PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 1, 2017 wherein the ministry determined the appellant's request for a health supplement for a CPAP machine and accessories did not meet the eligibility requirements set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, Sections 3 and 3.9(2).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation, Section 62
Employment and Assistance for Persons with Disabilities Regulation, Schedule C, sections 3 and 3.9

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

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

The appellant is in receipt of disability assistance and is therefore eligible to receive health supplements set out under Section 62 of the EAPWD Regulations.

On November 8, 2016, the ministry received a request for a CPAP machine and accessories. The request included the following documents:

- Price Quote prepared by a respiratory service company dated November 8, 2016 listing the price for the CPAP machine and accessories totaling $2,627.00.
- The appellant's CPAP Trial Summary Report prepared by a Respiratory Therapist for the date range of March 31, 2016 to September 26, 2016 noting an Apnea-Hypopnea Index (AHI) average of 0.8.
- Medical Equipment Request and Justification form dated October 1, 2015. Section 2 was completed by a medical practitioner indicating the appellant has been diagnosed with obstructive sleep apnea. Section 3 was completed by a Respiratory Therapist recommending a CPAP machine with heated humidifier, mask, tubing and filters to meet the appellant's needs.
- Letter written by a Nurse Practitioner dated September 7, 2016 in which is stated: "[He] has a diagnosis of sleep apnea. He was suffering with increased fatigue, depressed mood and increased irritability. He has been using CPAP therapy successfully for nearly a year. His sleep has improved, he is much less irritable and his mood has improved with the use of CPAP therapy. I recommend that he continue with CPAP therapy and that it is necessary for his long-term health."
- Letter dated September 9, 2016 from a Respiratory Therapist stating: "This patient has been diagnosed with Obstructive Sleep Apnea requiring the nightly use of CPAP/BiPAP therapy and requires a new CPAP machine with heated humidifier, mask, filters and cleanable tub. I have examined their equipment in question. [He] presented with many difficulties, including fatigue and worsening anxiety, arising from his untreated sleep apnea, although his original DEI was only ~ 13. This patient has been treated successfully with CPAP therapy for the past several months. It is the hope of myself and [the patient's] primary healthcare team that he can get funding for ongoing treatment. This patient does use their CPAP therapy continuously and compliance has been 100%. These recommendations are consistent with instances of prescribed use and are necessary for this patient to continue with their therapy. We would appreciate your consideration in providing funding approval for the purchase(s) as noted."
- Oximetry: Summary Report prepared by the respiratory service company for the study date of September 18, 2016 describing the appellant's saturation levels as ranging from a high of 98% to a low of 83.4% with an average of 84%. The time with saturation level less than 90% was 3 minutes, 40 seconds, or 0.8% of the time.
- Respiratory Report dated August 21, 2015 prepared by a medical practitioner who wrote in the Comments section: "Epworth Sleepiness Score measures 0/24 which is normal for daytime sleepiness. Patient's STOP-Bang Score measures 4/8, which puts him at moderate risk for OSA based in clinical features. The study was conducted for a total valid sampling time of 5 hours and 42 minutes on room air. Based on quantitative assessment, the desaturation event index is elevated at 12.1 events per hour. 2.4% of the night was spent with an oxygen saturation less than 88%. Qualitative pattern assessment reveals baseline oxygen saturation

throughout the night at about 92% with some desaturation events clustered at intervals potentially related to REM sleep. In the Impression section, the practitioner noted: “Repetitive cyclical desaturation pattern consistent with sleep apnea. Differential diagnosis includes obstructive and central apnea/hypopnea. If there is high pre-test probability of obstructive sleep apnea, a trial CPAP may be reconsidered. If not, a referral to a sleep specialist or clinic is suggested for further evaluation and therapy.

