

APPEAL NUMBER
2020-00036

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated January 14, 2020 wherein the Ministry determined that the Appellant was not eligible for a battery backup kit for a hospital bed as a health supplement under Schedule C sections 3 and 3.6 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation section 62 and Schedule C sections 3 and 3.6

PART E – SUMMARY OF FACTS

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

The appellant is a recipient of disability assistance.

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

- A Request for Reconsideration dated December 26, 2019 in which the appellant included a letter explaining that:
 - because of the disability they are unable to get out of bed without lowering the bed at both ends;
 - that in the event of a power outage they would not be able to get out of bed, which is a safety concern, and that emergency personnel would have to come to assist; and
 - that no battery was included with the hospital bed in 2016, it is run totally by electricity, so this is not a request for a backup battery, rather is a request for a battery that was not included with the bed.
- A quote from a medical supply company dated October 22, 2019 noting that the appellant requires a backup battery for a bed that did not come with a battery and that the appellant had been stuck in bed several times because of that. The quote is for \$360.80.
- A letter dated November 21, 2019 from the Health Assistance Branch (HAB) to the appellant which denied a hospital bed accessory (backup battery kit) citing:
 - the specific upgraded components requested in the assessment are not medically essential to facilitate transfers or to achieve positioning in bed;
 - the battery that comes with the bed meets basic transfer and positioning needs; and
 - these basic components are the least expensive appropriate options available to meet the appellant's needs and further funding of this upgraded component would not be the least expensive appropriate option to meet transfer and positioning needs.

Additional Information:

In the Notice of Appeal the appellant wrote that it is absolutely critical to be able to lower the bed to get out of bed and they cannot do that if the power it out because the motor to the bed is electric.

The appellant submitted a written submission which included these points:

- The hospital bed that they received on November 29, 2016 was provided with an electric motor and there was no consideration at that time for a backup battery kit. Because the appellant was new to the area, they did not consider power outages and the dire consequences if there was no power. In the summer of 2019 there were several lengthy power outages within a short period of time and the appellant realized the danger when the bed could not be lowered to facilitate a transfer.
- The hospital bed did not come with a battery, which the ministry indicated it had.
- The decision for this request should not be based on the frequency or duration of power outages. That it should be based on the fact that even one power outage could jeopardize their safety, because of not being able to lower the bed to facilitate the transfer.
- The request for a backup battery kit was submitted by the Occupational Therapist (OT) however this was not included in the documents, and that it was this request from the OT that precipitated this appeal process.
- The total cost of the battery backup kit is \$360.80, which is the least expensive alternative to replacing the entire bed with one that is equipped with a backup battery.

The ministry's submission in this matter is the reconsideration summary provided in the Record of Ministry Decision.

Admissibility of Additional Information

The panel admitted the appellant's written submission in accordance with section 22(4) of the Employment and Assistance Act because the information was reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The ministry did not object to the written submission.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the Ministry's Reconsideration Decision dated January 14, 2020 to deny the Appellant a backup battery for a hospital bed was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. In particular, the Panel must decide whether the Ministry reasonably determined that the Appellant was not eligible for a backup battery kit as a health supplement because it is not an eligible item listed under EAPWDR Schedule C sections 3 and 3.6.

The relevant legislation is:

EAPWDR**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 under 19 years of age, 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.

EAPWDR 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.

The appellant's position is that the ministry paid for the hospital bed, acknowledging it was medically essential to allow transfers in and out of bed, and that a battery be considered essential because when the power goes out, they are not able to get out of bed. The appellant also argues that the cost of the battery pack is \$360.80, which is less expensive than replacing the entire bed, so this is the least expensive alternative.

The ministry's position is that health supplements may only be issued pursuant to legislation and that EAPWDR Schedule C section 3 sets out that an item must be requested by a medical professional or Occupational Therapist (OT), is the least expensive appropriate medical equipment or device and is medically essential to facilitate transfer to and from the bed or to adjust or maintain the position in bed. The ministry argues, in the appellant's circumstance, that the battery pack was not prescribed by a medical practitioner or an OT, there is no evidence as to the frequency and duration of power outages where the appellant lives to justify that the battery pack is medically essential to facilitate transfers in and out of bed or is the least expensive appropriate medical equipment or device.

