PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("the ministry") reconsideration decision dated May 5, 2017 in which the ministry denied the appellant funding for an insulin pump 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 the following specific criteria were not met:

- An insulin pump is not an item listed in sections 3.1 to 3.12 of Schedule C and the other legislated criteria for each of these health supplements have not been met.
- The information submitted by the appellant did not demonstrate that the requirement of *no resources available to the family unit to pay for the cost of or obtain the medical equipment or device* under subsection 3(1)(b) of Schedule C was met.
- The appellant is not eligible for the insulin pump as a medical or surgical supply as the criteria for those items under sections 2(1) and 2(1.1) of Schedule C were not met.
- An insulin pump is also not an item set out in any of the other sections of Schedule C including therapies under section 2, and including the supplements listed in sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9 of the Schedule; and it does not qualify as a nutritional supplement under section 67 of the EAPWDR. In addition, the ministry found that the other legislated criteria for each of these health supplements have not been met.
- An insulin pump is not eligible as a life-threatening health need under EAPWDR 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 disability assistance.
◦ On January 24, 2017, he submitted an application for an insulin pump with *Medical Request and Justification* form signed by his endocrinologist ("doctor") on January 19, 2017 and a copy of her letter of the same date. He also included laboratory print-outs [for blood testing], generated on January 19, 2017, and showing results for specific measures that fall above, within, and below the specified *reference range* for each measure.
◦ The doctor's letter of January 19, 2017, in support of the appellant's need for an insulin pump, provided the following information:

- The appellant was diagnosed with Type 2 Diabetes in 2000, with the diagnosis changed to Type 1 diabetes based on several recent (hospital) admissions and undetectable C-peptide levels. In the past, the appellant had experienced chronic difficulty maintaining his blood sugar control despite 4-10 glucometer checks per day. His last A1C level was 10.7% on December 10, 2016.
- The appellant can successfully implement the use of an insulin pump as he has the ability to self-monitor blood glucose levels frequently as well as the motivation to achieve and maintain improved blood glucose control and demonstrate compliance with dietary and insulin regimes.
- He has been on 5 injections of insulin per day with regular glucose monitoring, but is still unable to achieve a satisfactory glucose control. The doctor stated that she strongly supports the use of an insulin pump due to the fact that he has "dawn phenomenon" where fasting blood glucose levels are excessive, with day to day variations based on his work schedule, mealtimes, and/ or activity levels; and also for prevention or reduction of hypoglycemia and the other [listed] medical complications.
- The doctor stated that due to the appellant's "hypoglycemic conditions", she has prescribed "a pump with continuous glucose monitoring (CGM)" as supported by the most recent published data in the *New England Journal of Medicine* (2010) "which showed a significant reduction in A1C with a patient wearing the sensor-augmented insulin pump." The doctor wrote that "an insulin pump with CGM and supplies are medically necessary for (the appellant) to control his diabetes for now and in the future."

◦ On February 17, 2017, the ministry denied the appellant's request for an insulin pump [copy of denial letter included in the record] and the appellant reported that he was informed of the decision on March 27, 2017.

2. A Request for Reconsideration ("RFR") signed by the appellant on April 21, 2017 with attached letter, dated April 5, 2017, signed by both a Registered Nurse - Diabetes Nurse Educator ("RN") and the appellant's doctor. They provided the following information in support of the appellant's request for an insulin pump for the management of his Type 1 Diabetes Mellitus:
◦ The appellant's current insulin regime is the *Multiple Daily Injections* system which involves two types of insulin (long-acting and rapid-acting). The problem he is encountering with this regime is the variability of the insulin action; in particular, the variability of his long-acting insulin which can cause issues in trying to regulate the dose without causing hypoglycemia.
◦ The insulin pump uses only rapid-acting insulin and, therefore, a high blood sugar can be prevented more effectively with the pump. The pump can also be adjusted to better match the basal needs,

