



## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) January 21, 2014 reconsideration decision denying the Appellant’s request for an insulin pump with a continuous glucose monitoring system because the Ministry determined that the Appellant did not meet the eligibility requirements for:

- a health supplement under section 62 and Schedule C of the Employment and Assistance for Persons with Disabilities Regulation;
- a nutritional supplement under section 67 of that regulation; or,
- a health supplement for a life-threatening health need under section 69 of that regulation.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) Sections 62, 67, 69 and Schedule C.



## PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the Employment and Assistance Act.

For its reconsideration decision, the Ministry had the following evidence:

1. Information from its records that the Appellant is a Person With Disabilities (“PWD”) and receives disability assistance.
2. Appellant’s September 3, 2013 Medical Equipment Request and Justification form signed by a doctor for an insulin pump and continuous glucose monitoring system, together with a quote from a medical supplier for that equipment and for monthly consumable supplies.
3. Email correspondence between the equipment supplier and a social worker regarding the cost of the items and information from the supplier advising that it does not upgrade pumps and also no longer sells the equipment the Appellant was using. His current pump is not compatible with continuous glucose monitoring.
4. Letter dated July 12, 2013 from a doctor to the Ministry advising that:
  - The Appellant, who is his patient, has type 1 diabetes, diagnosed as a youth.
  - The doctor has followed the Appellant regularly since 2002.
  - The Appellant has significant complications from his diabetes, including retinopathy with multiple ophthalmologic procedures, nephropathy currently being assessed for renal transplantation, neuropathy with distal pain and, auto? Neuropathy with recurrent admissions for intractable vomiting (diabetic gastro paresis).
  - The Appellant has been on insulin pump therapy since February 2010, leading to some improvement in his A1C testing and some improvement in his gastro paresis.
  - The doctor believes that the Appellant’s glycemic control could be better, leading to an improvement/stabilization of all diabetic complications if they could add a continuous blood glucose monitoring system to his insulin pump.
5. Prescription note dated August 19, 2013 completed by the same doctor for the Appellant for a specific type of insulin pump.
6. Appellant’s request for reconsideration, with a written statement from him noting that:
  - He is a brittle diabetic of 32 years with multiple side effects including kidney failure.
  - He suffers from frequent low blood sugar which he no longer feels and which is extremely dangerous to his life.
  - He suffers from some high blood sugars that he also does not feel.
  - He believes the requested item is medical equipment not a health supplement.
  - His current pump is outdated and no longer doing its job.
  - The requested equipment is a life saving piece of equipment.
  - There was a change to the legislation.

For this appeal, the Appellant submitted a written statement, a letter dated February 18, 2014 from the same doctor and a letter dated February 18, 2014 from a social worker.

In his statement, the Appellant wrote that there is no other funding source (Diabetes Association) that will cover the costs of the device. He has been working with the social worker for a kidney transplant program at a hospital and she has exhausted all potential funding resources for him, as indicated in the letter from her. The Appellant wrote that he has no other funding resources available to him other than the Ministry. The Appellant stated that the requested device is life saving and critical due to his dangerously low-blood sugars.

In the February 18, 2014 letter, the doctor wrote, in support of the Appellant's request, that:

- The Appellant has had type 1 diabetes since 1982; has complications in the form of retinopathy requiring laser photocoagulation, neuropathy and nephropathy requiring medication; is in consideration for a pancreas and/or kidney transplant.
- He has followed the Appellant as a consultant in endocrinology since 2002 and his records indicate that the Appellant has been on an insulin pump since 2010.
- The Appellant has decent blood sugar control as evidenced by his A1C, which most recently was 8.2% in October 2013.
- The Appellant has repeated episodes of severe hypoglycemia resulting in unconsciousness and hospitalization – also a complication of his diabetes and potentially life threatening.
- He is concerned that without ongoing pump therapy the Appellant will miss doses or make other insulin dosing errors which would have an adverse effect on his long and short term diabetes management, therefore, an insulin pump and a continuous blood glucose monitoring system is a medical necessity.

In the February 18, 2014 letter, the social worker confirmed that she has been working very closely with the Appellant to obtain funding for his new insulin pump and continuous blood glucose monitoring system. She stated that she explored extensively other potential funding resources for the Appellant and the only option available to him is through the Ministry.

The Panel finds that the written statement from the Appellant and the February 2014 letters from the doctor and social worker provide information about the Appellant's medical conditions, his need for the requested item and his attempts to obtain funding for the item. Therefore, pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the statement and letters into evidence as being in support of the evidence the Ministry had at reconsideration.

The Ministry relied on and reaffirmed its reconsideration decision.

