

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) January 12, 2015 reconsideration decision denying the appellant's request for a supplement for an insulin pump because the ministry determined that the information provided does not establish that the appellant met the requirements set out in Schedule C or section 69 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

EAPWDR sections 62 and 69, Schedule C.

PART E – Summary of Facts

The evidence before the ministry at reconsideration included the following information:

From ministry files: the appellant is a recipient of disability assistance.

On October 3, 2014 the appellant's doctor writes a prescription that the appellant needs a new insulin pump urgently as she is a brittle type 1 diabetic.

In a letter dated October 6, 2014 the appellant's diabetes nurse writes that she has known the appellant since 2003 following an admission to the hospital with Diabetic Ketoacidosis. Over the years the appellant has struggled with diabetes management and has experienced poor glycemic control for a large part of that time and includes multiple hospital admissions related to her diabetes. In 2009 she has obtained an insulin pump and she has improved and her sugars are more stable without episodes of severe diabetic ketoacidosis, less frequent hypoglycemia and regular follow-up in the diabetes education centre. The appellant has engaged in the process of understanding her diabetes, insulin pump therapy and the difference in insulin delivery from a pump versus injections and is capable of self-adjusting the pump settings as required. Her insulin pump is now out of warranty and requires urgent replacement. The health benefits she has had from being on an insulin pump are significant outside of the improved quality of life from less frequent hypoglycemia and no diabetes related hospital admissions.

In a letter dated October 27, 2014 a specialist writes that he has been involved in the appellant's diabetes management since 2011 and she has made truly dramatic and impressive clinical progress. She has a history of autoimmune type 1 diabetes back to the age of 17 alongside a history of previous narcotic dependence and other substance abuse including alcohol. She has modest diabetic retinopathy and early diabetic nephropathy.

At the time of her original presentation the appellant had dismal diabetes control. Since then she has made major lifestyle changes. She weaned herself off Methadone and has stopped smoking. Her glycemic control has improved to remarkable levels. Her compliance with prescription and diabetes management regimen has been exemplary.

The appellant managed to self-fund an insulin pump which has contributed a great deal to the present clinical improvement. Her retinopathy has improved and her kidney disease has completely stabilized. Her hospital admissions, which were frequent prior to the introduction of the insulin pump, have been absent ever since.

In the appellant's medical equipment request and justification dated November 12, 2014 the appellant's doctor states the Brittle Diabetes is difficult to manage blood sugars. Without the pump to manage these she is at high risk of hospitalization.

A quote for \$ 7,000 for an insulin pump.

Included with the appellant's Request or Reconsideration dated January 1, 2015 is a submission by her advocate. She writes that as a solution to rectify frequent hospitalizations (comas), constant monitoring with incorrect outcomes, ongoing damage to kidneys, risk to sight plus increased risk of heart disease and stroke the appellant has had the use of an insulin pump which has controlled her diabetes for a period of approximately 5 years. Recently the pump which the appellant's parents bought, has failed and neither she nor her parents can afford to buy a replacement. The appellant

has been given the use of an interim insulin pump by the company that she received her initial pump from. She was given the use of it while awaiting approval of the initial application and subsequent appeal process. The loan time period has been extended once but as soon as the reconsideration decision is made the insulin pump has to be returned. The appellant has never been able to control her blood sugars without the insulin pump; she has been in control of her diabetes for the first time while using the pump.

The appellant was hospitalized 6+ times per year in the decade prior to using an insulin pump. At the age of 21 the appellant had Gestational Diabetes and as a result 2 months after the birth of her child she slipped into a coma and was advised that if her mother had not found her she would have been dead within 12 hours or less.

The cost of the insulin pump is \$7000 or \$1400 per year over 5 years.

Online information on diabetes, its prevention, diagnosis and treatment.

In a letter dated December 23, 2014 the appellant's doctor is diagnosing her with Brittle Diabetes – uncontrolled. The doctor writes that the appellant has lived with this condition for almost 20 years and it has impacted her eyesight – Retinopathy, and has impacted her kidneys – Nephropathy.

