PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated August 20, 2015 which denied the appellant's request for a supplement to cover the cost of distilled water for the humidifier of a CPAP machine under Sections 3 and 3.9 of Schedule C of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR). The ministry found that the appellant's request did not meet the legislative criteria in Schedule C of the EAPWDR because:

- Distilled water is not required to operate a positive airway pressure device (i.e. the CPAP) as stipulated in Section 3.9(1)(a);
- The humidifier is not medically essential to moisturize air in order to allow a tracheostomy patient to breathe under Section 3.9(1)(f);
- There was no assessment by a respiratory therapist to confirm the medical need for the item, pursuant to Section 3.9(2)(b); and,
- The ministry was not satisfied that the distilled water is medically essential for the treatment of moderate to severe sleep apnea [Section 3.9(2)(c)].

PART D – Relevant Legislation

Employment and Persons with Disabilities Regulation (EAPWDR), Section 62 and Schedule C, Sections 3 and 3.9

PART E – Summary of Facts

With the oral consent of the appellant, a ministry observer attended but did not participate in the hearing.

The evidence before the ministry at the time of the reconsideration decision included:

1) Medical Equipment Request and Justification (MERJ) dated May 27, 2015 recommending a specific make and model of CPAP machine and mask for sleep apnea;
2) Fax sent May 28, 2015 from a respiratory supply company advising the appellant has been diagnosed with OSA [obstructive sleep apnea] and attaching an overnight sleep study;
3) Quote dated May 28, 2015 for rental of CPAP unit and humidifier;
4) Purchase Authorization dated June 3, 2015 from the ministry for a CPAP mask for $295, 2-month trial of a CPAP with humidifier for $400 and purchases of CPAP parts and tubing for $30, for a total of $725;
5) Prescription dated June 19, 2015 in which the appellant's physician wrote that the appellant "requires 8 litres of distilled water per month for her CPAP machine;"
6) Letter dated July 6, 2015 from the ministry denying the appellant's request for distilled water for her CPAP machine;
7) User Guide for CPAP machine; and,
8) Request for Reconsideration dated July 30, 2015, in which the appellant wrote:
    - Her request for distilled water for her CPAP machine fits into the EAPWDR.
    - The CPAP machine is to keep oxygen in her system while she sleeps and the machine indicates "distilled water only."
    - The water is turned to moisture by heating and evaporation which concentrates the particles in the water, sends it through the machine and into her lungs.
    - Her doctor wrote a prescription for distilled water.
    - The ministry is willing to buy the machine and will be charged a cleaning and/or replacement fee of between $60 to $100; therefore, [the distilled water] is the least expensive option.

Additional information

In her Notice of Appeal dated September 2, 2015, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that if humidity was not required, why would manufacturers include a humidity chamber? She wrote that she has "a history of heavy nose bleeds (had it cauterized)" and "humidity helps to avoid the issue."

Prior to the hearing, the appellant provided the following additional documents:

1) Letter from a respiratory supply company dated August 31, 2015 in which a clinical therapist wrote that:
    - Distilled water is used in CPAP machine humidifiers because most of the impurities in the water have been removed in a distilling process;
    - The two main "essential benefits" are: 1) less impurities are inhaled into the lungs, therefore there is less chance of the patient getting an infection when using distilled water over tap or regular water, and (2) the regular/tap water corrodes the chamber of the CPAP humidifier. Over time the chamber cannot be cleaned of these residues that keep building up and then has to be replaced. The replacement cost of a CPAP humidifier water chamber is approximately $60 to $100. On newer CPAP machines it states "use distilled water only" on the water chamber;

2) Letter from the appellant dated September 7, 2015 in which she wrote that:
   - She had requested funding for distilled water for the rental machine so the reservoir would not be damaged by the hard water in her community;
   - She hopes that the CPAP unit has not been damaged by the hard water as she cannot afford to pay $60 to $100 if there is damage.
   - There is a good chance she will be approved for a machine of her own.
   - If the air being blown into her nose and throat is dry, she runs the risk of waking up due to dry mouth or a nose bleed. She had her nose cauterized when she was young due to thin vein walls and frequent nose bleeds.
   - The manufacturers provide a humidity chamber with the machine; the reservoir states "distilled water only" as shown in the photo included.
   - There has been improvement in her sleep and her health is important.
   - If the ministry is willing to pay for the machine, then she hopes that the ministry would also like to prevent any damage to the machine; and,
3) Two photographs that had images that appeared very dark and unclear.

