

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 12 August that denied the appellant's request for funding for an insulin pump because the ministry found that the request does not meet the legislated eligibility criteria set out in the Employment and Assistance Regulation. Specifically, the ministry found that the appellant is not eligible for general health supplements under section 67 of the Employment and Assistance Regulation and that an insulin pump is not an eligible item as medical equipment under section 3 of Schedule C of the Regulation or as other supplies, services or treatments under Schedule C. The ministry also found that the appellant is not eligible to receive an insulin pump under section 76 of the Regulation as a life threatening health need because an insulin pump is not an eligible item under that section.

PART D – Relevant Legislation

Employment and Assistance Act (EAA).

Employment and Assistance Regulation (EAR), sections 67 and 76 and Schedule C.

PART E – Summary of Facts

The appellant and his advocate did not appear at the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration included the following:

1. On 18 June 2015, the ministry received the appellant's request for funding for an insulin pump. Attached to the request was a letter dated 18 June 2015 from a physician at a health authority kidney care unit. The physician stated that the appellant had reported that his insulin pump was no longer functioning and provided further background information (see below).
2. The appellant's request for Reconsideration, dated 22 July 2015, to which was attached another letter from the same physician dated 10 July 2015, elaborating on the first letter, as follows:

"This letter is to outline the dilemma facing my patient [the appellant] who's third insulin pump broke two weeks ago while he was very ill. He has had type I diabetes since the age of 3 and is now [early 50's]. [The appellant] became my patient many years ago as his kidney function was deteriorating, three years ago he went on hemodialysis and in Feb this year received a kidney transplant. The immunosuppressant drugs he is on cause uncontrollable shaking so bad that he can barely feed himself let alone give up to 8 needles a day and test his blood sugar up to 10 times daily. Due to the many thousands of hypo and hyperglycaemic episodes and acquiring diabetes during the formative years [the appellant] has severe learning disabilities and cumulative brain damage which have left him unable to care for himself. He has a live-in caregiver through the CSIL program to manage his medical and dietary and personal needs. [The appellant] has been on an insulin pump since 2004 and it vastly improved his blood sugar control over his now very brittle diabetes. After [the appellant] has recovered for a year from the kidney transplant he will go on the transplant list again for a pancreas to eliminate his lifetime of diabetes, the wait list is approx six years at this time. It is of utmost importance that [the appellant] continue to tightly control his blood sugar so as not to destroy his newly transplanted kidney. Giving injections up to 8 times a day increases his risk of infection which in his immunosuppressed state could kill him. In the two weeks without his pump he has been to emergency twice and spent 6 days in hospital! Due to the extenuating circumstances of [the appellant's] health, his life is at stake without this vital piece of equipment essential to manage his diabetes until a pancreas can be found for him."

Also attached to the Request for Reconsideration is a price quote from a medical supply provider dated 22 July 2015, showing the list price of \$7000.00 for an insulin pump and continuous glucose monitoring system starter kit, as well as prices for other related equipment and supplies.

The appellant also attached a bulletin from a diabetes advocacy organization on "The Economic Benefit of Public Funding for Insulin Pumps," with internet links to province-specific reports. The BC report notes that publicly funded coverage for insulin pumps is limited to persons under 19 years. [The panel notes that this coverage was expanded in 2012 to 25 years and younger.]

The appellant's Notice of Appeal was received by the Tribunal on 24 August 2015. Under Reasons, the appellant writes:

"Life at stake. No funding available from Healthcare or Diabetes Assoc. Not eligible for insurance due to pre-existing conditions. 1st pump gotten when working through insurance. Second & 3rd paid by ex-wife. You know I only make \$900 on disability CPP."

At the hearing, the ministry stood by its position at reconsideration.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry was reasonable in denying the appellant's request for funding for an insulin pump. More specifically, the issue is whether the following determinations by the ministry were reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant:

- a) an insulin pump is not listed as an eligible item in Schedule C of the EAR, and
- b) the appellant is not eligible to receive an insulin pump under section 76 of the EAR as a life threatening health need because an insulin pump is not an eligible item under that section.

Relevant legislation

Pursuant to Section 67 of the EAR, the applicant for a general health supplement must be a recipient of income assistance as a person with persistent multiple barriers to employment (PPMB), be in an emergency shelter or transitional house or be a dependant of such a person or be a former recipient under a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items or services.

Health supplement for persons facing direct and imminent life threatening health need

76 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).

Schedule C of the EAR:

Section 1 of Schedule C contains relevant definitions.

The remaining sections deal with specific categories of health supplements, with category-specific criteria relating to such matters as prescription required, medical necessity, exclusions, limits, purpose and replacement. These sections and the categories of supplement covered are listed below:

Section	Category
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2 (1)	General health supplements
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| (a) | Medical or surgical supplies that are disposable or reusable and 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; |
| (c) | The following services: acupuncture, chiropractic, massage therapy, naturopathy, non- |

surgical podiatry, physical therapy.
(f) Travel for the purposes of medical care.

