PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "ministry") reconsideration decision of August 24, 2015, which denied the appellant's request for a Medtronic continuous glucose monitoring/insulin pump system (CGM/Insulin pump system) on the basis that it was not an eligible item under Schedule C of the *Employment and Assistance for Persons With Disabilities Regulation* ("EAPWDR").

In particular, the ministry found that the CGM/Insulin pump system is not a "non-conventional glucose meter" as defined in EAPWDR Schedule C, section 3.12(1).

PART D – Relevant Legislation

EAPWDR, section 62 and 69 and Schedule C

PART E – Summary of Facts

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

- The appellant's Request for Reconsideration dated July 24, 2015 and letter dated August 20, 2015 stating that she has struggled her entire life to try and manage her type 1 diabetes. The appellant states that despite her best efforts she has had several hospitalizations due to critically low blood glucose levels requiring urgent treatment and requires an integrated CGM/insulin system.
- Advocate Submission dated August 21, 2015 (the "Submission 1")
- Joint Letter from the appellant's Endocrinologist and Case Manager (the "Joint Letter") stating that as the current therapies of multiple daily blood tests and multiple daily injections do not sufficiently and safely control her diabetes, the appellant requires a continuous monitoring system and insulin pump.
- Appellant's lab test results dated July 9, 2013 to July 22, 2015.
- Quote, undated, from a medical equipment supplier for the cost of an insulin pump package at a cost of $7,000 and the cost of ongoing supplies for infusion sets ($205-$215), reservoirs ($43.50) and glucose sensors ($325).
- Medical Equipment Request and Justification form dated April 16, 2015 completed by the appellant's Endocrinologist stating that the appellant requires a Medtronic insulin pump for her type 1 diabetes. The Endocrinologist also provided a letter dated April 20, 2015 stating that the appellant is one of his patients that would benefit most from insulin pump and CGM technologies because her basal insulin needs cannot be met with existing long-acting insulin, because she has severe and unpredictable blood glucose excursions despite best care, as well as recurrent severe hypoglycemia.

Additional information provided

In her Notice of Appeal the appellant states that the ministry's decision was unreasonable and that the appellant meets all the criteria.

Prior to the hearing the appellant submitted a letter from her Endocrinologist dated September 8, 2015 stating that the CGM/Insulin pump system is a medical necessity even though insulin pumps (and by extension CGM devices) are not explicitly listed in the applicable legislation. The Endocrinologist states that unfortunately, BC legislation has not kept pace with technological advances in diabetes. The Endocrinologist states that the CGM/Insulin pump system is most certainly a non-conventional glucose meter system as it is a single cohesive system eligible for funding through the ministry (the "Endocrinologist Letter").

The appellant also provided a submission from her advocate ("Submission 2") that was written argument.

At the hearing the appellant provided oral evidence indicating that she has had diabetes since 1981 and has tried the gauntlet of diabetes technology to try and manage her symptoms but that nothing has worked. She described the two types of insulin that she requires and her daily routine of monitoring her blood sugar levels and dispensing insulin in an effort to manage her symptoms but states that she has developed hypoglycemic unawareness whereby she does not feel her low blood

sugar coming on and that can be extremely dangerous, particularly if she is driving or at home alone. The appellant states that she has been hospitalized due to her low blood sugars, typically once each year, and that her last hospitalization was approximately one year ago.

The ministry did not object to the Endocrinologist Letter or the appellant's oral evidence.

Admissibility of New Information

The panel has admitted the appellant's oral testimony and the Endocrinologist Letter as it is evidence in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act.* In particular, the new information relates to the appellant's physical diagnosis and the process around obtaining funds for the requested CGM/Insulin pump system.

The ministry relied on the reconsideration decision.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's reconsideration decision denying the appellant funding for the CGM/Insulin pump system was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the CGM/Insulin pump system is not an eligible item under EAPWDR section 62 or 69 or Schedule C and in particular, that it did not meet the criteria for a non-conventional glucose meter as defined in EAPWDR Schedule C, section 3.12(1)?

