APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated June 6, 2013 wherein the ministry denied the appellant's request for funding for a variety of different items for medical purposes. The appellant is a recipient of disability assistance, and the ministry determined that the appellant was not eligible for the requested items:

- as medical supplies, as provided in sections 2(1)(a), (a.1) or (a.2) of Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR);
- as medical equipment or devices, as provided in sections 3 to 3.12 of Schedule C;
- as any health supplement under any other sections of Schedule C; or
- as a health supplement for a person facing a direct and imminent life threatening need under s. 69 of the EAPWDR.

The ministry also found that the appellant's request is not "grandfathered" under s. 2(3) of Schedule C.

PART D – Relevant Legislation

EAPWDR section 62 *[general health supplements]*; section 69 *[health supplement for persons facing direct and imminent life threatening health need]*; and Schedule C.

PART E – Summary of Facts

The appeal record in this case comprised well over 1,000 pages of material in 4 bound volumes. The panel has reviewed all of this information. The relevant information before the ministry at the time of reconsideration included the following:

- The appellant is designated as a person with disabilities (PWD) and is a recipient of disability assistance.
- In 2002 the appellant's physician at the time provided the ministry with a list of diagnoses for the appellant. As a result of the diagnosed health conditions the ministry provided the appellant with a number of medical supplies, with authorization for those supplies being renewed on an annual basis by means of a Standing Offer to Supply from a local pharmacy.
- On February 7, 2013 the appellant's caregiver provided to the ministry a list of supplies with a number of items previously supplied deleted (the "Caregiver's List").
- On March 22, 2013 the appellant forwarded to the ministry a 3 page request listing over 80 different items (the "March 22nd List"). The appellant's current physician (the "Physician") had initialed all three pages and signed the last page, adding the notation "[The appellant] does need all of these."
- On March 22nd the Physician responded to a questionnaire supplied to him by the ministry, seeking clarification of the medical justification for several of the items on the March 22nd List and of the amount needed on a daily, weekly or monthly basis (the "Questionnaire").
- On May 23, 2013 the appellant's pharmacy responded by e-mail to a query from the ministry, clarifying the items provided to the appellant by the pharmacy over the previous year under a Standing Offer to Supply, including information on their number and frequency.

In its reconsideration decision, the ministry identified the 24 following items as being "denied":

1. AA Batteries for Blood Pressure Monitor
2. acidophilus
3. Active pads
4. Active underpants
5. AD ear wax guards
6. air purifier filter
7. air purifier ions
8. Atarax
9. batteries – 9 volt for TENS machine
10. Cerumol ear wax remover
11. elastic shoe laces
12. electropads
13. electrolines
14. foot odour insoles
15. Gravol
16. hearing aid batteries

17. hearing aid disinfectant
18. heel raisers
19. lactaid
20. Pepto Bismol
21. TENS gel
22. TENS tape
23. Maalox or Tums
24. Universal wipes

The ministry, however, excluded 3 of these items (AD ear wax guards *[item 5]* , hearing aid batteries *[item 16],* and hearing aid disinfectant *[item 17]*) from its reconsideration decision on the basis that these are not part of the Standing Offer to Supply and are subject to a separate reconsideration. At the appeal hearing the appellant conceded that the hearing aid batteries are no longer at issue. The panel's jurisdiction is limited to the reconsideration decision that is the subject of this appeal. Since items 5, 16 and 17 are subject to a separate reconsideration, the panel has not given further consideration to them in this appeal.

In the Questionnaire, the Physician indicated that the acidophilus *[item 1]* and the Universal wipes *[item 24]* could be stopped.

The Physician also indicated in the Questionnaire that the Atrax *[8]*, Gravol *[15]*, Lactaid *[19]*, Pepto Bismol *[20]*, and Tums *[23]* are needed by the appellant, but confirmed that they are not directly needed for any of the purposes described in the legislation. He confirmed that these items are not necessary to avoid an imminent and substantial danger to the appellant's health.

At hearing the appellant submitted 21 pages of typed material, which the panel accepted as written argument.

