APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated April 26, 2012 (sic) which denied the appellant's request for a supplement to cover the cost of a 560 Legendair Ventilator. 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 3.12, 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) Quote dated February 27, 2013 from a medical supply company setting out the price of $15,995 for a 560 Legendair Home Care Pressure and Volume Ventilator complete with power supply cable, user's manual and carrying bag;
2) Letter dated March 1, 2013 'To Whom It May Concern', signed by a registered respiratory therapist and a physician and stating in part that secondary to the appellant's diagnosis of lupus, chronic aspiration and night-time hypoventilation, she now requires at home ventilation throughout the night. She requires the ventilator equipment outlined in the attached quote;
3) Supplies required for the appellant dated March 1, 2013 and signed by a physician;
4) Letter dated April 16, 2013 from a physician who is a specialist in chest and critical care medicine which states in part that the appellant has multiple medical problems but from a respiratory point of view has a history of recurring aspiration and a degree of neuromuscular weakness which has led her to require ventilation at night and often through the day as well. She is ventilated via tracheostomy which remains cuff-inflated because of recurring aspiration due to upper GI dysfunction. This medical equipment is necessary to sustain life. Without it, the appellant would not survive and clearly this has improved her quality of life and will keep her out of the hospital which unfortunately is the only option for therapy if she is not able to obtain the coverage for ventilation at home; and,
5) Request for Reconsideration dated April 12, 2013.

In the Notice of Appeal, the advocate wrote that the provision of a ventilator is necessary equipment to avoid an imminent and substantial danger to the appellant's health, as outlined in the letter from the physician, a Respirologist and Intensivist. A home ventilator is necessary to improve the appellant's quality of life as it allows her to be home. If the appellant is unable to obtain two ventilators for her home, she will be required to return to the ICU for a lengthy period of time. The advocate wrote that the positive airway pressure device does not specify that it needs to be a non-invasive device and, therefore, a home ventilator would qualify.

At the hearing, the appellant's caregiver stated that if the appellant is off a ventilator for more than 4 hours, her CO2 levels go off and her breathing gets harder and harder and then she will get a massive headache and become very drowsy. If she is off the ventilator for any length of time, she has no function in the lower lobes of her lungs. The appellant requires the use of a ventilator approximately 19 to 22 hours out of 24 hours in a day. The caregiver stated that, without the ventilator, the appellant will end up in the hospital and one and a half weeks in the ICU will result in a cost that would cover the cost to purchase the ventilator. The caregiver stated that the appellant is financially reliant on the ministry and she has no resources to get the ventilator on her own. The caregiver stated that the respiratory therapist recently took a sputum sample and the appellant has another infection and has to take another course of antibiotics. The caregiver stated that when the appellant has gone into the hospital in the past, it has been for a month at a time and up to a year. The appellant has been vented in ICU nine times and is a critical patient for the long term. The caregiver stated that the appellant is much happier at home, that she has a better quality of life and her lung function is much better than when she is laying in bed all day. As soon as she gets into hospital, she gets very stressed and she is exposed to much more infection.

At the hearing, the appellant's physician who wrote the letter dated April 16, 2013 stated that the appellant has been his patient for more than 10 years. He was involved when the appellant was initially ventilated in ICU, when she developed chronic respiratory failure. Although she can survive 3 to 4 hours without a ventilator, she is dependent on it for her survival. She is "ventilator-dependent" and has been for some time. The appellant has multiple medical problems but has an upper GI [gastro-intestinal] disease which results in dysfunction and a risk of recurring aspiration. Her neuromuscular weakness is partially a result of her narcotics use to cope with pain, and she has had blood clots in her lungs as part of a congenital disorder. As a result of the problems with her lungs, the ventilator functions like the muscles that assist with breathing. The appellant clearly requires a ventilator to stay alive at home, so that she does not have to be admitted to

hospital. The physician stated that the 560 Legendair Ventilator will work the best for the appellant's situation and is the one that would be preferred. The physician stated that the ventilator is a positive airway pressure device. The ventilator maintains positive pressure so that the appellant can move more air and sometimes it will breathe for her, particularly at night time.