- On January 12, 2017, the ministry denied the appellant’s request for a CPAP machine and accessories. The denial summary states: “The Polysomnogram (PSG) shows [the appellant’s] Apnea Hypopnea Index (AHI) at 12.1 events per hour which is consistent with mild sleep apnea test values. The report by the Interpreting Respirologist confirms mild obstructive sleep apnea. Ranges for this test value are 0-5 normal, 5-15 moderate and 30+ severe, as per the current consensus of the American Academy of Sleep Medicine. As per Schedule C, Section 3.9(2), CPAP therapy is funded by the ministry for moderate to severe sleep apnea. It is for this reason that [the appellant’s] request for a CPAP trial is denied. In addition, a CPAP buyout has been submitted for a CPAP machine; however, because the ministry has never approved the initial CPAP trial the ministry has also denied the CPAP buyout.
- The appellant submitted a Request for Reconsideration on February 15, 2017 in which he state: ”I wish to be reconsidered because I do not sleep without it, causing depression, fatigue and anger. I had to leave my job of three years because of it when I was in a stable position to no longer require assistance. I had to start over again somewhere else and not stable enough on my own to function without a machine. I am also attending a sleep lab to further prove my need but please reconsider.”

In the Reconsideration Decision, the ministry found that the appellant’s request does not meet the eligibility requirement set out in Subsection 3.9(2)(c) of the EAPWDR. This legislation sets out that the ministry must be satisfied that the item is medically essential for the treatment of moderate to severe sleep apnea.

The ministry provided the following description of factors used in diagnosing and assessing sleep apnea including the Apnea-Hypopnea Index (AHI), the Respiratory Disturbance Index, daytime sleepiness, as well as strong indicators for the presence of sleep apnea such as BMI, impaired cognition, mood disorders, insomnia, hypertension, ischemic heart disease or stroke.

- The AHI is an index used to assess the severity of sleep apnea based on the total number of apnea (complete cessations in breathing) and hypopnea (any partial obstruction of the airway) occurring per hour of sleep. To count the AHI, these pauses in breathing must last for 10 seconds and be associated with a decrease in the oxygen levels of the blood or an awakening called an arousal. In general, the AHI can be used to classify the severity of disease (normal 0-5, mild 5-15, moderate 15-30 and severe greater than 30.)
- The AHI overlaps with the Respiratory Disturbance Index (RDI) though the RDI differs as it includes other minor breathing difficulties. Although AHI is the standard measurement for severity of sleep apnea, RDI is also used to classify the severity of disease (normal 0-5, mild 5-15, moderate 15-30 and severe greater than 30.)
- Another measure used is the Desaturation Event Index (DEI) which is the number of times per hour of sleep that the blood’s oxygen level drops by a certain degree from baseline. It is noted the DEI is not a measurement of the frequency of apneas or hypopneas. DEI may also be used to classify the severity of disease (normal 0-5, mild 5-15, moderate 15-30 and severe greater than 30.)

The ministry explained that, as set out in its decision of January 12, 2017, it was not satisfied the information submitted with the appellant's initial application was indicative of the presence of moderate to severe sleep apnea. It provided the following:

- The appellant's CPAP Trial Summary Report shows an AHI of 0.8 which is in the normal range for sleep apnea. Ranges for this test value are 0-5 normal, 5-15 mild, 15-30 moderate and 30+ severe as per the current consensus of the American Academy of Sleep Medicine. It was noted that this AHI measurement was based on breathing while wearing a CPAP as opposed to normal room air breathing.
- The Oximetry Summary Report indicates the total time spent with a saturation level less than 90% was 3 minutes, 40 seconds or 0.8% of the time.
- The Respiratory Report dated August 21, 2015 indicates an Epworth Sleepiness Scale Score of 0, which is the normal range. The Report also indicates a DEI of 12.1 events per hour. The report states: "Repetitive Cyclical Desaturation pattern consistent with sleep apnea. […] If there is a high pretest probability of obstructive sleep apnea, a trial CPAP may be reconsidered. If not, a referral to asleep specialist or clinic is suggested for further evaluation and therapy." The Report further states: "Patient's STOP-Bang Score measures 4/8 which puts the appellant at moderate risk for OSA based in clinical features." It is noted the Respiratory Report summarizes a study conducted on room air.