compared to long-acting insulin, as the pump can be set to change the amount of insulin needed every hour.
◦ The appellant has become increasingly frustrated with his blood sugar results and at times he refrains from eating for an hour out of fear that his blood sugars will go up. He is therefore not getting the nutrition he needs to stay healthy and prevent diabetes complications. He is fatigued due to multiple awakenings at night to void when he has hyperglycemia.
◦ On his current injection regime, the appellant has been to the Emergency room in 2012, 2014, and November and December 2016 and for the latter admission he required Intensive Care Unit ('ICU") care. He also required ambulance and EMS [emergency management] assistance for 3 of these 4 hyperglycemic episodes. The medical professionals stated that the appellant's current insulin regime is clearly not working for him, and by wearing an insulin pump, episodes of hyperglycemia and hypoglycemia will be reduced; therefore decreasing the risk of further complications and hospitalizations and reducing the cost of health care.

Procedural matters

With the consent of both parties, the appeal proceeded as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act* ("EAA"). In his *Notice of Appeal* dated May 11, 2017, the appellant provided his argument and the panel will consider both parties' arguments in *Part F.* The appellant also stated that he trusts that the appeal tribunal will include medical professionals who will properly diagnose his condition as stated. The panel advises that it is not comprised of medical professionals, but it has the authority under section 24 of the EAA to decide whether the ministry's reconsideration was reasonably supported by the evidence or was a reasonable application of the relevant legislation. The panel's decision is based on the information in the appeal record in accordance with section 22(4) of the EAA.

Additional submissions on appeal

1. The appellant provided a letter from the RN dated May 25, 2017 in which she specifically requested a continuous glucose monitoring meter ("CGM") for the appellant under section 3.12 of EAPWDR Schedule C. Attached to her letter were 12 *Glucofacts deluxe* laboratory print-outs with charts showing low, medium, and high fluctuations in the appellant's blood sugar readings between February 28 and May 30, 2017.

In the letter, the RN provided the following information:

◦ The appellant currently tests his blood 5-10 times per day and despite this frequent testing, he continues to have variable blood sugars and an A1C of 9.0%. He will get up around 3:00 a.m. to confirm that his blood sugar is not "under 4.0 mmol/L" and he will soon reach his *Pharmacare* limit of 3,000 test strips per year.
◦ He has met with a dietitian to review eating habits and insulin dosing for his meals and changes have been made to reduce his blood sugar swings. The RN wrote that despite their continued, combined efforts, the appellant "has not been able to minimize the variability in his blood sugars" and a CGM would allow him to use the trending graphs and directional arrows to better dose his insulin.
◦ The RN explained that the CGM "would not only tell (the appellant) what his blood sugar (reading) is, but would also let him know if his blood sugar is rising or falling and how quickly it is changing." The RN stated that he would be better equipped to modify his insulin dosing and his food intake, and this would "result in avoiding severe hypoglycemia and potential(ly) avoiding further admissions to the Emergency Department…(also) reduce the amount of testing and would stay in his limit of strips."
◦ The RN explained that all three components of the CGM [transmitter, receiver, and sensors] would need to be covered by the ministry and the appellant would require a continuous supply of the

sensors as these are changed every 6-7 days.
◦ The RN added that the CGM would give the appellant better tools for managing his diabetes and minimize "acute and chronic complications of diabetes", therefore reducing the overall cost to healthcare.

2. The ministry provided a letter to the Tribunal dated June 12, 2017 indicating that the ministry's submission will be the reconsideration summary in the record of decision and, in addition, the ministry reviewed the RN's letter of May 25, 2017 and the eligibility criteria for a *non-conventional glucose meter* (including a CGM) under section 3.12 of EAPWDR Schedule C. The ministry provided the following response to the RN's letter:

◦ The ministry is not satisfied that a CGM is medically essential for the appellant to test his blood glucose levels as he is able to use a conventional glucometer.

