

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated July 9, 2021 which held that the appellant is not eligible for a health supplement for a replacement pressure relief mattress because the request failed to meet the legislative criteria set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The ministry held that the appellant had not had the current mattress for over the legislated minimum five-year replacement period, and that as no information was submitted indicating the mattress is damaged beyond repair the ministry is unable to confirm it is cheaper to replace the existing mattress rather than repair it as required under section 3 (3) of schedule C of the EAPWDR.

Also, as it was not confirmed that the current mattress is unable to prevent skin breakdown and maintain skin integrity and based on the information provided, the ministry could not establish the requested replacement LTC Sensus Ultra 55 mattress is medically essential to prevent skin breakdown and maintain skin integrity as required under section 3.7 of Schedule C of the EAPWDR.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation, (EAPWDR) sections 62; Schedule C, sections 3 & 3.7.

PART E – SUMMARY OF FACTS

The evidence before the ministry at reconsideration included the following:

- The appellant has been designated as a person with disabilities (PWD) and is in receipt of disability assistance.
- On July 4, 2018 the appellant received a LTC 4000 Sensus Plus mattress from the ministry.
- On April 12, 2021 the ministry received a request for a LTC 4000 Sensus Ultra 55 mattress. The following documents were submitted with this request:

An assessment from the appellant's Occupational Therapist (OT) reporting:

Background information:

Client has a LTC 4000 mattress in place that was purchased in July 2018. The mattress is worn and sagging in the middle of the mattress and no longer provides adequate support. This occupational therapist is recommending the mattress be replaced with a more durable LTC Sensus Ultra 55 mattress.

Diagnosis/Medical History:

Cerebral vascular accident (CVA), Diabetes mellitus, HTN, Hyperlipidemia, Asthma, Obesity, Osteoarthritis knees, depression.

Current Physical Status:

Due to the CVA the appellant experiences right sides hemiplegia.

Mobility:

Client uses a wheelchair for mobility.

Trial: Client trialed the LTC Sensus Ultra 55 mattress and voiced mattress is comfortable.

Recommendations:

OT recommends LTC Sensus Ultra 55 mattress, as client requires firm borders during transfers due to hemiplegia and requires a durable mattress as has worn out LTC 4000 mattress.

Length of Time Equipment will be Required

The client will require the use of this equipment long-term.

- A Medical Equipment and Justification form signed by the appellant's OT, reporting:

Client's mattress is worn, sagging in middle of mattress, no longer provides adequate support, requires replacement. OT recommending mattress be replaced with more durable mattress.

- A quote from a mobility supply company for \$1430.02 for a LTC Sensus Ultra 55 mattress.

On June 24, 2021 the appellant submitted a signed Request for Reconsideration. This package included:

- A letter from the appellant's OT, stating:

Background Information

Client has a LTC 4000 mattress in place that was purchased in July 2018. The mattress is worn and sagging in the middle of the mattress and no longer provides adequate support. This occupational therapist is recommending the mattress be replaced with a more durable LTC Sensus Ultra 55 mattress.

This Occupational Therapist received a voice mail from adjudicator from the Ministry of Social Development and [Poverty Reduction] that the request was declined, name of adjudicator not left with writer.

Support for why client requires replacement mattress

Client's weight has changed since prior to experiencing a stroke.

Appellant has gained 26 pounds. Client is short and heavy and has a round shaped body frame, therefore client's body is positioned at the center of the mattress and this is where the breakdown of the mattress is occurring.

The LTC 4000 Plus mattress client currently has in place is worn out, soft and sagging in the middle of the mattress. The LTC 4000 Plus mattress includes the following components: 4 inches of medium firm core, and 2 inches visco elastic foam.

The mattress the writer has recommended as a replacement, the LTC 400 Ultra 55 mattress is firmer mattress than the current mattress in place. It includes the following components: 2 inches of firm core, 2 inches of high resiliency transitional layer and 2 inches of visco elastic foam.

The LTC 4000 ultra 55 mattress is designed to hold a higher weight capacity of 400lbs compared to the LTC 4000 which is only designed to hold a weight capacity of 350lbs. The mattress chosen for replacement is a firmer, more durable mattress, which is more appropriate to support client's body shape. Writer initially applied for LTC 4000 Plus mattress in attempt to provide the lowest cost mattress, however, unfortunately this mattress has worn out prior to the 5-year replacement time frame.

Recommendations:

OT recommends the LTC Sensus Ultra 55 mattress as client requires firm borders during transfers due to hemiplegia and requires a more durable mattress and has worn out LTC 4000 mattress. Writer has attached handouts with mattress descriptions for reference.