The appellant said that over the years this is his 4th appeal hearing with respect to various denied items, that his medical conditions are all deteriorating as he ages, and that his need for the denied items will never go away. He stated that it would save the health care system money to provide him with the requested items, as without them his health will deteriorate further, requiring more money to be spent on his care. The appellant said that the ministry took on the role of providing for him many years ago when it designated him as a PWD, and it has a responsibility to allow him to live as independently as possible. According to the appellant, it costs him money to have his caregiver attend tribunal hearings, and it is not part of her job description.

The appellant reported as follows with respect to individual requested items:

1. AA batteries for blood pressure monitor – He used to be on blood pressure medication, but his blood pressure has moderated and he is no longer on this medication. He still monitors his blood pressure daily as a preventative measure.
2. Acidopholus – needed for acid reflux.

6 and 7. air purifier filter and air purifier ions – required for asthma as his house is dusty.

8. Atarax – an antihistamine he takes for asthma.
9. batteries – 9 volt for TENS machine - The appellant uses the TENS machine to control the constant pain he endures from cerebral palsy.

10. Cerumol ear wax remover – required to keep his hearing aids in working order.
11. elastic shoe laces – Because of his cerebral palsy, these shoe laces are easier to handle.
12 and 13. Electropads and electrolines – required for the TENS machine.
14. foot odour insoles – Because of his club feet and weak ankles, the appellant has to wear special socks which cause his feet to sweat excessively, thereby necessitating odour control.
16. hearing aid batteries – The appellant does not dispute the decision regarding hearing aid batteries as they are provided separately.
18. heel raisers – The appellant acknowledged that he does not need these. (The ministry noted in its reconsideration decision at page 42 of the appeal record that the appellant had received permanent heel raisers as a modification to his footwear in January 2012.)
19. Lactaid – required so the appellant can eat dairy products.
20. Pepto Bismol – required for acid reflux.
21 and 22. TENS gel and TENS tape – required for the TENS machine which he uses for pain relief.
23. Maalox or Tums – required for acid reflux.
24. Universal wipes – the appellant conceded these are no longer needed and can be stopped.

The appellant said that as well as the 24 items identified as denied by the ministry, the number of asthma masks was reduced from 10 to 4 without explanation, asthma filters are not being supplied, and 1 box of lancets monthly are required. Regarding the asthma masks, the appellant wrote in his submission "I have to nebulae 10 times a day these masks are not washable and needs to be thrown in the garbage 4 masks per month is not enough I was asking for 31."

In response to a question as to why the appellant requested Lactaid after the caregiver had deleted it from the Caregiver's List, the appellant replied that it should not have been deleted as the Physician supported its need.

The appellant's caregiver provided oral testimony with respect to the requested items as follows:

6 and 7. Air purifier filter and ions – have to be replaced every couple of weeks because the house is dusty.
10. Cerumol ear wax remover – required to maintain operation of hearing aids.
11. elastic shoe laces – required as the appellant has difficulty otherwise. The caregiver has been tying the appellant's shoes for years.
14. foot odour insoles – Despite daily showers, the appellant has a foot odour problem which has to be addressed with the insoles.
15. Gravol – needed by the appellant.
19. Lactaid – helps settle the appellant's stomach.
20. Pepto Bismol – The caregiver said she doesn't know for sure, but that the appellant says it helps.

The caregiver said that the Physician and the caregiver had gone through the list of previously provided items to see what could be reduced or eliminated – not that they weren't needed, but some could be reduced somewhat. She confirmed that there had been "a couple" that the appellant could do without.

In the panel's view the oral testimony of the appellant and the caregiver provide additional detail with

respect to the requested items and the appellant's need for them. The panel has accepted this oral testimony as evidence in support of the information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act.*

The ministry relied on its reconsideration decision and provided no new information.

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PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision to deny the requested items is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was it reasonable for the ministry to determine that the appellant was not eligible for the requested items:

- as medical supplies, as provided in sections 2(1)(a), (a.1) or (a.2) of Schedule C of the EAPWDR;
- as medical equipment or devices, as provided in sections 3 to 3.12 of Schedule C;
- as any health supplement under any other sections of Schedule C; or
- as a health supplement for a person facing a direct and imminent life threatening need under s. 69 of the EAPWDR;

and that the requested items were not grandfathered under s. 2(3) of Schedule C.