◦ The ministry wrote:
:*while it is recognized that a CGM would enable him to more easily identify trends in blood glucose levels and make more informed decisions with his insulin requirements, the ministry has determined that he is still able to achieve this through frequent testing with a conventional glucometer and that it is not medically essential for him to have a CGM. Further, legislation requires that (the appellant) be unable to use a conventional glucometer in order to be eligible for a CGM and the ministry has not received information that he is unable to use a conventional glucometer.*

Admissibility of additional information

Under section 22(4) of the EAA, the panel has the authority to admit as evidence, only the information and records that were before the minister when the decision being appealed was made and oral or written testimony in support of the information and records that were before the minister. The panel finds that the RN's letter of May 25, 2017 and the ministry's response dated June 12, 2017 are admissible under section 22(4) of the EAA because they are in support of the information in the reconsideration record for the following reasons:

◦ First, in the May 25, 2017 letter from the RN, the requested medical device is a CGM, thereby corroborating the request for a CGM made by the endocrinologist in her letter of January 19, 2017 which was before the minister at reconsideration. The panel therefore admits the May 25, 2017 letter under subsection 22(4)(b) of the EAA as evidence in support of the information and records that were before the minister at the time the decision being appealed was made.
◦ Second, in the reconsideration decision, the ministry discussed in detail the purpose, function, and features of a CGM, as well as the eligibility criteria for a *non-conventional glucose meter* under subsection 3.12(2) of EAPDWR Schedule C, with specific reference to a CGM as described in subsection 3.12(1)(a) of the Schedule. Nevertheless, the ministry determined in the reconsideration decision, that the appellant was not eligible for an *insulin pump* and the ministry did not make a decision regarding his eligibility for a CGM as either a stand-alone item or as a medical device associated with an insulin pump.

The ministry explained that a CGM and an insulin pump are two components of an "artificial pancreas" and while the ministry found that it is not authorized by the legislation to provide an *insulin pump*, it recommended that the appellant "explore the option of obtaining a *non-conventional glucose meter*, which the ministry is authorized to provide."

Subsequent to the reconsideration decision, in its response letter of June 12, 2017, the ministry again reviewed the eligibility criteria for a CGM, thereby corroborating the analysis that was before the minister at reconsideration. This time, however, the ministry also made a decision as to whether the appellant is eligible for a ministry-funded CGM by denying the request as not meeting the legislative criteria under subsection 3.12(2) of EAPWDR Schedule C. Given that the ministry discussed the CGM and analyzed the legislative requirements for this item in considerable detail in the reconsideration decision, the panel accepts the ministry's June 12, 2017 decision on the appellant's request for a CGM as an addendum to the reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the reconsideration decision of May 5, 2017 in which the ministry denied the appellant funding for an insulin pump 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 the following specific criteria were not met:

◦ An insulin pump is not an item listed in sections 3.1 to 3.12 of Schedule C and the other legislated criteria for each of these health supplements have not been met.

◦ The information submitted by the appellant did not demonstrate that the requirement of *no resources available to the family unit to pay for the cost of or obtain the medical equipment or device* under subsection 3(1)(b) of Schedule C was met.

◦ The appellant is not eligible for the insulin pump as a medical or surgical supply as the criteria for these items under sections 2(1) and 2(1.1) of Schedule C were not met.

◦ An insulin pump is also not an item set out in any of the other sections of Schedule C including therapies under section 2 as well as the supplements listed in sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9 of the Schedule; and it does not qualify as a nutritional supplement under section 67 of the EAPWDR. In addition, the ministry found that the other legislated criteria for each of these health supplements have not been met.

◦ An insulin pump is not eligible as a life-threatening health need under EAPWDR 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,

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*

(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.

***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

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 disability 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 an insulin pump. The panel provides the following analysis and decision for each of the legislative criteria the ministry said were not met:

An insulin pump is not eligible as medical equipment/ devices under sections 3.1 to 3.11 of Schedule C

Parties' positions

The appellant did not argue that his request for an insulin pump with CGM should be funded under these sections of *Medical Equipment and devices*, and the ministry's position is that the insulin pump is not one of the listed items in these sections and, in addition, the information provided in the appellant's request for the insulin pump did not establish that the other legislated criteria for each of the listed health supplements have been met.

