PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated April 6, 2016 made by the Ministry of Social Development and Social Innovation (the ministry) which determined that the appellant was not eligible to receive funding for Microsan and Caviwipes (the sanitizers), and Poliflush N/S 1ml, CADD pump tubing, normal saline IV bags and Drsg IV trans (the IV supplies) as the request does not meet the requirements set out in sections 2(1)(a) and (a.1) of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

PART D – Relevant Legislation

The relevant legislation is sections 2(1)(a) and (a.1) of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

PART E – Summary of Facts

The appellant is in receipt of disability assistance. His medical conditions include T5 paraplegia and multiple chronic wounds on left buttock x2, right buttock, right hip, coccyx, abdomen, left flank, right knee, left knee and left lower leg. The appellant suffers from hypo-magnesemia, which means he must take a magnesium supplement by IV three times per week. As well, the appellant is MRSA positive, which means that he must receive his IV treatments in a sanitized environment.

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

A fax dated November 28, 2015, from a Registered Nurse (the RN) requesting medical supplies for the appellant for wound care, catheter care and central line care. The fax included a list of 40 items with a physician's signature for authorization. The ministry approved the majority of the supplies, with the exception of the sanitizers, the IV supplies and two other items.

A reconsideration request dated December 16, 2015, submitted by the RN.

A letter dated January 27, 2016, from the RN supporting the request for the items that had been denied. In this letter the RN explain that the hospital is supplying the magnesium and Heparin to prime the appellant's central access line at no charge and have lent the appellant an IV infusion pump (CADD). The RN also states that the health authority is supplying the appellant with his IV and central line supplies but that the health authority's policy is that after two weeks the cost of these items is assumed by the patient. The RN then identifies a number of medical supplies required by the appellant.

A letter dated March 3, 2016, in which the RN provides a revised list of medical items needed by the appellant which was reviewed and approved by the appellant's physician. Some of these items represent a new request and so are not part of the reconsideration decision. Others are the items denied by the ministry. A number of items were no longer being requested as circumstances had changed. The RN writes: "IV – receives Magnesium Sulfate 2-3x week – absolutely required as this health supplement is necessary or else he faces a direct imminent life threatening issue. The N/S Posiflush, CADD Pump Tubing, Drsg IV Trans 10x15cm, Latex-free sterile gloves are for this." The RN also writes that as the appellant is MRSA-positive, "Microsan and caviwipes are required to care health care for workers health and equipment."

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant was not eligible to receive a medical supplement for the sanitizers and the IV supplies because the request did not meet the requirements set out in sections 2(1)(a) and (a.1) of Schedule C of the EAPWDR was reasonably supported by the evidence and/or a reasonable interpretation of the legislation.

The relevant legislation is sections 2(1)(a) and (a.1) of Schedule C of the EAPWDR.

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;

This was a written decision.

THE APPELLANT'S POSITION

In his appeal submission appellant states the following:

I have spoken with my case manager at [the health authority] they have agreed to assume the

cost of my IV supplies however the Caviwipes + Hand Sanitizer remain outstanding. I need these items monthly to prevent the spread of MRSA and more importantly to protect myself from contracting any new communicable viruses due to my vulnerable health condition.

THE MINISTRY'S POSITION

The ministry indicated that its position at appeal was that contained in the reconsideration decision. In that decision the ministry found the following:

1. The Sanitizers
   The ministry found that the sanitizers met the legislative requirements in section 2(1)(a) of Schedule C of being prescribed by a medical professional, being the least expensive appropriate supplies and that the appellant has no resources available to pay for the supplies.

   However, the ministry found that:

   a. The supplies were not for one of the purposes listed in section 2(1)(a)(i)(A). (The approved supplies had been found to be needed for "(A) wound care".) Rather, based on the March 3 letter from the RN, they are required:

      i. "to care for health care workers health and equipment",

      ii. to address the appellant's MRSA-positive status, and

      iii. for general cleanliness.

