

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision made September 2, 2021 which held that the appellant was not eligible for a 48-inch hospital bed by reason that the appellant did not meet the criteria in subsection 3(1), 3(3), or 3.6 of Schedule C Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”).

Part D – Relevant Legislation

s.22(4) Employment and Assistance Act (“EAA”)
s. 62, Schedule C (sections 3, 3.6) Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”)

Part E – Summary of Facts

***Gender neutral pronouns are used in the case of individuals who have not had the opportunity to identify their pronouns to the panel.**

The information before the Ministry at the time of reconsideration was:

1. The appellant is designated as a person with disabilities and is in receipt of disability assistance.
2. December 14, 2020 letter to the Ministry from the first occupational therapist (the “First OT”) which is summarized as follows:
 - a. The appellant’s height is five foot eight inches and the appellant’s supine width is 50 inches.
 - b. The appellant requires a bariatric hospital bed because of a variety of medical conditions that limit her ability to transfer and ambulate.
 - c. The appellant currently uses a similar bed to the requested model that was funded by the Ministry in 2015.
 - d. The appellant’s old bed is worn out and has a risk of breaking down.
 - e. A quote for a 54-inch bed is attached to the letter with a handwritten sticky note stating, “ministry funded – existent bed – to move to storage”. There are illegible numbers on the sticky note. Below the sticky note is another handwritten note that states: 2015 bed: drive medical. Mattress dimensions 7-inch-thick x 42-inch-wide x 80-inch length. Next to the width dimension of 54 inches is a handwritten note which states “too wide – hard to roll and shuffle to reach bedside C-PAP machine”.
3. January 12, 2021 quote from the retailer for the bariatric bed showing the total cost of the 54-inch-wide bed and mattress to be \$10,671.16. The number 54 is circled.
4. January 15, 2021 approval letter from the Ministry addressed to the retailer. The appellant’s address is also on the letter below the retailer’s address. The letter approves the bariatric bed and mattress for the appellant. The letter requests the retailer to “contact the client to advise of approved items and make arrangements for delivery.” The letter requests the retailer to provide the order in accordance with the prices, terms, delivery and specifications listed above. It asks the retailer to notify the Ministry immediately if they are unable to ship as specified and to invoice the Ministry directly.
5. On June 23, 2021 the appellant submitted a request to the Ministry for a replacement hospital bed.
6. A report from an in-home assessment from the Second OT dated March 16, 2021 which is summarized as follows:
 - a. They state that the First OT requested a larger width bed because of the appellant’s complaints with the size of her previous mattress. They state that the First OT said that the appellant “made it clear that her prior mattress was too narrow for her and when we did measurements it appeared that she was too wide for her current set up.”
 - b. At the time of writing this report the appellant was sleeping in a recliner chair.
 - c. The appellant stated that the current bed was too wide, and she wanted to go back to her original bed size which is 48 inches wide and 8 inches thick.

- d. The appellant indicated that her narrower bed was easier for her to get in and out of and scooting and rolling in the wide bed is too painful.
 - e. The appellant stated that the First OT did not ask her what her current bed dimensions were.
 - f. The appellant stated that the current bed is not on wheels, too heavy to move, the outlet was only available in one location, and since the bed is so wide the appellant cannot reach her bedside table where her CPAP machine is.
 - g. Appellant was not amendable to any strategies to make the current mattress more therapeutic or comfortable such as a mattress overlay.
 - h. The appellant's current bed that was approved by the Ministry is 54 inches wide and 6 inches thick. It was unclear the specific date that the client received the bed from the Ministry.
 - i. Appellant was not amenable to discuss room layout re-arranging, nor suggestions to remove items to create more room
 - j. Appellant enters the bed on the opposite side than where the long end table sits with her CPAP machine and other items.
 - k. Appellant thinks she feels the mechanical joints through the mattress.
 - l. Appellant has chronic back pain and hip pain which makes moving, scooting, rolling, and bridging more painful.
 - m. Appellant states she has to use the bathroom frequently and wears incontinence pads in bed and shuffling in the bed disarranges the pads and towels she places on her bed.
 - n. Appellant was sleeping in a recliner which was disruptive to her family life.
 - o. The appellant's anxiety, pain and trauma experiences are exasperated by this issue with the bed.
 - p. Appellant is experiencing poor and disrupted sleep
 - q. The interim plan is to get a temporary bed for the appellant and contact the First OT to submit a funding appeal to the Ministry.
7. A letter from the Second OT dated June 23, 2021 to the Ministry. The letter repeats items in the Second OT's report (paragraph 6 above). Additional information not already summarized in paragraph 6 above is summarized as follows:
- a. The appellant was expecting to get the same width bed as her previous bed which was 48 inches in width.
 - b. The appellant has difficulty to move across and get out of the 54-inch bed and is not able to use it.
 - c. The appellant currently has her 54-inch bed in storage and is using a loaner bed from Island Health that is 46.5 inches wide and that has a 42-inch-wide mattress
 - d. The appellant's height is 5'8 and the appellant's width is 24 inches hip to hip and 27 inches width between her underarms.
 - e. The appellant can complete lie-to sit and sit-to-stand transfers only with the support of her mechanical hospital bed raised upright and with use of the upper rail.
 - f. The appellant does not have the strength or pain-free range to complete lie-to-sit or sit-to-stand without adjusting the back rest in her bed, as well as adjusting the height of the bed to move from seated to standing.
 - g. The appellant's physical conditions have left her significantly deconditioned and they impact her ability to mobilize including transfers.

