

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("the ministry") reconsideration decision dated January 21, 2014 which denied the appellant's request for funding for an insulin pump on the basis that:

- a. The appellant is not eligible for an insulin pump as medical equipment as provided for in Schedule C, section 3(1) of the *EAPWDR*;
- b. The appellant is not eligible for an insulin pump as a medical supply as provided for in Schedule C, section 2(1) of the *EAPWDR*;
- c. The appellant is not eligible for an insulin pump as it is not an item set out in any of the other sections of Schedule C of the *EAPWDR*; and
- d. The appellant was not eligible for the insulin pump as a life threatening health need as provided for by section 69 of the *EAPWDR* as the appellant was eligible for a health supplement as set out under Schedule C, sections 2(1)(a) and (f) and 3 of the *EAPWDR*.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 62 and 69, Schedule C sections 2-9

PART E – Summary of Facts

The appellant did not attend the hearing. The panel received confirmation from the Tribunal that the appellant had been notified of the date, time and location of the hearing. Accordingly, under s. 86(b) of the *Employment and Assistance Regulation*, the panel heard the appeal in the appellant's absence. The appellant's advocate attended the hearing in person and was in possession of the appeal materials. While there was no formal release of information signed by the appellant in favour of the advocate, the fact that the advocate had the appeal materials satisfied the panel that the appellant had provided implicit consent to the advocate to attend the hearing and represent her interests.

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

1. The appellant's Request for Reconsideration dated January 6, 2014 attaching the following:
 - a. Five pages of written submissions prepared by the appellant's advocate;
 - b. A letter dated December 19, 2013 from the appellant's family physician and addressed to "To Whom It May Concern" (the "GP Letter");
 - c. Two pages of product information regarding the proposed insulin pump;
 - d. A handwritten note dated January 6, 2014 prepared by the appellant setting out a portion of her monthly expenses and noting her employment status; and
 - e. A two page statement from the appellant's bank for the period of November 30, 2013 through January 6, 2014.
2. A Medical Equipment Request and Justification form (the "Request Form") dated December 4, 2013 requesting an insulin pump for the appellant;
3. A letter dated October 30, 2013 from the appellant's medical specialist addressed to the appellant's family physician (the "Consult Report");
4. A one-page Wikipedia excerpt dated December 5, 2013 setting out the definition of a medical condition; and
5. An undated quote from a medical equipment supply company for an insulin pump and associated monthly supplies.

In the Request Form, the appellant's physician recommends that she use an insulin pump but no comments are provided as to the appellant's condition.

In the Consult Report, the appellant's physician notes that he has followed the appellant from March 2006 through December 2011 and he summarizes the appellant's condition as "largely uncontrolled Type 1 or Type 2 diabetes, CKD [chronic kidney disease] Stage 1 last time checked, optimally controlled hypertension and has some mental health issues." The physician goes on to say that "Considering the last diagnosis and considering the fact that she is not very compliant to her insulin injections as well as not very compliant to medications and considering her forgetfulness that she insists that she has, I believe this patient would be best served with an insulin pump."

In the written submissions attached to the Request for Reconsideration, the appellant's advocate submits the appellant has been diagnosed with Type 1 and Type 2 diabetes as well as mental health issues, that she has been designated as a Person With Disabilities under the *EAPWDR*, that she applied for the insulin pump and provided the Consult Report. The advocate submits further that in the GP Letter, the appellant's family physician indicates that the appellant had been recently hospitalized due to diabetic ketoacidosis which the advocate submits is a potentially life threatening complication in patients with diabetes mellitus.

The advocate submits further in the written submissions that the appellant is eligible for medical equipment and devices under Schedule C of the *EAPWDR*, that she has had to stop work due to medical complications, has received an eviction notice and submitted a preauthorization to the Ministry for the insulin pump. The advocate states that the appellant does not have the resources to purchase the insulin pump which was prescribed by her family physician.

In the GP Letter, the appellant's physician states that the appellant is in need of a continuous glucose monitor in the form of an insulin pump and that she is a diabetic patient that has obsessive compulsive disorder which prevents her from taking her medications, including insulin, in a timely manner. The physician goes on to comment that the appellant is "in desperate need of an insulin pump, as this would regularly check her blood sugar levels and constantly remind her of her body's insulin requirement."

In response to a question, the advocate confirmed that the proposed insulin pump also monitors glucose levels.

At the hearing of the appeal, the ministry confirmed that the appellant is eligible for health supplements under section 62

of the *EAPWDR* but that while the ministry is able under the legislation to fund a non-conventional glucose monitoring system, an insulin pump as requested by the appellant is not an eligible item. The ministry referred to the Consult Letter which indicates that the appellant "would be best served with an insulin pump" and the ministry stated that the appellant's problem is that she forgets to take her insulin and that there was no follow up from the medical specialist as to whether the appellant was able to control her diabetes by taking her medication in the morning.

