APPEAL #

## PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated July 6, 2015 that denied the appellant's application for funds to cover the cost of Revitive Circulation Booster. The ministry found that the appellant met the requirements to receive health supplements under the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) s. 62 however the device she is seeking funding for was not an eligible device as described in EAPWDR Schedule C. The ministry determined that the appellant is not eligible for the device as a medical supply, medical equipment, and that the Revitive Circulation Booster is not an item set out in any other section of the EAPWDR Schedule C. The ministry also found the appellant does not qualify for the device under the EAPWDR s. 69 because she is authorized to receive health supplements under the EAPWDR s. 62.

## PART D – Relevant Legislation

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

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## PART E – Summary of Facts

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

- A medical equipment request form completed by the appellant's physician dated February 17, 2015 recommending a Circulation Booster (Revitive) for the appellant. The physician writes she is suffering from chronic venous stasis dermatitis with chronic ulcer in leg, and coagulation disorder.
- A letter titled Investigation Report dated October 10, 2014 completed by a physician. The letter describes the medical details of the appellant's ulcer. The physician recommends the appellant continue with current dressing, frequent leg elevation, and that she will be reassessed in 4-6 weeks.
- Information printed from the Revitive company website about the Revitive machine.
- A self-report completed by the appellant dated April 28, 2015. The appellant writes about the difficulties she has had with her hip replacements and hip dislocations, which led to her blood clots and ulcers. She writes her application for the Revitive Circulation Booster was denied because the ministry thought it was a piece of exercise equipment. She adds that her leg is at risk of amputation and she requires the Revitive Circulation Booster for basic mobility.

At the hearing the appellant presented new evidence that was not before the ministry at the time of the reconsideration. The appellant submitted a brochure produced by the manufacturer of the Revitive Circulation Booster. The brochure provides general information about the machine's purpose, functions, and testimonials of its efficacy. This brochure was admitted as evidence as per the Employment and Assistance Act section 22 (4). The panel found that the information contained in the document is in support of evidence that was before the ministry at the time of the reconsideration. The letter was accepted because it provides further details about the item the appellant requested. At the hearing the ministry had no objections to the letter being accepted as evidence.

At the hearing the appellant told the panel about her medical condition including, due to her poor circulation and complications from past surgeries, she has developed ulcers on her legs that won't heal, and that her infections are getting worse. She told the panel that she has consulted with multiple health professionals and the condition persists. She added that she requires additional surgeries to correct issues with her joints however she cannot have the surgery until her ulcers have healed.

Regarding the ministry's interpretation of the legislation, the appellant argued that the requested device, the Revitive Circulation Booster, qualifies as a medical supply as defined by EAPWDR Schedule C s. 2(1)(a) because the device is used for wound care and limb circulation care.

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## 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 funds to cover the cost of Revitive Circulation Booster. The ministry found that the appellant met the requirements to receive health supplements under the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 62 however the device she is seeking funding for was not an eligible device as described in EAPWDR Schedule C. The ministry determined that the appellant is not eligible for the device as a medical supply, medical equipment, and that the Revitive Circulation Booster is not an item set out in any other section of the EAPWDR Schedule C. The ministry also found the appellant does not qualify for the device under the EAPWDR s. 69 because she is authorized to receive health supplements under the EAPWDR s. 62.

The applicable legislation is the EAPWDR section 62, 69 and the EAPWDR Schedule C:

**EAPWDR Section 62**

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,

**EAPWDR Section 69**

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).

**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;
(1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements,

food, vitamins, minerals or prescription medications.

**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.

**Medical equipment and devices — canes, crutches and walkers**

**3.1** (1) Subject to subsection (2) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:

(a) a cane;

(b) a crutch;

(c) a walker;

(d) an accessory to a cane, a crutch or a walker.

(2) A walking pole is not a health supplement for the purposes of section 3 of this Schedule.

**Medical equipment and devices — wheelchairs**

**3.2** (1) In this section, **"wheelchair"** does not include a stroller.

(2) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:

(a) a wheelchair;

(b) an upgraded component of a wheelchair;

(c) an accessory attached to a wheelchair.