The physician further stated that many patients are covered by 'PROP" or the Provincial Respiratory Outreach Program, but the appellant's situation is complicated and PROP is not prepared to provide her with a ventilator. The appellant is ventilated via tracheostomy which remains cuff-inflated because of recurring aspiration due to upper GI dysfunction, and she cannot have the cuff down. The ventilators provided by PROP are for patients with ALS or neuro-muscular conditions, and not for the appellant's situation. In response to a question, the physician stated there was no appeal process offered after the denial of resources through the PROP.

At the hearing, the appellant's respiratory therapist stated that the question seems to be not whether the appellant needs the ventilator, that the ministry appears to acknowledge this, but whether the ministry can provide the ventilator. The respiratory therapist stated that the ventilator is a positive pressure airway device.

At the hearing, a supervisor with Interior Health stated that the focus needs to be on what is best for the appellant and, for her quality of life, she needs to be at home. The uncertainty of her situation is affecting her ability to fight infection as she knows that if she is not at home, she will have to be admitted to hospital. The team recognizes that the best place for the appellant is in her own home, that it is safe and she is getting excellent care, that she is going out on day trips and has a good quality of life. The appellant requires 24-hour support from a respiratory therapist, and she keeps a ventilator on her chair.

At the hearing, a manager with Interior Health stated that the 560 Lengendair Ventilator meets the provincial standard for ventilators and other types are more expensive, around $20,000 each. The manager stated that the ventilator is a positive airway pressure device that acts by replacing the muscles in the diaphragm. The manager stated that another challenge with securing a ventilator through PROP is that there is no definitive diagnosis with the appellant, as she has reduced lung function, along with the issue of the cuff. The manager stated that the discussion with PROP was mostly physician to physician and even at the working group level they stick to their medical criteria. The manager stated that the appellant is currently using a ventilator on loan from the hospital. When the PROP denied the request, the hospital provided a transitional ventilator to allow the appellant to be discharged home. Because there has been no funding provided for a permanent, replacement ventilator, another patient has been grid-locked in intensive care, unable to be discharged.

At the hearing, the appellant stated that she has no money and she requires two ventilators at home, one for her chair and one for at night. She is a Person With Disabilities (PWD) and she relies on the ministry to provide her with resources that she needs or she will be in the ICU at hospital. The appellant stated that a nursing home will not take her. If she is off the ventilator for 6 hours, she will get a severe headache and become very sleepy and lethargic. The appellant stated that it appears that there is no one to look after her. She wonders what she is to do, whether she will have to live in ICU at a huge cost to the ministry of health. She wonders if she will have to go to the minister of health.

The ministry did not raise an objection to the admissibility of evidence from the witnesses on behalf of the appellant, and the panel admitted the evidence as relating to the appellant's need for a 560 Lengendair Ventilator and being in support of information before the ministry on reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

The ministry relied on its reconsideration decision which included evidence that the appellant is in receipt of disability assistance and is eligible to receive health supplements provided under Section 62 and Schedule C of the EAPWDR.

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 560 Legendair Ventilator 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 or previous 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 560 Legendair Ventilator 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. ...

Section 2(1)(a.1) of Schedule C provides that the following medical or surgical supplies are health supplements if the other criteria of the section are met: lancets, needles and syringes, ventilator supplies, and tracheostomy supplies.

Section 2(1)(a.2) of Schedule C provides that the following consumable medical supplies are health supplements if the other criteria of the section are met: supplies required to thicken food.

Further, Section 2(1.1) of Schedule C, provides that for the purposes of Section 2(1)(a) "medical or surgical supplies" do not include nutritional supplements, food, vitamins, minerals or prescription medications.

Section 2(1)(c) of Schedule 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, physical therapy.

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.

Section 2.2 of Schedule C provides that the minister may pay a health supplement under Section 62.2 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, 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. ...

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 of the Schedule 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 or bedroom; a portable commode chair; a standing frame or a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility; and a transfer aid for a person for whom the transfer aid is medically essential to transfer from one position to another.

