

**Reasons for Decision:**

**Order # AP2021-0018**

On <date removed>, <name removed> filed an appeal of the decision of the Director to deny funding for a specialized pressurized air bed. The decision was communicated in a letter dated <date removed>.

The decision letter stated the specialized bed was not an eligible item through the income assistance program.

At the hearing, the Department relied exclusively on its written report entered as evidence. The Department stated that funding for medical beds is typically provided by the Regional Health Authority (RHA). Therefore, the Department denied the request.

The appellant was represented at the hearing by their parent, <name removed>.

The parent told the Board that the appellant was born 99 days premature, and spent the first 3 months of their life in the hospital. At age 2, they were diagnosed with cerebral palsy. By age 4, they were using a wheelchair.

The parent stated <name removed> has been under the care of the Twin Cities Shriners Hospital for a number of years. The appellant has undergone a number of surgeries, including major surgery in <year removed>. The appellant was in a full body cast for six weeks. While the surgery was successful, <name removed> had three open pressure wounds when their body cast was removed, one of which took a long time to heal.

While the Shriners Hospital will provide wheelchair equipment until age 21, it does not provide the specialized bed. The doctors at the Twin Cities hospital advised the parent that <name removed> would need a specialized bed for their entire life.

The parent told the Board that, when they and the appellant returned to Manitoba after the <year removed> surgery, a specialized bed had been provided for their home. They subsequently learned that the Southern RHA had paid for the bed, after a considerable amount of discussion between the RHA and the Department.

The parent stated the bed was successful in managing <name removed>'s susceptibility to pressure wounds for several years. However, in <date removed> the air pump failed. The parent worked with the manufacturer to resolve the issue, but eventually learned the pump was beyond its service life and could not be replaced.

The parent told the Board that <name removed> started to experience skin problems once the bed no longer worked. They attributed the skin problems to the absence of a functional specialized bed, as the appellant did not experience the problems while the bed worked.

The parent stated they contacted the RHA, which sent a nurse and an occupational therapist to review the appellant's situation. The RHA supplied a different type of air bag, but preliminary indications are that the bag does not alleviate the skin problems. The parent stated the RHA was waiting for the outcome of this appeal before deciding if it would fund the bed.

The parent stated they have contacted their workplace health insurer, who denied coverage for the bed. The parent told the Board they understood that the bed was expensive, but reiterated that it was medically necessary and would prevent larger health care costs in the future.

The Board noted that the Department report stated that specialized beds are "typically" funded by the RHA, and asked the Department to clarify the term "typically". The Department confirmed that it does not have an explicit policy denying funding for specialized beds, but normally does not consider a specialized bed to be basic and essential health care. The Department acknowledged that it had acted in the past when an RHA did not provide support, on an exceptional basis. The Department suggested it might have made two exceptions in the past five years.

In response to a question from the Board, the parent stated nursing and occupational therapy support from the RHA started recently. The only other support they received was when the family returned from the Shriners Hospital, when they received training on the operation of the bed.

The parent told the Board they were the sole care provider for the appellant. They stated they worked full-time for a large Winnipeg-based company, which has supported them through workplace accommodations and direct philanthropy. They also praised the Headingley Fire Department for its ongoing support of the appellant.

The parent stated they have to turn the appellant manually throughout the night, now that their bed does not function. The parent turns them at 10:30 p.m. before they retires for the night. The parent wakes up four times throughout the night to turn them, and then turns them again when they arises for work at 6:00 a.m.

The Department told the Board that the Department of Health's own home care policy states that specialized sleep services and beds are funded through the budget of each RHA. The Department's own policy is based on the Department of Health's directive.

In response to a question from the Board, the parent stated that the RHA is undertaking a nursing and occupational therapy review before making a final decision on the bed. The parent reiterated that the RHA was waiting for the outcome of this appeal. In their opinion, the RHA was waiting to find out if the Department would pay for the bed, while the Department was waiting to see if the RHA would pay for the bed.