Panel's decision

As sections 3.1 to 3.11 of EAPWDR Schedule C list mobility devices, bed related products, airway devices, items related to foot wear; and hearing instruments, and the appellant has not requested these items, the panel finds that the ministry reasonably determined that it is not authorized to fund an insulin pump under these sections of Schedule C and that the other legislated criteria for each of the listed items have not been met. The panel finds that the ministry reasonably applied the above-noted sections of the Regulation in the circumstances of the appellant.

An insulin pump is not eligible as a non-conventional glucose meter under section 3.12 of Schedule C

Appellant's position

In the doctor's letter of January 19, 2017 [provided with the appellant's application for an insulin pump with CGM], the appellant argued that he needs an insulin pump to adequately control his diabetes "now and in the future" and prevent or reduce hypoglycemia and other complications of the disease. The doctor supported the use of an insulin pump "due to the fact that he has dawn phenomenon" where fasting glucose levels are excessive with day to day variations in meal times and activities.

In the letter signed by both the RN and the doctor [April 5, 2017, provided for the reconsideration], the appellant further argued that he needs an insulin pump to more easily prevent high blood sugar. His medical professionals explained in the letter that the pump uses only rapid-acting insulin which can be adjusted to better match the basal needs, compared with his daily injections that include long-acting insulin. They explained that an insulin pump will reduce the episodes of hyperglycemia and hypoglycemia, "therefore reducing the risk of further complications and hospitalizations, which will reduce the cost to the health care in general."

Ministry's position

The ministry argued that the insulin pump itself is not a *non-conventional glucose meter* under the EAPWDR because the pump is not included in the definition of a non-conventional meter under subsection 3.12(1) of Schedule C and while the ministry may fund a CGM under section 3.12 of the Schedule, there is no provision under section 3.12 which would allow it to fund an insulin pump. The ministry noted that under subsection 3.12(1) of Schedule C, a *non-conventional glucose meter* includes a CGM, as well as a *talking glucose meter*. The ministry explained that these devices "provide real-time measurements of glucose levels" but do not dispense insulin. The ministry explained that a CGM is only one component of an "artificial pancreas"; whereas, an insulin delivery system "i.e., pump" is another component.

Panel's decision

The panel finds that the ministry reasonably determined that an insulin pump is not included as an eligible item under section 3.12 of EAPWDR Schedule C. As noted by the ministry, subsection 3.12(1) of the Schedule lists only a *continuous glucose monitoring meter* and a *talking glucose meter*. As the ministry explained, these meters do not dispense insulin [unlike a pump which is for the sole purpose of delivering the medication]. While the ministry acknowledged the benefits of an insulin pump for the appellant, it remarked that insulin pumps are unfortunately not an eligible item under the legislation. As section 3.12 of EAPWDR Schedule C applies only to glucose meters, and not to an insulin pump, the panel finds that the ministry reasonably determined that it is not authorized to fund an insulin pump under this section of Schedule C. While the panel is sympathetic to the appellant's position as endorsed by his medical professionals, the panel finds that the ministry reasonably applied section 3.12 of EAPWDR Schedule C in his circumstances.

The information provided does not establish that the other criteria in section 3 of Schedule have been met, specifically subsection 3(1)(b)(ii): no resources available to pay the cost of or obtain the medical equipment or device

Appellant's position

The appellant did not address the issue of resources in his RFR submission but indicated in his appeal submission [letter from the RN of May 25, 2017] that under his current glucose monitoring system, he tests his blood 5-10 times per day and will soon reach his *Pharmacare* limit of 3,000 test strips per year.

Ministry's position

The ministry argued that the appellant did not demonstrate that he had no resources available for an insulin pump because there was no evidence that he had applied to the Ministry of Health *Pharmacare* program for "an exception" to obtain coverage for the pump. While the ministry acknowledged that the Ministry of Health normally only provides insulin pumps for persons aged 25 years or younger, it noted that unlike the ministry, the Ministry of Health has the discretion to authorize payment for the device in situations "not listed on a formulary." The ministry noted that most of the health supplements in EAPWDR Schedule C are not covered by *Pharmacare*, arguing that the EAPWDR authorizes the ministry to fund the listed health items only as a last resort.

