

### PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 3, 2015 that denied the appellant's application for anti-bacterial wipes, Cavi-Wipes, and day and night urine bags (30 of each per month). The ministry determined that the request did not meet the criteria set out in Employment and Assistance for Persons With Disabilities Regulation Schedule C. The ministry found that a medical practitioner prescribed the supplies and that the appellant does not have the resources available to meet the cost. However, the ministry found that the anti-bacterial wipes and Cavi-wipes are not required for one of the purposes listed in EAPWDR schedule C section 2(1)(a)(i), and are not the least expensive supply appropriate for the purposes and are not necessary to avoid an imminent and substantial danger to her health as required by section 2(1)(a)(ii)(B) and (C). The ministry determined that the day and night urine bags were required for a listed purpose but that the quantity requested was not the least expensive supply appropriate for the purpose and necessary to avoid an imminent and substantial danger to her health. The ministry approved 4 of each urine bags monthly.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disability Regulation (EAPWDR), section 62  
Employment and Assistance for Persons with Disability Regulation (EAPWDR), schedule C Section 2

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- A letter from the appellant's physician dated November 25, 2014 listing all of the permanent medical supplies the appellant needs for her ongoing care on a monthly basis. This list includes items she uses for permanent medical condition including pads and wipes for hygienic care, latex gloves, catheterization supplies, syringes, 35 urinary night bags, 35 urinary leg bags, 20 anti-bacterial wipes daily, etc.
- A letter from the appellant's physician dated November 25, 2014 listing all of the medical supplies she needs for her ongoing wound care on a monthly basis. This list includes items she uses for wound care including wound dressings, surgical gloves, wound wraps, distilled water, 3 containers of Cavi-Wipes (160 per container), etc.
- A letter from the appellant dated January 25, 2015, referring the reader to the list of items the physician has confirmed she needs for wound care. The appellant writes that the physician failed to include all of the ailments she has when the physician submitted the list.
- A letter written by the appellant's physician dated February 13, 2015. The physician writes the appellant has ongoing and recurrent urinary tract infections because she is unable to effectively clean her perineum when she soils herself. She is requesting Cavi-wipes, anti-bacterial wipes, and 30 day and 30 night urinary bags per month. She has an ongoing decubitus ulcer (bedsore) in the sacral region that has been a source of contamination to her urine. She is requesting an increase to the standard number of bags usually issued.
- In her request for reconsideration the appellant writes
  - She is a quadriplegic woman
  - She has a prolapsed bowel causing frequent incontinence
  - She has wounds in more than one area
  - She gets MRSA in her wounds
  - She needs the antibacterial wipes to sterilize the area
  - Her health is at risk

At the hearing the appellant told the panel that she is a quadriplegic woman with a prolapsed bowel and open wounds that won't heal. She spends more than half her time in bed and cannot always get herself to the sink to wash herself with soap and water. Due to her prolapsed bowel she experiences periods of diarrhea lasting up to two weeks at a time when she must use various wipes to clean herself as part of her bowel care. She told the panel that she has had many infections due to her medical conditions and that she must be vigilant to keep her body and living area sterile to reduce the risk of contamination and noted her physician has confirmed this in a letter. She said she uses three different types of wipes for bowel and wound care. These include the Attends Wipes for primary clean-up of her bowel movements, anti-bacterial wipes as a secondary clean-up of her body, and then the Cavi-wipes to clean surfaces in her living area including counters, doors, railings, her wheelchair, etc. The Cavi-Wipes were approved in the past and she was not told why she no longer qualifies to receive them. She said she also uses the anti-bacterial wipes to clean her skin when she removes her wound bandages. She said she has a care-aid that assists her periodically and the care-aid can use other cleaning products to clean surfaces around her home, however, often she has no care-aid and she relies more heavily on the wipes to maintain cleanliness. She added that she is very concerned about infections because she has had an anti-biotic resistant infection in the past called MRSA requiring a very strong medication that causes severe constipation and reduced effectiveness of other anti-biotic medication. She is reluctant to take antibiotics because she expects they will one

day be needed to save her life and she doesn't want her body to develop a resistance to them. She told the panel the anti-bacterial wipes and the Cavi-Wipes are part of a general infection control regime.

She told the panel that she has been approved for 30 day and 30 night urinary bags in the past and was not told why the ministry reduced her approved number of bags to 4 day and 4 night bags per month. She told the panel that the bags are porous and can't be effectively cleaned with the provided cleanser or bleach. She said cleaning the bags and tubing does not remove the strong odor of the stale urine. She maintains the bags are not reusable as claimed by the ministry.