The ministry stated that although the CPAP Trial Summary Report printed September 26, 2016 indicates the appellant benefited from the use of a CPAP machine, the findings of the practitioner as noted in the Respiratory Report of August 21, 2015 are not indicative of moderate to severe sleep apnea. The Respiratory Report states the appellant's Epworth-Sleepiness Score was 0/24, which is normal. The Report further states that the appellant's STOP-Bang Score was 4/8, and although it indicates a moderate risk for Obstructive Sleep Apnea, it does not establish the presence of moderate to severe sleep apnea. Furthermore, the Respiratory Report indicates a DEI of 12.1 events per hour, which is in the mild range.

The ministry noted that the report states "If there is a high pretest probability of obstructive sleep apnea, a trial CPAP may be reconsidered. However, the Epworth-Sleepiness Score, the STOP-Bang Score and the Desaturation Event Index represent pre-tests which are not indicative of a high probability of obstructive sleep apnea."

The ministry stated that while it is sympathetic with the circumstances of the appellant's case and acknowledges that he may benefit from using the requested equipment, it found there is not enough evidence to demonstrate that a CPAP machine and accessories are medically essential for the treatment of moderate to severe sleep apnea.

On March 13, 2017, the ministry received the appellant's Notice of Appeal dated March 7, 2017. In the Reasons for Appeal the appellant wrote: "I disagree with the definition; it's not just fatigue. I am depressed to the point of suicide before I started my treatment. If my treatment stops this it could start again and I don't want this."

The appellant also submitted a letter in which he wrote: "Because you do not believe my problem is not life threatening enough I will be attending a sleep lab in two-three weeks' time to prove the seriousness of my condition. During this time, they have discontinued my treatment to remove any residue treatment. I found additional information from my doctor for resubmission in the meantime in hopes I am not denied again because my depression, fatigue and frustration has returned. I am no longer able to drive myself to work in fear of my own and others' safety."

As the statement contains information that was not before the ministry at the time of reconsideration, the panel has determined that the statement is not admissible as evidence under Section 22(4) of the Employment and Assistance Act.

The appellant submitted the following documents with the Notice of Appeal:

- A copy of the Respiratory Report dated August 21, 2015 that was submitted to the ministry at the time of the original request for medical equipment.
- A Fax from a Respiratory Therapist to a Nurse Practitioner dated September 6, 2016 stating that the appellant has been treated with CPAP therapy successfully for nearly a year and requesting a short letter explaining that this therapy is necessary for his long-term health and that he needs to be on CPAP therapy.
- A letter from the Nurse Practitioner dated March 29, 2017 stating that the appellant has been diagnosed with sleep apnea and was suffering with increased fatigue, depressed mood and increased irritability. He has been using CPAP therapy successfully for nearly 1.5 years. His sleep has improved, he is much less irritable and his mood has improved significantly with the use of CPAP therapy. The practitioner strongly recommends that the appellant continues with CPAP therapy and that it is necessary for his long-term health and well-being.

The panel finds the information in the documents submitted go to argument and do not contain new information but are in support of the evidence before the ministry at the time of reconsideration. The panel admits them as evidence under Section 22(4) of the Employment and Assistance Act.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration of March 1, 2017 wherein the ministry determined the appellant's request for a health supplement for a CPAP machine and accessories did not meet the eligibility requirements set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, Sections 3 and 3.9(2).

The legislation considered:

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

Part 5 Supplements

Division 4 — Health Supplements

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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4.]

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).

[en. B.C. Reg. 61/2010, s. 4; am. B.C. Regs. 197/2012, Sch. 2, s. 8; 145/2015, Sch. 2, s. 12.]