Panel's decision

The panel notes that in addition to meeting the specific eligibility requirements for each item described in Schedule C, the general requirements under sections 3(1) and 3(2) of the Schedule must also be met. Subsection 3(1)(b)(ii) sets out the requirement that there are no resources available to the family unit to pay for or obtain the requested item. While the appellant provided evidence that he receives a limited number of test strips from *Pharmacare* for his glucometer, this information is insufficient to confirm that he applied to the Ministry of Health for an insulin pump under "an exception".

As the Regulation requires evidence that there *no resources available*, and the appellant had not confirmed that he applied for an insulin pump through other health programs and was denied, the panel finds that the ministry reasonably determined that the requirement in subsection 3(1)(b)(ii) of EAPWDR Schedule C was not met, and that the ministry's decision on this criterion was therefore reasonably supported by the evidence.

An insulin pump is not eligible as a medical or surgical supply under section 2 of Schedule C

Parties' positions

As with *Medical Equipment and devices*, the appellant did not argue that his request for an insulin pump with CGM should be funded as a medical or surgical supply, and the ministry's position is that the insulin pump is not one of the listed items under section 2 of EAPWDR Schedule C. Specifically, the ministry argued that an insulin pump 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 "directly required" 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, required for purposes that include wound care and incontinence.

Panel's decision

The panel finds that the ministry reasonably determined that an insulin pump is not included as a medical or surgical supply or consumable medical supply under the above-noted sections of Schedule C and is not directly required for one of the purposes specified in subsection 2(1)(a)(i) of the Schedule. As there is insufficient evidence to confirm that the appellant is requesting any of the medical/ surgical items listed in these sections for one of the purposes set out in the Schedule, the panel finds that the ministry reasonably applied the above-noted sections of the Regulation in determining that an insulin pump is not an eligible item under these sections.

An insulin pump 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

Parties' positions

Once again, the appellant did not argue that his request for an insulin pump with CGM should be funded under these provisions and the ministry's position is that an insulin pump is not one of the listed items in these sections and, in addition, the information provided in the appellant's request for the insulin pump did not establish that the other legislated criteria for each of the listed health supplements have been met.

Panel's decision

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. An insulin pump clearly does not fall within any of these supplements; thus, the specific legislative criteria for each of these supplements do not apply to an insulin pump. The panel therefore finds that the ministry reasonably applied the legislation in determining that an insulin pump is not covered under these sections and that the appellant's request for the insulin pump does not meet the other legislative requirements for each of the health supplements listed in these sections.

An insulin pump is not eligible as a life-threatening health need under section 69

Appellant's position

The appellant argued that he has a life-threatening health need for an insulin pump with CGM, based on the evidence from the doctor and the RN indicating that he is unable to adequately control his Type 1 diabetes with his current method of blood testing and insulin delivery. His medical professionals reported that he has had several hyperglycemic episodes, with most of these episodes requiring ambulance and EMS assistance, and the most recent episode in December 2016 requiring ICU care as well. The medical professionals indicated in their letter of April 5, 2017 that ongoing high blood sugars can cause chronic health conditions, while low blood sugar can result in seizures and coma.

The ministry acknowledged that the information submitted with the initial request and RFR "suggests that (the appellant) may face a direct and imminent life-threatening need for the item requested." The ministry nevertheless argued that the appellant is not eligible to receive an insulin pump 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, he is eligible to receive health supplements under EAWDR Schedule C [*general health supplements* and *medical equipment and devices*], and therefore he does not require a remedy under section 69; and
◦ An insulin pump is not one of the health supplements set out in sections 2(1)(a) and (f) or section 3 of Schedule C [as required under section 69], and his request for the insulin pump has not met all of the requirements specified in sections 2(1)(a) and (f) and sections 3 to 3.11 of Schedule C.