(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 (2) of this section is 5 years after the minister provided the item being replaced.
(4) A high-performance wheelchair for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

**3.3 Medical equipment and devices — wheelchair seating system**

**3.4 Medical equipment and devices — scooter**

**Medical equipment and devices — toileting, transfers and positioning aids**

**3.5** (0.1) In this section:

**"positioning chair"** does not include a lift chair;

**"transfer aid"** means a transfer board, transfer belt or slider sheet.

(1) The following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to facilitate toileting or transfers of a person or to achieve or maintain a person's positioning:
(a) a grab bar in a bathroom;
(b) a bath or shower seat;
(c) a bath transfer bench with hand held shower;
(d) a tub slide;
(e) a bath lift;
(f) a bed pan or urinal;
(g) a raised toilet seat;
(h) a toilet safety frame;
(i) a floor-to-ceiling pole in a bathroom or bedroom;
(j) a portable commode chair;
(k) a standing frame for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;
(l) a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;
(m) a transfer aid for a person for whom the transfer aid is medically essential to transfer from one position to another.
(2) 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 5 years from the date on which the minister provided the item being replaced.

**3.6 Medical equipment and devices — hospital bed**

**3.7 Medical equipment and devices — pressure relief mattresse**

**3.8 Medical equipment and devices — floor or ceiling lift device**

**3.9 Medical equipment and devices — breathing devices**

(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;
(d) in the case of an inhaler accessory device, one year from the date on which the minister provided the device being replaced;
(e) in the case of an accessory or supply for an item referred to in paragraph (c) or (d), one year from the date on which the minister provided the device being replaced.
(4) A ventilator is not a health supplement for the purposes of section 3 of this Schedule.

**Medical equipment and devices — orthoses**

**3.10** (1) In this section:

**"off-the-shelf"** , in relation to an orthosis, means a prefabricated, mass-produced orthosis that is not unique to a particular person;

**"orthosis"** means
(a) a custom-made or off-the-shelf foot orthotic;
(b) custom-made footwear;
(c) a permanent modification to footwear;
(d) off-the-shelf footwear required for the purpose set out in subsection (4.1) (a);
(e) off-the-shelf orthopaedic footwear;
(f) an ankle brace;
(g) an ankle-foot orthosis;
(h) a knee-ankle-foot orthosis;
(i) a knee brace;
(j) a hip brace;
(k) an upper extremity brace;
(l) a cranial helmet used for the purposes set out in subsection (7);
(m) a torso or spine brace;
(n) a foot abduction orthosis;
(o) a toe orthosis.
(2) Subject to subsections (3) to (11) of this section, an orthosis is a health supplement for the purposes of section 3 of this Schedule if
(a) the orthosis is prescribed by a medical practitioner or a nurse practitioner,
(b) the minister is satisfied that the orthosis is medically essential to achieve or maintain basic functionality,
(c) the minister is satisfied that the orthosis is required for one or more of the following purposes:
(i) to prevent surgery;
(ii) for post-surgical care;
(iii) to assist in physical healing from surgery, injury or disease;
(iv) to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition, and
(d) the orthosis is off-the-shelf unless
(i) a medical practitioner or nurse practitioner confirms that a custom-made orthosis is medically required, and
(ii) the custom-made orthosis is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist.
(3) For an orthosis that is a custom-made foot orthotic, in addition to the requirements in subsection (2) of

this section, all of the following requirements must be met:
(a) a medical practitioner or nurse practitioner confirms that a custom-made foot orthotic is medically required;
(b) the custom-made foot orthotic is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist;
(c) Repealed. [B.C. Reg. 144/2011, Sch. 2.]
(d) the custom-made foot orthotic must be made from a hand-cast mold;
(e) the cost of one pair of custom-made foot orthotics, including the assessment fee, must not exceed $450.
(4) For an orthosis that is custom-made footwear, in addition to the requirements in subsection (2) of this section, the cost of the custom-made footwear, including the assessment fee, must not exceed $1 650.
(4.1) For an orthosis that is off-the-shelf footwear, in addition to the requirements in subsection (2) of this section,
(a) the footwear is required to accommodate a custom-made orthosis, and
(b) the cost of the footwear must not exceed $125.
(4.2) For an orthosis that is off-the-shelf orthopaedic footwear, in addition to the requirements in subsection (2) of this section, the cost of the footwear must not exceed $250.
(5) For an orthosis that is a knee brace, in addition to the requirements in subsection (2) of this section, the medical practitioner or nurse practitioner who prescribed the knee brace must have recommended that the knee brace be worn at least 6 hours per day.
(6) For an orthosis that is an upper extremity brace, in addition to the requirements in subsection (2) of this section, the upper extremity brace must be intended to provide hand, finger, wrist, elbow or shoulder support.
(7) For an orthosis that is a cranial helmet, in addition to the requirements in subsection (2) of this section, the cranial helmet must be a helmet prescribed by a medical practitioner or nurse practitioner and recommended for daily use in cases of self abusive behaviour, seizure disorder, or to protect or facilitate healing of chronic wounds or cranial defects.
(8) For an orthosis that is a torso or spine brace, in addition to the requirements in subsection (2) of this section, the brace must be intended to provide pelvic, lumbar, lumbar-sacral, thoracic-lumbar-sacral, cervical-thoracic-lumbar-sacral, or cervical spine support.
(9) Subject to section 3 of this Schedule, the limit on the number of orthoses that may be provided for the use of a person as a health supplement for the purposes of section 3 of this Schedule is the number set out in Column 2 of Table 1 opposite the description of the applicable orthosis in Column 1.
(11) The following items are not health supplements for the purposes of section 3 of this Schedule:
(a) a prosthetic and related supplies;
(b) a plaster or fiberglass cast;
(c) a hernia support;
(d) an abdominal support;
(e) a walking boot for a fracture.
(f) Repealed. [B.C. Reg. 144/2011, Sch. 2.]
(12) An accessory or supply that is medically essential to use an orthosis that is a health supplement under subsection (2) is a health supplement for the purposes of section 3 of this Schedule.

