

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision, dated August 8, 2022 (the “Reconsideration”), in which the Ministry determined that the Appellant was not eligible for a Harmony Hi-Low twin XL hospital bed (the “Harmony Bed”) because the Appellant had not met the criteria set out in section 3(1) of Schedule B to the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR and, in particular, the Appellant had not demonstrated that the Harmony Bed was the least expensive appropriate medical equipment or device for the Appellant.

**Part D – Relevant Legislation**

EAPWDR- section 62, Schedule C- section 3

The legislation described above can be found at the end of this decision.

## Part E – Summary of Facts

The Appellant is a person with disabilities who is eligible for medical services only as a “continued person”, as defined by section 61.1 of the EAPWDR.

The information before the Ministry at the time of the Reconsideration included the following:

- a Purchase Authorization, dated June 6, 2022 for;
  - a hospital bed with head and footboard and half rails in the amount of \$2,300.00; and
  - a Harmony Twin XL Mattress (the “Harmony Mattress”) in the amount of \$1,349.10;
- letter from the Ministry to the appellant, dated June 6, 2022, in which the Ministry:
  - denied the Appellant’s request for the Harmony Bed on the basis that it was not the least expensive hospital bed that is “medically essential to maintain positioning in bed, or to facilitate transfers of a person to and from the bed”;
  - noted that the Harmony Bed cost \$3,352.50 with additional half rails for \$314.10 for a total of \$3,666.60; and
  - advised that the maximum it could provide for hospital beds, including half rails, was \$2,300.00;
- a Quote from a local supplier of medical supplies which included the Harmony Bed at a cost of \$3,352.50, a Harmony Twin XL mattress in the amount of \$1,349.10, and extra half rails in the amount of \$314.10;
- a letter from an occupational therapist, dated May 11, 2022 (the “First OT Letter”) setting out:
  - the medical history of the Appellant, which includes:
    - a heart attack;
    - frequent falls;
    - cancer;
    - prostate disease;
    - hemorrhoids;
    - lung disease;
  - the Appellant’s height and weight was 6’2” and 130 pounds (but with no reference to the Appellant’s supine width);
  - that the Appellant requires a wheelchair, a raised toilet due to difficulty transferring from low surfaces; a hospital bed to facilitate breathing and to maintain positioning and ease transferring;
  - setting out that the Invacare hospital bed (the “Invacare Bed”) was being recommended for the Appellant;
- Medical Equipment Request and Justification, dated March 31, 2022 (the “Request”), which referenced the OT Letter; and
- the Appellant’s Request for Reconsideration, dated July 4, 2022 (the “RFR”), which included the following documents:
  - a letter, dated August 1, 2022, from an internal medicine specialist (the “Doctor’s Letter”) whom the Appellant had been seeing which recommends the Harmony Bed for the Appellant as the bed best suited for the needs of the Appellant;

- a letter, dated August 2, 2022, from an advocate (the “Advocate’s Letter”), which reiterates many of the issues addressed in the OT Letter and compares the Harmony Bed to other beds, noting that the Harmony Bed has a remote control, which would make it easier for the Appellant to prop up when struggling to breathe, a massage function, and is rated for 850 pounds of weight as opposed to the Invacare Bed which was rated for only 350 pounds;
  - another letter, dated June 9, 2022 (the “Second OT Letter”), from the same occupational therapist who authored the OT Letter, setting out that the Appellant weighs 200 pounds, prefers to dangle feet off the end of the end, and requires a hospital bed that addresses the Appellant’s difficulty with breathing when laying flat and difficulty transferring in and out of bed but did not address the Appellant’s supine width;
  - an information sheet for an LTC 4000 Ultra 55 Mattress;
  - letter from the medical supplies company to the Appellant’s advocate describing the features of the Harmony Bed, the Harmony Mattress, and the Invacare Bed, including that:
    - the sleeping surface of the Harmony Bed was 38 inches by 80 inches;
    - the Harmony Mattress was 38 inches by 79.5 inches;
    - the Invacare Bed had a sleeping surface of 36 inches by 80 inches;
  - patient data regarding the Appellant from a local hospital from December 5, 1993 to April 22, 2022, showing all of the treatments that the Appellant had received in that period;
  - a consent form signed by the Appellant, dated July 5, 2022 to permit the organization for which the advocate worked to obtain records related to the Appellant; and
  - authorization and waiver of confidentiality signed by the Appellant, dated July 5, 2022 to permit the organization for which the advocate worked to obtain records related to the Appellant.
- A request for an extension to file the RFR, dated July 4, 2022.