The relevant legislation is as follows:

EAPWDR

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 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,

(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).
(B.C. Reg. 61/2010) (B.C. Reg. 197/2012)

EAPWDR Schedule C

General health supplements

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;

(b) Repealed. [B.C. Reg. 236/2003, Sch. 2, s. 2 (b).]

(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 medical practitioner or nurse practitioner has confirmed an acute need,

(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:

Item	Service	Provided by	Registered with
1	acupuncture	acupuncturist	College of Traditional Chinese Medicine under the *Hea*
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia und
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia unde
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia und

(d) and (e) Repealed. [B.C. Reg. 75/2008, s. (a).]

(f) the least expensive appropriate mode of transportation to or from
(i) an office, in the local area, of a medical practitioner or nurse practitioner,
(ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,
(iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or
(iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*,
provided that

(v) the transportation is to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, and
(vi) there are no resources available to the person's family unit to cover the cost.

(g) Repealed. [B.C. Reg. 75/2008, s. (a).]

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

(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.

(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.

(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.

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.

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.

Medical equipment and devices – wheelchair seating systems

3.3 (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 achieve or maintain a person's positioning in a wheelchair:

(a) a wheelchair seating system;
(b) an accessory to a wheelchair seating system.

Medical equipment and devices – scooters

3.4 (1) In this section, **"scooter"** does not include a scooter with 2 wheels.

(2) Subject to subsection (5) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (3) of this section are met:

(a) a scooter;
(b) an upgraded component of a scooter;
(c) an accessory attached to a scooter.

Medical equipment and devices – bathing and toileting aids

3.5 (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 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;
(j) a portable commode chair.

Medical equipment and devices – hospital bed

3.6 (1) Subject to subsection (3) 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 facilitate transfers of a person to and from bed or to adjust a person's positioning in bed:

(a) a hospital bed;
(b) an upgraded component of a hospital bed;
(c) an accessory attached to a hospital bed.

Medical equipment and devices – pressure relief mattresses

3.7 (1) A pressure relief mattress is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that the pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity.

Medical equipment and devices – floor or ceiling lift devices

3.8 (1) In this section, **"floor or ceiling lift device"** means a device that stands on the floor or is attached to the ceiling and that uses a sling system to transfer a person.

(2) A floor or ceiling lift device is a health supplement for the purposes of section 3 of this Schedule if the following requirements are met:

(a) the minister is satisfied that the floor or ceiling lift device is medically essential to facilitate transfers of a person in a bedroom or a bathroom;

(b) the cost of the floor or ceiling lift device does not exceed $4 200 or, if the cost of the floor or ceiling lift device does exceed $4 200, the minister is satisfied that the excess cost is a result of unusual installation expenses.

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 if all of the requirements set out in subsection (2) of this section are met:

(a) a positive airway pressure device;
(b) an accessory that is required to operate a positive airway pressure device;
(c) a supply that is required to operate a positive airway pressure device.

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.

Medical equipment and devices – hearing instruments

3.11 A hearing instrument is a health supplement for the purposes of section 3 of this Schedule if

(a) the hearing instrument is prescribed by an audiologist or hearing instrument practitioner, and
(b) an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument.

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.

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Eligibility criteria - s. 62 and Schedule C, section 3(1)

The appellant states that she is a recipient of disability assistance who makes marginal additional income from part-time employment and that she works extensively with the Endocrinologist and case manager, neither of whom has been able to help her procure other sources of funding for the requested equipment. The appellant argues that she has adequately pursued funding alternatives and no other funding is currently available for the requested CGM/Insulin pump system.

The appellant argues that while the ministry suggested that the appellant obtain an exemption from the Ministry of Health to cover the cost to the CGM/Insulin pump system, the Endocrinologist is clear that funding is not available for people over 25, which the appellant is, and there is no rationale provided by the ministry for why an exemption might be possible in the appellant's case. The appellant also argues that a principle objective of the *Employment and Assistance for Persons with Disabilities Act* and accompanying EAPWDR is to promote the health and well-being of persons with disabilities, and specifically those who have limited financial means. The appellant states that as a person with largely uncontrolled type 1 diabetes, the ministry's decision will have profound implications for her health and well-being. The appellant argues that the ministry must interpret the EAPWDR in a large and liberal manner with a view to promoting the objectives of advancing the appellant's overall health and well-being.

