PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("the ministry") reconsideration decision dated April 11, 2017 in which the ministry denied the appellant funding for a Prothrombrin Time/ International Normalized Ratio Monitor and supplies ("PT/INR monitor") because the program criteria under the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") were not met. While the ministry was satisfied that the appellant is eligible to receive health supplements under section 62 and Schedule C of the EAPWDR, the ministry determined that specific criteria were not met:

- A PT/INR monitor is not eligible as a *non-conventional glucose meter* under section 3.12 of Schedule C.
- A PT/INR monitor is not an eligible item under sections 3.1 to 3.8 of Schedule C and the other legislated criteria in these sections and in section 3, for each of these health supplements, have not been met
- The monitor is not a disposable or reusable medical or surgical supply under section 2 of Schedule C of the Regulation and is not required for one of the purposes listed in the corresponding subsections.
- The monitor is also not an item set out in any of the other sections of Schedule C [sections 2, 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9] or in section 67 of the EAPWDR, and the other legislated criteria for each of these health supplements have not been met.
- The item is not eligible as a life-threatening health need under section 69.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - sections 62, 67 and 69; and Schedule C

PART E – Summary of Facts

The evidence before the minister at reconsideration consisted of the following:

1. Information from the ministry's record of decision as follows:

- The appellant is receiving Medical Services Only assistance ("MSO") as a client who has Persons with Disabilities designation.
- On February 10, 2017, she submitted an application for a PT/INR Monitor.
- On February 23, 2017, the ministry sent a denial letter stating that the monitor is not an eligible item under the EAPWDR and the ministry, therefore, does not have the legal authority to provide it.

2. A Request for Reconsideration ("RFR") signed by the appellant on March 31, 2017 with the following documents attached:

- A one-page submission from the appellant's husband summarizing the appellant's argument which the panel will consider in *Part F - Reasons for Panel Decision*.
- A copy of a prescription from a family physician for *coagucheck and strips, self monitor INR*, dated February 8, 2017. Hand-written notations indicate *pack of 6 strips $35/ Coagucheck machine $496*.
- A letter from the appellant's hematologist [blood specialist] dated March 30, 2017 stating that the appellant requires anti-coagulation with warfarin [medication] for a *mechanical mitral valve and atrial fibrillation*. Following a recent surgery the appellant suffered a "cardiovascular accident" that has further affected her health and mobility. The appellant's husband is the primary caregiver for her complex medical issues. She requires close monitoring of her INR to ensure that warfarin is at the right dose need to achieve a therapeutic level. The hematologist recommends that the appellant be equipped with the *Coagucheck and strips required for home monitoring. As it is often required and important to monitor the INR on different and often unpredictable days, the best way to achieve stable control of the INR would be with home monitoring. A technician from an outpatient laboratory that comes to the home at varying times is not suitable in this case*.
- A price quotation print-out from March 30, 2017 for $17 - *Prothrombin Time* [The appellant's husband explained at the hearing that this is the cost for each home visit by the outpatient laboratory].
- A letter from the appellant's cardiologist dated February 8, 2017 describing the appellant's heart condition and indicating that she requires long term warfarin to prevent valve thrombosis. Due to other medical problems including a recent stroke it is difficult for her to go regularly to a laboratory to have her blood tested for prothrombin time/ INR and, therefore, the laboratory has been sending a technician to her home to draw blood on a regular basis. The cardiologist states that *this is sometimes inconvenient for the patient as the lab is not able to predict exactly when their technician will be arriving and so the patient is tied up for a long time on a regular basis*. He recommends the home-monitoring device so that the appellant and her husband can test her blood at home to determine the prothrombin time/INR and regulate her warfarin dose.

Additional submissions

Subsequent to the reconsideration decision, the appellant's *Notice of Appeal* dated April 24, 2017 furthers the argument set out in her reconsideration submission. The appellant attended the hearing with her husband who acted as her advocate and spoke on her behalf. He provided further argument in disagreement with the ministry's decision including submissions on the cost savings for the home monitoring device; the health risks associated with the current monitoring system [home visits by the laboratory technician]; and the interpretation of the EAPWD Regulation. He explained the purpose of the PT/INR monitor in further detail indicating that it is a new device that came on the market two years ago; and explaining that the glucose monitor mentioned by the ministry in the reconsideration decision is a completely different device that the ministry has already provided for the appellant.

