

Part C - Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated November 15, 2023, which denied the appellant's request for a containment bed. The ministry found that the item requested is not an eligible item pursuant to the Employment and Assistance for Persons with Disabilities Regulation:

- Schedule C, not a listed item as medical equipment or medical supplies; or
- Section 69, as a life-threatening health need supplement

Part D - Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (Regulation) sections 62, 69 and Schedule C

(The relevant legislation is set out in Appendix A)

Part E – Summary of Facts

As the appellant is a recipient of disability assistance who is not capable of representing herself and the mother is her representative, all submissions from the mother will be referred to as from “the representative”.

Information Before the Ministry at Reconsideration:

- Occupational Therapist (OT) report dated September 11, 2023. The report outlines the appellant’s medical conditions, which are: autism; seizure disorder, developmental disability, corpus-colosum split, G-tube in place (for enteral feeding post-seizures). The OT provides information about the appellant’s situation and observations about the differences between a hospital bed and a containment bed as follows (summarized):
 - The appellant lives in a group home.
 - The appellant frequently has seizures of the cluster type and generally has a few seizures each week. The seizures leave the appellant fatigued and incapable of any functional performance for hours, sometimes days. Following these seizures, she primarily sleeps.
 - The appellant requires some safety equipment to prevent injury during a seizure and to support her loss of function following a seizure.
 - The appellant is currently supported in a containment bed which was obtained for her through the At Home Program when she was a child; however, due to her frequent seizing activity and dependence for care during and following seizures, it was previously noted that she would benefit from a hospital bed.
 - The appellant’s bedroom is equipped with lift tracking and a lift, which the care staff rely on to manage her transfers during post-ictal periods.
 - The containment bed does not allow use of the mechanical lift as it has no pass through. The containment bed is not height adjustable and only has a small opening, making it difficult to provide care to the appellant.
 - To support the appellant’s care and mechanical lifts, it is appropriate that she have a hospital bed. However, the caregivers note that she is unsafe to be supported in a hospital bed, so they have not been doing so.
 - When the appellant is ‘well’, she can transfer independently, however she is also a high risk for elopement and does not call for help when transferring. She can easily get out of the bed and injure herself. Care staff utilize a bed alarm to notify them when this is happening; however, they are not always able to immediately respond, and the appellant has ample time to get out of the bed and fall.
 - In the evenings, there is only one staff member available, so the containment bed works well.

- The appellant is a 'climber' and can scale the wall of the containment bed, so it has been provided with a mesh roof to prevent her from climbing out the top.
- If the appellant is unwell and not mobilizing, the hospital bed allows for caregivers to care for her in bed. However, should she seize while in this bed she can come over the rails and fall from bed. And, as she recovers from the seizure she attempts to come out of the bed, climbing over the rails, if need be.
- A containment bed is ideal should she have a seizure as the padded space protects her and prevents her from falling out of bed. However, should she have a seizure while in the current containment bed the caregivers cannot support her care or use the mechanical lift. Therefore, the caregiver has to crawl into the bed in stooped and awkward postures. The opening only exists on one side of the bed, and as such two persons cannot perform her care. They would have to manually lift her and move her out of the bed.
- The appellant requires a hybrid of these two beds: the height adjustment of a hospital bed; the protection of a containment bed and the allowance for mechanical lift use.
- The OT recommends the Sleep Safer Bed with Hi-Low frame because it has tall enough walls, it has side panels that lock into place but can easily be folded down by the caregiver to allow unobstructed access, it adjusts up and down to facilitate caregiving tasks in bed and allows access for the feeding tube. There is also an additional removable mesh roof that can be easily snapped on and off, for supporting mechanical lift transfers.
- Estimate for a Sleep Safer tall bed with dual access option in the amount of \$23,191.31.
- Estimate for a mattress and mattress base protector in the amount of \$1,010.16.
- Estimate for a custom removable screen top with fasteners in the amount of \$650.00.
- Ministry Health Assistance Branch denial of the Sleep Safer tall bed dated October 5, 2023.
- Request for Reconsideration submitted by the appellant on October 27, 2023. With the reconsideration were the quotes regarding the Sleep Safer tall bed as previously submitted as well as an additional OT report dated October 27, 2023, from the OT. The OT included the points raised in the first OT report as well as (summarized):
 - They appreciate the ministry's eligibility criteria does not identify this request, but they argue that this does not preclude the need.
 - Without this bed, they have no solution to providing appropriate medical care and the appellant is at risk of injury.
 - They appreciate the ministry includes consultation of other OT's and they would be happy to have the other OT offer an appropriate alternative, as they have been unable to locate one.
 - The requested Sleep Safer tall bed is the appropriate intervention.