Panel Decision

The legislative authority for the ministry to assist with a health supplement for any kind of medical supply or equipment rests within EAPWDR Schedule C. Section 3 of this Schedule relates to medical equipment and devices and section 3.6 relates specifically to hospital beds.

The ministry acknowledges that the eligibility requirements of EAPWDR Schedule C section 3(1)(a)(b)(i) and (b)(ii) have been met because the appellant is requesting pre-authorization and that there are no resources available to the appellant to pay the cost of, or obtain the medical equipment.

EAPWDR Schedule C section 3(1)(b)(iii) requires that the medical equipment being requested, which in the appellant's circumstance is a backup battery for the appellant's hospital bed, must be the least expensive appropriate medical equipment or device. The ministry's argument for this section of legislation is that they had no access to the frequency or duration of power outages in the appellant's area to establish the likelihood the appellant will be without power and will need to rely on the back up battery pack. The panel notes the ministry did not provide any less expensive alternatives available to the appellant, only that the appellant already has a bed equipped with a power cord. The panel considers it unreasonable for the ministry to determine that the number of power outages is relevant to whether a battery is the least expensive medical device. The reason the appellant requires a battery for the hospital bed is for use when the power goes out, and this legislation requires that it be the least expensive appropriate device. The appellant's argument that the \$360.80 cost of a battery is less than the cost of replacing the hospital bed for one that does have a battery for back up is a reasonable argument, therefore the panel finds the ministry was not reasonable in determining the appellant has not met the requirements of EAPWDR Schedule C section 3(1)(b)(iii).

EAPWDR Schedule C section 3(2) requires that a medical professional or an OT has prescribed the medical equipment or device. In the appellant's circumstance, the ministry decision was that there was no OT request confirming the medical need for a backup battery. In the appellant's written submission they wrote that a request for a backup battery kit was submitted by the OT, in fact, that request is what precipitated this appeal, but that the ministry neglected to provide that information in the documents provided. The Record of Appeal did not contain a form completed by an OT requesting a backup battery, however, the panel notes in the Health Assistance Branch letter of November 21, 2019 reference is made that an application for Health Supplements had been received and the ministry determined the item requested in the assessment was not medically essential to facilitate transfers in and out of bed. The denial letter did not include a reference to denying the request because of not having been requested by an OT. The panel concludes it is reasonable to assume the ministry had received some type of form, which is usually submitted by a physician or OT. The panel also notes the ministry had funded the appellant in November 2016 for a hospital bed, which was to include a battery to raise and lower the bed, and they would have received an OT request at that time, because the appellant was deemed eligible. Unfortunately, a battery did not come with the bed, as had been approved at the time, and which is confirmed on the technician's invoice included in the appeal record. The panel finds that a battery has been requested by an OT, by way of the authorization made by the ministry for a hospital bed with a battery.

EAPWDR Schedule C section 3.6(1) requires that when requesting an accessory to attach to a hospital bed that it must be medically essential to facilitate transfer of the person to and from the bed or to adjust or maintain their position in bed. In the appellant's circumstance, the ministry argues it is not clear whether the frequency or duration of the power outages in the appellant's area justifies the provision of a back up battery kit and also that no medical information from a physician or OT had been provided to establish that the appellant is unable to transfer to or from bed in the instance of a prolonged power outage. Although power outages may not be frequent and may be of a

short duration, the panel finds that in the event of an outage the bed should have the necessary power to operate and a backup battery is the most reasonable option. The panel notes the ministry acknowledged in the reconsideration decision they had received a request from an OT on June 9, 2016 which included a recommendation the appellant required a hospital bed that can go low enough to allow for independent and safe transfers and this is type of bed that the ministry approved. The panel finds that because the ministry approved a hospital bed that could lower to facilitate transfers to and from bed, there is already ministry acknowledgement that a bed that lowers is medically essential. The panel finds the ministry was not reasonable in determining a back up battery was not medically essential to facilitate the appellant's ability to transfer in and out of bed.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for a backup battery pack for a hospital bed pursuant to Schedule C section 3 of the EAPWDR, was not a reasonable application of the applicable enactment in the circumstances of the appellant and therefore rescinds the decision. The appellant is successful in the appeal.

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PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION 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? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME
Janet Ward

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)
2020 March 24

PRINT NAME
Joseph Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2020 March 24

PRINT NAME
Marlene Russo

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2020 March 24