- A pamphlet for Essential Medical Products describing the mattresses, with the information for the current mattress, the LTC 4000 Plus and the requested mattress, the LTC 4000 Ultra 55, circled.

The panel notes the pamphlets do show a difference in firmness for the LTC 4000 Ultra 55 over the current LTC 4000 Plus mattress (firm versus medium) and that under the circled "key considerations" the only other differences are that the current mattress is listed as "Good choice for individuals at risk for pressure sore development" and "recommended weight capacity is 350 pounds", and the recommended mattress is listed as "Best choice for individuals at risk for pressure sore development" with a "recommended weight capacity is 400 pounds".

The ministry provided information regarding policy which is available online. This policy was provided as;

*The ministry may consider repairing **or** replacing medical equipment due to the medical equipment being damaged, worn out, or not functioning.*

Replacement may be considered if all of the following are met:

- *It is more economical to replace, rather than repair, the medical equipment;*
- *The medical equipment has not been damaged by misuse;*
- *The time period, if any, set out in a table has passed. The ministry shows that time period to be 5 years*

*The ministry notes that the replacement time period does **not** apply when an item is required due to changes in a person's medical condition or growth.*

The hearing was held as a teleconference. At the hearing several events caused a delay in process. One panel member and the ministry representative had trouble during the call with reception and either re-joined the call or re-joined with another phone.

The appellant does not use English as a primary language and was accompanied by a direct family member acting as both interpreter and advocate/support person (advocate) to assist with the provision of evidence and confirming telephone discussions. The panel spoke directly to the appellant who provided agreement and instruction for the family member's role. The ministry had no objection to this assistance being provided.

With the permission of the appellant the ministry had a trainee person join the hearing by phone as an observer.

Oral submissions

Appellant

The appellant did not call any other witnesses to testify but did offer that the OT would be able to provide answers to any information that was needed. The advocate had telephoned the ministry after filing the appeal to ask if the OT needed to be present. The advocate was told the ministry had received the letters from the OT and they did not need anything further at this time. Upon reflection the advocate indicated that they would have preferred to have the OT at the hearing. The advocate called the OT on a separate telephone line twice during the hearing but was unable to connect.

The advocate provided testimony to the history of the initial medical event of the appellant's stroke, of losing movement on the right side of the body, and the subsequent support provisions by an Occupational Therapist (OT). This included the trialing of, and issuance by the ministry of a pressure relief mattress in 2018 and support to this date.

Recently the appellant has become 'super-uncomfortable' during the night, having to get up 4 – 5 times a night to sit up before going back to sleep.

The appellant is suffering a lot now from other medical issues and over a number of weeks or a month or so the advocate had spoken to the appellant's medical practitioner about the nighttime discomfort symptoms and was apparently told they were not as a

result of the appellant's medical conditions. It was then that the family realised it was the mattress that is causing the problem.

The OT viewed the mattress and stated it was unsafe/uncomfortable and would need the ministry to supply a new mattress. The OT had a manufacturer representative attend the home and view the mattress; however, the OT was unable to attend at the same time. A report was made by the representative and was to be sent to the OT. In answer to a question the advocate confirmed seeing written notes being taken and was sure such a report had been sent to the OT.

The OT submitted a request for a new mattress to the ministry and it was rejected. The OT had to submit another letter after 6 May 2021 and had to again attend the home to have the appellant sign a document. This delayed the eventual submission of the reconsideration request.

Following receipt of the reconsideration decision by both the appellant and the OT the advocate called the ministry to discuss the case and was advised the appellant would not be eligible for a replacement mattress until 2023.

The advocate explained the existing mattress is fully down where the appellant lies. The bottom and top, and both sides are different from where the appellant lies to sleep. The advocate offered that if any member of the panel or the ministry wishes to see the mattress the advocate will clean it and we are welcome to lie down in it to see the sagging for ourselves.

The advocate offered that there was no other means of funding the replacement mattress and the ministry had indeed asked if this was an option. The advocate has approached other family members and agencies who are at this time unable to provide financial assistance.

In answer to questions the advocate confirmed the mattress had been provided by the ministry. The ministry advised that the normal process is that they purchase the mattress and it becomes the property of the appellant and any warranty would be to the benefit of the appellant. Both the advocate and appellant were unaware of any warranty claim available. The advocate advised that as the mattress was not ripped the manufacturer representative said it could not be fixed and a new one would be required.

The advocate offered that although the mattress is rated for 300 pounds weight (which is more than the appellant weighs) the middle of the mattress no longer provides adequate support.

