

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") Reconsideration Decision of September 15, 2023. In the Reconsideration Decision the Ministry determined that the appellant was not eligible for a crisis supplement to purchase a replacement mattress.

The Ministry found that: the appellant is eligible to receive crisis supplements; and, that the need for the replacement mattress was unexpected.

The Ministry was not satisfied that the appellant had no resources available to get a new mattress. Nor was the Ministry satisfied that failure to purchase a new mattress would result in imminent danger to the appellant's physical health.

**Part D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation ~ Section 57 (the regulation)

**Part E – Summary of Facts**

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

- The appellant is no longer in receipt of disability assistance, but does receive supplements, Old Age Security (OAS) and Guaranteed Income Supplement (GIS), and a small amount from Canadian Pension Plan.
- On March 6, 2023, the Ministry purchased a new mattress and box spring for the appellant.
- On August 4, 2023, the appellant requested a crisis supplement to buy a new mattress and box spring, stating the need for a thicker, firmer queen-sized mattress and box spring, and reporting that the mattress is getting softer and sagging so the appellant is starting to slide off it. That results in calling the ambulance to check on them and get the appellant back into bed. The appellant advised that her therapist said sleeping on a soft mattress would not help her lungs.
- On August 14, 2023, the Ministry denied the request because it determined that preferring a thicker, firmer mattress is not an unexpected need for a new mattress.
- On August 28, 2023, the appellant submitted a request for reconsideration, stating that she did not realize there was a difference in mattress thickness and the mattress received is soft and already sagging. The appellant indicated she was requesting a firmer mattress, specifically a pillow top mattress because the last bed she had was a pillow top mattress and had lasted a long time. The appellant intended to exchange the mattress that the Ministry already provided for a firmer, thicker mattress.

Information submitted after the Reconsideration Decision:

- Appellant Submission (October 17, 2023)
- An Equipment Request from an Occupational Therapist (OT) included the appellant's past medical history and an OT assessment. The assessment included the following:
  - The appellant reported she had spoken to (a mattress company) and they were willing to work with her on an exchange/replacement but needed approval from the Ministry.
  - The OT observed the sagging depression in the mattress in the spot where the appellant sleeps most and significant depression along the edge where the appellant sits when getting in and out. Additionally, the mattress has little support, internal structure can be felt when pressing on the mattress, and there is little response to any pressure or weight applied.
  - The appellant was observed to transfer in and out of bed effectively and sit at the edge of the bed safely. The bed measures 23" high and compresses to

19" when the appellant sits on the edge. The appellant's lower leg measures 15", which suggests the bed is slightly high for the appellant's height and, though the appellant appeared to be safe sitting and transferring, a sensation of slipping when mobilizing to or from the bed could occur.

- Of most concern is that the appellant struggles with shortness of breath, even at rest and is unable to lay flat in bed because it makes breathing too difficult. This would be exacerbated if laying in a bed that compresses significantly leaving the body essentially immersed in a depression. Further the ability to roll, turn, and reposition to the edge of the bed would require significantly more physical effort, resulting in more respiratory demand or shortness of breath.
- The appellant would be a suitable candidate for an electric hospital bed but, for personal and emotional reasons, the appellant is not ready for this transition. In lieu, the OT recommends a firm and supportive bed/mattress for sleeping and resting, weight rated for the appellant's stature and durable for frequent use.
- The appellant has sourced a bed that has head and foot adjustment.
- A supportive mattress that responds to the appellant's body weight will allow for more effective mobility with less effort, thereby improving respiratory workload and energy conservation, which would be valuable in mitigating overall fall risk.

Information provided at the hearing:

- The appellant stated that her parents both died recently. Both were in hospital beds, so the thought of a hospital bed is very upsetting. In addition, she had one before the Ministry purchased the current bed; it was not comfortable.
- The appellant spends approximately 22 – 23 hours per day in bed.
- When the appellant contacted the mattress company, they said that they could only deal with the purchaser of the bed – the Ministry.
- The appellant has fallen approximately two times since getting the current bed; two other times have been avoided using the brake on the walker or grabbing the bed rails.
- The appellant can not afford to purchase a new bed. The main income is Old Age Security. When the appellant's car got damaged, there was no money to fix it, so it had to be sold.
- The Ministry indicated that, had the OT Assessment been available at the time of the Reconsideration Decision, it would likely have affected the decision and might have made the appellant eligible for a replacement bed under another section of the legislation.

- As well, the Ministry stated that normally, suppliers have certain beds the ministry purchases on behalf of its clients (i.e., normally, a client would not be able to pick and choose a new mattress). The Ministry added that it was unaware of the process to replace the mattress.

The Ministry did not object to the new information submitted by the appellant.