The relevant legislative provisions are described as follows:

EAPWDR Schedule C

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;

(a.1) the following medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies:

(i) lancets;

(ii) needles and syringes;

(iii) ventilator supplies required for the essential operation or sterilization of a ventilator;

(iv) tracheostomy supplies;

(a.2) consumable medical supplies, if the minister is satisfied that all of the following requirements are met:

(i) the supplies are required to thicken food;

(ii) all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies; ...

Section 2(1.1) of Schedule C, provides that for the purposes of subsection 2(1)(a), "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(3) of Schedule C provides that "If the minister provided a benefit to or for a person under section 2(3) of Schedule C of the Disability Benefits Program Regulation, B.C. Reg. 79/97, the Income Assistance Regulation, B.C. Reg. 75/97 or the Youth Works Regulation, B.C. Reg. 77/97, as applicable, for the month during which the regulation was repealed, the minister may continue to provide that benefit to or for that person as a supplement under this regulation on the same terms and conditions as previously until the earlier of the following dates:

(a) the date the conditions on which the minister paid the benefit are no longer met;
(b) the date the person ceases to receive disability assistance.

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 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. Among the requirements in relation to a positive airway pressure device is that the medical need for it must be confirmed by an assessment performed by a respiratory therapist.

Section 3.10 provides that each of the following items is 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 3.12 provides that a non-conventional glucose meter is a health supplement for the purposes of section 3 of the Schedule, it the other criteria of the section are met.

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 is 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.

EAPWDR

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 3.12, other than paragraph (a) of section 3 (1).

* * *

The appellant's position

The appellant argued that the requested items are grandfathered as they have been provided to him by previous decisions of tribunal panels, and that the previous decisions can't be overruled by this panel. He said that his medical conditions won't get better, they will only get worse, so he has an ongoing lifetime need for the requested items. The appellant argued that it costs him $50 each time he obtains a physician's letter to support his requests for these items, and that the physicians don't understand the ministry's requests for ongoing confirmation of his need for the items, since his need will never diminish. The appellant also requested that if this panel confirms that he has an ongoing lifetime need for the requested items, to use wording to ensure our decision will bind future ministry and tribunal decision makers so as to create an ongoing obligation for the ministry to provide these items.

The appellant also argued that he has a life threatening health need for each of the requested items, and that he has no other resources with which to pay for them. He said that satisfying these two criteria is sufficient to make him eligible for the requested items. The appellant said that the Physician's determination of what constitutes a life threatening health need should be given more weight than that of the ministry, since the ministry decision makers are not medical practitioners.

The ministry's position

The ministry's position, as set out in its reconsideration decision, is that the ministry has no indefinite obligation to continuously provide the same assistance or benefits previously provided by a decision of the minister or a tribunal panel, unless provided by the legislation. The ministry argued that the requested items are not "grandfathered" by section 2(3) of Schedule C as they had never been covered by that section or the predecessor legislation to which it applies. The ministry said that when the facts related to the provision of assistance or benefits have changed and a person is no longer eligible, the minister must act upon this information.

The ministry also argued that based on a review of the evidence and the legislation, the appellant does not satisfy the legislated criteria for the requested items.

Panel Decision

Ongoing obligation

The general rule is that legislation does not impose an indefinite obligation on government to provide benefits. (*Duncan Matthew McLean v. HMTQ* [2004 BCSC 285]). The legislature is free to change its legislation within its constitutional competence as it wishes. There is no evidence before the panel on which we can conclude that any of the requested items fall within the grandfathering provisions of s. 2(3) of Schedule C, or that the relevant legislation otherwise compels the ministry to provide the requested items indefinitely.

Regarding the effect of the previous tribunal decisions, the general rule is that administrative tribunals can only exercise the powers that are provided in their enabling legislation, and that their decisions do not provide precedent that is binding on future administrative decision makers. The panel notes that the last decision of a tribunal panel to which we were referred by the parties (from December 2010), was based on a version of Schedule C of the EAPWDR which was amended subsequent to the appellant's application in that case. This panel is bound to apply the legislation as it stood at the time the appellant requested the subject items by submitting his March 22nd List, and must apply the legislation to the facts as we find them. Accordingly, we are not bound to follow the previous tribunal decisions, and even though the appellant asked us to do so, we do not have the authority to bind future ministry or tribunal decision makers.

