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 January 16, 2017 which determined that the Appellant was not entitled to receive funding for glucose monitoring strips (Monitoring Strips), Nutricia Phlexy Vits concentrated nutritional formula (Nutritional Formula), an oximetry sensor (Sensor), and reagent chemstrip urinalysis (Urine Test Strips) because none of the requested items were any of the following:

1. Medical supplies, as provided in Section 2(1)(a) of Schedule C of the EAPWDR;

2. Medical equipment or devices, as provided in Sections 3 and 3.1 to 3.12 of Schedule C of the EAPWDR;

3. A therapy service as provided in Sections 2(1)(c), 2(2), and 2(2.1) of Schedule C of the EAPWDR;

4. Any health supplement under any other sections of Schedule C of the EAPWDR; or

5. A health supplement for a person facing a direct and imminent life threatening need under Section 69 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Section 17(1)(a)

EAPWDR Sections 62 and 69, and Schedule C Section 2(1)

PART E – Summary of Facts

The Appellant is under the age of 19 and is in receipt of disability assistance.

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

1. At Home Program (AHP) Medical Benefits and Intellectual Disabilities Youth Transition Consent Form in the name of the Appellant dated July 29, 2016 and signed by the Appellant's parent (AP);
2. At Home Transition Decision Summary in the name of the Appellant dated August 19, 2016;
3. One page undated list of approved medical equipment in the name of the Appellant;
4. AHP Application Form in the name of the Appellant, signed by the AP on May 9, 2008 and by the Appellant's physician (date illegible);
5. Letter from the Ministry of Children and Family Development dated June 17, 2008 confirming that the Appellant has been recommended for acceptance into the AHP, effective May 9, 2008, and indicating that a medical benefits package purportedly explaining what benefits are available through the AHP and how to access them is attached (referenced materials not included in information included in the appeal package);
6. Letter from a medical specialist (Medical Specialist's Letter) addressed to whom it may concern regarding the Appellant and dated December 5, 2016, indicating that the Appellant is required to use a "Mickey Tube (G Tube)" and that he will be required to use a G Tube and a Sensor permanently; and
7. Request for Reconsideration, signed by the AP and dated December 29, 2017, which states in part that the Appellant's medical specialist:
   - Has provided a letter (which was attached to the reconsideration decision and is referenced above) outlining the need for a G Tube, a Sensor and Monitoring Strips;
   - Supports the request for reconsideration and is available to provide further information if needed.

Additional Information

In the Appellant's Notice of Appeal (NOA) dated January 27, 2017 completed by the AP, the AP states that he is providing reasons for the appeal on behalf of the Appellant. He states that the Appellant is ventilator dependent as a result of a spinal chord injury. The AP also explains that since being discharged from hospital in 2008, the Appellant's oxygen saturation has to be monitored overnight to make sure that he is properly ventilated and because his heart rate can fluctuate and drop with autonomic dysreflexia while sleeping his heart rate also needs to be monitored by a Sensor. AHP has provided an oxymeter and Sensors (also known as oximetry pediatric adhesive sensors), and currently Sensors are being changed 3 times per week.

Prior to the hearing but after the reconsideration decision, the Appellant provided a letter dated February 1, 2017 from a Respirologist (the Respirologist's Letter) which states that:

- The Appellant has suffered an injury that has left him dependent 24 hours per day on a ventilator to breath;
- The Sensor is medically necessary to assist with the monitoring of his breathing as he has no ability to breath on his own;
- The Sensor also alerts the Appellant's caregivers to changes in his heart rate which precede an episode of dysreflexia (sudden changes in his heart rate, blood pressure and temperature) and "ensure timely intervention thus preventing possible devastating consequences";
- The Appellant has a Sensor at home but requires disposable saturation probes for it and uses

approximately 15 disposable probes per month;
- The Appellant also needs assurance that if his current Sensor stops working he will be able to replace it because it is a crucial piece of his care.

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the minister when the decision being appealed was made and "oral and written testimony in support of the information and records" before the minister when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the minister at reconsideration. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA – to determine whether the Ministry's reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an Appellant. That is, panels are limited to determining if the Ministry's decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

The Ministry did not object to the information contained in the NOA or the the Respirologist's Letter being admitted as evidence.

As the information in the NOA and the Respirologist's Letter provides further details regarding the information contained in the medical Specialist's Letter, and because the Ministry has stated in its reconsideration decision that it "is satisfied that the (medical equipment and supplies) have been prescribed by (the Appellant's) physician and are necessary to avoid an imminent ans substantial danger to (his) health", the panel accepts the information in the NOA and the Respirologist's Letter as written testimony in support of information and records that were before the minister when the decision being appealed was made, pursuant to Section 22(4) of the EAA.