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, and a positioning item on 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 — breathing 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:

(a) if all of the requirements set out in subsection (2) of this section are met,
  (i) a positive airway pressure device,
  (ii) an accessory that is required to operate a positive airway pressure device, or
  (iii) a supply that is required to operate a positive airway pressure device;

(b) if the minister is satisfied that the item is medically essential to monitor breathing,
  (i) an apnea monitor,
  (ii) an accessory that is required to operate an apnea monitor, or
  (iii) a supply that is required to operate an apnea monitor;

(c) if the minister is satisfied that the item is medically essential for clearing respiratory airways,
  (i) a suction unit,
  (ii) an accessory that is required to operate a suction unit, or
  (iii) a supply that is required to operate a suction unit;

(d) if the minister is satisfied that the item is medically essential for clearing respiratory airways,
  (i) a percussor,
  (ii) an accessory that is required to operate a percussor, or
  (iii) a supply that is required to operate a percussor;

(e) if the minister is satisfied that the item is medically essential to avoid an imminent and substantial danger to health,
  (i) a nebulizer,
  (ii) an accessory that is required to operate a nebulizer, or
  (iii) a supply that is required to operate a nebulizer;

(f) if the minister is satisfied that the item is medically essential to moisturize air in order to allow a tracheostomy patient to breathe,
  (i) a medical humidifier,
  (ii) an accessory that is required to operate a medical humidifier, or
  (iii) a supply that is required to operate a medical humidifier;

(g) if the minister is satisfied that the item is medically essential to deliver medication,
  (i) an inhaler accessory device,
  (ii) an accessory that is required to operate an inhaler accessory device, or
  (iii) a supply that is required to operate an inhaler accessory device.

(2) The following are the requirements in relation to an item referred to in subsection (1) (a) 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 as follows:

(a) in the case of an item referred to in subsection (1) (a) (i), 5 years from the date on which the minister provided the item being replaced;

(b) in the case of an item referred to in subsection (1) (a) (ii) or (iii), one year from the date on which the minister provided the item being replaced;

(c) in the case of an apnea monitor, suction unit, percussor, nebulizer or medical humidifier, 5 years from the date on which the minister provided the item being replaced;

(d) in the case of an inhaler accessory device, one year from the date on which the minister provided the device being replaced;

(e) in the case of an accessory or supply for an item referred to in paragraph (c) or (d), one year from the date on which the minister provided the device being replaced.

(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 instrument.

Section 3.12 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 non-conventional glucose meter.

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 of Schedule C 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 [*emergency dental and denture supplements*] of the EAPWDR are emergency dental services.

Section 6 of Schedule C 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 Schedule C 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 Schedule C 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 Schedule C 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 3.12, 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 560 Legendair Ventilator, is not an eligible item as a medical or surgical supply set out in Section 2(1) of Schedule C of the EAPWDR as it does not meet all of the criteria. The ministry argued that information has not been provided to establish that the 560 Legendair Ventilator 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 required due to loss of muscle function, catheterization, incontinence, skin parasite care, or limb circulation care. The ministry argued that information is not provided to establish that the 560 Legendair Ventilator is necessary to avoid an imminent and substantial danger to health. The ministry argued that the 560 Legendair Ventilator is not set out in subsections 2(1)(a.1) or 2(1)(a.2) as it is not lancets, needles and syringes, ventilator supplies, or tracheostomy supplies and it is not a supply required to thicken food. The appellant's position is that several professionals support her application for a 560 Legendair Ventilator, including her caregiver, physician, respiratory therapist and other members of the health team, that it is a ventilator supply upon which she is dependent and it is, therefore, necessary to avoid an imminent and substantial danger to health.

The panel finds that the 560 Legendair Ventilator functions as an assist to the appellant's breathing and is not required for one of the purposes of wound care, ongoing bowel care, catheterization, incontinence, skin parasite care or limb circulation care, as set out in Section 2(1)(a)(i) of Schedule C of the EAPWDR. The appellant's physician stated that the appellant is ventilator-dependent and that, without it, she would not survive. The appellant's caregiver and the other members of her health team stated that the appellant is currently using a ventilator on loan from the hospital and this is not a long-term solution and that her quality of life and state of health is much improved at home over the only other alternative of ventilation in the ICU at the hospital. The appellant's caregiver stated that the appellant requires the use of a ventilator 19 to 22 hours out of a 24-hour period in a day. The panel finds that the ministry's conclusion that information is not provided to establish that the 560 Legendair Ventilator is necessary to avoid an imminent and substantial danger to health, pursuant to Section 2(1)(a)(ii)(C) of Schedule C, was not reasonable. The panel finds that the ministry reasonably concluded that the 560 Legendair Ventilator is not set out in subsections 2(1)(a.1) or 2(1)(a.2) as it is not lancets, needles and syringes, ventilator supplies, or tracheostomy supplies and it is not a supply