The Panel makes the following findings of fact:

1. The Appellant receives disability assistance as a PWD.
2. The doctor diagnosed the Appellant with type 1 diabetes since 1982 and complications in the form of retinopathy requiring laser photocoagulation, neuropathy and nephropathy requiring medication
3. The Appellant's doctor prescribed an insulin pump and continuous glucose monitoring system for the Appellant to ensure ongoing pump therapy so that the Appellant will not miss doses or make other insulin dosing errors which would have an adverse effect on his long and short term diabetes management.
4. The insulin pump and a continuous blood glucose monitoring system is a medical necessity for the Appellant.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably denied the Appellant's request for an insulin pump with a continuous glucose monitoring system because the Ministry determined that the Appellant did not meet the eligibility requirements for:

- a health supplement under section 62 and Schedule C of the EAPWDR;
- a nutritional supplement under section 67 of that regulation; or,
- a health supplement for a life-threatening health need under section 69 of that regulation.

The Ministry, in its reconsideration decision, considered the provisions of sections 62, 67(3), 69 and parts of Schedule C of the EAPWDR to determine if the Appellant's request met the legislated eligibility requirements for the requested item. The Panel has reviewed all of the legislation and the evidence and will consider whether the Ministry's determination under the specific provisions was reasonable. The Panel has reproduced only those regulatory sections applicable to the Appellant's appeal, as follows:

### *General health supplements*

62 (1) Subject to subsections (1.1) and (1.2), the minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who is

(a) a recipient of disability assistance.

### *Nutritional supplement*

67(3) The minister may provide a nutritional supplement for a period of 3 calendar months to or for a family unit if the supplement is provided to or for a recipient of disability assistance or a dependent child or a recipient of disability assistance.

### *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 section 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) a 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 the need.
- (b) the health supplement is necessary to meet the need.

### 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) cauterization; (D) incontinence; (E) skin parasite care; (F) limb circulation care;
- (iii) there are no resources available to the family unit to pay the cost or obtain the supplies.

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

(iv) tracheotomy 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.

(1)(c) through 2(2) – acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy.

2.1, - optical supplies, 2.2 eye examination 4 – dental supplement, 4.1 - crown and bridgework, 5 – emergency dental, 6 – diet supplements, 7- monthly nutritional supplement, 8 – natal supplement, 9 – infant formula.

### *Medical equipment and devices*

3(1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in section 3.1 to 3.12 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.

3.1 – canes, crutches and walkers, 3.2 wheelchairs, 3.3 wheelchair seating systems, 3.4 scooters, 3.5 bathing and toileting seats, 3.6 hospital bed, 3.7 pressure relief mattresses, 3.8 floor or ceiling lift devices, 3.9 breathing devices, 3.10 orthoses, 3.11 hearing instruments,

3.12 Non-conventional meters

(1) In this section, “non-conventional glucose meter” includes

(a) a continuous glucose monitoring meter, and (b) a talking glucose meter.

(2) A non-conventional glucose meter is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that

(a) the glucose meter is medically essential to test blood glucose levels, and (b) the person for whom the non-conventional glucose meter has been prescribed is unable to use a conventional glucose meter.

The Appellant's position is that he is eligible for funding for the requested insulin pump because it is a medical necessity and he has no other way to pay for it. He submitted a letter from a social worker who has been working with him and who confirmed that she had explored different funding sources for him. The Ministry is the last resort. He submitted that he has type 1 diabetes and complications from that condition, as confirmed by his doctor. For example, the doctor referred to repeated episodes of severe hypoglycemia resulting in unconsciousness and hospitalization, a condition which is potentially life threatening. The doctor also expressed concern that without ongoing pump therapy the Appellant will miss doses or make other insulin dosing errors which would have an adverse effect on his long- and short-term diabetes management. The Appellant submitted that he believes that the requested item is medical equipment not a health supplement. His current pump is outdated and no longer doing its job. For him, the requested equipment is a life saving piece of equipment.

### **Eligibility under Schedule C Section 2(1)(a)**

First the Ministry considered whether the requested item could be authorized under section 2(1)(a) of Schedule C; that is, as a disposable or reusable medical or surgical supply. The Ministry determined that the requested item is not a disposable or reusable medical or surgical supply. Also, based on the information about the Appellant's medical conditions, the Ministry determined that the requested item was not necessary for any of the conditions listed in section 2(1)(a)(i). It also determined that the requested item is not listed among the medical or surgical supplies which it may authorize under section 2(1)(a.1) or 2(1)(a.2) of that Schedule..