Currently the appellant has good kidney function and has improved eye-sight due to the use of her insulin pump, and additionally her quality of life has improved to the point that she is no longer frequently hospitalized in the Intensive Care unit of a hospital due to diabetes.

The appellant has only been able to survive to this point in her life due to the use of an insulin pump that was given to her 5 years ago. Without the insulin pump there was little chance of her saving her eyesight, kidney damage/failure and ultimately death.

Now that the pump has ceased to function she requires a replacement insulin pump as she will be facing a life threatening situation in regards to kidney failure and/or blindness in addition to recurring hospitalization and possible death. If her pump is not replaced she will suffer imminent danger to her health.

At her Notice of Appeal dated January 16, 2015 the appellant states that without the insulin pump she will face imminent danger to her health and life.

On appeal the advocate submitted a letter dated January 27, 2015 addressed to the Minister of Health and copied to the local MLA and the Employment and Assistance Appeal Tribunal. In this letter the advocate requests an insulin pump for the appellant. The letter summarizes the appellant's history of diabetes and surrounding circumstances before and after her use of an insulin pump, and the medical evidence that was before the ministry at reconsideration. The advocate states that the insulin pump is the appellant's life support machine and has made a dramatic and life sustaining difference for the appellant because it gives the appellant more control over her diabetes and has helped to create a much better quality of life. Without it the appellant will once again face uncontrolled Type 1 Diabetes, which could lead to extremely high risks of comas, organ deterioration, frequent hospitalizations and unnecessary early death.

At the hearing the appellant stated that before she received her first pump she was hospitalized for a coma every 9 months in the ICU for 4 years. As she always had roommates so she was not on her own when these emergencies occurred.

She realized that her old pump was no longer working when her blood sugars went out of control and as a result she went to see her diabetic nurse. Within 24 hours the nurse was able to supply her with

a loaned new pump free of charge until April 2015. A payment plan is available for a new pump for \$190 per month but the appellant cannot afford it. The appellant said she tried everything to get funding for a new insulin pump. Her diabetic nurse who has all the pertinent information has informed her about possibilities to get funding from the Canadian Diabetes Association, the Lions Club, and the local MLA. The appellant inquired and found out that the Diabetes Association no longer supplies pumps, the Lion's Club's deadline had past and they no longer have funds available, and the local MLA said he would take it to the Legislature. She also tried the Disability Resource Centre but they could not help. Her parents cannot afford to buy her another pump. She has been with her family doctor for 8 years and she sees him once a month. She also sees her diabetic nurse once a month and her specialist once a year – before she used the pump she saw her twice a year.

At the hearing the appellant's advocate re-iterated that the appellant's situation is life-threatening because of her severe medical condition; she would die without a pump, taking away her pump is like taking her off life support.

The ministry stood by its reconsideration decision and added the following information: Around 2003 the legislation changed and as a result all available health supplements are explicitly listed in Schedule C. The ministry refers clients to the Disability Resource Centre. The appellant's doctor can ask the Minister of Health to approve an insulin pump.

The ministry did not object to the admissibility of the advocate's January 27, 2015 letter, and the panel determined the additional documentary evidence as well as the appellant's and advocate's statements at the hearing were admissible pursuant to section 22(4) of the Employment and Assistance Act as they were in support of the records that were before the ministry at reconsideration; more information was provided on resources the appellant had explored and about the appellant's state of health in connection with her need for an insulin pump.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably denied the appellant funding for an insulin pump because the information provided did not establish that the appellant met the requirements of Schedule C or section 69 of the EAPWDR.

The following sections of the EAPWDR apply to this appeal:

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,

SCHEDULE C

General health supplements

2 (1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation:

- (a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following

requirements are met:

- (i) the supplies are required for one of the following purposes:
 - (A) wound care;
 - (B) ongoing bowel care required due to loss of muscle function;
 - (C) catheterization;
 - (D) incontinence;
 - (E) skin parasite care;
 - (F) limb circulation care.