At the hearing the ministry told the panel that it is standard practice to periodically review the appellant's need for ongoing medical supplies. During the last review the ministry determined that the anti-bacterial wipes, Cavi-Wipes, and 30 day and 30 night urine bags no longer qualified. The ministry reasoned that the urine bags could be reduced from 2 bags a day to 2 bags per week since the bags can be cleaned and reused. The ministry further determined the anti-bacterial wipes and Cavi-Wipes were unnecessary because the appellant uses the Cavi-wipes to disinfect surfaces and the anti-bacterial wipes are used to clean her hands and therefore soap and water would be adequate to meet her needs. When asked by the panel how the ministry determined that the appellant was using the anti-bacterial wipes to clean her hands, the ministry was unaware where that information came from. The ministry was not aware of why the appellant's medical supply approval was reduced except that it was part of a regular review.

## PART F – Reasons for Panel Decision

The decision under appeal is the reasonableness of the ministry's decision to deny the appellant's application for anti-bacterial wipes, Cavi-Wipes, and day and night urine bags (30 of each per month). The ministry determined that the request did not meet the criteria set out in Employment and Assistance for Persons With Disabilities Regulation Schedule C. The ministry found that a medical practitioner prescribed the supplies and that the appellant does not have the resources available to meet the cost. However, the ministry found that the anti-bacterial wipes and Cavi-wipes are not required for one of the purposes listed in EAPWDR schedule C section 2(1)(a)(i), and are not the least expensive supply appropriate for the purposes and are not necessary to avoid an imminent and substantial danger to her health as required by section 2(1)(a)(ii)(B) and (C). The ministry determined that the day and night urine bags were required for a listed purpose but that the quantity requested was not the least expensive supply appropriate for the purpose and necessary to avoid an imminent and substantial danger to her health. The ministry approved 4 of each urine bags monthly.

### Employment and Assistance for Persons with Disability Regulation (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,

### Employment and Assistance for Persons with Disability Regulation (EAPWDR), schedule C Section 2

#### **General health supplements (Medical supplies)**

**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;

### Arguments of the Parties

The argument of the appellant is that she requires the anti-bacterial wipes, Cavi-Wipes (3 containers of 160 wipes), and 30-day and 30 night urine bags per month to maintain her health. She argues that her physician confirmed she is at high risk for infections and must remain vigilant with sterilization for infection control.

The argument of the ministry is that the appellant does not qualify for anti-bacterial wipes, Cavi-Wipes, and 30 day and 30 night urine bags (the ministry approved her for a reduced number of 4 day and 4 night urine bags per month). The ministry argues that the anti-bacterial wipes and Cavi-wipes are not required for one of the purposes listed in EAPWDR schedule C section 2(1)(a)(i) and that all

three requested items were not the least expensive supply appropriate for the purposes and that there was insufficient evidence to support that the requested supplies were necessary to avoid an imminent and substantial danger to her health. The ministry argues that in order to avoid imminent and substantial danger to her health, the appellant needs only 4 of each urine bag per month.

#### Accepted Criteria

The ministry determined that the appellant met the general eligibility criteria in EAPWDR, section 62 as well that a medical practitioner prescribed the supplies and that the appellant does not have the resources available to meet the cost. The panel will determine the reasonableness of the criteria the ministry determined the appellant did not meet. Although the appellant was denied three different items, anti-bacterial wipes, Cavi-Wipes, and 30 day and 30 night urine bags, in its reconsideration decision the ministry provided reasons for denial for anti-bacterial wipes and Cavi-Wipes together. In its analysis of the decision, this panel will separate these items and determine the reasonableness of the ministry's decision on the items individually.

#### 30 Day and 30 Night Urine Bags

The panel considered the ministry's argument that the 30 day and 30 night urine bags are not the least expensive supply appropriate for the purpose. The panel considered that, based on the physician's letters dated November 25, 2014 and February 13, 2015, the ministry accepts that the appellant requires the urine bags prescribed by her physician in order to avoid imminent and substantial danger to her health. In his letters, the appellant's physician prescribed one day bag and one night bag for each day of the month, or between 30 to 35 bags, as a supply for each of the days and the nights each month and disposed of after each day and each night. In his letter dated February 13, 2015, the physician explained that the appellant has an ongoing decubitus ulcer in the sacral region which has continued to be a source of contamination to her urine, thereby emphasizing that the appellant requires the bags as prescribed and not a lesser amount. While the ministry determined that 4 day and 4 night bags each month are sufficient to avoid an imminent and substantial danger to the appellant's health, the ministry did not point to any medical evidence to show that a re-usable bag is appropriate given the appellant's particular health conditions or that the bags prescribed by the appellant's physician are the type of bags that can be re-used, especially given the quantity listed by the physician as one per day and one per night. The panel finds that the ministry was unreasonable to determine that 30 day and 30 night urine bags are not necessary to avoid imminent and substantial danger to health.

