APPEAL #

## PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated February 13, 2013 which denied the appellant's request for a supplement to cover the cost of a circulation booster. 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 included:
1) "Parts and Controls" diagram/ specification sheet of the circulation booster item;
2) Receipt from a pharmacy dated October 3, 2012 for a booster at the total cost of $325.63;
3) Undated letter from a physician 'To Whom It May Concern,' stamped received by the ministry in November 2012, stating in part that the appellant will benefit from the "circulation booster" for her diabetic foot symptoms; and,
4) Request for Reconsideration- Reasons.

Prior to the hearing, the appellant provided a Radiological Consultation Report dated January 9, 2013 stating in part that a Doppler Arterial Assessment of the appellant's lower limbs was conducted for arm and/or leg pain. The appellant has a history of rheumatoid arthritis, osteoporosis, kidney disease, scoliosis, and lupus with discoloration in both lower legs/feet. The report includes the comment: "...symptoms have improved since using 'circulation booster' two months ago."

The ministry did not object to the admissibility of the report. The panel admitted the report, pursuant to Section 22(4) of the Employment and Assistance Act, as providing further detail relating to the need for the requested circulation booster and being in support of information that was before the ministry on reconsideration.

In her Notice of Appeal, the appellant stated that the circulation booster should be on the ministry's list of items because it will save many amputations. The appellant stated that she now has pinkish feet and legs instead of blue legs and purple feet. She uses the machine religiously every evening for half an hour. It puts electric impulses through the left foot and through the right foot sort of like an electrocution which, in turn, makes the blood flow and the muscle move more to help the blood flow. The appellant stated that she needs the amount paid for the circulation booster reimbursed to pay back her credit card and to keep it available to her. She does not have the money to pay.

In her Request for Reconsideration, the appellant stated that she has been using the circulation booster which she paid for on her credit card. Her feet and legs have gone from blue (legs) and purple (feet) to pink. By using this machine for 30 minutes every night, she feels that she will not lose her legs. The ministry will not have to pay for the surgery, hospital bills, rehab and home care. The appellant stated that saving all this money is worth the ministry reimbursing her the $325.00.

At the hearing, the appellant stated that the Doppler Arterial Assessment of her lower limbs was ordered by her doctor because she thought that the appellant's legs might have to be amputated. The appellant stated that when she heard that she might lose her legs, she went right out and got the circulation booster and charged it on her credit card even though it put her over her limit. The appellant stated she felt that there was an urgency to finding something to help. The Report shows that her symptoms have improved with the use of the circulation booster. The appellant stated that her legs were blue and her feet were purple but now they are both pink and the doctor has said that they look fine. The appellant stated that she has also experienced neuropathy in her hands and she started using the circulation booster on her hands and they are not as numb anymore. The appellant stated that her sister and her friend have been amazed at the improvement the appellant has experienced and the appellant feels that the circulation booster could help many people with circulation problems.

The ministry relied on its reconsideration decision which included evidence that the appellant is a recipient of disability assistance. The ministry added that according to the specification sheet for the circulation booster, it operates in a similar manner to a T.E.N.S. machine in delivering electric impulses to an area of the body, and the T.E.N.S. machine is also an item not covered by Schedule C of the EAPWDR. In response to a question, the ministry stated that a medical or surgical supply is a smaller item, such as tension stockings for limb circulation care, rather than a larger item that would be considered medical 'equipment' or a device.

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 a circulation booster 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 circulation booster 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.

**Medical equipment and devices – positive airway pressure devices**

3.9 (1) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (2) of this section are met:
(a) a positive airway pressure device;
(b) an accessory that is required to operate a positive airway pressure device;
(c) a supply that is required to operate a positive airway pressure device.

(2) The following are the requirements in relation to an item referred to in subsection (1) of this section:
(a) the item is prescribed by a medical practitioner or nurse practitioner;
(b) a respiratory therapist has performed an assessment that confirms the medical need for the item;
(c) the minister is satisfied that the item is medically essential for the treatment of moderate to severe sleep apnea.

(3) 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
(a) 5 years from the date on which the minister provided the item being replaced, for an item described in subsection (1) (a), and
(b) 1 year from the date on which the minister provided the item being replaced, for an item described in subsection (1) (b) or (c).

(4) A ventilator is not a health supplement for the purposes of section 3 of this Schedule.

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.

Section 69 of the EAPWDR provides as follows:

**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 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, a circulation booster, is not an eligible item as a medical or surgical supply set out in 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 circulation booster 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 there is insufficient information to establish that the item requested is necessary to avoid an imminent and substantial danger to health. The appellant's position is that the circulation booster has increased the circulation in her legs and feet so that she is no longer at risk of losing her legs to amputation. The appellant argues that the ministry will not have to pay for the surgery, hospital bills, rehab and home care, and saving all this money is worth the ministry reimbursing her the $325.00 for the circulation booster.

The appellant described the circulation booster as a machine that puts electric impulses through the left foot and through the right foot sort of like an electrocution which, in turn, makes the blood flow and the muscles move more to help the blood flow. The panel finds that the ministry reasonably concluded that the circulation booster is a piece of equipment or a device, as a larger mechanical item, as described by the appellant and set out in the "Parts and Controls" diagram/ specification sheet, rather than a medical or surgical "supply" set out in Section 2(1)(a) of Schedule C. The appellant's physician reported in a letter of November 2012 that the appellant will benefit from the "circulation booster" for her diabetic foot symptoms and the appellant credits its regular use with dramatically increasing the circulation in her legs and feet and returning them to a healthy pink colour, thereby saving her legs from amputation; the panel finds that the ministry's determination that the circulation booster is not required for the purpose of "limb circulation care" [Section 2(1)(a)(i)(F)], in the appellant's circumstances, was not reasonable.