In response to a question from the Board, the parent stated they have not approached the Society of Manitobans with Disabilities (now called Manitoba Possible) for support. The parent noted the Society does provide wheelchair support, but the appellant's wheelchair is currently covered by the Shriners.

In most appeals concerning the denial of medical equipment, the Board must determine first if the requested equipment is medically necessary. If the equipment is medically necessary, then the Board must determine if the equipment is basic and essential, and therefore should be supplied by the Department.

The provision of medical equipment is authorized by Section 9 of Schedule A of *The Manitoba Assistance Act Regulation*:

The following amounts are payable to a person in respect of his or her health care:

- (e) such other remedial care, treatment and attention including physiotherapy as may be prescribed by a duly qualified medical practitioner;
- (h) such other rehabilitative treatment or care as the director may authorize.

In previous appeals, the Board has determined that Section 9 of the *Regulation* provided flexibility to the Department to determine what services or supplies may be funded. The Board notes that subsections (a) through (d) of Section 9 use the term "essential", while the treatments in subsection (e) and (h) are not limited by that term.

The Department has set bounds on its authority through its policy, by denying funding for any device or supply that is not considered basic and essential. The Board has the power to make any decision the Director has the power to make. The Board is not bound by any internal restrictions the Director may place on their own powers. However, the Board recognizes the important role policy has in ensuring large programs are administered efficiently and equitably. Generally, the Board defers to Department policy except where the individual circumstances of an appellant differ so significantly from other recipients as to warrant an exception.

The parent gave compelling evidence that the appellant's health condition had deteriorated markedly since the original bed stopped functioning. While the RHA has assisted the parent with a number of stopgap measures, the Board concludes from the evidence that these stop-gap measures will be insufficient to halt the deterioration.

In this appeal, the Department did not dispute that the specialized bed was medically necessary. In its written evidence, and at the hearing, the Department asserted that specialized beds did not constitute basic and essential care, but acknowledged it had made exceptions in the past. The Department's position was that it was the responsibility of the RHA to pay for specialized beds. The Department correctly noted that the RHA funded the original bed, and the Department of Health's own policy is that specialized beds are funded from the RHA's home care budget.

The parent told the Board that the RHA was waiting for the outcome of this appeal before determining whether it would fund the bed. From the evidence presented to the Board, it does not appear that the RHA disputes the medical necessity of the bed.

In the Board's view, the Department, the RHA and the parent all agree that the appellant would benefit medically from the replacement of their specialized bed. The delay in providing the bed is purely a jurisdictional dispute between two reporting entities in the Manitoba Government. While these two entities disagree over the appropriate funding source, the appellant's health continues to deteriorate and the parent bears the burden of caring for them throughout the night, as well as during the day.

Faced with a parallel issue concerning First Nations children, the federal and provincial governments developed Jordan's Principle. Jordan's Principle provides that where a government service is available to all other children, but a jurisdictional dispute regarding services to a First Nations child arises between Canada, a province, a territory, or between government departments, the government department of first contact pays for the service and can seek reimbursement from the other government or department after the child has received the service.

The Board is not suggesting that Jordan's Principle applies in this case in a formal way. However, the notion that the health of a vulnerable person should not deteriorate while two components of the Government try to determine funding responsibility is broadly applicable, particularly when both components have the authority to provide the funding.

In the appellant's case, the Board determines there are two distinguishing factors that merit an exception to the Department's policy. First, the appellant experienced limited skin issues when their bed was functional and is now experiencing a deterioration in their health. Second, the parent has managed to slow the rate of deterioration by waking up four times per night to turn them, and the Board does not believe this schedule will be sustainable if the parent must return to their worksite. If the schedule is not sustainable, the appellant's condition will deteriorate further.

Based on the evidence presented to it, including the two distinguishing factors noted above, the Board determines that the specialized bed is a medically necessary service for the appellant. Therefore, the Board rescinds the decision of the Director and orders the Department to provide <name removed> with the equipment listed in the Arjo Canada quote on page A9 of the hearing package.

The Board notes the Department may pursue reimbursement from the Southern RHA at its discretion

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