In the case of the bags, the ministry's determination that they are not the least expensive option is directly related to the number of the bags versus there being an alternate supply for the same purpose. As the panel finds that the ministry was unreasonable to determine that 4 of each bag was sufficient per month to prevent imminent danger, the panel therefore finds that the ministry was unreasonable to determine that 30 day and 30 night urine bags are not the least expensive supply appropriate for the purpose.

#### Anti-Bacterial Wipes

The panel considered the ministry's argument that the anti-bacterial wipes are not required for one of the purposes listed in EAPWDR schedule C section 2(1)(a)(i). The ministry reasoned that, "the additional information from your physician that you have ongoing urinary tract infections due to ineffective cleanliness of your perineum does not correspond with the need for.... anti-bacterial wipes for your hands." The panel considered the appellant's argument that these anti-bacterial wipes are

not for her hands but rather are used for bowel care and wound care. At the hearing the ministry could not explain why it had determined the anti-bacterial wipes were for cleaning her hands other than the reference to them as "Wet Ones." The panel finds that ministry was unreasonable to determine the anti-bacterial wipes are not required for one of the purposes listed in EAPWDR schedule C section 2(1)(a)(i).

The panel considered the ministry's argument that the anti-bacterial wipes are not the least expensive supply appropriate to the purpose. As the panel accepts the appellant's statement that the wipes are used for bowel care and to clean and disinfect her wounds, the panel has no evidence to support the ministry's argument that the appellant has alternative options. The ministry suggested soap and water would be effective for hand washing however provided no suggestions for alternate supplies for how the appellant actually uses the anti-bacterial wipes. The panel finds the ministry was not reasonable to determine the anti-bacterial wipes are not the least expensive supply appropriate to the purpose.

The panel considered the ministry's argument that the anti-bacterial wipes are not necessary to avoid an imminent and substantial danger to her health. The panel considered the physician's letter detailing the ongoing urinary tract infections and the urinary contamination she experiences as a result of her decubitus ulcer. The panel accepts the appellant's argument that the anti-bacterial wipes form part of her over-all infection control regime and is necessary to maintain her bowel and wound care. The panel finds the ministry was not reasonable to determine the anti-bacterial wipes are not necessary to avoid an imminent and substantial danger to her health.

#### Cavi-Wipes

The panel considered the ministry's argument that the Cavi-wipes are not required for one of the purposes listed in EAPWDR schedule C section 2(1)(a)(i). The panel considered the appellant's argument that the Cavi-wipes form part of her over-all infection control regime and they are needed to clean the surfaces of her living area and for general disinfection. The panel considered the ministry's argument that the wipes are used for surface disinfection and not one of the purposes listed in the legislation. The panel accepts the appellant's statements that the wipes are not used for her body but rather they are used to clean surfaces in her home. The panel finds the ministry was reasonable to determine the Cavi-wipes are not required for one of the purposes listed in EAPWDR schedule C section 2(1)(a)(i).

The panel considered the ministry's argument that the Cavi-wipes are not the least expensive supply appropriate to the purpose. As noted above, the appellant told the panel the Cavi-wipes are used to clean the surfaces of her living area and for general disinfection but the care-aid can use other cleaning products to clean. The panel accepts the ministry's argument that there are less expensive ways to clean the surfaces of her living area and as they are not required for one of the listed purposes, the panel finds the ministry was reasonable to determine the Cavi-wipes are not the least expensive supply appropriate to the purpose.

The panel considered the ministry's argument that the Cavi-wipes are not necessary to avoid an imminent and substantial danger to her health. As noted above, the panel accepts the ministry's argument that there are less expensive ways to clean the surfaces of her living area. The panel also accepts the ministry's argument that while the Cavi-wipes may be beneficial, there is no indication that the Cavi-wipes are necessary to avoid imminent and substantial danger to her health. The panel finds the ministry was reasonable to determine the Cavi-wipes are not necessary to avoid an

imminent and substantial danger to her health.

Conclusion

The panel finds that the ministry's decision regarding the 30 day and 30 night urine bags and the anti-biotic wipes was not a reasonable application of the applicable enactment in the circumstances of the appellant and therefore rescinds the decision.

The panel finds that the evidence reasonably supported the ministry's decision regarding the Cavi-wipes and confirms this part of the decision.