...

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.

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— canes, crutches and walkers [3.1]

— wheelchairs [3.2]

— wheelchair seating systems [3.3]

— scooters [3.4]

- toileting, transfers and positioning aids [3.5]
- hospital bed [3.6]
- pressure relief mattresses [3.7]
- floor or ceiling lift devices [3.8]
- breathing devices [3.9]
- orthoses [3.10]
- hearing instruments [3.11]
- non-conventional glucose meters [3.12]

Dental supplements

4 ...

Emergency dental supplements

5 ...

Diet supplements

6 ...

Monthly nutritional supplement

7 ...

Natal supplement

8 ...

Infant formula

9 ...

Position of the parties:

The appellant believes she is entitled to receive funds from the ministry for an insulin pump because she has a life threatening health condition and requires an insulin pump to prevent diabetic comas, frequent hospitalizations, organ deterioration and premature death. Providing the appellant with an insulin pump at \$7,000 would save the ministry money in the long run – the cost of kidney failure resulting in dialysis is approximately \$35,000 to 50,000 per year.

The ministry argues that the appellant is not eligible for an insulin pump because the item is not a disposable or reusable medical supply, is not requested for any of the purposes under section 2(1)(a), and is not set out in subsections 2(1)(a.1) or 2(1)(a.2). The ministry argues further that the appellant is not eligible for medical equipment and devices listed in sections 3.1 to 3.12 as there is no evidence that other options for funding (i.e. Ministry of Health, Canadian Diabetes Association, EATI) were explored pursuant to subsection 3(1)(b)(ii). Further, an insulin pump is not an item set out in any of the other sections of Schedule C. While the appellant may face a direct and imminent life-threatening health need for an insulin pump, this item is not among the health supplements set out in Schedule C, and the appellant does not meet the previously mentioned eligibility criterion.

Panel Decision

Pursuant to section 62 (1) the minister may provide any health supplement set out in section 2 or 3 of Schedule C to a recipient of disability assistance. An insulin pump is not included in the health supplements the minister may provide and can therefore not be made available to the applicant under section 62. Similarly, the panel finds that the ministry reasonably determined it has no authority to provide an insulin pump under any other sections of Schedule C.

While the ministry argues that the appellant is not eligible for medical equipment and devices listed in sections 3.1 to 3.12 as there is no evidence that other options for funding (i.e. Ministry of Health, Canadian Diabetes Association, EATI) were explored pursuant to subsection 3(1)(b)(ii) the panel finds that the appellant provided sufficient evidence that she had explored various options of funding; she informed that even though her parents paid for her first pump they cannot afford to do it again. Her diabetic nurse had provided her with information on possible funding, and as a result the appellant approached the Canadian Diabetes Association, the Lions Club, and the local MLA. She inquired and found out that the Diabetes Association no longer supplies insulin pumps, the Lion's Club no longer had funds available as the deadline had passed, and the local MLA said he would take her need for funding for an insulin pump to the Legislature. The appellant stated further that she tried to find help at the Disability Resource Centre in regards to her request for an insulin pump but did not succeed. Therefore the panel finds that pursuant to section 3(1)(b)(ii) of Schedule C the ministry was not reasonable in determining that there is no evidence that other options for funding were explored. The panel notes that this finding does not change the fact that an insulin pump cannot be made available to an appellant under section 62 and Schedule C.

Under section 69 (a) the minister may provide health supplements as set out in section 2(1)(a) and (f) and section 3 of Schedule C if a person faces a direct and imminent life threatening need - an insulin pump is not included among these supplements.

Although the ministry accepted that the appellant may face a direct and imminent life-threatening health need for an insulin pump the panel notes that this finding does not change the fact that an insulin pump cannot be made available under section 69 as this item is not among the health supplements listed in section 2(1)(a) and (f) and section 3 of Schedule C .

For these reasons, the panel finds that the ministry was reasonable in denying the appellant's request for a supplement for an insulin pump. The ministry's decision is confirmed.