The appellant's position is that as she has tried numerous other glucose monitoring meters that do not work effectively and that the CGM/Insulin pump system is the least expensive equipment

appropriate to safely manage her condition.

The ministry's position is that as the appellant is a recipient of disability assistance she is eligible to receive health supplements provided under section 62 and Schedule C of the EAPWDR.

The ministry's position is that as set out in EAPWDR Schedule C, section 3(1)(b), the minister may provide the least expensive appropriate medical device described in sections 3.1 to 3.12 if

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.

The ministry states that it is the "last resort" for funding and that the appellant has not provided evidence that other options for funding were explored.

The panel finds that as the appellant is a recipient of disability assistance earning marginal part-time income that she does not have the funds to purchase the prescribed CGM/Insulin pump system. The panel accepts the appellant's evidence that she has worked with the Endocrinologist and her case manager in an effort to obtain funding for the CGM/Insulin pump system but has not been able to do so. The panel finds that the ministry's decision that the appellant has not provided evidence that other options for funding were explored is not reasonable.

Eligibility for the CGM/Insulin pump system as medical equipment

Appellant's position

The appellant's position, as set out in both Submission 1 and Submission 2, is that the CGM/Insulin pump system is an integrated system that provides continuous glucose monitoring and dispenses insulin as necessary, made possible with the technological advances in diabetes. The appellant's position is that it meets the criteria of EAPWDR section 3.12(1) as it is a continuous glucose monitoring meter that is medically essential to test her blood glucose levels and has been prescribed because she is unable to use a conventional glucose meter. The appellant's position is that the Joint Letter confirms that she has tried eight different blood glucose monitoring systems and it is her Endocrinologist's opinion that blood test results and habitual appointments with her healthcare team have proven that these methods do not safely and effectively control her diabetes. The appellant states that while she can technically use a conventional glucose meter it does not work effectively in her circumstances.

The appellant's position is that just because the CGM/Insulin pump system is also an insulin pump in addition to a continuous glucose monitoring meter, should not exclude it from the legislated criteria. The appellant relies on the Endocrinologist Letter to support her position that the CGM/Insulin pump system is a non conventional glucose meter system and should be eligible for funding.

In Submission 2, the appellant argues, through her advocate, that the ministry's reconsideration decision was both unreasonable and incorrect and should be rescinded. Alternatively, the appellant

argues that the tribunal should rescind the reconsideration decision and order that the ministry make a new decision that does not unreasonably or incorrectly interpret the applicable legislation.

In Submission 2 the appellant argues that the ministry's position that the word "includes" means "is limited to" in relation to section 3.12(1) is an untenable interpretation of the word "includes". The Submission states that this interpretation contradicts previous Tribunal decisions which adopt an inclusive interpretation of the word "includes". Submission 2 states that by adopting an untenable interpretation of the word "includes", the ministry has failed to meaningfully engage with the appellant's request and has completely sidestepped the substantive justification for her request.

The appellant's position is that the dichotomy that the ministry suggests between continuous glucose monitoring and insulin pump technology is outmoded and no longer seems to reflect the technological reality of diabetes management technology. The appellant argues that the dichotomy is not fixed, particularly in the context of new and emerging diabetes management systems.

Ministry's position

The ministry's position is that the requested CGM/Insulin pump system is not an item set out in the EAPWDR sections 3.1 to 3.12 as it is not a cane, crutch, walker, wheelchair, wheelchair seating system, scooter, mobility aid, hospital bed, pressure relief mattress, floor or ceiling lift device, positive airway pressure device, foot orthotic, hearing instrument or a non-conventional glucose meter.

In particular the ministry states that EAPWDR Schedule C, section 3.12(1) provides that a "non-conventional glucose meter" includes a continuous glucose monitoring meter, and a talking glucose meter. The ministry states that EAPWDR Schedule C section 3.12(12) sets out that a non-conventional glucose meter is a health supplement for the purposes of section 3 of Schedule C 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.