In response to a question, the ministry reiterated that the legislation is clear that an insulin pump is not an eligible item under Schedule C of the *EAPWDR* and that a non-conventional glucose monitor is sufficient to alert the appellant to take her insulin. The ministry stated that there is no reference whatsoever in the legislation to an insulin pump and stated that a non-conventional glucose monitor and an insulin pump are two different things. The ministry further stated that even if the non-conventional glucose monitor included an insulin pump, it would still not satisfy section 3.12 of Schedule C of the *EAPWDR*.

PART F – Reasons for Panel Decision

The issue on the appeal is the reasonableness of the ministry's decision to deny the appellant's request for an insulin pump on the basis that:

- a. The appellant is not eligible for an insulin pump as medical equipment as provided for in Schedule C, section 3(1) of the *EAPWDR*;
- b. The appellant is not eligible for an insulin pump as a medical supply as provided for in Schedule C, section 2(1) of the *EAPWDR*;
- c. The appellant is not eligible for an insulin pump as it is not an item set out in any of the other sections of Schedule C of the *EAPWDR*; and
- d. The appellant was not eligible for the insulin pump as a life threatening health need as provided for by section 69 of the *EAPWDR* as the appellant was eligible for a health supplement as set out under Schedule C, sections 2(1)(a) and (f) and 3 of the *EAPWDR*.

The applicable legislation is found in the *EAPWDR* 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,...

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 applicable provision that addresses medical equipment and devices is found in Schedule C of the *EAPWDR* as follows:

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;

(b) Repealed. [B.C. Reg. 236/2003, Sch. 2, s. 2 (b).]

(c) subject to subsection (2), a service provided by a person described opposite that service in the following table, delivered in not more than 12 visits per calendar year,

- (i) for which a medical practitioner or nurse practitioner has confirmed an acute need,
- (ii) if the visits available under the Medical and Health Care Services Regulation, B.C. Reg. 426/97, for that calendar year have been provided and for which payment is not available under the *Medicare Protection Act*, and
- (iii) for which there are no resources available to the family unit to cover the cost:

Item	Service	Provided by	Registered with
1	acupuncture	acupuncturist	College of Traditional Chinese Medicine under the <i>Health Professions Act</i>
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the <i>Health Professions Act</i>
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia under the <i>Health Professions Act</i>
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia under the <i>Health Professions Act</i>
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia under the <i>Health Professions Act</i>
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia under the <i>Health Professions Act</i>

(d) and (e) Repealed. [B.C. Reg. 75/2008, s. (a).]

(f) the least expensive appropriate mode of transportation to or from

- (i) an office, in the local area, of a medical practitioner or nurse practitioner,
- (ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,
- (iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the *Hospital Insurance Act Regulations*, or

(iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*,
provided that

(v) the transportation is to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, and

(vi) there are no resources available to the person's family unit to cover the cost.

(g) Repealed. [B.C. Reg. 75/2008, s. (a).]

(1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

(2) No more than 12 visits per calendar year are payable by the minister under this section for any combination of physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services.

(2.1) If eligible under subsection (1) (c) and subject to subsection (2), the amount of a general health supplement under section 62 of this regulation for physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services is \$23 for each visit.

(3) 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.

2.1 Optical supplements.

2.2 Eye examination supplements

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 3.12 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.

(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.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section 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 a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if

- (a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and
- (b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

(4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.

(5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if

- (a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and
- (b) it is more economical to repair the medical equipment or device than to replace it.

(6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

3.1 Medical equipment and devices — canes, crutches and walkers

3.2 Medical equipment and devices — wheelchairs

3.3 Medical equipment and devices — wheelchair seating systems

3.4 Medical equipment and devices — scooters**3.5 Medical equipment and devices — toileting, transfers and positioning aids****3.6 Medical equipment and devices — hospital bed****3.7 Medical equipment and devices — pressure relief mattresses****3.8 Medical equipment and devices — floor or ceiling lift devices****3.9 Medical equipment and devices — breathing devices****3.10 Medical equipment and devices — orthoses****3.11 Medical equipment and devices — hearing instruments****Medical equipment and devices — non-conventional glucose meters**

3.12 (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.

(3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of a non-conventional glucose meter is 5 years from the date on which the minister provided the glucose meter being replaced.

4 Dental supplements**Positions of Parties**

In her Notice of Appeal dated January 30, 2014, the appellant submits that the Reconsideration Decision was an unreasonable interpretation of the law to the facts. The appellant takes the following position:

1. The appellant is eligible for funding for an insulin pump as medical equipment under section 62 and Schedule C of the *EAPWDR*;
2. The requested insulin pump is also a continuous glucose monitor and as such is an eligible item under section 3.12 of Schedule C of the *EAPWDR*; and
3. That ambiguities within the context of social welfare benefits should be resolved in favour of the claimant citing the Supreme Court of Canada decision of *Abrahams v. Canada* (1983) 142 DLR (3d) 1.