At the hearing, the appellant stated that:

- The two photographs were supposed to show the humidification chamber on the CPAP machine and the sticker that says "Distilled Water Only" and displays the make of the machine.
- The letter dated August 31, 2015 is from a licensed practitioner nurse and not a respiratory therapist.
- The CPAP machine she has been using is a rental and she wanted to prevent damage to the machine potentially caused by not using distilled water. If it needs to be cleaned, she was told it will cost around $60 to $100, which she hopes will not be charged because she cannot pay.
- There has now been a request to purchase the CPAP machine and she needs to use distilled water, particularly because of the hard water in her community. She has seen how the hard water will turn "scummy" if it sits for too long.
- The User Guide for the CPAP machine sets out that the adverse effects may include drying of the nose, mouth or throat and nosebleeds. She was prone to nose bleeds when she was younger and had to have her nose cauterized to avoid future nose bleeds.
- She still has nose bleeds and when that happens she cannot use the CPAP machine for the rest of the night.
- She keeps the humidification setting at 6 or 7 out of 8 because it makes it more comfortable.
- The use of the CPAP machine is necessary for her, as set out in the test results in the fax from a respiratory supply company. Her score for sleep disturbances was 46.6 and anything over 30 is severe. The Purchase Authorization from the ministry was for a CPAP with humidifier.

The ministry relied on its reconsideration decision as summarized at the hearing. The ministry also stated that there are CPAP machines available that do not have humidifiers and the appellant could have been prescribed a CPAP machine without a humidifier.

Admissibility of Additional Information

The ministry did not object to the admissibility of the additional documents submitted by the appellant, which the panel considered consisted of instructions for operating the CPAP machine and information regarding the appellant's need for distilled water, which is in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4)(b) of the EAA.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which denied the appellant's request for a supplement to cover the cost of distilled water for the humidifier of a CPAP machine under Sections 3 and 3.9 of Schedule C of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR), is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Pursuant to Section 62 of the EAPWDR, the applicant must be a recipient of disability assistance, or be a dependant of a person in receipt of disability assistance in 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. In this case, the ministry has not disputed that the requirement of Section 62 has been met in that the appellant has been approved as a recipient of disability assistance.

At issue is whether the appellant's request for distilled water for the humidifier of a CPAP machine meets the requirements under Schedule C of the EAPWDR.

Section 3 provides in part:

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 a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device. ...

Section 3.9 of Schedule C provides:

Medical equipment and devices — breathing 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:

(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; . . .

(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.

. . .

Required to operate a positive airway pressure device

Ministry's position

The ministry's position is that the appellant is eligible to receive health supplements under Section 62 of the EAPWDR, but her request does not meet all of the applicable criteria of Sections 3 and 3.9 of Schedule C of the EAPWDR. In particular, the ministry stated that the requirement in Section 3.9(1)(a) has not been met as the requested distilled water is not required to operate a positive airway pressure device. The ministry argued that the CPAP machine that was approved is a positive airway pressure device but the humidifier is not a positive airway pressure device. The ministry argued that the humidifier is operated in tandem with but is not an integral part of the CPAP machine. The ministry argued that the CPAP machine does not require a humidifier to run it and distilled water is required for the water chamber of the heated humidifier. When questioned by the panel, the ministry agreed that the CPAP machine that was recommended and approved as medically necessary for the appellant contained a "built-in" humidifier but maintained that another CPAP machine that did not include a humidifier could have been recommended by the respiratory supply company but was not.

The ministry also argued that the humidifier is not medically essential to moisturize air in order to allow a tracheostomy patient to breathe and, therefore, does not meet the requirements of Section 3.9(1)(f) of Schedule C.