Based on this analysis, the panel finds that the ministry reasonably concluded that the 21 requested items that are the subject of this appeal (that is, the original 24 less the 3 that the panel has found are subject to a separate reconsideration) are not grandfathered so as to compel the ministry to provide them indefinitely.

Legislative criteria

The panel will go on to consider the requested items in the context of the current legislation (which was in place on March 22, 2013) and the evidence.

Item 1. AA batteries for blood pressure monitor – The panel finds that the ministry reasonably determined that these batteries are not available as medical or surgical supplies under s. 2(1)(a) of Schedule C as there is no prescription for them from a medical or nurse practitioner. The appellant confirmed that he is no longer on blood pressure medication, and that he checks his blood pressure purely for monitoring purposes. Accordingly, there is insufficient evidence that the batteries are necessary to avoid an imminent and substantial danger to health as required by s. 2(1)(a)(ii)(C). A blood pressure monitor and accessories are not listed in s. 2(1)(a.1) or (a.2), are not included as medical equipment or devices, and are not a health supplement as set out elsewhere in Schedule C. Since blood pressure monitors and accessory batteries are not a health supplement, and since there is insufficient evidence that the appellant faces a direct and imminent life threatening need for them, the criteria of EAPWDR s. 69 are not satisfied. Accordingly, the panel finds the ministry reasonably determined that the appellant is not eligible for AA batteries for a blood pressure monitor.

Item 2. Acidophilus – The physician confirmed that acidophilus could be stopped. Since it is no longer prescribed by a medical or nurse practitioner, it does not satisfy the criteria as a medical or surgical supply under s. 2(1)(a). Acidophilus is not listed in s. 2(1)(a.1) or (a.2), is not included as medical equipment or devices, and is not a health supplement as set out elsewhere in Schedule C. There is insufficient evidence that the appellant faces a direct and imminent life threatening need for acidophilus, so the criteria of EAPWDR s. 69 are not satisfied. Accordingly, the panel finds the ministry reasonably determined that the appellant is not eligible for acidophilus.

Items 3 and 4. Active pads and Active underpants have been discontinued and the appellant is receiving other equivalent items for incontinence. Accordingly, the panel finds the ministry reasonably determined that the appellant is not eligible for Active pads or Active underpants.

Items 6 and 7. Air purifiers and accessories (filters, ions) are not needed for a purpose set out in s. 2(1)(a) and are not identified in s. 2(1)(a.1) or (a.2), are not included as medical equipment or devices, and are not a health supplement as set out elsewhere in Schedule C. Since they are not a health supplement, and since there is insufficient evidence that the appellant faces a direct and imminent life threatening need for them, the criteria of EAPWDR s. 69 are not satisfied. Accordingly, the panel finds the ministry reasonably determined that the appellant is not eligible for air purifier filters and ions.

Item 8. Atarax is a prescription medication, so as provided in section 2(1.1) of Schedule C it is not a medical or surgical supply. The Physician confirmed that is not required for a purpose listed in s. 2(1)(a) and that it is not necessary to avoid an imminent and substantial danger to health. Atarax is not included in Schedule C as medical equipment or devices, and is not described as a health supplement elsewhere in Schedule C. Since it is not a health supplement, and since there is insufficient evidence that the appellant faces a direct and imminent life threatening need for it, the criteria of EAPWDR s. 69 are not satisfied. Accordingly, the panel finds the ministry reasonably determined that the appellant is not eligible for Atarax.

Items 9, 12, 13, 21 and 22. TENS machines and accessories (9 volt batteries, electropads, electrolines, TENS gel and TENS tape) are not required for a purpose set out in s. 2(1)(a) and are not described in s. 2(1)(a.1) or (a.2). They are not included in Schedule C as medical equipment or devices, and are not described as a health supplement elsewhere in Schedule C. Since they are not a health supplement, and since there is insufficient evidence that the appellant faces a direct and

imminent life threatening need for them, the criteria of EAPWDR s. 69 are not satisfied. Accordingly, the panel finds the ministry reasonably determined that the appellant is not eligible for these TENS machine accessories.