- h. The appellant reports that on bad days she requires the support of her partner to complete transfers.
 - i. A decreased range of motion make bridging, rolling, and shuffling in the 54-inch bed too difficult.
 - j. The letter attaches a quote from the retailer dated June 23, 2021 for a 48-inch bed and mattress with a total cost of \$8780.59
 - k. The letter attaches some information about the 48-inch bed and an advertisement pamphlet that shows a 39-inch mattress that is circled and that has a star next to it.
8. A medical equipment justification form dated May 26, 2021 requesting a 48-inch hospital bed and mattress.

On July 19, 2021 the Ministry denied the appellant's request.

In the reconsideration submission the appellant provided the following additional information:

1. A medical equipment and justification form completed by the Second OT and dated August 20, 2021 listing the medical conditions of the appellant and recommending a mechanical/electric bariatric hospital bed and pressure relief mattress/cover (48-inch-wide not 54 inch wide. 12-inch-thick)
2. A fax cover sheet from the Second OT which encloses 47 pages along with their August 30, 2021 letter. Enclosed with that fax is the report from the First OT with handwritten notes on the original report.
3. A letter from the Second OT dated August 30, 2021 and attached to the equipment and justification form. The letter provides the following:
 - a. The previous occupational therapist that met with the appellant and completed a virtual appointment with the appellant due to being from a different community and covid concerns.
 - b. The appellant began reporting issues with the bed to the Second OT (the writer of the letter)
 - c. The Second OT did an in-home OT assessment on March 16, 2021.
 - d. On March 24, 2021 a temporary rental bed was delivered, and the 54-inch bed was removed and placed into storage
 - e. The appellant reported to the OT that the 54-inch bed was too wide, and it doesn't permit her to access her bedside table where her C-Pap and other essential items are.
 - f. The appellant's pain and mobility limitations prohibit her from rolling, pelvic bridging, shuffling to access the items on her bedside table which has essential items including her C-pap machine.
 - g. The idea of adding bolsters to assist in making the bed area smaller would add a barrier to the appellant being able to reach her C-Pap machine.
 - h. The lack of sleep affects the appellant's ability to cope with life stressors and her physical symptoms.
 - i. The appellant's incontinence has required her to use the bathroom multiple times in the night which requires painfully moving across the wider sized bed.
 - j. The rental bed that the appellant is currently using is not optimum and the client reports extra pain and no sleep.

- k. The appellant is able to complete lie-to-sit and sit-to-stand transfers in and out of the mechanical hospital bed.
- 4. A letter dated August 23, 2021 from a mental health and substance use clinician to the Ministry writing in support of a replacement 48-inch hospital bed. The relevant portions of the letter are summarized below:
 - a. The client was struggling with the state of her old bed and the process for obtaining a new one was lengthy.
 - b. The client was never asked by the First OT about the width of her bed.

The Notice of Appeal states: "Because the OT did not ask me or order the correct bed. The OT lied many times on the documents"

The additional appellant submission includes:

1. Letter from registered respiratory therapist dated October 6, 2021 which is summarized as follows:
 - a. The respiratory therapist manages the appellant's BiPAP therapy which she is prescribed to use nightly to treat her sleep disordered breathing.
 - b. The appellant is limited in the use of the BiPAP machine due to logistical issues caused when she received a mechanical bed of the wrong size.
 - c. The appellant was given a child size bed to replace the other larger bed and the current bed is not suitable
 - d. The position of the BIPAP must be below the patient for safety reasons.
 - e. The bed she currently uses limits placement of the machine as well as her ability to reach it
 - f. Due to the appellant's limited use of the machine, she is at an increased risk for heart attack, stroke and diabetes.
 - g. The appellant recently suffered a stroke, and she needs to sort out the issue of the bed as soon as possible to limit her risk of additional health detriment.
2. Letter from Island Health to the lawyer for Disability Alliance dated November 23, 2021 which is summarized as follows:
 - a. If the appellant no longer requires her 54-inch bed, Island Health could possibly facilitate the donation of the bed to other individuals in need.
 - b. Island Health does not assist clients to sell medical equipment that they no longer need.
3. Letter from a Doctor dated October 27, 2021 but not addressed to anyone which is summarized as follows:
 - a. The doctor confirms that the appellant is severely distressed by having a bed that is incorrectly sized. The appellant is suffering from a multitude of medical and mental issues and the appellant feels that having the correct sized bed ordered would help her immensely.
 - b. The Doctor lists the appellant's medical history and active mediations.

At the hearing the appellant provided the following additional evidence:

1. The problem with the bed she received in January 2021 is that the bed is too wide. Neither the First OT or the Second OT ever took any measurements of the appellant and she does not know where the First OT obtained the supine width of 55 inches or where the Second OT obtained the supine width of 24 inches to 27 inches.
2. The appellant told the First OT that she wanted the same bed but with a thicker mattress.
3. The appellant only gets up to use the bathroom once per night and the Second OT that stated she got up multiple times per night was not truthful in that statement.
4. She did try using the 54-inch-medical bed provided by the Ministry. She couldn't get in and out of it and if she could also not reach her C-PAP machine. She recalls that she received it in February sometime and it was out of her house by the end of March.
5. After she received the bed and realized it wouldn't work, she slept in her recliner chair before the health authority arranged for her to have a loaner bed.
6. The loaner bed she is using now it too small. Her feet go over the end of the mattress. It doesn't lift her feet up high enough and she has difficulty reaching her CPAP machine.
7. She tried to return the bed directly to the retailer in exchange for the correct size, but they would not return the bed because of covid.

At the hearing the Ministry relied on their reconsideration decision.

Pursuant to s.22(4) EAA, the panel finds that the additional evidence that was not available at reconsideration is admissible because it 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 if the Ministry decision which found that the appellant was not eligible for a 48-inch hospital bed by reason that the appellant did not meet the criteria in subsection 3(1), 3(3), or 3.6 of Schedule C EAPWDR was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

The legislation provides:

EAAT

s.22(4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

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.

Schedule C EAPWDR

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.

The panel finds:

S. 62 and Schedule C s. 62, s.3(1)(b)(i) and (ii) EAPWDR

The Ministry found that the appellant is in receipt of disability assistance and therefore eligible to receive Schedule C health supplements pursuant to s.62 EAPWDR. They found that the appellant met Schedule C s.3(1)(b)(i) EAPWDR and (ii) EAPWDR because she sought prior authorization for the hospital bed and did not have other resources to pay for the bed. The panel agrees and finds the Ministry reasonable on these determinations.

Schedule C 3(1)(b)(iii) EAPWDR

The Ministry found that the appellant did not meet this requirement because they were “not satisfied the requested replacement hospital bed is the least expensive appropriate for your needs, as the ministry previously funded a hospital bed in February 2021, and it has not been confirmed to be unable to meet your needs.” The test set out in Schedule C s.3(1)(b)(iii) EAPWDR is that the medical equipment or device must be the least expensive appropriate medical equipment or device. The evidence shows that the Ministry previously approved a similar bed for this appellant on January 15, 2021 for the sum of \$10,671.16. In this appeal the bed that the appellant requests is less expensive totalling \$8,780.59. The Second OT initially suggested in her report of March 16, 2021 the possibility of a mattress overlay as an alternative to a new bed. This could have been a possible less expensive option contemplated by the

legislation, however in the Second OT's report of August 30, 2021 her professional opinion was that a 48-inch hospital bed was required for this appellant in place of a 54-inch hospital bed. Schedule C s.3(1)(b)(iii) EAPWDR does not require the interpreter to consider if a piece of equipment was already funded or if the previous equipment is unable to meet the client's needs. It only asks if the equipment is the least expensive appropriate piece of medical equipment. The panel finds that it was not reasonable for the Ministry to determine that this bed was not the least expensive when they already funded a bed that was more expensive than this one. Further, the panel finds that it was not reasonable for the Ministry to determine that it had not been confirmed that the 54-inch bed was unable to meet the appellant's needs when that is not part of the legal test in Schedule C section 3(1)(b)(iii) EAPWDR. In addition to being the least expensive, the panel also finds that it was unreasonable for the Ministry to determine that the 48-inch bed was not the appropriate equipment. The evidence of the Second OT and the appellant was that the 54-inch bed did not meet the appellant's needs and the appellant required a 48-inch bed. The panel does not find the Ministry reasonable on their determination under Schedule C 3(1)(b)(iii) EAPWDR.