At the hearing, the ministry acknowledged the medical specialists' recommendations and stated that the PT/INR monitor would, without question, help the appellant. The ministry explained that it can only provide medical equipment within the legislative framework and it cannot approve the device based on calculations of cost savings. The ministry explained that the reconsideration branch reviews all of the health supplements listed in the Regulation to determine whether the requested item fits into any of the legislative criteria and that is why all of the criteria are summarized even where they are not relevant to the appellant's request. Regarding the glucose meter, specifically, the ministry explained that the reason it is mentioned in the reconsideration decision is because it is the most similar item under the EAPWDR to the requested PT/INR monitor

In response to a question regarding the ministry's suggestion [in the reconsideration decision] that the appellant's health professionals consider *alternative equipment the ministry is authorized to provide to meet your needs*, the ministry explained that this is a generic statement by the reconsideration branch, and the ministry acknowledges that the legislation will not provide an alternative for all circumstances. In addition, the ministry provided argument on its interpretation of section 69 of the EAPWDR. The panel will consider both parties' arguments in Part F below.

The panel accepts the oral testimony as argument in support of the positions set out in the reconsideration record. The panel admits the information on the purpose and function the PT/INR monitor, and the submissions on the ministry's reconsideration process, under section 22(4)(b) of the *Employment and Assistance Act*. The panel finds that these are in support of the information and records before the minister at reconsideration as they provide corroborative detail about the device and further explain the ministry's process for administering a request for a health supplement.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the reconsideration decision of April 11, 2017 in which the ministry denied funding for a PT/INR monitor because the program criteria under the EAPWDR were not met, was reasonably supported by the evidence or was a reasonable application of the Regulation in the circumstances of the appellant. While the ministry was satisfied that the appellant is eligible to receive health supplements under section 62 and Schedule C of the EAPWDR, the ministry determined that specific criteria were not met:

- A PT/INR monitor is not eligible as a *non-conventional glucose meter* under section 3.12 of Schedule C.
- A PT/INR monitor is not an eligible item under sections 3.1 to 3.8 of Schedule C and the other legislated criteria in these sections and in section 3, for each of these health supplements, have not been met
- The monitor is not a disposable or reusable medical or surgical supply under section 2 of Schedule C of the Regulation and is not required for one of the purposes listed in the corresponding subsections.
- The monitor is also not an item set out in any of the other sections of Schedule C [sections 2, 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9] or in section 67 of the EAPWDR, and the other legislated criteria for each of these health supplements have not been met.
- The item is not eligible as a life-threatening health need under section 69.

Applicable legislation – 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…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.

67 Nutritional supplement

69 Health supplement for persons facing direct and imminent life threatening health need

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 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 3.12, other than paragraph (a) of section 3 (1).
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:*
(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;
(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…**2(2)**...**2(2.1)**…***[therapies]*.
(f) [medical transportation]

2.1 *Op*tical supplements
2.2 *Eye examination 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
(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.

3.1 *canes, crutches and walkers*
3.2 *wheelchairs*
3.3 *wheelchair seating systems*
3.4 *scooters*
3.5 *bathing and toileting aids*
3.6 *hospital bed*
3.7 *pressure relief mattresses*
3.8 *floor or ceiling lift devices*
3.9 *positive airway pressure devices*
3.10 *orthoses*
3.11 *hearing instrument*

3.12 *non-conventional glucose meters*
(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.

4 *Dental supplements*
4.1 *Crown and bridgework supplement*
5 *Emergency dental supplements*
6 *Diet supplements*
7 *Monthly nutritional supplement*
8 *Natal supplement*
9 *Infant Formula*

Analysis and decision

The ministry was satisfied that the appellant is eligible to receive health supplements under section 62 and Schedule C of the EAPWDR as a person in receipt of MSO assistance. Thus, the criterion of basic eligibility is not in dispute. However, upon reviewing the eligibility requirements for specific health supplements under sections 67, 69, and Schedule C of the Regulation the ministry determined that it is not authorized to fund a PT/INR monitor. Beginning with section 3.12 of the EAPWDR, which the ministry addresses first in the reconsideration decision, the panel provides the following analysis and decision for each of the legislative criteria the ministry said were not met:

A PT/INR monitor is not eligible as a non-conventional glucose meter under section 3.12 of Schedule C

The appellant's husband, as her advocate, argues that the ministry "made a mistake" in considering the glucose meter because a glucose meter is for a completely different purpose than the PT/INR monitor ["comparing apples with oranges"]. He stated that a glucose meter is "not the machine we requested" and confirmed that the appellant already has a glucose meter that the ministry provided. The ministry acknowledges that the PT/INR monitor is for the purpose of measuring how long it takes the blood to clot or to check whether the appellant's medication is working. The ministry argues that the PT/INR monitor is not eligible under section 3.12 of Schedule C because it is not used to test blood glucose levels as required under subsection 3.12(2) of Schedule C.