required to thicken food. The panel finds that the ministry's decision, which concluded that the 560 Legendair Ventilator does not meet all of the applicable legislative criteria as set out in Section 2(1) 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 560 Legendair Ventilator is not an eligible item as medical equipment specifically set out in Sections 3 and 3.1 through 3.12 of Schedule C of the EAPWDR. At the hearing, the ministry pointed out that Section 3.9(4) of Schedule C of the EAPWDR specifically excludes a ventilator from consideration as a health supplement under Section 3 of the Schedule. The appellant's position is that the 560 Legendair Ventilator is a positive airway pressure device, as stated by both her physician and her respiratory therapist and, therefore, falls within Section 3.9(1)(a) of Schedule C.

The panel finds that the ministry reasonably determined that the requested 560 Legendair Ventilator is not specifically set out in Section 3.1 through 3.12 of Schedule C of the EAPWDR as it is not: a cane, a crutch or a walker, or an accessory to 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, a portable commode chair, a standing frame or a positioning chair, or a transfer aid; a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed, or a positioning item on a hospital bed; a pressure relief mattress; a floor or ceiling lift device; a custom-made of off-the-shelf foot orthotic, custom-made footwear, a permanent modification to footwear, off-the-shelf footwear, off-the-shelf orthopedic 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, a foot abduction orthoses, or a toe orthosis; a hearing instrument or a non-conventional glucose meter. Although the appellant presented evidence that the 560 Legendair Ventilator is a positive airway pressure device under Section 3.9 of Schedule C, the panel finds that the provision in subsection (4) specifically excludes a ventilator from consideration as a health supplement for the purposes of Section 3 of Schedule C.

The ministry's position is that the appellant's request for a supplement to cover the cost of a 560 Legendair Ventilator 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 560 Legendair Ventilator 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 requested 560 Legendair Ventilator does not fall within any of these other sections of Schedule C. The panel finds that the ministry's decision, which concluded that the 560 Legendair Ventilator 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 argued 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 argued that the information submitted does not establish that the appellant faces a direct and imminent life-threatening health need for the 560 Legendair Ventilator. The ministry further argued that information has not been provided to demonstrate that the requirements of Section 69(d) are met as a 560 Legendair Ventilator 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 3.12. The appellant's position is that several professionals support her application for a 560 Legendair Ventilator, including her caregiver, physician, respiratory therapist and other members of the health team, that she is dependent on the use of a ventilator to survive and it is,

therefore, she faces a direct and imminent life threatening health need. The appellant's position is that the 560 Legendair Ventilator is a positive airway pressure device, as stated by both her physician and her respiratory therapist and, therefore, falls under Section 3.9(1)(a) of Schedule C.

The panel finds that the ministry reasonably determined that the appellant is eligible 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 appellant's physician stated that the appellant is ventilator-dependent and that, without it, she would not survive. The appellant's caregiver and the other members of her health team stated that the appellant is currently using a ventilator on loan from the hospital and this is not a long-term solution and that her quality of life and state of health is much improved at home over the only other alternative of ventilation in the ICU at the hospital. The appellant's caregiver stated that the appellant requires the use of a ventilator 19 to 22 hours out of a 24-hour period in a day. The panel finds that the ministry's conclusion that the information submitted does not establish that the appellant faces a direct and imminent life-threatening health need for the 560 Legendair Ventilator, pursuant to Section 69(a), was not reasonable. However, the panel finds that the ministry reasonably determined that the requirements of Section 69(d) are not met as a 560 Legendair Ventilator 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 3.12, as detailed above. Although the appellant argued that the 560 Legendair Ventilator is a positive airway pressure device which is covered under Section 3.9 of Schedule C, the panel finds that the provision in subsection (4) specifically excludes a ventilator from consideration as a health supplement for the purposes of Section 3 of Schedule C. Therefore, the panel finds that the ministry's decision, which concluded that all of the criteria in Section 69 of the EAPWDR are not met, 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 560 Legendair Ventilator as not meeting the legislated criteria of Schedule C, Sections 3, 3.1 to 3.12, 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.