Schedule C s.3(2) EAPWDR

The Second OT confirmed the need for the 48-inch hospital bed for this appellant and the Ministry found that the appellant met the requirement of Schedule C 3.3(2) EAPWDR. The panel finds this to be reasonable given the recommendation by the Second OT for the 48-inch bed after the March 16, 2021 in-home assessment. The Second OT repeats the recommendation for a 48-inch bed in the June 23, 2021 letter to the Ministry, the August 20, 2021 Medical Justification Form, and the August 30, 2021 letter to the Ministry.

Schedule C s.3(3) EAPWDR

The Ministry found that the appellant did not meet this requirement because "your current hospital bed is not beyond repair, as it is not damaged. As it does not require repairs it is not cheaper to replace rather than repair it."

The appellant's counsel argues that Schedule C s.3(3) EAPWDR only applies if the equipment is damaged, worn out or not functioning. He submits that the appellant's 54-inch bed is not damaged, worn out, or not functioning. He submits that the bed is perfectly functioning but is just sitting in storage because it is not the correct size bed for the appellant and not what the appellant medically requires. He argues that because the bed is not damaged, worn out, or not functioning, Schedule C s.3(3) EAPWDR is not applicable, and the appellant need not demonstrate that a replacement bed is more economical than repairing the bed or that the period of time set out in Schedule C s.3.6(2) EAPWDR of five years has passed. He argues that the appellant is not asking for a replacement bed; she is simply asking for a bed and Schedule C s.3(3) EAPWDR does not apply.

The panel agrees that in the case of this appellant none of those adjectives apply to her 54-inch bed. The evidence is that the bed is not the right bed for her; and cannot be used by her. There is nothing wrong with the bed. The panel finds that the evidence shows that the appellant is unable to use the bed because it is medically the wrong sized bed for her. The panel relies on the following evidence:

- The 54-inch-bed was removed from the appellant's home on March 24, 2021 and at the time that the Second OT assessed the appellant on March 16, 2021 the appellant was sleeping in a recliner chair because the appellant was unable to use the 54-inch bed.
- The panel accepts the Second OT's evidence in their letter of August 30, 2021, where they found that the appellant's pain and mobility prohibited her from performing successful in-bed mobility such as rolling, pelvic bridging, and shuffling.
- The panel also relies on the handwritten notes written on the report from the First OT. The panel finds that the handwritten notes are from the Second OT because they form part of her 47-page fax to the Ministry as per the page numbering. Next to the width dimension of 54 inches on the original bed is a handwritten note which states "too wide – hard to roll and shuffle to reach bedside C-PAP machine".

The panel finds that the legislation uses these descriptors in relation to the medical equipment itself and not to the circumstances of the family unit that is making use of the medical equipment. For example, additional descriptors that offer other scenarios such as "unsuitable for the family unit" or "not medically operational for the family unit" are not included after the words damaged, worn out, or not functioning.

An example comparison would be if a client was provided with a bath lift instead of a bath seat. The client would have received the wrong equipment for their circumstances, but the equipment would not be damaged, worn out or not functioning as contemplated by Schedule C s 3(3) EAPWDR. It would be unreasonable to make the client wait 5 years before they could apply for a new piece of equipment when they were never able to use the equipment they received because it was the wrong equipment.

The panel therefore finds that it was not reasonable for the Ministry to determine that because the appellant's bed did not require repairs it was not cheaper to replace than to repair. Instead, the more reasonable interpretation of this part of the legislation is that it doesn't apply to this appellant because her 54-inch-bed was not actually damaged, worn out or not functioning. As such, the appellant is seeking a bed under the legislation. She is not seeking a replacement bed because she is not claiming that her 54-inch bed is damaged, worn out or not functioning.