The ministry explained that section 69 is intended to provide a remedy for persons who are facing a direct and imminent life-threatening health need for the requested health supplement but are not otherwise eligible to receive the item because they are not in receipt of disability or other assistance from the ministry.

Panel's decision - EAPWDR 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 must 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 in sections 2(1)(a) and (f) and section 3 of Schedule C because he meets the basic eligibility requirement for health supplements as a person in receipt of disability assistance under EAPWDR section 62(a).

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

As the appellant receives disability assistance from the ministry; and the sections of Schedule C that are referenced in EAPWDR section 69 do not include an insulin pump as an eligible item, the panel finds that the ministry reasonably applied the legislation in determining that the appellant is not eligible for an insulin pump to meet a direct and imminent life-threatening health need. Specifically, sections 2(1)(a) and (f) of Schedule C reference disposable and reusable medical and surgical

supplies, and medical transportation and as noted earlier, an insulin pump is also not included as medical equipment under section 3 (or sections 3.1 to 3.12) of EAPWDR Schedule C.

Analysis: eligibility for CGM

The appellant is not eligible for a non-conventional glucose meter under section 3.12 of Schedule C

Appellant's position

In his *Notice of Appeal*, the appellant argued that he has provided all of the necessary documentation. His doctor stated [letter of January 19, 2017], that he requires a non-conventional glucose meter, specifically a CGM for his Type 1 diabetes, because this device is "medically necessary…to control his diabetes adequately for now and in the future." The doctor noted that the appellant's most recent test of his A1C level indicated a reading of 10.7% and that the most recent published data on a pump augmented with a CGM device "showed a significant reduction in A1C." The doctor highlighted the inadequacy of the appellant's current "glucometer" checking system; and emphasized that not only is it inadequate for maintaining his blood sugar control and preventing or reducing numerous complications of diabetes, he is "unable to achieve a satisfactory glucose control".

In the letter of April 5, 2017, signed by both the RN and the doctor, the appellant further argued that his current blood testing regime is not only frustrating for him [affecting his nutrition and sleep due to hyperglycemia], he has also been to the Emergency Room 4 times due to "hyperglycemic episodes", with ICU care required at his most recent admission in December 2016. The appellant further argued in his appeal submission [letter from the RN dated May 25, 2017] that he requires a CGM so that he "would be better equipped to modify his insulin dosing and food intake" to avoid "severe hypoglycemia" and potentially avoid further admissions to the Emergency Department.

The appellant argued that a CGM would not only reduce the amount of testing that he requires and reduce the cost to the health care system,it would provide him with better tools to minimize both the acute and chronic complications of diabetes. As noted by the RN, despite the continued, combined efforts of the appellant and his health care team including changes to his eating habits and insulin dosing to help manage his blood sugar swings, the appellant "has not been able to minimize the variability in his blood sugars."

Ministry's position

In its appeal submission of June 12, 2017, the ministry submitted that the specific regulatory criteria for a CGM were also not met. The ministry acknowledged that a CGM would enable the appellant to more easily monitor his blood glucose levels and make more informed decisions about his insulin requirements, but argued that "he is still able to achieve this through frequent testing with a conventional glucometer" and it is not medically essential for him to have a CGM. The ministry further argued that the request for a CGM did not meet the criteria of being *unable to use a conventional glucose meter* pursuant to subsection 3.12(2)(b) of EAPWDR Schedule C "as he is able to use a conventional glucometer" and the ministry "has not received information that he is unable to use a conventional meter."

Panel's decision

Section 3.12 of EAPWDR Schedule C sets out the specific requirements for ministry funded non-conventional glucose meters. As noted by the ministry, subsection 3.12(1)(a) authorizes the minister to provide a CGM as a health supplement as long as the requirements under subsection 3.12(2) are met. While the legislation gives the minister discretion to determine whether the criteria are met, the ministry must make a reasoned decision based on the evidence before it as well as reasonably apply the legislation in the circumstances of the appellant.

