

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) Reconsideration Decision dated March 1, 2019 which denied the appellant's request for funding for a health supplement, namely an automatic turning bed (ATB), on the basis that the request did not meet the legislative criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 62 and 69 and Schedule C Sections 3 and 3.6, specifically that:

- a) an ATB is specifically excluded as a "hospital bed" in EAPWDR Section 3.6;
- b) the appellant does not meet the criteria for a replacement ATB;
- c) the appellant has not demonstrated that there are no alternative resources to pay the cost or the ATB is the least expensive appropriate medical device; and
- d) the appellant is not eligible for an ATB as a health supplement for a person facing a direct and imminent life threatening health need under EAPWDR Section 69.

PART D – RELEVANT LEGISLATION

EAPWDR:

- Sections 62, 69
- Schedule C, Sections 3, 3.6

PART E – SUMMARY OF FACTS

Information Received prior to Reconsideration

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

- Medical Request and Justification Form dated December 10, 2018 written by an occupational therapist (OT), summarized as follows:
 - a new ATB (referred to as a “Freedom Bed” in the information provided to the ministry) is needed to replace the appellant’s 18 year old ATB, which has reached the end of its life span;
 - as a result of a severe anoxic brain injury incurred at years of age the appellant is entirely dependent in the performance of her daily living activities and requires a tilting wheelchair, lift transfer system and ATB;
 - while still a youth the appellant was supplied with an ATB 18 years ago through a different provincial ministry;
 - the ATB has solved the need for frequent nightly repositioning and has assisted with respiratory issues, enabling the appellant’s mother and principal caregiver (N) to get a reasonable night’s sleep.
- letter dated February 8, 2000 written by a different occupational therapist, noting that without the ATB the appellant would require repositioning 2-3 times per night;
- October 18, 2018 ATB price quote of \$40,53.00 from Supplier #1;
- January 8, 2019 ATB price quote of \$42,552.00 from Supplier #2;
- appellant’s request for reconsideration submitted to the ministry on February 15, 2019 with the following attachments:
 - letter from N dated February 11, 2019, summarized as follows:
 - the appellant requires an ATB to prevent pressure sores and respiratory problems;
 - without the ATB the appellant will be required to be turned nightly by a caregiver;
 - ATBs are used as hospital beds at a hospital in another part of the province.
- February 13, 2019 letter from the OT requesting reconsideration of the ministry’s denial of a replacement ATB. Attached to the OT’s letter is a commercially-produced report comparing the cost of the bed to the cost of institutional care.

Information Received after Reconsideration

1. Written Submission

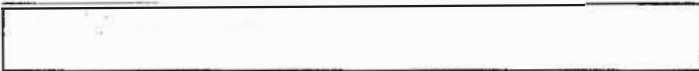
On March 25, 2019 N submitted a letter which consisted of argument and contained no new information.

2. Oral Evidence at the Hearing

The appellant was present at the hearing. All oral evidence was given by N due to the severity of the appellant’s physical and mental impairments. N executed a Release of Information in her capacity as committee of the appellant’s person and estate.

N stated that they attempted to use a specialized mattress topper for the appellant but by the third night she had fallen to the floor. Without the ATB the appellant must be turned every 2 ½ hours. The family unit does not have the financial resources to purchase an ATB.

The panel considered the oral evidence of N and admitted it under EAA Section 22 (4) as evidence in support of the information before the ministry at reconsideration because it provided additional details pertaining to the appellant’s need for a replacement ATB.



PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry's decision which denied the appellant's request for funding for a health supplement, namely an automatic turning bed (ATB), on the basis that the request did not meet the legislative criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 62 and 69 and Schedule C Sections 3 and 3.6, specifically that:

- a) an ATB is specifically excluded as a "hospital bed" in EAPWDR Section 3.6;
- b) the appellant does not meet the criteria for a replacement ATB;
- c) the appellant has not demonstrated that there are no alternative resources to pay the cost or the ATB is the least expensive appropriate medical device; and
- d) the appellant is not eligible for an ATB as a health supplement for a person facing a direct and imminent life threatening health need under EAPWDR Section 69.

Relevant legislation:

EAPWDR:

General health supplements

62 (1) Subject to subsections (1.1) and (1.2), 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 family unit if the health supplement is provided to or for a person in the family unit who is

- (a) a recipient of disability assistance

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).

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.

(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.

The appellant argues that an ATB is the only bed that can meet her complex needs, and without it she will either require paid caregivers to move her several times a night or alternatively will need to move to a care facility. The appellant also argues that the ministry should be required to replace the appellant's worn out ATB because it was provided to her by the provincial government.

