APPEAL #

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated February 7, 2012 which denied the appellant's request for a supplement to cover the cost of an I-Port for insulin injections. The ministry found that the item requested is not listed as an eligible item in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and the appellant is not eligible for a supplement pursuant to Section 69 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 62 and 69 and Schedule C, Sections 2, 2.1, 2.2, 3, 3.1 to 3.11, 4, 4.1, 5, 6, 7, 8, 9

APPEAL #

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

1) Photo of the I-Port with a handwritten note stating in part that 1 needle gives 60 injections versus 60 different needles/60 metal tips ...(illegible);
2) Product specification sheet for I-Port injection port which states in part that it functions as a medication delivery channel directly into the subcutaneous tissue; when applying the I-Port, an insertion needle guides a soft cannula (a small, flexible tube) under the skin. Once applied, the insertion needle is removed and only the soft cannula remains below the skin, acting as the gateway into the subcutaneous tissue. When injecting through the I-Port, the needle of the syringe or insulin pen remains above the surface of the skin, while the medication is immediately delivered through the soft cannula and into the subcutaneous tissue; each I-Port comes packaged individually in a box of 10 devices, or roughly a 1 month supply.
3) Price Quote from supplier dated October 14, 2011 for an I-Port Injection port, box of 10 for $155 plus HST;
4) Prescription dated January 4, 2012 for I-Port for insulin injections X 1 year, patient Hx [history] is 8 injections per day causing bruising, bleeding at site, pain and scabbing;
5) Letter from the ministry to the appellant dated January 4, 2012 advising that her request for an I-Port/ Insulin Pump had been denied as the I-Port/ Insulin pump is not an eligible item;
6) Copy of the ministry's letter dated January 4, 2012 with a handwritten note: "not a pump a patch"; and,
7) Request for Reconsideration- Reasons.

Prior to the hearing, the appellant provided additional evidence as follows:

1) Note from the appellant's physician dated February 14, 2012 stating in part that the I-Port for insulin injection is required for wound prevention; the appellant has developed bleeding/bruising wounds from repeated injections; and,
2) Note from the appellant's physician dated February 14, 2012 stating in part that due to significant bleeding and bruising, the appellant's insulin is not being taken correctly which poses an imminent and direct danger to her health.

The ministry did not raise an objection to the admission of this additional evidence. The panel reviewed the documents and admitted them as providing information regarding the appellant's need for an I-Port Injection port , as evidence in support of the information before the ministry when the decision being appealed was made, pursuant to Section 22(4) of the Employment and Assistance Act.

The appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

In her Request for Reconsideration, the appellant states that the I-Port is in no way a pump of any kind. The appellant states that it is an insulin patch that sticks to your skin with one needle in it. The appellant explains that she uses 8-10 needles per day making 8-10 holes in her skin and she bleeds each time and is covered in bruises. The appellant states that the patch will allow 70 needles in the I-Port rather than 70 holes in her skin, that it will make one hole and is not a medical device. In the Notice of Appeal, the appellant adds that without the I-Port she cannot keep putting 8 needles per day into her skin since it bleeds each time and she has panic attacks. The appellant states that she is now unable to maintain her sugar levels without the insulin.

The ministry's evidence included that the appellant has been designated as a person with disabilities (PWD). The appellant requested an I-Port injection port on January 4, 2012 with a prescription from her physician. On January 4, 2012, the request was denied by the ministry and the appellant requested a reconsideration stating that the I-Port is in no way a pump, but is a patch that sticks to the skin with one needle in it. The ministry acknowledges that the I-Port injection port has been prescribed by the appellant's physician.

APPEAL #

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of an I-Port injection port because the item requested is not listed as an eligible item in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and the appellant is not eligible for a supplement pursuant to Section 69 of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Pursuant to Section 62 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the applicant must be a recipient of disability assistance, or be a dependent of a person in receipt of disability assistance in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has found that the requirement of Section 62 has been met in that the appellant has been approved as a recipient of disability assistance.

At issue is whether the requested I-Port injection port is an eligible item under Schedule C of the EAPWDR, including:

General health supplements

2 (1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 *[general health supplements]* of this regulation:

(a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:

(i) the supplies are required for one of the following purposes:

(A) wound care;

(B) ongoing bowel care required due to loss of muscle function;

(C) catheterization;

(D) incontinence;

(E) skin parasite care;

(F) limb circulation care;

(ii) the supplies are

(A) prescribed by a medical practitioner or nurse practitioner,

(B) the least expensive supplies appropriate for the purpose, and

(C) necessary to avoid an imminent and substantial danger to health;

(iii) there are no resources available to the family unit to pay the cost of or obtain the supplies. ...

Further, Section 2(1.1) of Schedule C, provides that "medical or surgical supplies" do not include nutritional supplements, food, vitamins, minerals or prescription medications.

Section 2(1)(c) provides that the following items are health supplements if the other criteria of the section are met: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physiotherapy.

Section 2(1)(f) of Schedule C provides that the following items are health supplements if the other criteria of the section are met: the least expensive appropriate mode of transportation.