Schedule C s.3.6(1) EAPWDR

The Ministry found that the appellant did not meet this requirement because the Second OT stated in their letter of August 30, 2021 that the appellant can complete transfers in her current bed. The Ministry says that the replacement 48-inch bed is not medically essential to facilitate transfers in and out of bed. The legislation provides that the item must be medically essential to facilitate transfers of a person to and from bed or to adjust or maintain a person's positioning in bed. The Ministry found that reaching your C-pap machine is not captured in transferring in and out of your bed or maintaining or adjusting your positioning in bed. The appellant's counsel pointed to the fact that at the time the Second OT wrote the August 30, 2021 letter the evidence shows that that the appellant was in the 48-inch loaner bed from the health authority. As such, he submits, that the Second OT's comment that the appellant was able to transfer in and out of

bed was referring to the 48-inch loaner bed. When asked about this at the hearing the Ministry did acknowledge that the appellant was not in the 54-inch bed at the time of the Second OT's report. At the hearing, the appellant provided evidence that she tried the 54-inch bed. She testified that she couldn't get in and out of it and she could not reach her C-PAP machine from the bed. She recalls that she received the 54-inch bed in February 2021 sometime and it was out of her house by the end of March 2021. After she received the 54-inch bed and realized it wouldn't work, she slept in her recliner chair before the health authority arranged for her to have a loaner bed. She also attempted to return the bed to the retailer in exchange for the correct size, but the retailer would not take it back. The loaner bed she is using now is too small in length, but the width is the correct 48-inch width. Her feet go over the end of the mattress. It doesn't lift her feet up high enough and she has difficulty reaching her CPAP machine.

The panel finds that at times it was unclear from the Second OT as to what bed they were referring to in their various reports. The August 30, 2021 letter from the Second OT was based on the Second OT's assessment that was completed on March 16, 2021. From the time of that assessment, it appears that the 54-inch bed was still in the appellant's room. The Second OT referred to the issue with the width of the bed which makes it seem as though the Second OT was referring to the 54-inch bed. The Second OT also referred to the ability to transfer in and out which made it seem like she was referring to the 54-inch bed also.

With respect to maintaining her position in bed, the Second OT provided evidence that because of the width of the bed the appellant is not able to maintain positioning and the appellant's pain and mobility limitations prohibit her from rolling, pelvic bridging, shuffling to access the items on her bedside table. The panel finds that it was not reasonable for the Ministry to determine that reaching your bedside table is not captured by adjusting or maintaining your position in bed. The access of the C-pap machine is directly related to the appellant's ability to sleep safely and comfortably in her bed. The panel relies on the evidence of the Respiratory therapist in their letter of October 6, 2021 which states that the appellant must be able to access her C-pap machine or she is at a greater risk of stroke.

The panel finds, that despite confusion about what bed the Second OT was referring to, the Second OT made it clear that the appellant requires a 48-inch bed because the 54-inch bed is too wide for the appellant to complete in-bed mobility. The panel relies on the following evidence from the Second OT:

- The letter of August 30, 2021, were the Second OT found that the appellant's pain and mobility prohibited her from performing successful in-bed mobility such as rolling, pelvic bridging, and shuffling in the wider bed.
- Adding bolsters to the wider bed to make it work would add a barrier to the appellant to reach her C-pap machine.
- The letter of June 23 where the second OT found that it was difficult for the appellant to move across and get out of the 54-inch bed and that the appellant is not able to use it.
- The Second OT did a comprehensive in person bed assessment to ensure fit and function requirement and this was something that the First OT did not do because of Covid concerns and concerns of understaffing. During the in person assessment on March 16, 2021 the Second OT noted the appellant's comments that "scooting and rolling in the wide bed is too painful"
- The panel also relies on the handwritten notes written on the report from the First OT.

The panel finds that the handwritten notes are from the Second OT because they form part of her 47-page fax to the Ministry as per the page numbering. Next to the width dimension of 54 inches on the original bed is a handwritten note which states “too wide – hard to roll and shuffle to reach bedside C-PAP machine”.

In addition to the evidence of the Second OT, the appellant has made it clear in her evidence that the 54-inch bed is not conducive to transfers in and out of the bed or adjusting or positioning in the bed. She stated that scooting and rolling is too painful in the wider bed. Perhaps the strongest evidence that the 54-inch bed is not medically suitable for the appellant is that upon receiving the bed it was put into storage almost immediately and the appellant chose to sleep on a recliner chair until such time that she received the loaner bed from the health authority.

The panel therefore finds that it was not reasonable for the Ministry to determine that the 48-inch hospital bed was not medically essential for this appellant to adjust or maintain her position in the bed.

Conclusion

The panel finds that the Ministry decision to deny this appellant the 48-inch hospital bed was not reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of this appellant. The appellant is successful in her appeal.

Appeal Number 2021-0181

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)

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

Part H – Signatures

Print Name

Meghan Wallace

Signature of Chair

Date (Year/Month/Day)

2021/12/13

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)

2021/12/14

Print Name

Sarah Bijl

Signature of Member

Date (Year/Month/Day)

2021/12/15