Schedule C

Health Supplements

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 an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section 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.

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if

(a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and

(b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

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;

(g) if the minister is satisfied that the item is medically essential to deliver medication,

(i) an inhaler accessory device,

(ii) an accessory that is required to operate an inhaler accessory device, or

(iii) a supply that is required to operate an inhaler accessory device.

(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.

(3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is as follows:

(a) in the case of an item referred to in subsection (1) (a) (i), 5 years from the date on which the minister provided the item being replaced;

(b) in the case of an item referred to in subsection (1) (a) (ii) or (iii), one year from the date on which the minister provided the item being replaced;

(c) in the case of an apnea monitor, suction unit, percussor, nebulizer or medical humidifier, 5 years from the date on which the minister provided the item being replaced;

(d) in the case of an inhaler accessory device, one year from the date on which the minister provided the device being replaced;

(e) in the case of an accessory or supply for an item referred to in paragraph (c) or (d), one year from the date on which the minister provided the device being replaced.

Ministry's Position

As per Section 3.9(2)(c), the minister can provide a health supplement for a breathing device if the minister is satisfied that the item is medically essential for the treatment of moderate to severe sleep apnea.

The appellant provided the ministry with reports of several assessments conducted over a period of more than a year. The CPAP Trial Summary Report describes the appellant's Polysomnogram results, which show the appellant's Apnea-Hypopnea Index (AHI) Score of 12.1 events per hour which is consistent with mild sleep apnea test values. The AHI is an index used to assess the severity of sleep apnea based on the number of complete cessations in breathing and any partial obstructions of the airway. Ranges for this value are 0-5 normal, 5-15 mild, 15-30 moderate and 30+ severe.

The Oximetry Summary Report describes the Desaturation Event Index level of the appellant, which is the number of times per hour of sleep that the blood's oxygen level drops by a certain degree from baseline. It can be used to classify the severity of disease (normal 0-5;

mild 5-15, moderate 15-30, and severe greater than 30. The appellant's Score was 0.8% which is mild.

The Respiratory Report shows an Epworth Sleepiness Score of 0/24 which is normal for daytime sleepiness, and a STOP-Bang Score of 4/8 which puts the appellant at moderate risk for Obstructive Sleep Apnea. This report also states that if there is a high pre-test probability of obstructive sleep apnea, a trial CPAP may be considered. However, the Epworth-Sleepiness Score, the STOP-Bang Score and the Desaturation Event Index level represent pre-tests that are not indicative of a high probability of obstructive sleep apnea.

Based on the above information, the ministry found there is not enough evidence to demonstrate that a CPAP machine and accessories are medically essential for the treatment of moderate to severe sleep apnea.

Appellant's Position

The appellant's position is that he needs the CPAP machine because without it he is not able to sleep. As a result, he suffers from fatigue, depression and anger. He lost a good job because of his condition. He was depressed to the point of suicide before he originally started using CPAP therapy and he is concerned that if his treatment stops, he could feel that way again.

Panel Decision

Section 3.9(2) of the EAPWDR stipulates that the minister may provide a health supplement for a breathing device if the item has been prescribed by a medical practitioner or nurse practitioner, and a respiratory therapist has performed an assessment confirming a medical need for the item, and the minister is satisfied that the item is medically essential for the treatment of moderate to severe sleep apnea.

In the case of this appellant, a nurse practitioner has recommended that the appellant use a CPAP for his long-term health and well-being. The test results performed by a respiratory therapist show values that range from normal to moderate, not severe. The respiratory therapist stated in a Fax to the ministry that "the client does NOT meet the [above listed] screening criteria", referring to the Sleep Disturbance Index the ministry considers to determine funding for CPAP therapy.

There is no evidence to show that the item requested is medically essential for the treatment of moderate to severe sleep apnea as required by legislation.

The panel finds the ministry's decision that the appellant has not met the legislated criterion was reasonable.

The panel confirms the ministry's position.