The ministry's position is set out in the reconsideration decision and is summarized as follows:

1. although the ministry acknowledges that the ATB is a hospital bed and that a hospital bed is medically necessary for the appellant, the ministry is prohibited from providing an ATB to the appellant because the legislation specifically excludes an ATB as a health supplement under Section 3.6 (3)(a) of Schedule C;
2. the appellant is not eligible for replacement of the existing ATB under Schedule C, Section 3(3) because it was not provided to her by the ministry;
3. the appellant's request does not meet the eligibility requirements set out in Schedule C, Section 3

- (1)(b)(ii) , that the appellant has not provided information to demonstrate that funding from other sources has been explored, and (iii) that there may be less expensive alternatives to the ATB;
4. the appellant is not eligible for an ATB under EAPWDR Section 69 because she is otherwise eligible to receive health supplements under Schedule C, Section 3 [*medical equipment and devices*].

Panel Decision

1. Not an Eligible Health Supplement

The appellant is an extraordinary year old woman who suffered devastating permanent physical and mental impairments from a severe anoxic brain injury that occurred when she was years old. Her care needs are exceptional; she is unable to attend to any of her activities of daily living independently. For the past 26 years she has been unremittingly cared for by her mother N.

The evidence provided by N and the OT indicates that without the ATB the appellant would need to be repositioned in bed every 2 ½ hours, either by N or by a paid caregiver. A less expensive “mattress topper” option was attempted, with the result that the appellant fell from her bed to the floor. It is clear from the evidence that an ATB is an essential component of the appellant’s home care.

However, the ministry is bound by the legislation that governs the provision of health supplements, in this case the list of eligible “medical equipment and devices – hospital bed” set out in EAPWDR Schedule C, Section 3.6. Subsection (3) of Section 3.6 states: “The following items **are not health supplements** for purposes of section 3 of this Schedule: (a) **an automatic turning bed.**” (*Emphasis added.*) The exclusion of an ATB from the list of allowable hospital beds is clear and unambiguous. The panel therefore finds that the ministry reasonably concluded that the ATB requested by the appellant is not an eligible health supplement under the legislation.

2. Not Eligible for Replacement

The appellant acquired her current ATB in 2000 through government funding made possible by a specialized program operated by a different ministry. Section 3.6 (2) of Schedule C allows for replacement of items listed in subsection (1) under certain circumstances if it was previously provided by the ministry. The appellant’s ATB was not provided by the ministry, is not listed in subsection (1) and is specifically excluded in (3). The panel therefore finds that the ministry reasonably determined that the appellant is not eligible for replacement of ATB under this section.

3. Other Funding Resources Available/Least Expensive Appropriate Equipment

The information provided by the appellant does not demonstrate that significant attempts to obtain alternate funding from non-governmental organizations for the ATB were undertaken. The panel therefore finds that the ministry reasonably determined that the appellant’s request did not meet the eligibility criterion set out in Schedule C, Section 3 (1)(b)(ii), i.e., that there are no resources available to the family unit.

However, the reconsideration officer went on to state: “there may be less expensive alternatives to [the ATB]”. This finding is not supported by information that refutes the overwhelming evidence that an ATB is the only bed that meet’s the appellant’s complex needs. The panel therefore finds that the ministry was not reasonable in determining that Section 3 (1) (b)(iii) had not been met.

4. Not an Imminent, Life-Threatening Health Need

EAPWDR Section 69 allows the ministry to provide a health supplement to a person facing a direct and imminent life threatening need if that person is not otherwise eligible for a health supplement under the EAPWDR. Because the appellant is eligible under Section C she does not meet the requirements of Section 69. In addition the information submitted to the ministry does not indicate that the appellant will experience a direct and

imminent life-threatening health need if she fails to obtain a new ATB.

The panel therefore finds that the ministry reasonably determined that the appellant did not meet the criteria of an imminent life-threatening health need set out in Section 69.

Conclusion

The panel finds that the ministry's determination that the appellant is not eligible for an ATB because her request failed to meet the eligibility criteria set out in the legislation is reasonably supported by the evidence, and confirms the decision. The appellant is not successful in her appeal.

Although not pertinent to this decision the panel would suggest that the appellant, the ministry and perhaps independent funding organizations further explore options to enable the purchase of this essential medical support item for the appellant.

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| PART G – ORDER | |
| THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY | |
| THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> RESCINDS THE MINISTRY DECISION | |
| If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| LEGISLATIVE AUTHORITY FOR THE DECISION: | |
| <i>Employment and Assistance Act</i> | |
| Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/> | |
| and | |
| Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/> | |

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| PART H – SIGNATURES | |
| PRINT NAME Joan Bubbs | |
| SIGNATURE OF CHAIR | DATE (YEAR/MONTH/DAY) 2019/Mar/29 |

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|------------------------------|--------------------------------------|
| PRINT NAME Patrick Cooper | |
| SIGNATURE OF MEMBER | DATE (YEAR/MONTH/DAY) 2019/Mar/29 |
| PRINT NAME Marilyn Mellis | |
| SIGNATURE OF MEMBER | DATE (YEAR/MONTH/DAY) 2019/Mar/29 |