- They have reviewed sections 3.1 to 3.11 of Schedule C and see that the requested bed does not fall into the provided lists of eligible medical equipment.
- They challenge that the ministry's list of eligible medical equipment should not be finite, and complex medical presentations, such as the appellant's, will present the need for complex medical equipment.
- They appreciate the need to manage a 'defined list' of eligible medical items as this offers a standardized and fair method for determining client need, but, in this case, the list acts as a barrier to the appellant receiving medically essential equipment.
- The ineligibility of the necessary equipment only comes as per the ministry's legislative language. They cannot make the requested containment bed fall into the existing lists of eligible medical equipment, as they clearly do not; however, there is no other identified means to solve the appellant's presenting problems and no other source to fund the needed bed.
- The bed is: "The least expensive, appropriate medical supply....to avoid an imminent and substantial danger to health."

Information Submitted After Reconsideration

On the Notice of Appeal form dated November 21, 2023, the representative wrote she disagrees with the decision: "she is epileptic; when she has seizures she needs this bed; the request for the bed is a need for both her and her care team."

On December 6, 2023, the OT submitted a letter stating they are providing additional details to further illustrate the need. The letter is summarized as follows:

- A containment bed has been funded by the ministry for at least one other client in the past, despite the current legislation which states such a bed is ineligible.
- If the appellant is offered a standard, funded, hospital bed, it would require a restraint system. The appellant resides in a Residential Care facility and their regulations stipulate when the use of a restraint may be used. The restrictions are that restraint may be used only in an emergency or if there is an agreement, in writing, signed by either the appellant or the representative in care of the person. Neither of these restrictions have been fulfilled.
- The appellant's current containment bed no longer meets her needs.
- The proposed containment bed is equipped with a video camera which would allow the appellant opportunity to notify the care staff when she is ready to get out of bed.
- If the decision to not fund the containment bed is upheld, could the ministry provide a financial commitment equal to the cost of a hospital bed, which would at least contribute towards the cost of fund-raising for a containment bed. The appellant has

never been funded for a hospital bed and is currently using one that is provided through her care home.

- The OT and the vendor of the containment bed have spent a considerable amount of time contemplating the appellant's bed support needs, and in their opinion, have exhausted all 'standard' options.
- If the OT continues to support her within the standard, eligible hospital bed and rails, they foresee the presenting problems continuing.

At the hearing, the representative explained the appellant is epileptic and autistic, and is resourceful in ways of escaping from her bed. The appellant got her current bed when she was 16 years old and now that she is an adult her needs have changed. The representative explained that the appellant has intense seizures, and a hospital bed is not adequate. The bed being requested will give the caregivers the ability to care for her, and it also comes with a camera to monitor her and allows the use of a lift.

The caregiver/advocate explained the current bed is pushed up against a wall, so it only opens on one side. It is a large bed, so the appellant has room to move around and there is a camera to observe her. The appellant knows she can tap the camera to indicate she is ready to leave the bed, however, she has learned to push against the zipper which gives her room to get out. This has been repaired several times. The bed was adequate when she was a child, but not now as an adult. The current bed doesn't allow for the caregivers to put her into bed when she is seizing. The recommended bed would allow for them to use the mechanical lift, and is the only option for her, without restraining her.

The OT/advocate explained that she understands the ministry was reasonable to determine the containment bed is not an eligible item as it is listed as not eligible in legislation, however, there is no other way to help the appellant. They have reviewed all options for a bed that meets the appellant's needs and found the hybrid bed is the only option. When the appellant is seizing, the caregiver must crawl into the bed to care for her because the current bed has walls and a ceiling. They have tried a hospital bed. When the appellant is well, she can climb out, but when seizing they are grand mal seizures and she can fall over the rails.

The Safety Rep (from the facility in which the appellant resides)/Advocate explained there is no safe way for staff to provide care in the appellant's current bed, or in a hospital bed because there is no known pattern for her seizures. Initially, they did not want to use a containment bed, but found there were no other options to keep her, or the staff, safe. The ministry's decision is based upon legislation and not based on the care needed for the appellant. This bed is the safest option for the appellant.

The OT was asked to describe the hybrid bed request. She explained that it is built on a hospital bed platform which elevates and has walls that are adjustable. The walls are on hinges that drop down when providing care. The recommended bed does not come with a roof, but there is a snap-on option, which allows for the use of a mechanical lift. The care home does have a compatible mattress that would fit the requested bed so there is no need to purchase a mattress.

The OT stated that this same type of bed was approved by the ministry at reconsideration last year for a different client. In that situation, the ministry initially approved adaptations for a hospital bed. When those did not work, and after spending a significant amount of money on the adaptations, the hybrid bed was approved at reconsideration.

The OT further explained that the manufacturer does not use the term “containment bed” when describing the requested bed.

At the hearing, the ministry relied on its reconsideration decision and highlighted that section 3.6(3)(b) of Schedule C is why the request was denied.

The ministry explained they cannot speak to any approvals that may have been made for another person and approvals given at reconsideration or tribunal are not precedent setting. Each request is assessed on its own circumstances.

The ministry was asked for clarification about how the ministry determines whether a bed is a hospital bed or a containment bed. The ministry responded that the bed requested was reviewed by a consultant OT with the ministry’s health assistance branch and it was determined to be a containment bed, which is specifically identified as not an eligible item.