The ministry's position as set out in the Reconsideration Decision is that:

1. The appellant is not eligible for funding for an insulin pump as medical equipment as the appellant has not satisfied section 3(1) of Schedule C of the *EAPWDR*;
2. The appellant is not eligible for funding for an insulin pump as a medical supply as the appellant has not satisfied section 2(1) of Schedule C of the *EAPWDR*;
3. The appellant is not eligible for funding for an insulin pump as it does not meet the criteria as therapy or a health supplement as provided by sections 2 through 9 of Schedule C of the *EAPWDR*;
4. The appellant is not eligible for funding for an insulin pump as a health supplement for a person facing a direct and imminent life threatening health need as the appellant has not satisfied section 69 of the *EAPWDR*; and
5. The Supreme Court of Canada's decision in *Abrahams* has no bearing on the legislation that guides the appeal of this matter.

Eligibility for insulin pump as medical equipment under Schedule C of the EAPWDR

Sections 3.1 to 3.12 of Schedule C of the *EAPWDR* set out the various examples of medical equipment and devices that may be provided by the ministry where a person satisfies the requirements of section 62 of the *EAPWDR*. The listed medical equipment and devices may be provided by the minister if certain conditions are met including that there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device.

In the present case, the appellant through her physician has requested funding for an insulin pump. The appellant's advocate argues that the proposed device serves a dual purpose insofar as it monitors glucose levels while also serving as an insulin pump and as such it satisfies the definition of "non-conventional glucose meter" which is an eligible item under Schedule C section 3.12 of the *EAPWDR*. The ministry argues that the insulin pump requested by the appellant is not an eligible item under Schedule C section 3.12 of the *EAPWDR* and that a non-conventional glucose meter does not include an insulin pump.

The panel notes that an insulin pump is not included in sections 3.1 through 3.12 of Schedule C of the *EAPWDR* and that section 3.12, which describe a non-conventional glucose meter as eligible medical equipment, does not make reference to it as including an insulin pump. The panel further notes that the Request Form prepared by the appellant's physician specifically requested an insulin pump and that the medical specialist recommends in the Consult Report that the appellant would be best served by an insulin pump. Further, the appellant's physician notes in the GP Letter that the appellant is in need of "a continuous glucose monitor in the form of an insulin pump."

The panel further notes that while the appellant has provided evidence of her monthly expenses and a bank statement, there is no evidence as to whether there are any other resources available to the appellant to pay the cost of or obtain the requested insulin pump including, as the ministry argues, the ministry of health disability association.

Given the aforementioned evidence, the panel finds that the ministry was reasonable in its decision to deny the appellant's request for funding for an insulin pump on the basis that it is not included as medical equipment or devices in sections 3.1 to 3.12 of Schedule C of the *EAPWDR* and on the basis that the appellant has not demonstrated that there are no resources available to her to pay the cost of or to obtain the insulin pump as required by section 3(1)(b) of Schedule C of the *EAPWDR*.

Eligibility for insulin pump as a medical supply under Schedule C of the EAPWDR

Section 2(1)(a) of Schedule C of the *EAPWDR* lists the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62. These health supplements include disposable or reusable medical or surgical supplies and consumable medical supplies.

On review of the legislation, the panel finds that the ministry was reasonable in its decision to deny the appellant's request for funding for an insulin pump on the basis that it is not included as a medical supply as provided by section 2(1)(a) of Schedule C of the *EAPWDR*.

Eligibility for insulin pump under any other section of Schedule C of the EAPWDR

Sections 2(1)(c), 2(2) and 2(2.1) of Schedule C of the *EAPWDR* provide that the ministry may provide acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physiotherapy treatments to a family unit. The panel finds that the ministry was reasonable in its decision to deny the appellant's request for funding for an insulin pump on the basis that it is not included in these sections of Schedule C of the *EAPWDR*.

Sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9 of Schedule C of the *EAPWDR* provide that the ministry may provide optical supplements, eye examination supplements, dental supplements, crown and bridgework supplements, emergency dental supplements, diet supplements, monthly nutritional supplements, natal supplements and infant formula to a family unit. The panel finds that the ministry was reasonable in its decision to deny the appellant's request for funding for an insulin pump on the basis that it is not included in these sections of Schedule C of the *EAPWDR*.

Eligibility for insulin pump as life threatening health need under section 69 of the EAPWDR

Section 69 of the *EAPWDR* provides that the minister may provide to a family unit any health supplement set out in sections 2(1)(a) and (f) and 3 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 the regulation and if the minister is satisfied that 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.

In this case however, the appellant has requested an insulin pump and, as set out above, the panel finds that an insulin pump does not constitute a "Health Supplement" as contemplated by Schedule C of the *EAPWDR* as it does not fit within any of the medical equipment or devices in sections 3.1 through 3.12 and is not a supplement as set out in section 2(1)(a) or (f).

As the appellant's request for an insulin pump does not meet the definition of a "Health Supplement", the ministry is not able to provide that to the appellant under section 69 of the *EAPWDR* regardless of whether there is evidence of a direct and imminent life threatening need and as such, the panel concludes that the ministry was reasonable in determining that the appellant was not eligible for insulin pump on the basis that she was facing a direct and life threatening health need as provided for by section 69 of the *EAPWDR*.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for an insulin pump was a reasonable application of the applicable enactment in the circumstances of the appellant, and therefore confirms the decision.