Appellant's position
The appellant's position is that her request for distilled water meets the legislative requirements in Sections 3 and 3.9 of Schedule C of the EAPWDR since the CPAP machine is to keep oxygen in her system while she sleeps and a component of the machine indicates "distilled water only." In her Notice of Appeal, the appellant argued that if humidity was not required, the manufacturers would not include a humidity chamber. The appellant did not claim that she is a tracheostomy patient.

Panel decision
Section 3.9(1)(a)(ii) and (iii) of Schedule C of the EAPWDR stipulates that the requested distilled water must be either an accessory or a supply required to operate a positive airway pressure device as distilled water is clearly not itself a positive airway pressure device under Section 3.9(1)(a)(i). While the ministry argued that not all CPAP machines have a humidifier, the panel finds that the model approved by the ministry for the appellant has a humidifier, as set out in the Purchase Authorization letter dated June 3, 2015. The appellant stated at the hearing that the humidifier chamber has a sticker that reads "Distilled Water Only," which she attempted to show in a photograph she provided on the appeal, and the photographs of the CPAP machine in the User Guide show a singular appliance with a water tub at one end that is opened for filling and then inserted into the device. The User Guide for the appellant's particular CPAP machine also states and that the device will not work without the water tub inserted and, in a "Caution" section, to "open the water tub and fill it with distilled water."

The ministry acknowledged elsewhere in the decision that distilled water is recommended by the manufacturer for use in the humidifier of the CPAP machine to prevent a coating on the humidifier's heating plate. At the hearing, the appellant stated that the water is particularly hard in her community and she has seen how the hard water will turn "scummy" if it sits for too long. Although the User Guide also specifies in the section regarding use for traveling by plane not to use the device with water in the water tub due to "risk of inhalation of water during turbulence," this is not the typical use of the CPAP machine. The panel finds that the manufacturer for the appellant's particular CPAP machine, approved for her by the ministry, requires that distilled water is used for its usual and proper operation. Therefore, the panel finds that the ministry was not reasonable in concluding that distilled water is not a supply required to operate her CPAP machine, pursuant to Section 3.9(1)(a)(iii) of Schedule C of the EAPWDR.

The panel finds that the appellant did not claim that she is a tracheostomy patient. It is not clear why the ministry considered Section 3.9(1)(f) as it is not relevant to the appellant's situation. Regardless, the conclusion by the ministry that the humidifier is not medically essential to moisturize air in order to allow a tracheostomy patient to breathe and, therefore, her request for distilled water does not meet the requirements of Section 3.9(1)(f) of Schedule C, was reasonable.

Assessment by a respiratory therapist to confirm the medical need
Ministry's position
The ministry's position is that Section 3.9(2)(b) of Schedule C of the EAPWDR requires that a respiratory therapist confirm in an assessment that there is a medical need for the item which, in this

case, is distilled water for the humidifier of the CPAP machine. The ministry argued that while distilled water is recommended by the manufacturer for use in the humidifier of the CPAP machine to prevent a coating on the humidifier's heating plate, an assessment has not been provided by a respiratory therapist expressly confirming the medical need for the use of distilled water in the humidifier of the appellant's CPAP machine.

Appellant's position
The appellant's position is that her request for distilled water meets the legislative requirements in both Section 3 and 3.9 of Schedule C of the EAPWDR. The appellant argued that if the air being blown into her nose and throat is dry, she runs the risk of waking up due to dry mouth or a nose bleed. The appellant argued that use of the CPAP machine is necessary for her, as set out in the test results in the fax from a respiratory supply company, since her score for sleep disturbances was 46.6 and anything over 30 is severe. The appellant argued that the Purchase Authorization from the ministry was for a particular type of CPAP with humidifier.