The panel addresses the two requirements under subsection 3.12(2) as follows and notes that the Regulation requires both criteria to be met:

◦ Subsection 3.12(2)(a) of Schedule C requires the minister to be satisfied that the non-conventional glucose meter *is medically essential to test blood glucose levels*. In the reconsideration decision, the ministry accepted that the appellant "may face a direct and imminent life-threatening health need for the item requested" based on the information from the RN and the doctor. However, the ministry's appeal submission does not support its own finding, as the ministry's June 12, 2017 letter stated that "it is not medically essential for him to have a CGM." The ministry argued that the device is not medically essential to test blood glucose levels "as he is able to use a conventional glucometer". While the ministry indicated that a CGM would be more convenient for the appellant as it would "enable him to more easily identify trends in blood glucose levels and make more informed decisions with his insulin requirements", it argued that "he is still able to achieve this through frequent testing with a conventional glucometer and it is not medically essential for him to have a CGM."

The panel finds that the ministry's application of the subsection 3.12(2)(a) criterion was not a reasonable interpretation of the legislative requirement. The ministry bases the determination of whether the non-conventional CGM is medically essential, on its declaration that the appellant is able to use a conventional glucose meter as well as the CGM being more convenient for him to use due to its greater functionality. However, subsection 3.12(2)(a) requires evidence of the CGM being absolutely necessary for medical reasons, and the legislative test is not whether the person can use a conventional meter, or whether one device is more convenient and effective than the other in measuring glucose levels. It appears that the ministry has confused the subsection 3.12(2)(a) requirement with subsection 3.12(2)(b) which addresses whether the person is unable to use the conventional device as a separate criterion.

In determining that a CGM is not medically essential, the ministry did not adequately respond to the evidence of the medical professionals which indicated that the appellant needs a CGM to measure his blood glucose levels as this device, with its ability to generate real-time information on his blood sugar trends allowing him to adjust his insulin dose accordingly and thereby minimize the acute and chronic complications of his Type 1 diabetes. While the ministry summarized the May 25, 2017 letter from the RN, noting that a CGM would allow the appellant to "avoid severe hypoglycemia", the panel finds that the evidence of medical experts in the field of diabetes management [an endocrinologist and a Diabetes Nurse Educator] was not analyzed as a whole and given sufficient weight by the ministry.

The letters from the RN and the doctor [January and May 2017] noted that despite concerted efforts by the appellant and his medical team, including changes to his diet and insulin dosages, the appellant "has not been able to minimize the variability in his blood sugars" with regular glucose monitoring. In addition, the medical professionals reported that the appellant has had several Emergency Department admissions for "hyperglycemic episodes" that have become progressively

more serious, with the most recent episode, in December 2016, requiring ICU care. They indicated that an insulin pump "with CGM and supplies are medically necessary for [the appellant] to control his diabetes for now and in the future." Given the medical evidence as a whole, the panel finds that the ministry unreasonably concluded that a CGM is not *medically essential to test glucose levels* and the ministry's application of the legislation in the circumstances of the appellant was therefore not reasonable.

◦ Subsection 3.12(2)(b) of Schedule C sets out an additional criterion that must also be met for the ministry to fund a CGM. Not only must the CGM be medically essential to test blood glucose levels, the minister must be satisfied that the appellant is *unable to use a conventional glucose meter*. In its appeal submission, the ministry argued that the appellant "is able to use a conventional glucometer" [as the reason why the CGM is not medically essential, as noted above]. The submission further stated that the ministry "has not received information that he is unable to use a conventional glucometer."

As subsection 3.12(2)(b) requires evidence of the person's inability to use a conventional glucometer, the ministry would need to assess the information it received from the appellant's medical professionals to provide a reasonable explanation for finding there was no information to confirm that he is unable to use a conventional meter. In its submission, the ministry stated that the appellant "is able to use a conventional glucometer" but did not explain what it based this conclusion on. The panel has conducted a thorough review of the evidence and notes the following:

In the original request for an insulin pump with CGM, the doctor remarked that the appellant "has demonstrated the ability to self-monitor blood glucose levels frequently" [in the context of having the required motivation and adherence to a testing regime to successfully implement an insulin pump]. The doctor did not comment on whether the appellant is unable to use a conventional glucose meter in the context of assessing his ability to use a particular type of monitoring system. While one could argue that if he "self-monitors", he can clearly use a conventional meter to test his blood, information that he is testing his blood levels "frequently" because of his earnestness to achieve overall better heath with an insulin pump, is insufficient evidence of his actual ability/ inability to use a particular type of device.

