

### **Part C – Decision Under Appeal**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated May 19, 2023. The ministry denied the appellant’s request for a health supplement for a Halsa hospital bed (48” wide) (the “48” hospital bed”) and LTC 4000 Ultra 55 mattress (48” wide) (the “mattress”).

The ministry determined that the appellant was eligible to receive medical equipment and devices as health supplements under the Employment and Assistance for Persons with Disabilities Regulation (“Regulation”) Schedule C, section 3(1) and (2). However, the ministry determined that it was not established that the 48” hospital bed and the 48” mattress were the least expensive appropriate medical equipment or devices or medically essential to facilitate the appellant’s transfers to and from bed or to adjust or maintain the appellant’s positioning in bed, so the ministry was not authorized to provide them. Further, according to the ministry, as it was also not established that the 48” mattress was medically essential to prevent skin breakdown and maintain skin integrity, the ministry was not authorized to provide the mattress as a pressure relief mattress health supplement.

### **Part D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation, section 62  
Employment and Assistance for Persons with Disabilities Regulation, Schedule C, sections 3, 3.6 and 3.7

The full wording of this legislation is set out in the Schedule of Legislation at the end of this decision.

**Part E – Summary of Facts**

The hearing took place by written submissions on June 23, 2023.

Evidence before the Ministry at Reconsideration:

While not all details of the evidence are repeated here, the Panel has reviewed all of the documents and provides a summary of the evidence as it relates to the hospital bed and mattress.

- The appellant is designated as a person with disabilities and receives disability assistance
- Medical Equipment and Justification Form—undated & unsigned but verbal consent from client noted as signed February 2, 2023; with recommended medical equipment: “...Trost Plus bariatric bed with half side rails and LTC 4000 Ultra 55 mattress”.
- February 3, 2023 Medical Equipment Request & Justification Occupational Therapist Assessment signed by an Occupational Therapist (the “OT”) noting in part:
  - Equipment Specifications: Trost Plus bariatric bed with half side rails and LTC 4000Ultra 55 mattress
  - Functional Assessment:
    - Is 288 lbs
    - Has T5 complete paraplegia
    - Is using a loaned bed
    - Uses a transfer board for sliding transfers
    - Requires a power wheelchair for independent mobility
    - Broke both half rails on the Halsa bariatric bed
    - Needs a firmer mattress for bed mobility and transferring
    - At the time does not have skin integrity issues
  - Final recommendations: “With the prescribed equipment...it is hoped that this client can comfortable(*sic*) and safely be sustainably reintegrated into the community”
- March 23, 2023 Medical Equipment Request and Justification Form signed by the OT and notes under recommended equipment: “...requires a Halsa Bed Plus with half rails and LTC 4000 Ultra 55 48” x 80” x 6” “ and refers to the (March 23, 2023) Medical Equipment and Justification Form & Justification Occupational Therapist Assessment in response to “Specifications of medical equipment required to meet the applicant’s needs”
- March 23, 2023 Medical Equipment Request & Justification Occupational Therapist Assessment with added/**revised (emphasis added)** notes:
  - Equipment Specifications: **Halsa Bed Plus** bed with half side rails and LTC 4000Ultra 55 **48” x 80” x 6”** mattress
  - Market Alternatives: Uses a MEPP Halsa bariatric bed with a LTC3000 mattress. The bed is 42” wide. During the 6 month MEPP loan period, the client broke both half rails on the Halsa bariatric bed.**
    - February 2, 2023 Quote for the Halsa Plus Bed (\$4320) and LTC4000 Ultra 55 48”x80”x6” mattress (\$1973.76) included with March 23, 2023 documents

- March 24, 2023 E-mail from the OT noting: “needs a wider bed as his legs tend to fall off the 42” wide bed when he rolls onto his side” and includes the Appellant’s measurements:
  - Weight = 136 kg
  - Height/length = 180 cm
  - Supine width = 79 cm
- May 5, 2023 Request for Reconsideration with the Appellant’s reasons:
  - Due to severe spasticity while rolling in bed, he has fallen out of a 36” bed four times; “this is dangerous—a risk for broken bones or skin breakdown”
  - He needs to roll in bed through the night “to protect my skin from pressure ulcers” and does not have help to do so. When he rolls in bed, he is on the edge of his mattress and is afraid of falling
  - He cannot independently transfer to the 39” mattress and the method he uses—first scooting backward and then attempting to lift his legs, is unsafe

**Additional Information submitted after Reconsideration**

With his May 29, 2023 Notice of Appeal, the Appellant included the following reasons: “Because of my size and height and level of my spinal cord injury and severe spasticity I cannot easily change my position. There is a risk of falling which could break bones and cause further damage to my body”.