### *The Panel's Findings*

Under section 62 of the EAPWDR, the Ministry may authorize general health supplements or medical equipment/devices to recipients of disability assistance, such as the Appellant, but only if all the eligibility requirements in Schedule C are met for the specific health supplements or medical equipment/devices listed in Schedule C. Therefore, the Ministry may provide the general health supplements under section 2(1) of Schedule C only if the supplies are needed for the specific purposes itemized in section 2(1)(a), or if the requested item is specifically listed in section 2(1)(a.1) or 2(1)(a.2). The Panel finds that the doctor prescribed a specific type of insulin pump for the Appellant to manage his diabetes. This is not one of the purposes listed in section 2(1) nor is the

requested insulin pump one of the supplies listed in section 2(1)(a.1). The Panel further finds that there is no evidence that the insulin pump falls within the provisions of section 2(1)(a.2). Therefore, the Panel finds that the Ministry reasonably determined that the Appellant is not eligible for the requested insulin pump under Schedule C section 2(1).

### **Eligibility under Schedule C Section 3**

Next the Ministry considered whether it could provide the insulin pump with a continuous glucose monitoring system as medical equipment under the provisions of section 3 of Schedule C. The Ministry noted that, if the eligibility requirements in section 3(1)(b) are met, it is authorized to provide only the specific medical equipment/devices listed in section 3.1 through 3.12. The Ministry determined that the specific item requested by the Appellant is not listed as one of the eligible types of medical equipment under sections 3.1 through 3.11. It further considered the definition of a non-conventional glucose meter, which can be authorized under section 3.12. The Ministry determined that the continuous glucose monitoring system the Appellant is requesting is part of the requested insulin pump and an insulin pump is not an eligible type of medical equipment under section 3.12.

The Ministry also determined that the Appellant did not establish that he had sought other options to pay for the requested equipment as required under section 3(1)(b)(ii). The Ministry stated that it is the last resort.

#### *The Panel's Findings*

As the Panel noted in its previous findings, the Ministry can only authorize what is specifically provided for in the regulations. The Panel further notes that insulin pumps are not among the authorized types of medical equipment/devices in Schedule C section 3.1 through 3.11. Section 3.12 refers to a non-conventional glucose meter as an authorized type of medical equipment and states that such a meter includes a continuous glucose monitoring meter and a talking glucose meter. Based on the specific equipment prescribed by the doctor, the Panel finds that the Ministry reasonably determined that the continuous glucose monitoring system requested is part of the requested insulin pump and insulin pumps are not provided for under section 3.12.

With respect to the requirement to establish that there are no other resources to pay for the requested equipment, the Panel finds that the evidence demonstrates that the Appellant receives disability assistance, that the Appellant stated that he had tried other funding sources such as the Diabetes Association and that the social worker confirmed that she extensively explored other potential funding resources for the Appellant. The only option available to him is through the Ministry. Therefore, the Panel finds that it was not reasonable for the Ministry to determine that the Appellant had not satisfied the requirements of Schedule C section 3(1)(b)(ii).

### **Eligibility under Section 67(3) and Schedule C Sections 2 to 9**

The Ministry determined the requested equipment does not qualify as a nutritional supplement under section 67(3) of the EAPWDR as therapy under Schedule C section 2(1)(c), 2(2) and 2(2.1), or as one of the health supplements listed in section 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, or 9.

#### *The Panel's Findings*

The Panel finds that the evidence from the doctor establishes that the requested insulin pump with a continuous glucose monitoring system is a specific type of medical equipment needed by the Appellant to manage his diabetes. Therefore, the Ministry reasonably determined that the requested

equipment is not a nutritional supplement under EAPWDR section 67(3), not a therapy under Schedule C section 2 and not one of the health supplements specifically identified in Schedule C section 2.1 through 9.

### **Eligibility under Section 69**

The Ministry stated that the information provided by the Appellant demonstrates that the Appellant may face a direct and imminent life-threatening health need for the insulin pump with a continuous glucose monitoring system. However, it noted that under section 69 it can only provide the health supplements in Schedule C section 2(1)(a) and (f) and section 3. The Ministry determined that the requested item is not one of the health supplements set out in Schedule C section 2 and section 3 through 3.12. Therefore it could not approve the Appellant's request under section 69.

### *The Panel's Findings*

Section 69 of the EAPWDR imposes the same limitation on Ministry approval of supplies or medical equipment/devices as section 62; that is, the Ministry can only provide the specific supplements, therapies, or equipment/devices listed in Schedule C section 2 and 3. As discussed in the Panels' previous findings, the requested insulin pump with a continuous glucose monitoring system is not listed in any of those sections. Therefore, the Panel finds that the Ministry reasonably determined that that the Appellant's request did not meet the legislated criteria under section 69.

### **Conclusion**

The Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable legislation. Therefore, the Panel confirms that decision.