The Appellant’s Notice of Appeal was filed on August 21, 2022, and included a written argument from the Appellant’s Advocate, many of the documents included with the RFR, and two photographs of the Appellant lying on the Invacare Bed at a medical supplies store.

At the hearing of the appeal, the Appellant was not in attendance and the Appellant’s case was presented by the Appellant’s advocate (the “Advocate”). The Advocate called the Appellant’s sister as a witness (the “Witness”).

The Witness stated that the Appellant is not well and, in fact, was currently in the hospital. The Witness described the Appellant’s current living conditions as “not great”. According to the Witness, the Appellant has very little income and is currently sleeping on a bed that is quite low. The Witness described the Appellant has having had a recent fall from his bed. The Witness also described the Appellant’s current bed as uncomfortable and unsafe, as it had no rails to keep the Appellant from falling out of bed. The Appellant has significant bruising from falls out of bed, according to the Witness and was in hospital for about a month from July 22.

The Witness stated that the Appellant needs a comfortable bed and feels much better in a hospital bed. The Witness described taking the Appellant to a medical supplies store and noted that the Appellant lay down on a bed which he found quite uncomfortable, particularly when lying in a supine position.

The Witness stated that the right bed for the Appellant would make a significant difference as the Appellant feels better when he sleeps better. The Appellant is fairly large, being 6'2" and weighing over 200 pounds. The Witness described helping the Appellant as much as possible but was also taking care of their mother and had limited income herself.

The Witness also noted that the Appellant spends a lot of time in bed and is usually lying down when at home. The Witness stated that the Appellant had suffered a back fracture in a construction accident several years ago and was now estranged from his family because he was reluctant to let his family see him in his current condition.

The Witness described the Appellant as having found the Harmony Bed to be much more comfortable than the Ministry approved Invacare Bed. The Witness confirmed that the main issue for the Appellant with the Invacare Bed was comfort, and in particular, comfort when rolling onto one side or the other. The Witness stated that the Invacare Bed didn't fit the Appellant to his supine width and extended stomach.

The Witness confirmed that the Appellant didn't have the financial means to upgrade the bed by having the Ministry provide for the Invacare Bed with the Appellant paying the difference.

The Witness concluded by noting concerns about the width of the Invacare Bed, particularly given that it was 2 inches narrower than the Harmony Mattress, and the fact that the first OT Letter described the Appellant as weighing 130 pounds, almost 100 pounds less than the Appellant actually weighed. The Witness stated that a more comfortable bed would make it more likely that the Appellant would experience some degree of recovery from his current condition.

The Ministry took the position that there was no medical justification for the Harmony Bed and that the Ministry was not able to fund a bed that was the most comfortable bed for the Appellant and only the least expensive one that met the Appellant's basic medical needs. The Ministry confirmed that it was clear that the Appellant's condition warranted a hospital bed but stated that the Invacare Bed was the least expensive equipment that met the Appellant's medical needs.

The Ministry noted that the Doctor's Letter was taken into consideration but that it didn't set out a basis for the Harmony Bed being medically necessary. In effect, the Ministry stated that comfort was not a criteria in the legislation, notwithstanding its understandable importance insofar as quality of life is concerned.

The Ministry also confirmed that modifications could be made to the Invacare Bed to make it more comfortable or more appropriate for the Appellant, such as removal of the footboard,

which the Ministry would likely approve. The Ministry noted that it had already approved railings for the Invacare Bed.

The Ministry called as a witness a Ministry employee who advises the Ministry on medical equipment. The employee stated that it was unusual for the Ministry to approve a mattress that was wider than the bed that had been approved by the Ministry, as was the case here with the Harmony Mattress and the Invacare Bed. The Ministry witness advised that the size of the Harmony Mattress was not standard and was akin to a custom sized mattress. The Ministry witness stated that the Ministry should not have approved a mattress that was not correctly matched to the bed that had been approved by the Ministry.

