

Part C - Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") Reconsideration Decision of February 21, 2024. In the Reconsideration Decision the Ministry determined that the Appellant was not eligible for replacement of a pressure relief mattress or a transfer belt.

At the hearing, the Appellant confirmed that the appeal related only to the denial of funding for a new mattress. The decision to deny the transfer belt has been accepted.

Part D - Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (the Regulations), section 62 and Schedule C, sections 3, 3.7(2)

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

Part E – Summary of Facts

The hearing was held by telephone on March 25th. An advocate assisted the Appellant at the hearing.

Background

- The Appellant is 92 years old and has been designated as a Person with Disabilities and is eligible for “Medical Services Only” as a “continued person”.
- On October 19, 2020, the Ministry provided funding for a pressure relief mattress and a transfer belt.

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

- An Occupational Therapist Report dated December 7, 2023, including general health information, an Occupational Therapy Assessment, and justification for the pressure relief mattress and the transfer belt.
 - The Appellant has recently fractured her left wrist and is unable to use her two-wheeled walker or use the left-ascending handrail climbing stairs. A transfer belt is recommended for the safety of the Appellant and caregivers when ambulating and going up/downstairs.
 - While relocating the Appellant’s bed to the main floor of the house, a foul smell was noted, leading to the discovery of mould growing on the mattress.
 - The client presents as thin and frail, with pronounced bony prominences and has fragile skin.
 - The Appellant has slept well on her current mattress with no concerns re skin integrity. As such, it is recommended she continue to use this model of mattress or an equivalent.
- A quotation dated October 25, 2023, from an equipment supplier for a new mattress and a new transfer belt.
- Reasons for Request for Reconsideration, which contains comments by the Appellant’s caregiver:
 - My client cannot sleep on a standard mattress. Her hospital mattress requires a certain mattress that supports her need.
- A document dated October 30, 2023, signed with the first names of two techs which says:

- Picked up and disposed off a mattress that was very mouldy and was unsafe for client to be sleeping on. Dropped off loaner mattress for temporary use.

Information submitted after the Reconsideration Decision

- No additional submissions were made by the Appellant or the Ministry.

Testimony at the hearing

- The Ministry and the Appellant summarized the information contained in the appeal record. No new evidence was provided.
- The Advocate confirmed that she was the same person who completed the Reasons for Reconsideration and the Reasons for Appeal.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's decision that the Appellant was not eligible for a replacement pressure mattress is reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

Ministry's Position

The Ministry acknowledges the need for the mattress but maintains that it has no choice but to reject the request. The legislation is very specific that a medical device cannot be replaced unless a specific period has passed since it was provided, in this case five years.

Appellant's Position

The Appellant was funded for an LTC4000 mattress previously and has slept well on this surface with no concerns re skin integrity. She is 92 years old, thin, and frail, with fragile skin. She needs a pressure mattress of this specific type. She cannot use a standard mattress. The mattress had to be disposed of because the mould created an unsafe environment for the Appellant. The safety concerns with the mattress are not the fault of the Appellant. She cannot afford to replace the mattress on her own.

Panel Findings

The Ministry has found that the Appellant meets all legislative requirements for a replacement other than Schedule C, sections 3(3) and 3.7(2). The panel finds no reason to dispute this position.

(The panel notes that the Reconsideration Decision says 3(3) and 3.2(3). However, because 3.2(3) relates to wheelchairs, not pressure mattresses, and the Ministry immediately addresses 3.7(2), which pertains to pressure mattresses, the reference to 3.2(3) is assumed to be a typographical error.)

Section 3(3) says, "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."

The mattress had to be removed and is not repairable. Therefore, 3(3)(a) is satisfied. The remaining criterion is the period that must have passed. This is defined in section 3.7.

Medical equipment and devices — pressure relief mattresses

3.7 (1)...

(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 previous pressure mattress was provided in October 2020. As such, the Ministry is not authorized to replace the mattress before October 2025. The Regulations do not provide for any exception to this requirement and the panel does not have discretion to vary the requirements set out in the legislation.

The panel finds that the Ministry interpretation of the Regulations was reasonable and supported by the evidence.

In the Reconsideration Decision, the Ministry states: "...to ensure all recipients applying for replacement equipment are treated fairly and consistently in practice and procedure, the Ministry relies on policy to determine exemptions to the replacement period. Ministry policy states the replacement time period does not apply when an item is required due to changes in a person's medical condition or growth."

The Appellant has not provided any evidence indicating a change in medical condition that would require a replacement of the pressure mattress. The reason for the request is that the previous mattress had mould growing on it, was no longer safe, and had to be removed.

The panel's jurisdiction is to determine compliance with the legislation. It is beyond the scope of the panel to assess whether a policy exemption is applicable. Therefore, the panel makes no finding concerning the policy.

Conclusion

In summary, while the Appellant raises several valid concerns, the legislation does not allow the Ministry to replace medical devices unless the specified period has passed.

The panel, however, shares the Appellant's dismay. It has been established that the mattress is medically necessary, that the Appellant does not have the resources to cover the replacement cost, and that the device is completely unusable through no fault of the individual. Yet the process would leave the individual without something so critical to her wellbeing.

The panel has no authority to go beyond the legislation. Our role is to ensure the Ministry's decision is a reasonable interpretation of the existing legislation. Therefore, the panel finds that the Ministry was reasonable in their decision that the Appellant was not eligible for a replacement pressure mattress.

The panel confirms the Ministry's Reconsideration Decision and the Appellant's appeal is unsuccessful.

APPENDIX – Schedule of Legislation**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.

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 — 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.

APPEAL NUMBER 2024-0085

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)

2024/03/26

Print Name

Joseph Rodgers

Signature of Member

Date (Year/Month/Day)

2024/03/27

Print Name

Sarah Bijl

Signature of Member

Date (Year/Month/Day)

2024/03/27