With his appeal submission, the Appellant provided a letter, dated June 6, 2023, where he highlights:

- He takes issue with the ministry’s argument that neither he or the OT describe issues with skin breakdown or maintaining skin integrity; he has now experienced skin changes and discolouration over his sitting bone that indicates a stage 1 pressure ulcer; he must change position to avoid extended periods of time and pressure on bony prominences; and without more room in bed, he cannot roll safely to change position
- His severe spasticity, which is so severe that he receives Botox treatments for, throws his body back and into extension; during transfers he is always leaning back and has fallen onto the (narrow) bed with his head over the edge and results in a “nearly impossible position to get up from”
- The 48” hospital bed and mattress are medical necessities for him

Also included in the Appellant’s submission is a June 6, 2023 prescription from his Physiatrist for: “48” Wide Halsa Hospital Bed with 48” Wide LTC 4000 Ultra 55 Pressure Relieving Mattress”.

The panel admitted the letter and prescription as new evidence. It provides further information about the Appellant’s need for the medical equipment and devices for safe positioning and transfers and to protect skin integrity and prevent skin breakdown. The information clarifies the current state of his skin with the existing bed and mattress. The panel determined the new evidence to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal, pursuant to section 22(4) of the Employment and Assistance Act.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry's reconsideration decision, which determined that the Appellant was not eligible to receive a health supplement for a 48" hospital bed and 48" mattress pursuant to the Regulation, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

The ministry determined that because the hospital bed was not the least expensive appropriate medical equipment or device, and it was not medically essential to facilitate the appellant's transfers to and from bed or to adjust or maintain the appellant's positioning in bed, funding as a health supplement could not be approved.

The ministry also determined that the mattress was not the least expensive appropriate medical equipment or device, and it was not medically essential to prevent skin breakdown and maintain skin integrity, so the ministry was not authorized to provide the mattress as a pressure relief mattress health supplement.

Relevant sections of the legislation are set out after the reasons of the panel.

**Position of the Appellant**

The Appellant says that due to his size, height, level of his spinal cord injury, and severe degree of spasticity, he is unable to change position safely and easily on the smaller hospital bed and mattress. Due to his spasticity, his position changes must be by rolling from side-to-side and not scooting on his bottom. Repositioning is required to prevent pressure ulcers from developing on his skin. He says the larger 48" mattress and hospital bed are medical necessities for him; he has fallen off the narrow bed and mattress four times. He is unable to safely transfer independently to the narrow bed and mattress because of his severe spasticity which puts his body in extension and causes him to fall with his head hanging over the edge and in a "nearly impossible" position to get up from. He is alone through the night and is required to roll independently to change position to protect his skin from breaking down. Doing so on the narrow bed and mattress puts him at the very edge which is unsafe and where he is afraid he will fall again.

The Appellant also disagrees with the ministry position that the 48" mattress is not required to protect skin integrity or prevent skin breakdown. In his June 6, 2023 letter he points out that although his OT did not indicate issues with skin integrity or breakdown in February 2023, without the required mattress he has now experienced skin changes and discolouration over his sitting bone that indicates a stage 1 pressure ulcer.

Finally, the Appellant says the June 6, 2023 prescription from his Physiatrist confirms the 48" hospital bed and mattress are medically essential and necessary for his health and safety.

**Position of the Ministry**

The ministry says the Appellant's request for funding of a 48" hospital bed does not meet the eligibility requirements set out in the Regulation, Schedule C, subsections 3(1)(b)(iii) and 3.6(1). In addition, the ministry says the Appellant's request for funding of a 48" mattress does not meet

the eligibility requirements set out in the Regulation, Schedule C, subsections 3(1)(b)(iii), 3.6(1) and 3.7(1).