Section 2 of Schedule C also requires that the evidence establish that the requested item is necessary to avoid

an imminent and substantial danger to health. The appellant has provided a Radiological Consultation Report dated January 9, 2013 with the results of a Doppler Arterial Assessment of the appellant's lower limbs which indicated that whereas there had been discoloration in both lower legs/feet, the "...symptoms have improved since using 'circulation booster' two months ago." The appellant's physician has indicated that the appellant will 'benefit' from the circulation booster for her diabetic foot symptoms and the evidence demonstrates that there has been an improvement in symptoms. While the appellant feels that the circulation booster has saved her legs from imminent amputation, the panel finds that the physician did not indicate that the appellant's "diabetic foot symptoms" posed an imminent and substantial danger to the appellant's health, or that the circulation booster is necessary to avoid this danger. The panel finds that the ministry reasonably determined that there is not sufficient information to establish that the circulation booster is necessary to avoid an imminent and substantial danger to the appellant's health. Overall, although the panel finds that the circulation booster is required for the purpose of limb circulation care, it is not a medical supply and there is insufficient evidence to show that it is necessary to avoid an imminent and substantial danger to the appellant's health. Therefore, the panel finds that the ministry's decision, which concluded that the circulation booster 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 appellant is eligible to receive health supplements under Section 62 of the EAPWDR but the circulation booster, is not an eligible item as medical equipment specifically set out in Sections 3 and 3.1 through 3.11 of Schedule C of the EAPWDR. The appellant does not argue that the circulation booster is listed as an eligible item of medical equipment but, rather, that it should be on the ministry's list of eligible items because it will save many amputations and reduce costs for the long-term.

The panel finds that the ministry reasonably determined that the requested circulation booster 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. Although the appellant argues that the circulation booster should be included in Schedule C, the panel finds that Section 3 stipulates that only the items described in Section 3.1 to 3.12 are the health supplements that may be provided, and the Section does not allow for items other than those specifically listed.

The ministry's position is that the appellant is eligible to receive health supplements under Section 62 of the EAPWDR but the circulation booster, is not an eligible item as medical equipment specifically set out in Section 3.9 of Schedule C of the EAPWDR as a positive airway pressure device. The ministry argues that there is insufficient evidence that the circulation booster is a positive airway pressure device or an accessory or supply required to operate a positive airway pressure device. The ministry argues that the information provided does not establish that a respiratory therapist has performed an assessment that confirms the medical need for the item or that the item is medically essential for the treatment of moderate to severe sleep apnea. The appellant does not argue that the circulation booster is a positive airway pressure device or an accessory or supply required to operate a positive airway pressure device but, rather, that the circulation booster should be on the ministry's list of eligible items because it will save many amputations and reduce costs for the long-term.

The panel finds that the ministry reasonably determined that the requested circulation booster is not an eligible

item as medical equipment specifically set out in Section 3.9 of Schedule C of the EAPWDR as a positive airway pressure device or an accessory or supply required to operate a positive airway pressure device. The panel finds that the appellant does not dispute that there is no evidence that a respiratory therapist has performed an assessment that confirms the medical need for the item or that the item is medically essential for the treatment of moderate to severe sleep apnea. Although the appellant argues that the circulation booster should be included in Schedule C, the panel finds that Section 3 stipulates that only the items described in Section 3.1 to 3.12 are the health supplements that may be provided, and the Section does not allow for items other than those specifically listed.

The ministry's position is that the appellant's request for a supplement to cover the cost of a circulation booster does not meet the criteria of the other sections of Schedule C of the EAPWDR, including sections 2(1)(c), 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9, since a circulation booster is not any of the items covered, namely: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physiotherapy; 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 circulation booster does not fall within any of these other sections of Schedule C. The panel finds that the ministry's decision, which concluded that the circulation booster 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 in the reconsideration decision 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 requirements of Section 69(d) are met as a circulation booster is not set out under Schedule C, Section 2(1)(a) [medical supplies] or Section 2(1)(f) [medical transportation] or in Sections 3 to 3.11. The appellant's position is that the circulation booster has increased the circulation in her legs and feet so that she is no longer at risk of losing her legs to amputation. The appellant argues that the ministry will not have to pay for the surgery, hospital bills, rehab and home care, and saving all this money is worth the ministry reimbursing her the $325.00 for the circulation booster. The appellant does not argue that the circulation booster is listed as an eligible item of medical supply, transportation, or equipment but, rather, that it should be on the ministry's list of eligible items because it will save many amputations and reduce costs for the long-term.

The panel finds that the ministry reasonably 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 a circulation booster 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. Although the appellant argues that the circulation booster should be on the ministry's list of eligible items in Schedule C because it will save many amputations and reduce costs for the long-term, the panel finds that Section 3 stipulates that only the items that are presently described are the health supplements that may be provided. 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 a circulation booster as not meeting the legislated criteria of Schedule C, Sections 3, 3.1 to 3.11, or Section 2(1)(a) or (c), 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.