Ministry

The ministry relied upon the reconsideration decision. The ministry provided a short summary of reasons why the request did not meet all of the legislated requirements of section 62, and section 3 and 3.7 of the EAPWDR.

The ministry recounted the denial of a replacement mattress based on a shorter than 5-year period since the first mattress was provided, commentary on the OT's comments in the submissions as to sagging and worn condition and the relationship to the requirements of the legislation regarding replacement.

The ministry advised that they had reviewed the potential for a change in the appellant's medical condition against their criteria contained in ministry policy. That policy allows that the replacement time period does **not** apply when an item is required due to changes in a person's medical condition or growth. Upon referencing the OT report the ministry is of the position that the medical condition has not changed as the hemiplegia was present at the time of the original issuance of the mattress.

Upon questioning by the advocate, the ministry agreed that the appellant's weight had increased by 26 pounds, however the mattress is rated to 350 pounds which is more than the appellant weighs. The ministry agreed that factors other than weight are taken into consideration and that they would rely upon the OT report which may include items such as firm boundaries of the mattress.

In response to questions from the panel the ministry was not aware if anyone had attempted to repair the mattress and had not received a request for repair. The advocate offered that there was no request for repair as nothing can be repaired.

The ministry offered that there was no mention in the case notes of follow up with the OT regarding repair/repairable condition.

In answer to a further question regarding warranty possibilities the ministry confirmed that if a damage warranty claim was provided with some costs to be borne by the

warranty then the ministry would look to cost sharing as part of the repair if cheaper than replacement approach.

In summary the advocate expressed a general lack of understanding as to why the ministry would not follow up with the OT if they needed further information, as the OT had offered to provide in each letter. The ministry provided that generally they would not follow up if the material appeared complete and in this case, it appeared there was communication by both parties as a voice memo from the ministry was noted by the OT and the second letter communicated a change in medical condition as a reason for the request for replacement.

Admissibility of oral testimony

Aside from argument, neither party raised any objections to the other's information. The appellant provided additional evidence about the circumstances of discomfort, and the visit by the mattress manufacturer and the process the appellant had gone through with the ministry in applying for assistance. The ministry explained the application and review process.

The testimony speaks to the ministry's process for determining there was insufficient information to confirm the appellant's eligibility for assistance. The testimony also includes additional information on the appellant's current circumstances. The oral testimony is therefore relevant to whether there is enough evidence to determine if the appellant is eligible for assistance. The panel admits all the testimony under section 22(4) of the EAA as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision which held that the appellant's request for a replacement mattress does not meet the legislated eligibility criteria as set out in the EAPWD Regulation, Schedule C, Section 3 was reasonable.

In particular, was the ministry reasonable in determining that the mattress was not damaged beyond repair and less than five years old, such that the ministry was unable to confirm it is cheaper to replace the existing mattress rather than repair it as required under section 3 (3) of schedule C of the EAPWDR.

Lastly was the ministry's determination that it was not confirm a new mattress is required to prevent skin breakdown or maintain skin integrity was reasonable. Section 3.7 of Schedule C of the EAPWDR requires the minister to be satisfied that the mattress is required to prevent skin breakdown or maintain skin integrity.

The relevant legislation is provided in Appendix A.

Repair or Replacement

Appellant Position

The appellant argues that the current mattress issued by the ministry in 2018 is no longer providing adequate support and a manufacturer's inspection revealed the mattress cannot be repaired, therefore a new mattress should be provided. The mattress is sagging and is worn in the middle and is so uncomfortable it is causing the appellant to get up 4-5 times during the night. A report has been provided by an OT and an invoice showing a cost for a replacement mattress of a different model has been provided.

Ministry Position

The ministry argues the eligibility requirements have not been met in that the appellant has not had the current mattress for over the legislated five-year replacement period to be eligible for a replacement. The ministry provided a mattress on July 4, 2018 and states the appellant will not be eligible for replacement of the mattress until July 4, 2023.

In addition, no information was submitted indicating the mattress is damaged beyond repair. Therefore, the ministry is unable to confirm it is cheaper to replace the mattress rather than repair it.

Panel Finding

The legislation in section 3 (3) of Schedule C of the EAPWDR provides that the minister may provide a replacement mattress that is damaged, worn out or not functioning. The requirements to be met are that (a) it is more economical to replace the mattress than to repair it, and (b) the period of time of 5 years set out in section 3.7 of this Schedule has passed.