Section 2.1 of Schedule C provides that the following are the optical supplements that may be provided under Section 62.1 of the EAPWDR: basic eyewear and repairs, pre-authorized eyewear and repairs.

APPEAL #

Section 2.2 of Schedule C provides that the minister may pay a health supplement under Section 67.2 of the EAPWDR for an eye examination if the other criteria of the section are met.

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 3.11 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, 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. ...

Section 3.1 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a cane, a crutch, a walker, an accessory to a cane, a crutch or a walker.

Section 3.2 provides that the following items are health supplements for the purposes of section 3 if the other criteria of the section are met: a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair.

Section 3.3 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a wheelchair seating system, an accessory to a wheelchair seating system.

Section 3.4 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a scooter, an upgraded component of a scooter, an accessory attached to a scooter.

Section 3.5 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a grab bar in a bathroom, a bath or shower seat, a bath transfer bench with hand held shower, a tub slide, a bath lift, a bed pan or urinal, a raised toilet seat, a toilet safety frame, a floor-to-ceiling pole in a bathroom, a portable commode chair.

Section 3.6 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed.

Section 3.7 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a pressure relief mattress.

Section 3.8 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a floor or ceiling lift device.

Section 3.9 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a positive airway pressure device, an accessory that is required to operate a positive airway pressure device, a supply that is required to operate a positive airway pressure device.

Section 3.10 provides that the following items are an orthosis which is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a custom-made foot orthotic, custom-made footwear, a permanent modification to footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, a hip brace, an upper extremity brace, a cranial helmet, a torso or spine brace.

Section 3.11 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hearing aid.

Section 4 of the Schedule provides that the health supplement that may be paid under section 63 [*dental supplements*] are basic dental services, if the other criteria of the section are met.

Section 4.1 provides that the health supplement may be paid under section 63.1 for crown and bridgework, if the other criteria of the section are met.

Section 5 of Schedule C provides that the health supplement that may be paid for under Section 64 of the EAPWDR are emergency dental services.

Section 6 of the Schedule provides that the amount of a diet supplement that may be provided under section 66 [*diet supplements*] is set out for various conditions, if the other criteria of the section are met.

Section 7 of the Schedule provides as follows:

7 The amount of a nutritional supplement that may be provided under section 67 *[nutritional supplement]* of this regulation is the sum of the amounts for those of the following items specified as required in the request under section 67 (1) (c):

(a) for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to $165 each month;

(b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]

(c) for vitamins and minerals, up to $40 each month.

Section 8 of the Schedule provides that the amount of a natal supplement that may be provided under section 68 [*natal supplements*] is set out, if the other criteria of the section are met.

Section 9 of the Schedule provides that the minister may provide infant formula under section 67.1 of the EAPWDR if the other criteria of the section are met.

Under Section 69 of the EAPWDR, the minister may provide a general health supplement if it is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under the 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 person's family unit is receiving premium assistance under the *Medicare Protection Act*, 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 3.11, other than paragraph (a) of section 3 (1).

The ministry's position is that the appellant is eligible to receive health supplements under Section 62 of the EAPWDR but that the requested item, an I-Port injection port, is not an eligible item as a medical or surgical supply under Section 2(1)(a) of Schedule C of the EAPWDR as it does not meet all of the criteria. The ministry argues that information has not been provided to establish that the I-Port injection port is a disposable or reusable medical or surgical supply required for one of the purposes set out in the section, namely: wound care, ongoing bowel care, catheterization, incontinence, skin parasite care, or limb circulation care. The ministry also argues that it has not been shown that the item is necessary to avoid an imminent and substantial danger to health. The appellant argues that the I-Port injection port is an insulin patch that sticks to the skin with one needle in it and it will allow 70 needles through one hole rather than 70 separate holes. The appellant argues that she needs the I-Port because she cannot continue putting 8 needles per day into her skin since it bleeds each time and she has panic attacks and she is unable to maintain her sugar levels without the insulin.

The panel finds that the Product specification sheet states that the I-Port injection port functions as a medication delivery channel directly into the subcutaneous tissue and each I-Port comes packaged individually in a box of 10 devices, or roughly a 1 month supply, and therefore falls within the definition of a medical supply which is disposable with the primary function, or purpose, of providing a medication delivery channel. Section 2 of Schedule C requires that the supplies are needed for one of the listed purposes, which includes "wound care" [Section 2(1)(a)(i)(A)] and the panel finds that the note dated February 14, 2012 from the appellant's physician indicates that the appellant has developed bleeding/ bruising wounds from repeated injections and that the I-Port is required for wound prevention. Although the I-Port is a medication delivery method that would help prevent the wound (bleeding/bruising) that would be caused by repeated injections, the panel finds that its primary purpose of the I-Port is to deliver medication, in this case to treat a health condition requiring daily insulin, and not to care for the wounds caused by injections. The ministry also argues that it has not been shown that the I-Port injection port is necessary to avoid an imminent and substantial danger to health, and the appellant has provided a note from her physician dated February 14, 2012 indicating that due to significant bleeding and bruising, the appellant's insulin is not being taken correctly which poses an imminent and direct danger to her health. Section 2 of Schedule C requires that the evidence establish that the supply is necessary to avoid an imminent and substantial danger to health and the panel finds that the physician has confirmed that the I-Port, as a medication delivery channel, is required to correctly administer multiply daily doses of insulin and to avoid an imminent danger to health. The panel finds that the ministry's decision, which concluded that the I-Port injection port does not meet all of the legislative criteria as set out in Section 2(1)(a) of Schedule C of the EAPWDR, was reasonable.

