subsection 3.6(3)(a) of EAPWDR Schedule C.

*Conclusion*

The panel finds that the Ministry's reconsideration decision which found that the appellant was not eligible for a health supplement to repair her Freedom bed under sections 3 and 3.6 of the EAPWDR, Schedule C was a reasonable application of the legislation. The panel confirms the decision and the appellant is not successful in her appeal.