The testimony of the appellant indicates a visual examination of the mattress by a manufacturer representative arranged by the OT, and that a report was prepared and sent to the OT. Both the appellant and the OT refer to sagging and wear of the middle of the mattress. The panel notes that neither the report or letters submitted by the OT refer to either a manufacturer's inspection report or an inability to repair the mattress.

Based on the evidence the panel finds that the mattress has suffered some degradation, wear or settlement. The panel notes there is no evidence as to whether the mattress can be repaired, or what that might cost. As no comparison can be made as to the most economical cost to repair or replace the mattress with a new one, the panel therefore finds the ministry's decision not to replace the mattress on this point was reasonably supported by the evidence.

It is not disputed that the 5 year replacement period has not lapsed and therefore, the panel finds the ministry's determination on the second requirement to be reasonable.

The legislation further provides in section 3 (4) of Schedule C of the EAPWDR that the minister may repair the mattress if it is more economical to repair the medical equipment or device than to replace it.

While the appellant's testimony suggests the mattress is beyond repair, the panel notes there was no evidence on the cost of repairing the mattress. For these sections to be applicable, a comparison of replacement and repair costs would need to be made.

Change in medical condition

The ministry's policy, available online in the Policy and Procedure Manual, regarding repair or replacement of medical equipment, states "the replacement time period does not apply when an item is required due to changes in a person's medical condition or growth".

Ministry policy is not binding on the panel and the reasonableness of its application is not something the panel can determine.

New Issuance

Appellant Position

The appellant argues that a mattress issued by the ministry in 2018 is no longer providing adequate support. The mattress is sagging in the middle and is so uncomfortable it is causing the appellant to get up 4-5 times during the night. An OT report provided medical justification that the appellant requires a more durable pressure relief mattress and due to the current mattress being worn out the provision of a new LTC Sensus Ultra 55 mattress has the required firmness, durability and is recommended.

Ministry Position

The ministry argues that in neither the appellant's original April 2021 request or June 2021 request for reconsideration does the OT confirm that the mattress provided in 2018 is unable to prevent skin breakdown and maintain skin integrity. Based on the information provided, the ministry cannot establish the requested LTC Sensus Ultra 55 mattress is medically essential to prevent skin breakdown and maintain skin integrity.

Panel Finding

The legislation provides in section 3.7 of schedule C that a pressure relief mattress is a health supplement if the minister is satisfied that the pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity.

The appellant had been provided with a pressure relief mattress in 2018 and other than some weight gain the OT report has not identified any change in medical diagnosis. The panel has already found that although the current mattress is suffering some wear and tear and settling problems no information has been provided to establish that the current mattress is worn out, does not perform the function for which it was purchased, that of preventing skin breakdown and maintaining skin integrity, or that the recommended LTC 4000 Ultra 55 is more durable.

Notwithstanding the medical diagnosis and current physical status, at no point do the OT reports discuss the inability of the current mattress to prevent skin breakdown, the key reason the mattress was provided in 2018. The appellant's weight gain of 26 pounds is well under the capacity of the current mattress. A new issuance of a different model of mattress is discussed in terms of ability in general terms as being more durable in the OT report and able to carry more weight, 400 pounds rather than 350 pounds, both in excess of the appellant's weight. In the manufacturer's table of comparison, the recommended model and the current mattress do not differentiate durability. There is no identifiable reason therefore to support the recommendation of a higher quality or more expensive replacement mattress. This is a key issue that the panel believes should and could have been addressed.

As an existing pressure relief mattress has already been provided to the appellant the panel finds the ministry decision that it cannot establish the requested LTC Sensus Ultra 55 mattress is medically essential to prevent skin breakdown and maintain skin integrity to be a reasonable interpretation of the legislation in the circumstances of the appellant.

Conclusion

The panel has found that the appellant's mattress has undergone damage and/or wear and tear including settling. However, the panel finds that the appellant has not shown that the mattress is not functioning for its original purpose (preventing skin breakdown), what the cost of repair might be (if possible) or that a new mattress is required to prevent skin breakdown or maintain skin integrity.

Therefore, the ministry reasonably determined that the appellant is not eligible for a replacement or new issuance of a pressure relieving mattress at this time.

The appellant is not successful upon appeal and the panel confirms the reconsideration decision.

Appendix A

Schedule of Applicable Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

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.

Health supplement for persons facing direct and imminent life-threatening health need

69 (1) 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,

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.

(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.

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.

APPEAL NUMBER
2021-0147

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

Donald Stedeford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/08/16

PRINT NAME

Jeremy Scott

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/08/16

PRINT NAME

Sameer Kajani

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/08/16