The ministry's position is that the I-Port injection port, is not an eligible item as medical equipment specifically set out in Sections 3.1 through 3.11 of Schedule C of the EAPWDR. The appellant does not dispute that the I-Port injection port is not specifically listed as an item in Sections 3.1 through 3.11. The panel finds that the ministry reasonably determined that the requested I-Port injection port is not specifically set out in Section 3.1 through 3.11 of Schedule C of the EAPWDR as it is not: a cane, a crutch or a walker; a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair; a wheelchair seating system, an accessory to a wheelchair seating system; a scooter, an upgraded component of a scooter, an accessory attached to a scooter; a grab bar in a bathroom, a bath or shower seat, a bath transfer bench, a tub slide, a bath lift, a bed pan or urinal, a raised toilet seat, a toilet safety frame, a floor-to-ceiling pole in a bathroom, or a portable commode chair; a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed; a pressure relief mattress; a floor or ceiling lift device; a positive airway pressure device, an

accessory that is required to operate a positive airway pressure device, a supply that is required to operate a positive airway pressure device; a custom-made foot orthotic, custom-made footwear, a permanent modification to footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, a hip brace, an upper extremity brace, a cranial helmet, a torso or spine brace; or a hearing aid. The panel finds that the ministry reasonably concluded that the I-Port injection port does not meet the requirements of Sections 3.1 to 3.11of Schedule C of the EAPWDR.

The ministry's position is that the appellant's request for a supplement to cover the cost of an I-Port injection port does not meet the criteria of the other sections of Schedule C of the EAPWDR, including sections 2(1)(c), 2(1)(f), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9, since an I-port injection port is not any of the items covered, namely: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physiotherapy; medical transportation, optical supplements; eye examination supplements; a dental supplement; a crown and bridgework supplement; emergency dental supplements; diet supplements; monthly nutritional supplements; natal supplements; or infant formula. The appellant does not dispute that the request does not fall within any of these other sections of Schedule C. The panel finds that the ministry's decision, which concluded that the I-Port injection port is not an item listed in the other sections of Schedule C of the EAPWDR, was reasonable.

With respect to Section 69 of the EAPWDR, the ministry's position is that this section is intended to provide a remedy for those persons who are facing a direct and imminent life-threatening need for these supplements and who are not otherwise eligible to receive them. The ministry argues that the appellant does not require a remedy under Section 69 as she is eligible to receive health supplements set out under Schedule C, Sections 2 and 3. The ministry further argues that information has not been provided to demonstrate that the appellant faces a direct and imminent life threatening need for an I-Port for insulin injections. The ministry argues that the requirements of Section 69(d) are also not met as an I-Port injection port is not set out under Schedule C, Section 2(1)(a) [medical supplies] or Section 2(1)(f) [medical transportation] or in Section 3.1 through 3.11. The appellant has provided a note from her physician dated February 14, 2012 stating that due to significant bleeding and bruising, the appellant's insulin is not being taken correctly which poses an imminent and direct danger to her health.

The panel finds that the ministry determined that the appellant is eligible, as a recipient of disability assistance, for health supplements under Section 62 of the EAPWDR, whereas Section 69 applies to provide a health supplement to a person in the family unit who is otherwise not eligible for the health supplement under the EAPWDR. The panel also finds that the ministry reasonably determined that the requirements of Section 69(d) are not met as an I-Port injection port is not set out under Schedule C, Section 2(1)(a) as medical or surgical supplies or under Section 2(1)(f) as a mode of medical transportation, or under Sections 3 to 3.11, as detailed above. Section 69(a) requires that the evidence establish that the person faces a direct and imminent life threatening need and the panel finds that the physician has confirmed in the February 14, 2012 note that the I-Port injection port is required to correctly administer insulin and to avoid an imminent danger to the appellant's health but the panel finds that the ministry reasonably concluded that the evidence does not establish that the appellant faces a direct and imminent life threatening need. Therefore, the panel finds that the ministry's decision, which concluded that Section 69 of the EAPWDR does not apply to the appellant's circumstances, was reasonable.

In conclusion, the panel finds that the ministry's decision to deny the request for a supplement to cover the cost of an I-Port injection port as not meeting the legislated criteria of Schedule C, Section 2(1)(a)(i), Sections 3, 3.1 to 3.11, or Sections 2(1)(c) and (f), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, and 9 or Section 69 of the EAPWDR, was a reasonable application of the applicable enactment in the circumstances of the appellant and, therefore, confirms the decision.