

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry) dated August 7, 2014 in which the Ministry denied the Appellant funding for a mandibular device (the device) for obstructive sleep apnea. The Ministry found that it was not authorized to provide the requested device because it is not an eligible item under sections 62 and 69 or Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), or the Ministry of Social Development Dental Supplement - Schedule of Fee Allowances – Dentist.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 62, 63, 69 and Schedule C

Ministry of Social Development Dental Supplement – Schedule of Fee Allowances - Dentist

PART E – Summary of Facts

The evidence before the Ministry at reconsideration included the following:

- The Appellant's Request for Reconsideration dated July 9, 2014 in which she requested a time extension to obtain further information from her doctor as he had new results for sleep apnea.
- A letter to the Appellant from the Ministry dated May 30, 2014 in which the Ministry stated that the request for the mandibular advancement device was denied because the Ministry has no legal authority to fund the purchase of the device.
- A Medical Equipment Request and Justification form signed by the Appellant on May 23, 2014, with section 2 (medical or nurse practitioner recommendation) completed by the Appellant's physician on May 7, 2014. The Appellant's physician indicated the Appellant suffers from obstructive sleep apnea, is unable to tolerate CPAP (the regular treatment for obstructive sleep apnea), and has co-existing insomnia without the device, which worsens her chronic fibromyalgia. The physician recommended a mandibular advancement device.
- A non-drug prescription from the Appellant's physician dated April 1, 2014 for a mandibular advancement device. The physician indicated the diagnoses as obstructive sleep apnea and the treatment as "mandibular advancement device as intolerant of CPAP".
- A copy of the Ministry's Dental Supplement booklet dated October 1, 2012 outlining the Ministry's policy for dental and denture supplements and a Schedule of Fee Allowances for various dental procedures and treatments.

In her Notice of Appeal dated August 22, 2014, the Appellant stated that she needs the device so that she can breathe properly when she is sleeping. She has a heart condition as well as fibromyalgia which cause her a great deal of pain and she requires as much rest as possible. The following documents were submitted with her Notice of Appeal:

- A note from the Appellant dated August 8, 2014 (added to her Request for Reconsideration) in which she stated that she had dental work done, and teeth extracted; therefore, the configuration (of her mouth) has changed and her bottom teeth have closed into a protrusion that hits the back of her top teeth.
- A letter from the Appellant's dentist dated July 31, 2014 confirming that the Appellant had 3 teeth in her upper arch/maxilla extracted since 2011. The dentist stated that her old sleep apnea device no longer fits due to the extractions and shifting of teeth.
- A referral letter from the Appellant's family physician dated July 24, 2014 stating that the Appellant has moderate obstructive sleep apnea, coronary artery disease, and fibromyalgia. The physician added that the Appellant is intolerant of CPAP (the regular treatment for obstructive sleep apnea), and a mandibular advancement device is indicated to reduce her chances of experiencing a significant cardiovascular event. The physician stated that without the device the Appellant's risk to life is significant. Her old device no longer fits her current teeth structure, and there are some treatments for her fibromyalgia that cannot be used as they could worsen her sleep apnea by increasing her nighttime sedation. The physician anticipates that the Appellant's fibromyalgia management will be more effective if she were to get the device.
- Two documents indicating "payment for first mandibular device": a) a letter to the Appellant from the Ministry of Employment and Income Assistance, Health Assistance Branch dated November 9, 2005 approving a request for a mandibular advancement oral appliance for sleep

apnea in the amount of \$2,200.00, and b) an invoice to the same Ministry office from a specialized dental clinic dated January 17, 2006 requesting payment for a mandibular advancement oral appliance for sleep apnea in the amount of \$2,200.00.

The Panel finds that the information in the Notice of Appeal relates to the Appellant's reported need for the device and the provision of a previous similar device, and admits it under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of information and records that were before the Ministry at the time the decision being appealed was made.

The appeal record also contains a letter to the Appellant from the Ministry dated August 12, 2014 in which the Ministry acknowledged receipt of the letters from the Appellant's dentist and physician (dated July 31, and July 24, 2014 respectively as outlined above). The Ministry stated that these letters were submitted a day after the due date for its reconsideration decision but it reviewed the information and determined that the outcome of the reconsideration remains the same.

In its reconsideration decision, the Ministry noted that it provided the Appellant with a CPAP machine in 2001 and there is no indication that she subsequently requested a replacement machine, a machine of a different type, or any masks or filters. The Ministry also noted that the Appellant was transitioned to Medical Services Only in October 2013; however, as she was designated as a Person with Disabilities at the time of transition, she is eligible to receive health supplements under section 62 and Schedule C of the EAPWDR.