The ministry agrees that the Appellant is eligible for a 36” or 39” wide hospital bed and mattress. However, the ministry states the Appellant is not eligible for the 48” hospital bed and 48” mattress because the Appellant has not established that the 48” hospital bed and mattress are the least expensive appropriate medical device or equipment.

The ministry says it is also unable to provide the 48” hospital bed and mattress as a health supplement because the Appellant has not established that the hospital bed and mattress are medically essential to facilitate transfers to and from bed or are required to adjust or maintain his positioning in bed. The ministry found that the mattress was requested but not required per the submissions of the OT. Similarly, because a pressure relieving mattress was not specifically requested and neither the Appellant nor the OT described issues with skin integrity or breakdown, the ministry stated that the mattress was not medically essential to prevent skin breakdown and maintain skin integrity.

### **Analysis and Panel Decision**

Section 3(1)1(b) (iii) of Schedule C sets out that funding for medical equipment or device including a hospital bed and mattress, may be available if the ministry is satisfied that the medical equipment or device is the least expensive appropriate medical equipment or device. In addition, Section 3.2 sets out that a prescription of a medical practitioner or nurse practitioner for the medical equipment or device and/or an assessment by an OT or PT confirming the medical need for the medical equipment or device must also be provided.

Based on the following evidence available at reconsideration and new evidence at appeal, the Panel finds the ministry was not reasonable in denying funding for the 48” hospital bed and 48” mattress per 3 (1) 1(b) (iii) and 3.2:

- The legislation states the “least expensive *appropriate* medical equipment or device” (*emphasis added*). Although the 36” or 39” beds and mattresses may be the least expensive, none are the appropriate medical device for the paralyzed 288 lb Appellant. The Merriam-Webster Dictionary (<https://merriam-webster.com>) defines appropriate as “especially suitable or compatible”. A (narrow) hospital bed and mattress cannot be found to be especially suitable or compatible where the Appellant has previously had a history of falling out of it; is unable to safely roll and re-position as required to protect his skin; and where transfers to bed can result in his head hanging off the edge and put him in a nearly impossible position to get up from.
- The June 6, 2023 prescription from the Physiatrist for “48” Wide Halsa Hospital Bed With 48” Wide LTC 4000 Ultra 55 Pressure Relieving Mattress”. The Physiatrist has the direct personal and medical knowledge of the Appellant and his physical requirements; based on that experience, the Physiatrist’s prescription confirms that the 48” hospital bed and mattress are both the appropriate ones, and medically essential.

- The March 23, 2023 Medical Equipment Request and Justification Form completed by the OT confirms the medical need for the 48” bed and mattress:
- Under “Section 2-Medical or Nurse Practitioner Recommendation” and in response to “What type of medical equipment is recommended?”, the OT indicates the Appellant “requires... a Halsa Bed Plus bed with half side rails and LTC 4000Ultra 55 48” x 80” x 6” mattress”.
  - In “Section III-Equipment Specifications” the OT confirms their recommendation and medical need for the bed. The OT clearly indicates “Halsa Bed Plus bed with half side rails and LTC 4000Ultra 55 48” x 80” x 6” mattress”.
  - Although the required bed is not specifically stated as the 48”, it is improbable that the OT intended that the bed would be anything other than the same size as the mattress which is clearly noted as “**48**” x...”.
  - Further, the ministry relied on the OT’s Fax Cover Sheet(s) and Email communication to decide that the 48” bed and mattress are “requested” rather than required. However, Fax Cover Sheet(s) and an Email are not the ministry’s established forms for providing formal recommendations and accordingly, are not determinative. Indeed, the ministry forms completed by the OT do specify in the designated section(s) that the bed is recommended and/or required.

Section 3.6(1) of Schedule C sets out that funding for a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed, or a positioning item on a hospital bed may be available if the ministry is satisfied that that the item is medically essential to facilitate transfer of a person to and from bed or to adjust or maintain a person’s positioning in bed.