**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.

The argument of the appellant is that she requires the Revitive Circulation Booster to improve blood circulation in her legs to encourage her persistent wounds to heal. She argues that the device is used for wound care as well as circulation as described in the EAPWDR Schedule C s. 2(1). The appellant contends the legislation is too restrictive when dealing with technologies that are new to the market

such as the Revitive Circulation Booster and that the ministry needs to use its discretion to allow this device. The appellant added that compression stockings are an approved medical supply under the legislation and have a similar function as the Revitive Circulation Booster in improving circulation.

The ministry argues that the device the appellant requested is not an eligible device as described in EAPWDR Schedule C. The ministry determined that the appellant is not eligible for the device as a medical supply, medical equipment, and that the Revitive Circulation Booster is not an item set out in any other section of the EAPWDR Schedule C. The ministry also found the appellant does not qualify for the device under the EAPWDR s. 69 because she is authorized to receive health supplements under the EAPWDR s. 62. The ministry argues that it has no legislated discretion to provide funding for a device or supply that is not listed in the EAPWDR Schedule C.

Accepted Criteria

The ministry determined that the appellant met the general eligibility criteria in EAPWDR, section 62.

Qualifying Medical Supply Item

The ministry determined that the Revitive Circulation Booster does not qualify as a medical supply. The EAPWDR Schedule C allows the minister to provide an item if the purpose of the supply is included in the legislation. The appellant argues that since the Revitive Circulation Booster is meant to boost blood circulation relating to her wound care, and therefore qualifies as limb circulation care. The ministry argues that a Revitive Circulation Booster is considered a device not a reusable or disposable medical or surgical supply. The ministry refers to the EAPWDR Schedule C 2(1) and (a.2) where there is a list of the medical or surgical supplies that the minister may provide if the criteria of EAPWDR Schedule C s.2 has been met. No item matching the description of the Revitive Circulation Booster is listed. The panel finds the ministry was reasonable to determine the Revitive Circulation Booster does not qualify as a medical supply.

Qualifying Medical Equipment/Device or an EAPWDR Schedule C Category

The ministry determined that the Revitive Circulation Booster does not qualify as a medical equipment or device. The EAPWDR Schedule C s.3 sets out the general requirements for medical device or equipment. The EAPWDR Schedule C s.3 also includes a list and description of all the equipment and devices that the ministry is authorized to provide. The list of equipment and devices does not include an item matching the description of the Revive Circulation Booster. Upon review of all sections of EAPWDR, Schedule C, the panel finds the ministry was reasonable to determine that the Revitive Circulation Booster is not a qualifying item set out under medical device, equipment or in any other section of the legislation.

Qualifying as an item under EAPWDR s. 69

The EAPWDR s. 69 allows the minister to 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 if the person meets the listed criteria. The ministry determined the appellant is not eligible under this section because she is eligible to receive health supplements under EAPWDR s. 62. Upon reviewing the criteria for the EAPWDR s. 62 and s. 69, the panel finds the ministry was reasonable to determine the appellant does not qualify for the Revitive Circulation Booster under the EAPWDR s. 69 as she is eligible under EAPWDR, Section 62

The panel finds that the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.