At the hearing, the Ministry explained that the Nutritional Formula was the subject of a separate application by the Appellant for a monthly nutritional supplement - a $40 monthly allowance for vitamin and mineral supplementation - submitted by the AP on behalf of the Appellant on December 4, 2016 which was approved by the Ministry on December 29, 2016 and effective on that date. The Ministry provided a copy of the Application For Monthly Nutritional Supplement form, the Ministry's acceptance letter and a ministry cheque detail query indicating that a cheque for $40 was issued to the Appellant on December 30, 2016. The AP acknowledged that this allowance was now being received, and stated on behalf of the Appellant that the Appellant was no longer asking the Ministry to provide Nutritional Formula.

At the hearing, the Appellant's nurse explained that a nurse must be in attendance with the Appellant at all times, including at night while he sleeps. The Sensor monitors the Appellant's heart rate and temperature while he sleeps, and if there is a noxious stimulus (such as a full bladder) the Appellant's heart rate and temperature will fluctuate and the Sensor records the fluctuations, alerting the nurse to take action. While the Appellant's nurse acknowledged that the Sensor is not essential to the operation of the ventilator, without the Sensor there is no way to know of any heart rate or temperature abnormalities when there is a noxious stimulus, an infection or otherwise, other than by constantly taking the patient's temperature and pulse.

At the hearing, the AP and the Appellant's nurse stated that the Urine Strips were medical supplies used to make an initial local analysis of the Appellant's urine. If a bladder infection is suspected, a

urine sample is then sent to a medical lab for analysis. The AP also explained that the Appellant had suffered a seizure in 2014 and had been treated following the seizure with medication for 2 years. At the time, the Appellant's doctor suspected that the seizure might have resulted from hypoglycemia and wanted to have a supply of Monitoring Strips kept on hand in case they were needed to measure the Appellant's blood sugar levels. There has never been a need to use the Monitoring Strips and the Appellant is no longer on the related medication, but the AP said that the Monitoring Strips have a limited shelf-life and he would like to be able to replace them when they expire, just in case they are required in the future.

At the hearing, the AP also confirmed that AHP has provided a Sensor which is still functioning properly, but that a back-up Sensor would be useful for if and when the existing Sensor needs to be replaced. He also stated that the Appellant was also asking for an ongoing supply of related disposable saturation probes (Probes). The AP stated that the Probes are affixed to the Appellant's finger and are attached by wiring to the Sensor. They have to be replaced regularly and, as stated in the NOA and the Respirologist's Letter, the Appellant uses approximately 3 Probes per week or 15 Probes every month.

At the hearing the AP also stated that the medical equipment and supplies which had been provided by AHP were no longer being provided to the Appellant because AHP ends on the client's 18th birthday, which was November 23, 2016. The Appellant is still able to use the medical equipment provided by AHP, including the Sensor, and has a small supply of the Probes, the Monitoring Strips and the Urine Test Strips remaining. In addition, the AP said that the specific medical equipment and supply items provided by AHP was different from the eligible medical equipment and supplies provided by the Ministry: there are items which were provided by AHP that the Ministry has not provided, and the quantity of medical supplies provided each month also varies.

At the hearing, the Ministry relied on its written reconsideration decision and emphasized that the ministry was only permitted to provide medical equipment or devices and health supplements in accordance with the legislation, and that other resources available to obtain medical equipment and supplies (i.e. the Medical Services Plan and the BC PharmaCare program) had not been exhausted by the Appellant.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry's reconsideration decision dated January 16, 2017, wherein the Ministry denied the Appellant funding for Monitoring Strips, a Sensor and Urine Test Strips because none of the items are eligible items under Section 69 or Schedule C of the EAPWDR.

The panel must determine whether the Ministry's decision that the Appellant did not satisfy the statutory criteria as set out in Section 69 or Schedule C of the EAPWDR was either reasonably supported by the evidence or a reasonable interpretation of the legislation in the circumstances of the Appellant.

The relevant legislation is as follows:

EAA

Reconsideration and appeal rights

17 (1) Subject to section 18, a person may request the minister to reconsider any of the following decisions made under this Act:

(a) a decision that results in a refusal to provide income assistance, hardship assistance or a supplement to or for someone in the person's family unit ...

EAPWDR

General health supplements

62 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) a family unit in receipt of disability assistance,

(b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is a dependent child, or

(c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

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) a person in the family unit is eligible to receive 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).

EAPWDR Schedule C

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:

... (iii) ventilator supplies required for the essential operation or sterilization of a ventilator ...