The OT explained that a hospital bed has rails that are standard. They are not disputing that the requested bed is a containment bed, however, containment is not its main purpose. The OT argues that the language in the legislation is not meeting specific client needs. They are concerned for the appellant’s safety while seizing. If there is no mesh roof on the requested bed, the appellant can climb out. The bed is required for protection and safety, not just to contain. The OT argues that hospital beds have rails that contain people in bed, but the appellant’s need is for more than bed rails.

Admissibility of Additional Information

The panel accepted the OT submission provided with the Notice of Appeal and the oral testimony of the representative and advocates as evidence under section 22(4) of the Employment and Assistance Act, which allows for the admission of evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The Ministry had no objection to the admissibility of this evidence.

Part F – Reasons for Panel Decision

The issue under appeal is whether the ministry decision to deny a containment bed is reasonably supported by the evidence or is a reasonable interpretation of the legislation.

Appellant's Position

The appellant's position is that the bed being requested is a hybrid bed. It has a hospital bed platform, has walls that move up and down, and a snap on top to allow for mechanical lift. They consider the legislation to be too restrictive to not include this type of request because it is the only option available for the appellant.

Ministry's Position

The ministry's position is that the bed being requested is a containment bed, which is specifically identified in Section 3.6(3)(b) as a health supplement the ministry does not provide.

Panel's Decision

Section 62 of the Regulation allows the ministry to provide a recipient of disability assistance any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C, if the requirements under Schedule C are met. The appellant is a recipient of disability assistance.

Eligibility for the requested bed as medical equipment under Schedule C

Section 3.6 of Schedule C pertains to requests for medical equipment and devices – hospital bed. It states:

- (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.

(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

The panel considered the meaning of “containment bed” or “hospital bed”. The legislation does not define either term. The bed requested, a “sleep safer tall bed”, has padded “bed rails” and walls that move up and down. In the reconsideration decision, the ministry wrote that the requested bed has “fixed” walls. At the hearing, it was clarified by the OT that the walls move up and down, which would allow them to care for the appellant. The hybrid bed combines the conveniences of a hospital bed while having the ability to safely contain a person, when needed.

The ministry stated that they asked a contracted OT whether the bed being requested was a containment bed, and they determined that it was. An explanation of the basis for that decision was not included in the appeal record.

Section 3.6(1) allows that, a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed, and a positioning item on a hospital bed, are health supplements that may be approved. One could argue that the sleep safer bed is a hospital bed with upgraded components, (i.e. the walls that raise and lower). One could also argue that the snap on roof being requested is an accessory attached to the hospital bed. However, the evidence about the appellant’s situation certainly indicates that something more than a basic hospital bed is necessary, and there is no permission given for the use of restraints.

The panel notes that the representative and advocates all acknowledge that the requested bed is necessary to contain the appellant, and they refer to the bed as a containment bed. Also, the representative and advocates indicate the snap on roof is necessary to contain the appellant as she has been known to climb. The definition of “containment” is “the action of keeping something harmful under control or within limits”. The appellant requires a roof on her bed to contain her and keep her from harm. For these reasons, the panel considers the requested bed to be a containment bed. Section 3.6(1) if subject to subsection (3)(b) which does not allow for a containment type bed. Therefore, the panel finds the ministry was reasonable to determine the appellant is not eligible for the requested bed pursuant to section 3.6(3)(b) of Schedule C.

Eligibility for the requested bed as a life-threatening health supplement

The Regulation section 69 allows the ministry to provide a family unit some of the health supplements set out in Schedule C if provided to a person in the family unit who is otherwise not eligible for health supplements. The appellant is a person eligible for health supplements. In addition, containment beds are not an eligible item set out in Schedule C. Therefore, the panel finds the ministry was reasonable to determine a containment bed cannot be funded as a life-threatening health need supplement.

Conclusion

The Panel finds that the ministry's reconsideration decision, which determined that the appellant is not eligible for a containment bed, was a reasonable application of the legislation in the appellant's circumstances and therefore confirms the decision. The appellant is not successful on appeal.

**APPENDIX A
RELEVANT LEGISLATION**

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 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 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,
- (c) the adjusted net income of any person in the family unit, other than a dependent child, does not exceed the amount set out in section 11(3) of the Medical and Health Care Services legislation, and
- (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
 - (i) paragraph (a) or (f) of section (2) (1);
 - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

Regulation

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

(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

3.1 Canes, crutches and walkers

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3.2 Wheelchairs

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3.3 Wheelchair seating systems

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3.4 Scooters

....

3.5 Toileting, transfers and positioning aid

3.6 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.

3.7 Pressure relief mattresses

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3.8 Floor or ceiling lift devices

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3.9 Breathing devices

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3.10 Orthoses

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3.11 Hearing instruments

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3.12 Non-conventional glucose meters

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APPEAL NUMBER 2023-0360

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

Janet Ward

Signature of Chair

Date (Year/Month/Day)

2023/12/13

Print Name

Bill Farr

Signature of Member

Date (Year/Month/Day)

2023/12/15

Print Name

Neena Keram

Signature of Member

Date (Year/Month/Day)

2023/12/15