Panel decision
Section 3.9(2)(b) of Schedule C of the EAPWDR stipulates that a respiratory therapist has performed an assessment that confirms the medical need for the item, or the distilled water. Prior to the hearing, the appellant provided a letter dated August 31, 2015 from a therapist who wrote that distilled water is used in CPAP machine humidifiers because most of the impurities in the water have been removed in a distilling process and one of the "essential benefits" is that fewer impurities are inhaled into the lungs, therefore there is less chance of the patient getting an infection when using distilled water. At the hearing, the appellant acknowledged that the letter is not from a respiratory therapist but, rather, from a licensed practitioner nurse. The panel notes, however, that the MERJ dated May 27, 2015 recommending a specific make and model of CPAP machine was completed by the same "therapist" who certified that she had assessed the medical need of the appellant and that the recommended medical equipment will satisfy the appellant's need, and this was accepted by the ministry to approve the rental of the appellant's CPAP machine. Even if the letter had been written by a respiratory therapist, however, it does not go so far as to state that the appellant has a medical need for distilled water but, rather, that the use of distilled water is beneficial. Therefore, the panel finds that the ministry was reasonable in determining that a respiratory therapist has not confirmed the medical need for distilled water under Section 3.9(2)(b) of Schedule C of the EAPWDR.

Medically essential for the treatment of moderate to severe sleep apnea
Ministry's position
The ministry's position is that it is not satisfied that the distilled water for the humidifier of the CPAP machine is medically essential for the treatment of moderate to severe sleep apnea. The ministry argued that the information provided by the manufacturer indicates that the humidifier is designed to make therapy more comfortable but there was no evidence from a respiratory therapist to establish that the use of distilled water in the humidifier is medically essential for the treatment of sleep apnea.

Appellant's position
The appellant's position is that her request for distilled water meets the legislative requirements in both Section 3 and 3.9 of Schedule C of the EAPWDR. The appellant argued that the CPAP machine is necessary to keep oxygen in her system while she sleeps and the machine indicates "distilled water only." The appellant pointed out that her doctor wrote a prescription for distilled water. The appellant argued that the use of the CPAP machine is necessary for her, as set out in the test results in the fax from a respiratory supply company, since her score for sleep disturbances was 46.6

and anything over 30 is severe. The appellant argued that the Purchase Authorization from the ministry was for a CPAP with humidifier.

Panel decision

Section 3.9(2)(c) of Schedule C of the EAPWDR stipulates that the minister must be satisfied that the item, or distilled water, is medically essential for the treatment of moderate to severe sleep apnea. As pointed out by the appellant, the respiratory supply company wrote in the fax sent May 28, 2015 that the results of an overnight sleep study showed that the appellant has severe sleep apnea. In the MERJ dated May 27, 2015, the appellant's physician confirmed the diagnosis of sleep apnea and the need for a CPAP machine and the therapist specified a make and model for the CPAP machine with humidifier required to meet the appellant's need. While the appellant argued that her physician confirmed her need for distilled water for her CPAP machine in the prescription dated June 19, 2015, the appellant also acknowledged that she has been using the CPAP machine on a 2-month rental and she has been using tap water in the device. The panel finds that the evidence does not establish that the use of tap water had any adverse effects on the treatment of the appellant's sleep apnea, or that distilled water is medically essential for the treatment of the appellant's sleep apnea, as required by Section 3.9(2)(c), although the appellant argued that it may have caused damage to the CPAP machine itself. The appellant stated at the hearing that the necessary cleaning and repair of the CPAP machine due to the use of hard tap water may cost around $60 to $100 and that she cannot afford this cost. The panel finds that the ministry reasonably concluded that there was insufficient evidence to show that the item, or distilled water, is medically essential for the treatment of moderate to severe sleep apnea, as required under Section 3.9(2)(b) of Schedule C of the EAPWDR.

Conclusion

The panel finds that the ministry reasonably determined that the appellant's request does not meet the requirements of Section 3.9(1)(f) of Schedule C since the appellant did not claim to be a tracheostomy patient.

While the panel finds that the ministry was unreasonable in concluding that distilled water is not a supply required to operate her CPAP machine, pursuant to Section 3.9(1)(a)(iii) of Schedule C of the EAPWDR, the panel finds that the ministry reasonably determined that the appellant's request does not meet the other requirements under 3.9. Specifically, the panel finds that the ministry was reasonable in determining that a respiratory therapist has not confirmed the medical need for distilled water under Section 3.9(2)(b), and that there was insufficient evidence to show that the distilled water is medically essential for the treatment of moderate to severe sleep apnea, as required under Section 3.9(2)(b).

In conclusion, the panel finds that the ministry reconsideration decision is a reasonable application of the applicable enactment in the appellant's circumstances.