The ministry's position is that the purpose of the word "includes" is to define those items for which the ministry will provide funding and that the word "includes" is really synonymous with "limited to" and does not mean the list is exhaustive. The ministry's position is that the section 3.12(1) refers specifically to a non-conventional glucose meter and not to any other devices by stating the purpose of the glucose meter is to test blood glucose levels. The ministry states that a continuous glucose monitoring meter is used to test glucose levels, that an insulin pump dispense insulin and an "artificial pancreas" is a system that requires at least three components, being a continuous glucose monitoring system, an insulin delivery system and a computer program that "closes the loop" by adjusting insulin delivery based on changes in glucose levels. The ministry's position is that the legislation only authorizes the ministry to provide a continuous glucose monitoring meter or a talking glucose meter and not any other components such as the insulin pump.

Panel decision

The panel finds that the ministry's position that the CGM/Insulin pump system is not one of the medical equipment and devices specified in EAPWDR Schedule C, sections 3.1 to 3.11 was reasonable. In particular, the CGM/Insulin pump system is not a cane, crutch, walker, wheelchair, wheelchair seating system, scooter, mobility aid, hospital bed, pressure relief mattress, floor or ceiling lift device, positive airway pressure device, foot orthotic or hearing instrument provided for in section 3.1 to 3.11.

With respect to section 3.12(1), the panel finds that the legislation authorizes the ministry to fund a continuous glucose monitoring meter if the minister is satisfied that the glucose meter is medically essential to test blood glucose levels and the person for whom the non-conventional glucose meter has been prescribed is unable to use a conventional glucose meter.

The panel finds that the ministry's position that the word "includes" is really synonymous with "limited to" is not reasonable but that the legislation cannot be interpreted in as broad of a context as argued by the appellant such as to include an integrated system with components such as the insulin pump. The panel finds that the ministry's position that the non-conventional glucose meter must be medically essential to test blood glucose levels was reasonable and that the legislation does not contemplate integrated systems such as the CGM/Insulin pump system.

Although the appellant states that the dichotomy suggested by the ministry between CGM and insulin pump technology is outmoded and no longer seems to reflect the technological reality of diabetes management technology, there is no evidence to support a finding that the legislation was drafted to contemplate future technological changes. While the legislation must be interpreted in a broad and generous manner and resolved in favor of the appellant where ambiguities arise, that does not mean that the ministry ought to read in definitions that take technological advances in the medical field into account.

Although the Endocrinologist states that the CGM/Insulin pump system is medically essential, and that it meets the definition of a non-conventional glucose meter, the panel finds that the ministry reasonably determined that the CGM/Insulin pump system does not meet the legislated criteria of EAPWDR section 3.12(1) because what is being requested is more than the non-conventional glucose meter as defined in the legislation.

Eligibility for the CGM/Insulin pump as a medical supply

The appellant does not take the position that the CGM/Insulin pump system is eligible as a medical supply.

The ministry's position is that the CGM/Insulin pump system is not an eligible item as a medical supply pursuant to EAPWDR section 2(1)(a)(A-F) as it is not an item required for wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care or limb circulation care.

The ministry found that the CGM/Insulin pump system does not meet the requirements for a medical or surgical supply as set out in Schedule C section 2(1)(a.1) as the requested insulin pump is not one

of the listed medical supplies, being lancets, needles and syringes, ventilator supplies required for the operation or sterilization of a ventilator, or tracheostomy supplies.

The ministry found that the CGM/insulin pump system is not a consumable medical supply as set out in EAPWDR Schedule C, section 2(1)(a.2) or a nutritional supplement set out in EAPWDR Schedule C, section 2(1.1).

The panel finds that the ministry's decision that the CGM/Insulin pump system is not eligible as a medical supply under section 2(1)(a)(A-F) or section 2(1)(a.1) or 2(1)(a.2) or 2(1.1) was reasonable as it is not an item specified in any of those sections. In particular, the CGM/Insulin pump system is not an item required for wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care or limb circulation care, and it is not one of the listed medical supplies, consumable medical supply, or a nutritional supplement.

Eligibility for the CGM/Insulin pump system as an item in any of the other sections of the EAPWDR, Schedule C

The appellant does not take the position that the CGM/Insulin pump is eligible under any of the other sections of EAPWDR Schedule C.