The evidence provided by the appellant's medical specialists and her husband confirms that a PT/INR monitor is intended for patients who require their warfarin medication to be adjusted based on *prothrombin time/INR* blood levels. The purpose of the testing is to keep the patient's blood levels stable to prevent a further stroke/ "cardiac accident". As a PT/INR monitor does not fit the description for a *non-conventional glucose meter*, the panel finds that the ministry reasonably determined that a PT/INR monitor is not an eligible item under section 3.12 of Schedule C.

A PT/INR monitor is not an eligible item under sections 3.1 to 3.8 of Schedule C and the other legislated criteria in these sections and in section 3, for each of these health supplements, have not been met

The appellant does not dispute that the requested monitor is not included as a health supplement under these sections. Her husband argues that her request for a PT/INR monitor does, in fact, meet many of the requirements in section 3(2) of Schedule C as it was prescribed by the appellant's medical team including two specialists, and the letter from the appellant's hematologist confirms that the monitor is medically necessary. He notes that a PT/INR monitor is new, less invasive technology, arguing that the ministry should add it to the list of eligible items.

The ministry argues that it is authorized to provide only the equipment listed in sections 3.1 to 3.8 of Schedule C. The ministry notes that the specific eligibility requirements for each item described in these sections must also be met as well as the general requirements under sections 3(1) and 3(2) of the Schedule. The ministry concludes that a PT/INR monitor is not one of the items listed in sections 3.1 to 3.8 and that the information provided does not establish the other legislated criteria for each of these health supplements. Sections 3.1 to 3.8 of Schedule C describe specific medical equipment

and devices ranging from mobility aids such as canes and wheelchairs, to special beds, equipment for the treatment of sleep apnea, foot orthotics, and hearing aids. A PT/INR monitor is clearly not any of these.

While the appellant has provided a prescription and letters from medical specialists confirming her need for a PT/INR monitor, the requirements for a prescription and other medical verification under sections 3(1) and 3(2) of Schedule C are for the specific equipment listed in sections 3.1 to 3.8. Given that a PT/INR monitor is not listed in these sections, the panel finds that the ministry reasonably determined that it is not an eligible item under sections 3.1 to 3.8 of Schedule C and that the other legislative criteria in section 3 of the Schedule, which relate to these specific items, were not met. While the panel is sympathetic to the appellant's case, it notes that neither the EAA tribunal nor the ministry has the authority to amend the legislation by adding the PT/INR monitor to the list of eligible equipment and devices.

A PT/INR monitor is not a disposable or reusable medical or surgical supply under section 2 of Schedule C and is not required for one of the purposes listed in the corresponding subsections.

As with the preceding heading, the appellant does not argue that a PT/INR monitor should be funded as a health supplement under these sections. The ministry argues that a PT/INR monitor is not one of the disposable or reusable medical or surgical supplies listed in subsection 2(1)(a.1) of Schedule C; is not a consumable medical supply under subsection 2(1)(a.2); and is not for one of the legislated purposes set out in subsection 2(1)(a)(i) of the Schedule. These sections cover medical and surgical supplies such as lancets, syringes, ventilators, and consumable medical supplies. The panel finds that the ministry reasonably determined that a PT/INR monitor is not included as a medical or surgical supply or consumable medical supply under these sections of Schedule C and is not required for one of the purposes specified in subsection 2(1)(a)(i) of the Schedule. There is no evidence that the appellant is requesting any of the medical/ surgical items listed in these sections, and the purposes set out in subsection 2(1)(a)(i) of Schedule C relate only to the specific reason for needing each of the listed items.

A PT/INR monitor is not an item set out in any of the other sections of Schedule C [sections 2, 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9] or in section 67 of the EAPWDR, and the other legislated criteria for each of these health supplements have not been met

Once again, the appellant is not arguing that a PT/INR monitor is listed or referenced in the above-noted sections. At the hearing, the appellant's husband expressed his frustration with the ministry's approach of "going through every section that clearly does not apply." He argues that if the item does not fit, the ministry should "fix the legislation" so that this medically essential monitor will be covered under Schedule C. He argues that by funding the PT/INR monitor, the cost-savings to the Medical Services Plan [MSP] would be greater than $500 per year. The ministry argues that a PT/INR monitor does not meet the criteria for a therapy, or any of the other health supplements listed in Schedule C or section 67 of the Regulation and that the other legislated criteria for each of the listed supplements have not been met.