### **Admissibility of New Evidence**

The OT Equipment Request, the Appellant's comment with the Notification of Appeal, the Appellant statements in the hearing, and the Ministry statements may be considered as testimony. Under section 22(4) of the *Employment Assistance Act* the Panel admits statements expressed as fact as testimony, and thus 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 before the panel is whether the Ministry's decision that the appellant was not eligible for a crisis supplement for a replacement mattress was reasonably supported by the evidence or a reasonable application of the legislation. That is, was the Ministry reasonable to decide that the appellant had not established that she has no resources available to get a new mattress, or that failure to purchase a new mattress would result in imminent danger to her physical health.

Section 57(1) of the regulation states, "a crisis supplement may only be provided if all the following eligibility criteria are met:

1. The family unit is eligible for disability assistance or hardship assistance **and**
2. The family unit is required to meet an unexpected expense, or an item unexpectedly needed **and**
3. There are no resources available **and**
4. Failure to obtain the item or meet the expense will lead to imminent danger to your physical health or a child being removed under the *Child, Family and Community Service Act*."

The panel notes that the Ministry found that the appellant satisfied the first two criteria: 1) eligible for disability assistance or hardship assistance, and 2) required to meet an unexpected expense. These criteria will not be discussed further.

**No resources available****Ministry Position**

As the mattress and box spring were purchased less than a year ago and the appellant is reporting the integrity of the mattress is not adequate, it is possible a replacement may be covered under warranty with (the mattress company). As the appellant has not indicated this is not an option, the Ministry is not satisfied that the appellant has no resources available to get a new mattress.

**Appellant Position**

The appellant would like to exchange the mattress that the Ministry already provided for a firmer, thicker mattress but (the mattress company) will only deal with the Ministry for any adjustment. The appellant does not have any source of funds, other than the OAS.

**Panels Finding**

The Ministry's decision focused on the possibility that the replacement of the mattress might be covered by warranty, providing a financial resource. At the time of the

Reconsideration Decision, the Ministry was unaware that the mattress company had stated they could not deal directly with the appellant. The Panel finds the Ministry's decision at reconsideration to be unreasonable as it appears to have been based only on an assumption that the appellant could replace the mattress under warranty, and additional evidence provided at the hearing (i.e. Ministry purchases beds for clients), makes it clear that the appellant did not have this resource available to them. As well, at the hearing, the appellant stated her main income consists of OAS, she had no funds to replace her damaged car and has no funds to purchase a new mattress. Therefore, the Panel finds that the Ministry decision that the appellant has available resources is not supported by the evidence, and the appellant satisfies this criterion.

**Failure to obtain the item or meet the expense will lead to imminent danger to physical health.**

Ministry Position

The Ministry states the appellant has not provided any evidence, (such as a doctor's note), to confirm a medical condition that would be worsened if she continues to sleep on her current mattress. As a result, the Ministry is not satisfied that failure to purchase a new bed would result in imminent danger to the appellant's physical health.

Appellant's Position

The appellant advised that her therapist said sleeping on a soft mattress would not help her lungs. The appellant also stated that, because of sitting on the side of the sagging edge, she has started to slide off the bed and if she falls off the bed, she must call 911 to help get up. The Equipment Request indicates that the greatest concern is that the appellant struggles with shortness of breath, even at rest and is unable to lay flat in bed because it makes breathing too difficult. This would be exacerbated if laying in a bed that compresses significantly, leaving the body essentially immersed in a depression. Further the ability to roll, turn, and reposition to the edge of the bed would require significantly more physical effort, resulting in more respiratory demand or shortness of breath.

Panel's Finding

At the time of the Reconsideration Decision, there had been no evidence submitted indicating that falls had resulted in, or were likely to result in, an imminent danger to the physical health of the appellant, other than the inconvenience of an ambulance call. However, the Panel finds the OT Assessment documents a real danger to the health of the appellant, not the falls but the impact on the respiratory ability of the appellant. Based on the evidence provided, the Panel finds that, while the decision of the Ministry was reasonable at the time of the Reconsideration Decision, the additional information in the

OT Assessment means the decision is no longer supported by the evidence and this criterion is satisfied.

Conclusion

In summary, based on all the evidence and legislation, the Panel finds that the Ministry decision to disallow the crisis supplement for a replacement bed is no longer supported by the evidence. The Panel, therefore, rescinds the Reconsideration Decision and the appellant's appeal is successful.

**APPENDIX – RELEVANT LEGISLATION**

**Employment and Assistance for Persons with Disabilities Regulation Section 57**

*Crisis supplement*

57. (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if

- (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and
- (b) the minister considers that failure to meet the expense or obtain the item will result in
  - (i) imminent danger to the physical health of any person in the family unit, or
  - (ii) removal of a child under the Child, Family and Community Service Act



APPEAL NUMBER 2023-0298

**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

Wes Nelson

Signature of Chair

Date (Year/Month/Day)

2023/10/19

Print Name

Connie Simonsen

Signature of Member

Date (Year/Month/Day)

2023/10/19

Print Name

Joseph Rodgers

Signature of Member

Date (Year/Month/Day)

2023/10/19