Finally, the Ministry witness confirmed that the decision on what width of bed would typically be approved by the Ministry was based on the supine width of the person applying for the equipment and by adding a couple of inches to it. The Ministry witness advised that, in the hospital bed industry, there are fairly standard widths for the various sizes of mattresses. The Ministry witness confirmed that there was no standard method of calculating an individual's supine width, based on their height and weight.

The Ministry confirmed that it did not object to the admissibility of the information provided in the Notice of Appeal. Likewise, the Advocate did not object to the evidence provided by the Ministry's witness. In all of the circumstances, the panel finds that the information provided with the Notice of Appeal and the oral evidence given in the hearing of the appeal by both the Witness and the Ministry's witness is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as contemplated by section 22(4) of the *Employment and Assistance Act*, notwithstanding that it was not before the Ministry at the time of the Reconsideration.

**Part F – Reasons for Panel Decision**

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for the Harmony Bed because the Appellant had not demonstrated that the Harmony Bed was the least expensive appropriate medical equipment or device for the Appellant.

***Panel Decision***

In the circumstances of the Appellant's case, the Ministry determined that the Appellant was eligible for a health supplement as a continued person and had met all of the eligibility requirements under section 3(1)(b) of Schedule C to the EAPWDR except the requirement in section 3(1)(b)(iii) of Schedule C to the EAPWDR that the Harmony Bed be the least expensive appropriate medical equipment or device for the Appellant. Oddly, the Ministry did approve the Harmony Mattress, despite the fact that the Harmony Mattress was too wide for the Invacare Bed.

There are two components to section 3(1)(b)(iii) of Schedule C to the EAPWDR. First, the equipment being requested must be appropriate. Secondly, the equipment must be the least expensive equipment that is appropriate.

In this case, it is not clear how the Ministry determined that the equipment approved for the Appellant was appropriate. The First OT Letter incorrectly described the Appellant as weighing 130 pounds. In actual fact, the Appellant is significantly larger than that and weighs in excess of 200 pounds. Although this error was corrected in the Second OT Letter, neither of the letters set out the supine width of the Appellant, the factor that the Ministry witness described as being at least one, if not the only, determinative factor that the Ministry takes into account when deciding what width of bed to approve in these circumstances.

It is not clear how the Harmony Mattress, which is two inches wider than the Invacare Bed, and the Invacare Bed are appropriate for the Appellant, particularly when the Ministry did not appear to have information before it about the Appellant's supine width. That at least part of the discomfort experienced by the Appellant with the Invacare Bed occurs when the Appellant is on his side suggests that the Invacare Bed that was approved by the Ministry may not be appropriate for the Appellant. The Ministry itself conceded that the combination of the Harmony Mattress and the Invacare Bed was a mismatch of mattress and bed.

In view of the above issues, the panel finds that the Ministry was not reasonable in its determination that the equipment it approved for the Appellant, the Invacare Bed and the Harmony Mattress, was not the least expensive appropriate medical equipment for the Appellant.

With the above said, it is not the finding of this panel that the Ministry's determination that the Harmony Bed was not the least expensive appropriate medical equipment was necessarily unreasonable. Instead, the panel's determination is only that the Ministry's decision that the Invacare Bed that was approved for the Appellant, particularly when matched with the Harmony Mattress, was not appropriate medical equipment for the Appellant.

The panel rescinds the Ministry's Reconsideration decision.

### **Relevant Legislation**

Section 62 permits authorizes the Ministry to provide a supplement in respect of the medical equipment set out in section 3 of Schedule C to recipients of disability assistance, hardship assistance, or to a person in receipt of medical services only as a "continued person":

#### **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.

The basic eligibility requirements for a supplement in respect of the medical equipment set out in sections 3.1 through 3.12 of Schedule C to the EAPWDR are set out in section 3(1) of Schedule C to the 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.

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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)

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

**Part H – Signatures**

Print Name

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2022/September/20

Print Name

Diane O'Connor

Signature of Member

Date (Year/Month/Day)

2022/September/20

Print Name

Susanne Dahlin

Signature of Member

Date (Year/Month/Day)

2022/September/20