The above-noted sections of Schedule C authorize the ministry to fund therapies [sections 2(1)(c), 2(2), and 2(2.1)]; eye care [sections 2.1 and 2.2], and dental procedures [sections 4, 4.1, and 5]. The remaining sections of Schedule C as well as section 67 of the EAPWDR allow the ministry to provide nutrition-related supplements for adults, pregnant women, and infants. A PT/INR monitor clearly does not fall within any of these supplements; thus, the specific legislative criteria for each type of

supplement do not apply to a PT/INR monitor. The panel therefore finds that the ministry reasonably determined that a PT/INR monitor is not included with the health supplements listed in these sections and that the appellant's request for the monitor does not meet the other legislative requirements for each of the health supplements listed. As stated earlier, neither the Tribunal nor the ministry has the authority to change the legislation and as stated by the ministry at the hearing, the Regulation does not authorize the ministry to consider cost-savings as a reason to fund the requested item.

A PT/INR monitor is not eligible as a life-threatening health need under section 69

The appellant's husband argues that a PT/INR monitor should be eligible under section 69 of the EAPWDR as a life-threatening health need. He argues that is it unreasonable for the ministry to find that it is not "life-threatening" when the letters from the medical professionals clearly indicate that the device is medically essential. He emphasized the hematologist's letter which states that the current system of home visits by the laboratory technician "is not suitable in this case". He explained that the appellant has to wait for the results when the laboratory performs the testing and this puts the appellant's life at risk as her medication may need to be immediately adjusted in order to prevent a stroke. He explained that currently, the laboratory technician visits once per week, and he [the appellant's husband] carefully records the results as soon as they are available to keep track of the appellant's INR levels.

The appellant's husband explained that when the appellant's blood levels become unstable, he has to take her to the laboratory or to the hospital for additional monitoring and proper adjustment of her medication. He submits that the laboratory testing can also create other health problems such as bleeding and iron deficiency due to the amount of blood taken; whereas, the home monitoring device is safer and less invasive, only requiring a drop of blood for the testing. He expressed his frustration with a "two tier" system in which people with resources can buy the PT/INR monitor outright and then receive a tax deduction; whereas, people of modest means such as the appellant are put in a life-threatening situation through the ministry's refusal to fund the device.

The ministry argues the appellant is not eligible to receive a PT/INR monitor as a health supplement for a person facing a direct and imminent life-threatening health need for two reasons:

- As a recipient of disability assistance [MSO], she is eligible to receive health supplements under the EAWDR, Schedule C [*general health supplements* and *medical equipment and devices*] and therefore she does not require a remedy under section 69; and
- A PT/INR monitor is not one of the health supplements set out in sections 2(1)(a) and (f) or section 3 of Schedule C; and her request for the monitor has not met all of the requirements specified in the EAPWDR, Schedule C, sections 2(1)(a) and (f) and sections 3 to 3.11.

The ministry submits that section 69 is intended to provide a remedy for persons who are facing a direct and imminent life-threatening health need for the health supplement but are unable to obtain it because they are not in receipt of disability or other assistance from the ministry. The ministry noted at the hearing that even if a person was eligible for a health supplement as a life-threatening health need under section 69, the supplement is still limited to the specific items.

Decision - section 69

In order to be eligible for a health supplement under section 69, the person must not only be facing a direct and imminent life-threatening health need, but also not be eligible for health supplements under other specified sections of the EAPWDR. The appellant is eligible to receive the health supplements set out under section 2(1)(a) and (f) and section 3 of Schedule C because she meets the basic eligibility requirement for health supplements as a person transitioned to MSO under EAPWDR section 62(1)(c).

However, even though she is eligible for health supplements under sections 2(1)(a) and (f) and section 3 of EAPWDR Schedule C, the item she requested must fall within these sections and, as argued by the ministry, her request must also meet the specific eligibility requirements for a particular item or supplement. Where the item she requested is not listed in these sections of Schedule C as an eligible item, the ministry has no legal authority to provide a health supplement to cover the cost of the item even where a life-threatening health need is established.

As the appellant receives MSO assistance from the ministry; and the sections of Schedule C that are referenced in section 69 do not include a PT/INR monitor as an eligible item, the panel finds that the ministry reasonably determined that the appellant is not eligible for the monitor under section 69 to meet a direct and imminent life-threatening health need. Specifically, sections 2(1)(a) and (f) apply to disposable and reusable medical and surgical supplies, and medical transportation, and a PT/INR monitor is not listed under section 3 (or 3.1 to 3.12).

Conclusion

While the panel sympathizes with the appellant's circumstances and acknowledges that her situation is unfortunate, the panel's authority is limited to deciding whether the ministry's decision was reasonably supported by the evidence or was a reasonable application of the legislation. The panel finds that the ministry reasonably applied sections 67, 69 and Schedule C of the EAPWDR to find the appellant ineligible for a PT/INR monitor. The panel confirms the ministry's reconsideration decision under sections 24(1)(b) and 24(2)(a) of the *Employment and Assistance Act*. The appellant is not successful in her appeal.