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

*** * * ***

Ministry's Position

The Ministry's position is that there are no provisions in the legislation that would permit it to provide funding for Monitoring Strips, a Sensor and Urine Test Strips.

Appellant's Position

The Appellant's position, as expressed by the AP, is that the Appellant is ventilator dependent as a result of a spinal chord injury and requires Monitoring Strips, a Sensor, Probes and Urine Test Strips, and that, because those had previously been supplied by AHP, the Ministry should provide them.

The Panel's Decision

Section 62 of the EAPWDR states that the Ministry may provide any health supplement set out in section 2 or 3 of Schedule C to or for a family unit in receipt of disability assistance. As the Appellant is in receipt of disability assistance, the panel finds that the Ministry reasonably determined that the Appellant is entitled to the general health supplements identified in Section 2 of Schedule C of the EAPWDR and the medical equipment and devices specified in Section 3 of Schedule 2 of the EMPWDR.

Section 2 of Schedule C of the EAPWDR sets out the conditions under which health supplements may be paid for by the Ministry if provided to a family unit that is eligible. These conditions include the constraint that the medical or surgical supplies be either disposable or reusable and that the supplies are required for one of the following purposes: wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care or limb circulation care. As the Sensor is not disposable or reusable, the panel finds that the Ministry reasonably determined that the Sensor is not a health supplement which may be paid for by the ministry under Section 2 of Schedule 2 of the EAPWDR. In addition, as the Monitoring Strips and the Urine Test Strips are not supplies required for wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence, skin parasite care or limb circulation care, the panel finds that the Ministry reasonably determined that the Monitoring Strips and the Urine Test Strips are not a health supplements which may be paid for by the ministry under Section 2 of Schedule 2 of the EAPWDR.

Section 2(1)(a.1) of Schedule C states that ventilator supplies required for the essential operation or sterilization of a ventilator may, at the Ministry's discretion be paid for by the ministry if the minister is satisfied that all the requirements under Section 2(1) are met. The panel finds that the Ministry reasonable determined that the Sensor is not required for the essential operation of the ventilator to which it is attached.

Section 17(1)(a) of the EAA says that a person may ask the Ministry to reconsider any decision that results in a refusal to provide a supplement to or for someone in the person's family unit. As the Probes were not among the items for which the Appellant requested funding in the Ministry's original decision, they were not items which were addressed in the Ministry reconsideration decision. The panel is limited under the EAA to determining if a ministry decision is reasonable only where decisions are made by the Ministry. In other words, panels do not have the legislative authority to assume the role of decision-makers of the first instance. As the Ministry did not make a decision regarding whether Probes were an eligible item, the panel finds that there is no decision involving Probes that can be reviewed by the panel.

Therapy services under Sections 2(1)(c), 2(2), and 2(2.1) of Schedule C of the EAPWDR comprise acupuncture service, chiropractic services, massage therapy services, naturopathy services, non-surgical podiatry services and physical therapy services, and medical equipment and devices under

Section 3 and 2.1 to 3.12 of Schedule C of the EAPWDR comprise ambulatory devices (including canes, wheelchairs and scooters), devices to achieve or maintain basic stability, hospital beds, pressure relief mattresses, airway pressure devices and accessories, custom-made orthotics or footwear, hearing instruments, and non-conventional glucose meters. A "non-conventional glucose meter" is defined in Section 3.12 of Schedule C of the EAPWDR as "a continuous glucose monitoring meter ... and a talking glucose meter". The panel finds that the Monitoring Strips do not fit the definition of a "non-conventional glucose meter". The panel finds that none of the items under appeal are represented in any other provisions of Schedule C of the EAPWDR and therefore that the Ministry reasonably determined that the Monitoring Strips, Sensor and Urine Test Strips were not health supplements under any of the provisions of Schedule C of the EAPWDR.

Section 69 of the EAPWDR states that the minister may provide to a family unit any health supplement set out in 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 the EAPWDR provided other conditions are met. As Section 62 of the EAPWDR states that the Ministry may provide any health supplement set out in section 2 or 3 of Schedule C to or for a family unit in receipt of disability assistance, and because the Appellant satisfies the eligibility requirements set out in Section 62 (see above), the panel finds that Section 69 does not apply in the circumstances of the Appellant and that the Ministry was reasonable in determining that the Appellant does not qualify for a remedy under Section 69 of the EAPWDR.

Conclusion

The panel finds that the Ministry's decision to deny the Appellant funding for Monitoring Strips, a Sensor and Urine Test Strips because none of the items are eligible items under Section 69 or Schedule C of the EAPWDR was reasonably supported by the evidence and was a reasonable application of the applicable enactment. The Ministry's decision is confirmed and the Appellant is not successful in his appeal.