      Therefore, as the sanitizers are "not necessarily required for the treatment of a specific wound or parasite, but rather general cleanliness" they do not qualify under this section.

   b. The sanitizers did not meet the requirement of section 2(1)(a)(ii)(C) that they be necessary to avoid an imminent and substantial danger to health. The ministry states that, although these items may be useful in preventing the spread of bacteria and viruses, it is not satisfied that the evidence substantiates the position that there not being supplied by the ministry would place the appellant in *imminent* danger to his health -- as there are other methods of maintaining the required cleanliness -- and *substantial* danger to his health – because the amount of risk in not using these particular supplies has not been established.

2. The IV Supplies
   The ministry found that the IV supplies met the legislative requirements in section 2(1)(a) of Schedule C of being prescribed by a medical professional, being the least expensive appropriate supplies and that they are necessary to avoid an imminent and substantial danger to the appellant's health.

   However, the ministry found that:

   a. There was no evidence that the appellant did not have other resources to pay for these items in that they may be covered by MSP.

   b. The supplies were not for one of the purposes listed in section 2(1)(a)(i). The ministry recognized that these supplies are required in order for the appellant to inject

magnesium, “however, the minister unfortunately does not consider these supplies to be required” for any of the items listed in section 2(1)(a)(i).

c. The supplies were not one of the items listed in section 2(1)(a.1).

THE PANEL’S DECISION

1. The Sanitizers

   a. The supplies were not for one of the purposes listed in section 2(1)(a)(i)(A).

      On a strict reading of the information provided by the RN, she differentiates between those supplies needed to directly deal with the appellant’s need for wound care and those that are required to “care for health care workers health and equipment” because the appellant is MRSA-positive. The appellant states in his appeal that they are also necessary to “protect myself from contracting any new communicable viruses due to my vulnerable health condition.” This seems reasonable, but is not confirmed by a medical practitioner.

      Understanding this, here we have a vulnerable patient, with an infection issue receiving three IV treatments weekly for wound care. A physician and a RN have indicated that the sanitizers are necessary *as part of that treatment* in order to avoid complications from the appellant’s MRSA. Is it reasonable for the ministry to parse out items directly related to the wound care and those items required to avoid complications from the wound care treatment? If the answer is ‘yes’, then why did the ministry approve, without hesitation, latex-free sterile gloves which can only be necessary for the protection of the health care workers? This is inconsistent and so not reasonable.

   b. The sanitizers did not meet the requirement of section 2(1)(a)(ii)(C) that they be necessary to avoid an imminent and substantial danger to health.

      Again, is it reasonable for the ministry to parse out items directly related to the wound care and those items required to avoid complications from the wound care treatment in assessing which items are required to avoid imminent and substantial danger to the appellant’s health? The sanitizers are not for the treatment of MRSA, they are part of the suite of supplies necessary in order for the appellant to receive his magnesium treatments to address his wound care issues which have been determined by the ministry to present an imminent and substantial threat to the appellant’s health.

      Unfortunately, however, we have a statement by the RN indicating that the sanitizers are for the protection of the health care workers. Based on an interpretation of this statement that it means that the sanitizers are not for the benefit of the appellant, the ministry was reasonable in determining that the sanitizers did not meet this legislative requirement.

2. The IV Supplies

   a. There was no evidence that the appellant did not have other resources to pay for these items in that they may be covered by MSP.

The panel accepts the appellant's statement in his appeal that the health authority has agreed to assume the costs of the IV supplies. *De facto*, the ministry's position that the appellant has other resources available to pay for the equipment in the form of MSP was correct and so reasonable.

b. The supplies were not for one of the purposes listed in section 2(1)(a)(i).

   The bare statement by the ministry that it recognizes that these supplies are required in order for the appellant to inject magnesium (for the purpose of wound care), "however, the minister unfortunately does not consider these supplies to be required" for any of the items listed in section 2(1)(a)(i) (e.g. wound care) is not reasonable because there is no reason provided for why the ministry does not consider the IV supplies to be so required. Furthermore, the ministry's statement of, in effect, "we recognize that you require these supplies for wound care but we don't consider that these supplies are required for wound care," is patently absurd and so unreasonable.

c. As the IV supplies are not one of the items listed in section 2(1)(a.1) it was reasonable for the ministry to find that the IV supplies did not qualify under this section.

As the appellant's request does not meet all the legislative requirements, the ministry's determination that it could not provide the medical supplement to the appellant was a reasonable interpretation of legislation.

The panel confirms the ministry's decision.

PART G – Order