The Ministry did not attend the hearing and after establishing the Ministry had been notified of the hearing date and time, the panel proceeded under section 86(b) of the Employment and Assistance Regulation.

At the hearing, the Appellant stated that she had 24 incidents (of interrupted breathing) within a minute, and the normal ratio is 5 interruptions per minute. This adds to her existing heart condition because she is not getting enough rest and cannot function during the day. She had several teeth extracted so she cannot get a replacement device and has to start over with a new one.

The Appellant reported that she only sleeps for 15 minutes; then she gets quite a bit of sleep in the morning hours but is jolted awake because she cannot breathe. On 2 occasions last week, she could not breathe at all in the middle of the night but tried not to panic as that makes it worse and she caught her breath and calmed herself.

She stated that the last time she had a CPAP machine she was allergic to the silicone mask, and was also claustrophobic from having it cover her face. In addition to fibromyalgia and her heart condition, she has osteoarthritis, degenerative disc disease, and feet that don't work properly. She further stated that the Ministry paid for the mandibular device the last time she had it so she doesn't know why they won't pay for it this time.

In response to questions from the Panel, the Appellant described the device as a retainer-like mouth appliance that is hinged at the back, and is placed at the back of her mouth at night to hold her airway open. The device allows her airway to stay open longer so that she can breathe.

She stated that she had the same type of device in 2005 and when she asked the Ministry why they paid for it then but won't pay for it now, they told her that she had to prove that they had paid for it. The Appellant explained that she then requested a copy of the invoice from the specialist dental clinic that had provided the device in 2005. She went to the Ministry office to show them the letter from the Health Assistance Branch dated November 9, 2005 and the invoice from the clinic (dated January 17, 2006) indicating that the Ministry had paid for the device. She filed these documents on August 22nd but the Ministry told her that it was too late to submit them and she would have to appeal the reconsideration decision through the tribunal.

When asked whether she still had the device that was provided in 2005, the Appellant stated that she has not had it since 2013 because she had moved and packed it in a box and was unable to unpack the boxes to look for it due to her health conditions. She stated that in any event, she would need a new device because her old one would not fit anymore due to the extractions she had, and the dental clinic was going to fit her for a new one and make it for her.

When asked about the CPAP machine the Ministry indicated it provided for her in 2001, the Appellant explained that she did not ask for a replacement machine or different type of machine because she was allergic to the silicone parts. She stated that the Ministry provided a different style machine but it still didn't work because the silicone was still a problem. The Appellant further stated that there is apparently a new kind of machine available but she has not tried it because her doctor thinks that the mandibular device would be better for her than another machine.

The Panel makes the following findings of fact:

1. The Appellant had Person with Disabilities status at the time she was transitioned to Medical Services Only, and is eligible to receive health supplements under section 62 and Schedule C of the EAPWDR.
2. The Appellant has sleep apnea, coronary artery disease, and fibromyalgia and her teeth structure has changed due to the extraction of 3 teeth since 2011. Her physician recommends the device to reduce the risk of a significant cardiovascular event.
3. The Appellant's previous sleep apnea device no longer fits her mouth.
4. The Ministry provided her with a CPAP machine in 2001; approved a request for a mandibular advancement oral appliance for sleep apnea in November 2005; and received an invoice for this device in January 2006.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's reconsideration decision of July 9, 2014, denying the Appellant funding for a mandibular device for sleep apnea on the basis that the Ministry was not authorized to provide the requested device because it is not an eligible item under sections 62 and 69 or Schedule C of the EAPWDR, or the Ministry of Social Development Schedule of Fee Allowances – Dentist.

Legislation

The following sections of the EAPWDR are relevant to the Appellant's request for a mandibular device

EAPWDR - Section 62 - 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

Section 63 - Dental supplement

63 (1) Subject to subsections (2) and (3), the minister may provide any health supplement set out in section 4 [*dental supplements*] of Schedule C that is provided to or for a family unit if the health supplement is provided to or for a person in the family unit who is eligible for health supplements under

- (a) section 62 (1) (a), (b) (iii), (d) or (e) [*general health supplements*],

EAPWDR - Section 69 - 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, if the minister is satisfied that

- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
- (b) the health supplement is necessary to meet that need,
- (c) the person's family unit is receiving premium assistance under the Medicare Protection Act, and
- (d) the requirements specified in the following provisions of Schedule C, as applicable are met:
 - (i) paragraph (a) or (f) of section 2(1);
 - (ii) sections 3 to 3.11, other than paragraph (a) of section 3(1).