The ministry also argues that the CGM/Insulin pump does not meet the criteria as a therapy under EAPWDR Schedule C, sections 2(1)(c), 2(2) or 2(2.1) as it is not acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry or physiotherapy treatment.

The ministry's position is that the insulin pump does not meet the criteria as one of the other remaining health supplements set out in EAPWDR Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 or 9 as it is not a dental supplement, crown and bridgework supplement, emergency dental supplement, diet supplement, monthly nutritional supplement, natal supplement or infant formula.

The panel finds that the ministry's decision that the CGM/Insulin pump system is not an eligible item in any of the other sections of EAPWDR Schedule C, as it is not a therapy and is not one of the remaining health supplements of a dental supplement, crown and bridgework supplement, emergency dental supplement, diet supplement, monthly nutritional supplement, natal supplement or infant formula was reasonable.

Eligibility for the CGM/Insulin pump system under Life-Threatening Health Need

The appellant's position is that her diabetes is a grave, life threatening condition that requires hospitalizations typically once a year and that her hypoglycemic unawareness is very dangers, particularly when driving or when she is alone. The appellant's position, as supported by the Endocrinologist is that blood test results, habitual appointments with her healthcare team, and lifestyle management efforts do not safely and effectively control her diabetes. The Endocrinologist confirms that low blood glucose levels are a medical emergency, noting that symptoms of low blood glucose levels can occur suddenly and include blurry vision, rapid heartbeat, headache, shaking, trouble thinking clearly and unconsciousness. The Endocrinologist states that "*[t]hese warning sign*

symptoms, if not treated immediately, can progress quickly and take a longer time to recover…". He also confirms that due to the appellant's hypoglycemic unawareness, she is at higher risk for even more serious symptoms including fainting, seizure, or going into a coma.

The ministry's position is that the appellant's request for a CGM/Insulin pump system does not meet the legislated criteria as a life-threatening health need under EAPWDR section 69. The ministry states that section 69 applies to health supplements set out under Schedule C, sections 2(1)(a) to (f) and section 3 and is intended to provide a remedy for those persons who are facing a direct and imminent life-threatening health need for these supplements and who are not otherwise eligible to receive them.

The reconsideration decision states that the appellant does not require a remedy under section 69 as she is eligible to receive health supplements set out under Schedule C, sections 2(1)(a) and (f) and section 3 but that the information submitted with the RFR does not establish that the appellant faces a direct and imminent life-threatening health need for the CGM/Insulin pump system. The ministry's position is that even if the information provided established that the appellant faces a direct and imminent life-threatening need for the CGM/Insulin pump system, the CGM/Insulin pump system is not a health supplement set out in Schedule C, sections 2 and 3 and does not meet the requirements of EAPWDR Schedule C, sections 2(1)(a) and (f) and 3 to 3.12.

Panel Decision:

EAPWDR section 69 applies where a person faces a direct and imminent life threatening health need and a health supplement is necessary to meet that need. The term "imminent" requires a degree of immediacy.

The panel finds that the appellant has significant difficulty managing her diabetes and that she has tried 8 different blood glucose monitoring systems. The panel accepts that the symptoms of low blood glucose levels can be very serious. The panel also notes the Endocrinologist's statement that "…*I must insist she starts treatment with the Medtronic continuous monitoring system and insulin pump".* However, while the information establishes that the appellant's current methods are not safe and effective the information provided does not establish the requisite degree of immediacy to demonstrate that the appellant faces a direct and imminent life threatening health need. For example the appellant stated that she has been using her current blood glucose monitoring system BGStar for several months and has not been hospitalized for approximately one year. While the panel accepts that it would be preferable for the appellant to use the CGM/Insulin pump system the panel finds that the ministry reasonably determined that the information provided does not establish that the appellant faces a direct and imminent life-threatening health need as required by EAPWDR, section 69.

Conclusion

The panel acknowledges that the CGM/Insulin pump system has been recommended by the appellant's Endocrinologist and would be extremely beneficial for her condition. However, having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for funding for the CGM/Insulin pump system is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.