Based on the following evidence at reconsideration and new evidence at appeal, the Panel finds the ministry was unreasonable in denying funding for the 48” hospital bed per 3.6(1):

- The June 6, 2023 prescription from the Psychiatrist for “48” Wide Halsa Hospital Bed With 48” Wide LTC 4000 Ultra 55 Pressure Relieving Mattress”. The Psychiatrist has the direct personal and medical knowledge of the Appellant and his physical abilities and needs as relates to transfers and positioning; based on that experience, the Psychiatrist’s prescription confirms that the bed is medically essential for the Appellant
- The Appellant’s June 6, 2023 letter and his May 5, 2023 reasons for Request for Reconsideration where he indicates his transfer and positioning requirements: “Rolling at night is mandatory and I cannot achieve this safely without more room. My spasticity does not allow me to scoot laterally in bed to ensure that I am safely positioned far enough away from the edge of the bed”; he does not have help to roll in bed through the night and when he rolls in bed, he is on the edge of his mattress.

The Panel also gives due consideration to the fact that the Appellant does not receive assistance with transfers to bed or overnight assistance for positioning while in bed. Without the support of another person, he must rely heavily on his available medical equipment to facilitate his transfers and positioning, which is primarily achieved by rolling his body. Sufficient space to support these independent activities and to ensure he is not left in an unsafe position make the 48” bed medically essential.

The ministry determined that the Appellant had not established that the 48" mattress was medically necessary per 3.6 (1). The ministry found that the available evidence did not clearly indicate that the mattress is medically essential to facilitate the Appellant's transfer to and from bed or to adjust or maintain the Appellant's positioning in bed. However, given the Panel's prior determination that the need had been established for the 48" hospital bed, it would be inconsistent and unreasonable that the 48" mattress would not be provided together with the 48" hospital bed.

Section 3.7(1) of Schedule C sets out that funding for a pressure relief mattress may be available if the ministry is satisfied that the pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity. Based on the new evidence at appeal, the Panel finds the ministry was unreasonable in denying the health supplement for the 48" mattress per 3.7 (1) due to the following:

- The June 6, 2023 prescription from the Physiatrist for "48" Wide Halsa Hospital Bed With 48" Wide LTC 4000 Ultra 55 Pressure Relieving Mattress". The prescription provided from the Physiatrist confirms that in the doctor's medical opinion, the mattress is medically essential for the Appellant. Although the Physiatrist did not address the issue of the Appellant's skin integrity, the Physiatrist did specifically indicate the mattress as "pressure relieving" which logically, is in reference to the mattress' function as relates to skin condition and skin integrity. The Panel also notes that the prescription aligns with the Appellant's June 6, 2023 self-report of skin changes. It is reasonable to infer that the Appellant presented the same information to his doctor for assessment, resulting in the prescription for a pressure relieving mattress.
- The June 6, 2023 letter from the Appellant where he describes having skin changes and discolouration; an indication of a Stage 1 pressure ulcer. The Panel observes that the original OT assessment relied on by the ministry where the OT stated, "*At this time*, the client does not have skin integrity issues" (*emphasis added*) occurred four months prior in February 2023. Unfortunately, in the intervening period and having to manage in a bed and mattress that is unsuitable for his requirements and limits sufficient repositioning, per his self report and his doctor's prescription for a "Pressure Relieving" mattress, skin integrity issues are at issue for the Appellant at the present time.

Accordingly, the Appellant and his Physiatrist have satisfied the requirements of 3.7 (1) and have established that the 48" mattress is medically essential to prevent skin breakdown and maintain skin integrity.

### **Conclusion**

The Panel finds that the ministry decision to deny this Appellant the 48" hospital bed and mattress was not reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of this Appellant. The Panel rescinds the Ministry's decision. This means the Appellant is successful with his appeal.

**Relevant 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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4; am. B.C. Reg. 161/2017, App. 2, s. 2.]

**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.

(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.

(3) The following items are not health supplements for the purposes of section 3 of this Schedule:

- (a) an automatic turning bed;
- (b) a containment type bed.

**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.

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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  
Carmen Pickering

Signature of Chair

Date (Year/Month/Day)  
2023/06/27

Print Name  
Kevin Ash

Signature of Member

Date (Year/Month/Day)  
2023/06/27

Print Name  
Adam Shee

Signature of Member

Date (Year  
2023/06/27