EAPWDR - Schedule C Health Supplements

Definitions

1 In this Schedule:

"basic dental service" means a dental service that

- (a) if provided by a dentist,

- (i) is set out in the Schedule of Fee Allowances - Dentist that is effective April 1, 2010 and is on file with the office of the deputy minister, and (B.C. Reg. 65/2010)
- (ii) is provided at the rate set out for the service in that Schedule,

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.

(B.C. Reg. 66/2010)

(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;

(B.C. Reg. 197/2012)

(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.C. Reg. 197/2012)

(b) Repealed (B.C. Reg. 236/2003)

(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 prescribed by a medical practitioner or nurse practitioner has confirmed an acute need, (B.C. Reg. 317/2008)

(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:

(1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications. (B.C. Reg. 66/2010)

(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. (B.C. Reg. 10/2004) (B.C. Reg. 75/2008) (B.C. Reg. 318/2008) (B.C. Reg. 85/2012)

(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. (B.C. Reg. 318/2008) (B.C. Reg. 85/2012)

(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.

Optical supplements

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 (B.C. Reg. 197/2012)

(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: (B.C. Reg. 197/2012)

- (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.

(B.C. Reg. 197/2012)

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or 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. (B.C. Reg. 197/2012)

(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.C. Reg. 197/2012)

(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.

(B.C. Reg. 61/2010)

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 – bathing and toileting 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

Medical equipment and devices – positive airway pressure devices

3.9 (1) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule:

(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;

Dental supplements

4 (1.1) The health supplements that may be paid under section 63 [*dental supplements*] of this regulation are basic dental services to a maximum of

- (a) \$1 400 each period, if provided to a dependent child, (B.C. Reg. 65/2010)
- (b) \$1 000 each period, if provided to a person not referred to in paragraph (a), (B.C. Reg. 163/2005)

Submissions

Appellant's position: The Appellant's position is that the mandibular device is the type of appliance that her doctor recommends and it is vital to her health and life. Without it, she is unable to breathe properly and does not get enough rest. As a result, her medical conditions get worse. She argued that the Ministry paid for a similar device in 2005 and she cannot understand why they won't pay for a new one when her old device would no longer fit due to her recent tooth extractions. She is frustrated and willing to try anything including another CPAP, but the mandibular device is the one her doctor recommends as the best treatment for her conditions.

Ministry's position: The Ministry acknowledged that the Appellant's physician recommended the device and that the Appellant is eligible to receive health supplements under section 62 and Schedule C of the EAPWDR. However, the Ministry's position is that the information provided does not

establish that the eligibility criteria set out in the following sections of the EAPWDR have been met:

- The device does not fall under medical equipment in section 3.9 of Schedule C;
- The device does not fall under the Schedule of Fee Allowances – Dentist as referenced in section 1 of Schedule C; and
- A mandibular device is not an item set out in any of the other sections of the EAPWDR including the dental supplement provisions in section 63 and sections 4 and 4.1 of Schedule C;
- It is not a medical supply under section 2 of Schedule C, or one of the health supplements described in sections 2.1, 2.2; 5-9 of Schedule C or section 67 of the EAPWDR.
- It is not medical equipment under section 3.
- The Appellant is not eligible for a remedy under section 69 – Life-threatening health need because she is already eligible to receive health supplements under sections 2 and 3 of Schedule C.

Panel's decision

With regard to section 3.9 of Schedule C of the EAPWDR, the Ministry found that a mandibular device for obstructive sleep apnea is not one of the health supplements referred to in the section. The Panel notes that while this section pertains to devices for apnea that are medically essential for monitoring breathing, the only devices that are eligible are a positive airway pressure device, an apnea monitor, a suction unit, a percussor, a nebulizer, a medical humidifier and accessories and supplies for these items. The Panel therefore finds that the Ministry reasonably determined that the mandibular device recommended by the Appellant's physician is not an eligible item under this section.

Section 1 of Schedule C of the EAPWDR defines "basic dental service" as a service that is set out in the Schedule of Fee Allowances – Dentist that is on file at the Ministry office. Section 63 covers dental supplements, but only those that are referenced in section 4 of Schedule C of the EAPWDR which indicates that only "basic dental services" are eligible. The Ministry noted that a mandibular device for obstructive sleep apnea is not an item set out in the Schedule of Fee Allowances and that fee codes 14611 and 14612 cover standard mouth guards for bruxism at a rate of \$244.35 each. The Panel notes that the Appellant's physician does not indicate that the Appellant requires an appliance for any condition other than her obstructive sleep apnea. The Panel therefore finds that the Ministry reasonably determined that the device cannot be provided to the Appellant as a "basic dental service" under the Schedule of Fee Allowances – Dentist.