- 2.1 Optical supplements
- 2.2 Eye examination supplements
- 3 Medical equipment and devices – general provisions
 - 3.1 Canes, crutches and walkers
 - 3.2 Wheelchairs
 - 3.3 Wheelchair seating systems
 - 3.4 Scooters
 - 3.5 Toileting, transfers and positioning aids: (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; (j) a portable commode chair; (k) a standing frame; (l) a positioning frame; (m) a transfer aid
 - 3.6 Hospital beds: (a) a hospital bed; (b) an upgraded component of a hospital bed; (c) an accessory attached to a hospital bed; (d) a positioning item on a hospital bed
 - 3.7 Pressure relief mattresses
 - 3.8 Floor or ceiling lift devices
 - 3.9 Breathing devices
 - 3.10 Orthoses: (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
 - 3.11 Hearing instruments
 - 3.12 Non-conventional glucose meters
- 4 Dental supplements
 - 4.1 Crown and bridgework supplement
- 5 Denture supplements
- 6 Emergency dental supplements
- 7 Dental and optical services – healthy kids program
- 8 Diet supplements
- 9 Natal supplement
- 10 Infant formula

Panel decision

Under the Employment and Assistance legislation (the *EAA* and the *Employment and Assistance for Persons with Disabilities Act*) and the Regulations made thereunder, the minister is authorized to provide a wide, but specific, range of health related supplements -- medical supplies, services, equipment and devices and treatments. These are listed in the virtually identical Schedule C of each Regulation. At issue in this appeal is whether an insulin pump, a type of medical equipment or device, is an eligible item listed under Schedule C. Sections 3.1 to 3.12 of Schedule C list the medical

equipment or device items that are eligible.

To be eligible for a supplement for an item of medical equipment or device listed under section 3 of Schedule C of the EAR, a person must first meet one of the criteria set out in sections 67 or 76 of the EAR. These sections cover eligibility criteria for a person to qualify medical equipment and devices, as well as other supplies, treatments and services listed in section 2 of the EAR.

Under section 67 of the EAR, as summarized above, to be eligible for general health supplements, as listed in sections 2 and 3 of Schedule C of the EAR, a person must be a recipient of income assistance and qualified as PPMB, be in emergency shelter or transitional house or be a dependant of such a person or be former recipient under a variety of scenarios.

Section 76 of the EAR authorizes the minister to provide a supplement set out in section 2(1) (a) or (f) and section 3 of Schedule C of the EAR to persons not otherwise eligible under the regulation. This could include a recipient of income assistance who is not PPMB and therefore not eligible under section 67 or, as in this case, a member of the “general public who is not in receipt of income assistance” such as the appellant.

Section 76 authorizes the minister to provide a supplement if the minister is satisfied that the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need. The ministry was satisfied that, based on his application and the physician's letters at reconsideration, the appellant requires an insulin pump to meet a direct and imminent life threatening need.

However, central to the consideration of any request for a health supplement is whether the requested item or service is actually listed in Schedule C. In the reconsideration decision, the ministry canvassed the list of medical devices listed in section 3, as well as all other supplies, services and treatments listed elsewhere in Schedule C. Upon review of the Schedule, as summarized above, the panel finds that the ministry was reasonable in determining that an insulin pump is not an eligible item as medical equipment under section 3 of Schedule C or as any other supplies, services or treatments under Schedule C. The panel has reviewed the legislation and finds that the minister has no discretion, even under the exceptional or unusual circumstances of the appellant, to provide any health-related or medical equipment or device, or other supplies, services or treatments, not specifically authorized in Schedule C of the Regulation.

In the reconsideration decision the ministry stated a non-conventional glucose meter is an eligible health supplement under section 3.12 of Schedule C and the information provided by the appellant's physician suggests the appellant could benefit from a non-conventional glucose meter, which would at least monitor his blood glucose levels for him. The ministry went on to state that, although it is not authorized by the legislation to provide an insulin pump, the appellant might explore the option of obtaining a non-conventional glucose meter, an item that the ministry is authorized to provide.

The panel notes that the types of supplements listed in Schedule C are generally those not covered by Pharmacare. Pharmacare does provide coverage for insulin pumps, but only for those 25 years or younger, under specified plans and subject to a special authorization application process. Pharmacare comes under the jurisdiction of the Minister of Health. And in comparison to the Minister of Social Development and Social Innovation, the Minister of Health has the discretion, on application

made by one or more providers or practitioners, to authorize payment for all or part of a drug, device, substance or related service provided to a person or class of persons, even if the drug, device or substance is not listed on a formulary.

Based on a review of the evidence and the applicable legislation, the panel finds that the ministry's decision to deny his request for funding of an insulin pump is a reasonable application of the legislation. The panel therefore confirms the ministry's decision.