Item 10. Cerumol ear wax remover is not needed for a purpose set out in s. 2(1)(a) and is not identified in s. 2(1)(a.1) or (a.2) so is not a medical or surgical supply. It does not satisfy the definition of a hearing instrument and is not included elsewhere in Schedule C as medical equipment or devices or as any other type of health supplement. Since it is not a health supplement, and since there is insufficient evidence that the appellant faces a direct and imminent life threatening need for it, the criteria of EAPWDR s. 69 are not satisfied. Accordingly, the panel finds the ministry reasonably determined that the appellant is not eligible for Cerumol ear was remover.

Items 11 and 14. Elastic shoe laces and foot odour insoles are not needed for a purpose set out in s. 2(1)(a) and are not identified in s. 2(1)(a.1) or (a.2), so are not medical or surgical supplies. They are not orthoses as identified in s. 3.10 of Schedule C, and are not otherwise identified as any kind of medical equipment or devices or as any other type of health supplement. Since they are not a health supplement, and since there is insufficient evidence that the appellant faces a direct and imminent life threatening need for them, the criteria of EAPWDR s. 69 are not satisfied. Accordingly, the panel finds the ministry reasonably determined that the appellant is not eligible for elastic shoe laces or foot odour insoles.

Items 15, 19, 20, and 23. The Physician has confirmed that Gravol, Lactaid, Pepto Bismol, and Maalox/Tums are not required for a purpose set out in s. 2(1)(a). They are not identified in s. 2(1)(a.1) or (a.2), Accordingly, they are not medical or surgical supplies. They are not identified as medical equipment or devices. Since these items are not otherwise identified as any other type of health supplement and are not necessary to avoid an imminent and substantial danger to health, the criteria of EAPWDR s. 69 are not satisfied. Accordingly, the panel finds the ministry reasonably determined that the appellant is not eligible for Gravol, Lactaid, Pepto Bismol, or Maalox/Tums.

Item 18. The evidence indicates that the appellant has already received heel raisers in the form of permanent modifications to his footwear, and the appellant has confirmed that heel raisers are no longer in dispute. Accordingly, the panel finds the ministry reasonably decided not to provide this item.

Item 24. The Physician has confirmed that Universal wipes can be stopped. Since there is no prescription for the item from a medical or nurse practitioner, and since the item is not identified in s. 2(1)(a.1) or (a.2), it does not qualify as a medical or surgical supply. It is similarly not identified as a medical device or equipment, or as any other health supplement. Since it is not a health supplement, and since there is insufficient evidence that the appellant faces a direct and imminent life threatening need for it, the criteria of EAPWDR s. 69 are not satisfied. Accordingly, the panel finds the ministry reasonably determined that the appellant is not eligible for Universal wipes.

With respect to the additional items raised by the appellant at appeal (the lancets, the asthma filters, and the asthma masks), the panel notes that the reconsideration decision did approve one box of lancets per month, as requested by the appellant in the March 22nd List and on appeal, so the panel finds that the lancets are not at issue. Regarding the asthma filters, they do not appear on the March 22nd List, and were not addressed in the reconsideration decision. Accordingly, the panel finds it is

not within our jurisdiction to address them. Regarding the asthma masks, the appellant requested 10 packages per month on the March 22nd List. In the reconsideration decision the ministry indicated that Health Assistance Branch had approved "4 each monthly". No evidence was provided to the panel as to how many asthma masks are contained in each package, so the panel is unable to determine how the 10 packages per month requested by the appellant in the March 22nd List relates to the 31 masks per month referred to by the appellant on appeal or the "4 each monthly" approved by the ministry. No medical evidence was provided on the number of uses one should reasonably expect from an asthma mask, beyond the Physician's note at the end of the March 22nd List that "[The appellant] does need all of these." Given the Physician's subsequent confirmation that there were, indeed, some items on the March 22nd List that were no longer needed, the panel finds that the evidence is insufficient to show that the ministry's decision on the number of asthma masks to provide was unreasonable.

Conclusion

The panel acknowledges that the appellant suffers from a number of health conditions from which the requested items offer a degree of relief. The panel also acknowledges that it must be frustrating for the appellant to find that he is ineligible for items which were previously provided to him. However, the panel is bound by the legislation, and as detailed above the evidence falls short of demonstrating that the legislative criteria have been satisfied to allow the ministry to provide the requested items or to require that they be provided in the number requested by the appellant. For the reasons provided above, the panel finds that the ministry's decision is a reasonable application of the applicable legislation in the appellant's circumstances and confirms the ministry's decision.