With regard to the medical supplies listed in section 2 of Schedule C of the EAPWDR, subsection 2(1)(a) authorizes the Ministry to fund disposable or reusable medical supplies if these supplies are provided for a specific purpose such as wound care. Other conditions must also be met such as the supplies being prescribed by a medical practitioner, and necessary to avoid an imminent or substantial danger to health. While the Appellant's physician has prescribed the mandibular device and noted that the Appellant's risk to life from a cardiovascular event is significant without it, eligible items listed under subsection 2(1)(a.1) include lancets, needles, and consumable medical supplies. The Panel notes that a mandibular device is not covered under subsection 2(1), and finds that the Ministry reasonably determined that the device is not a disposable or reusable medical supply that is necessary for any of the purposes set out in subsection 2(1)(a) of Schedule C.

In addition, other items that the Ministry may fund under section 2 of Schedule C of the EAPWDR include therapies such as acupuncture and massage therapy pursuant to subsections 2(1)(c), 2(2), and 2(2.1). The Panel notes that a mandibular device is not listed among any of these section 2 provisions, and finds that the Ministry reasonably determined that it cannot fund the device under section 2 of Schedule C of the EAPWDR.

The Ministry further noted that sections 2.1 and 2.2 of Schedule C describe health supplements related to eye care, and sections 5-8 of Schedule C and section 67 of the EAPWDR set out food-related health supplements that the Ministry may provide. The Ministry determined that none of these provisions include or apply to a mandibular device as requested by the Appellant and the Panel finds that the Ministry was reasonable in its conclusion because the device is not mentioned in these sections of the EAPWDR.

Similarly, section 3 of Schedule C sets out the general requirements for medical equipment and devices and subsection 3(1)(b) authorizes the minister to provide the equipment listed in sections 3.1 to 3.12 if certain conditions are met such as the item being the least expensive appropriate device. The Panel notes that a mandibular device for obstructive sleep apnea is not among the eligible items in sections 3.1 to 3.12 (devices and accessories for mobility, hearing, and glucose monitoring). The Panel therefore finds that the Ministry reasonably determined that the Appellant is not eligible for the device as medical equipment pursuant to section 3 of Schedule C.

Section 69 of the EAPWDR sets out the criteria for health supplements for persons "facing a direct and imminent life threatening health need". The supplements that may be provided to address the health need are those listed in Schedule C subsections 2(1)(a) and (f) [medical supplies and medical transportation], and section 3 [medical equipment and devices). Conditions that must be met include that the person is not otherwise eligible for a health supplement under the EAPWDR, and that he or she "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 (section 69(a)).

The Ministry determined that the Appellant does not require a remedy under section 69 because she is eligible to receive health supplements under sections 2(1)(a) and (f) and section 3. A mandibular device for obstructive sleep apnea is not on the list of eligible health supplements in these sections as indicated above. The Ministry further determined that the information provided did not establish a direct and imminent life threatening health need. The Panel notes that the Appellant's physician indicated a significant risk to the Appellant's life if she did not receive the device, but did not comment on whether the risk was also imminent. In any event, even if the physician had provided evidence confirming an imminent health need, the Appellant would still not be eligible under this section because, as noted above, she is otherwise eligible to receive health supplements and the device is not listed among the health supplements she is eligible for. The Panel finds that the Ministry was therefore reasonable in denying a health supplement for the device under section 69.

The Appellant argued that the Ministry approved a similar device in November 2005 and should therefore pay for one now when a new device is clearly indicated by the current configuration of her teeth and endorsed by her doctor as the best device for her conditions. The Panel notes that there is no information in the record to indicate under which legislative provisions the Ministry approved the previous mandibular advancement oral appliance. Similarly, there is nothing in the record to indicate under which provisions the invoice of January 17, 2006 could be paid.

The Panel further notes that the Ministry did not acknowledge paying for the Appellant's previous mandibular device. The Ministry told the Appellant that it was too late to submit further information when she provided the Ministry with a copy of the invoice on August 22nd. Based on the preceding analysis of the legislative provisions, the Panel cannot find any authority that would allow the Ministry to pay for a new device. The Panel also does not have the jurisdiction to look into why the Ministry covered a previous, similar device but not the device that is currently requested.

Accordingly, the Panel finds that the Ministry's reconsideration decision to deny the Appellant's request for funding for a mandibular device for obstructive sleep apnea was reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the Appellant. The Panel confirms the Ministry's reconsideration decision.