In addition, a reasonable interpretation of the Regulation must take into account not only the plain meaning of the particular provision, but also consider the purpose of the legislative scheme [to provide health supplements as a last resort to persons who meet the specific legislative criteria, as noted by the ministry in the reconsideration decision]. As well, where there are two requirements set out under one heading in the legislation [in this case (a) and (b) under section 3.12(2)], the criteria must be read together in accordance with the principles of statutory interpretation.

While there was insufficient evidence that the appellant lacks the physical capacity or manual dexterity required to operate a conventional glucose meter, a reasonable application of the Regulation requires the ministry to take into account the evidence provided by the medical professionals regarding the objective of blood glucose testing and whether the appellant is unable to use a conventional glucose meter to meet the intended objective. Where the objective of using a glucose meter to test blood is to achieve consistency in glucose levels to facilitate the dosing of insulin to prevent and manage blood sugar that is too high or too low, it is unreasonable to conclude that the appellant can achieve that with a conventional glucose meter.

In the reconsideration decision, the ministry provided a detailed explanation of the difference between conventional testing with a glucometer and testing the blood with a CGM, explaining that a CGM functions as one component of an "artificial pancreas" by using a tiny sensor inserted under the skin to check glucose levels in tissue fluid. The ministry explained that a transmitter sends information about glucose levels to a pager-like wireless monitor, providing real-time measurements of glucose levels. The evidence indicated that the conventional and non-conventional devices test blood glucose levels via a very different function and the CGM provides more precise readings in real-time.

The evidence from the RN [May 25, 2017 letter] indicated that while the appellant "currently tests his blood 5-10 times per day", he is unable to use a conventional device because "he continues to have variable blood sugars and an A1C of 9.0%" despite frequent testing and changes to his diet and insulin dosage. She explained that a CGM has functions that a conventional glucometer does not have, in that a CGM not only provides a blood sugar reading, it also lets the appellant “know if his blood sugar is rising or falling and how quickly it is changing.” She reported that not only is this of general benefit to him, it would better equip him to modify his insulin intake and “avoid severe hypoglycemia” and minimize admissions to the Emergency Department.

The issue before the panel is whether the ministry reasonably determined that the appellant is “unable to use a conventional glucose meter.” While the evidence indicated that he is testing his blood glucose with a conventional device, the ministry’s decision did not consider whether he is unable to use a conventional meter due to the conventional device not having the ability to generate the precise data required to allow him to manage trends in real time and adjust his insulin dosing accordingly to adequately control his diabetes.

In reading subsections 3.12(2)(a) and (b) together and emphasizing that the legislation requires both criteria to be met in order for the ministry to fund the CGM, the evidence from the medical professionals indicated not only that a CGM is *medically essential to test blood glucose levels*, the appellant is also *unable to use a conventional glucose meter* because it does not generate precise enough data with real time analysis of trends in his blood glucose to achieve the intended purpose of the testing. The panel therefore finds that the ministry unreasonably applied section 3.12(2)(b) of EAPWDR Schedule C in the circumstances of the appellant.

Conclusion

The panel finds that the ministry reasonably determined that an insulin pump could not be provided under the EAPWDR and therefore finds that the reconsideration decision which denied the appellant’s request for an insulin pump was a reasonable application of the legislation in the circumstances of the appellant. With regard to the appellant’s request for a CGM, the panel finds that the ministry unreasonably applied section 3.12 of EAPWDR Schedule C based on the information that was provided.by two medical professionals who specialize in diabetes management. The panel therefore rescinds the reconsideration decision under section 24(2)(b) of the EAA and the appellant is successful in his appeal.