PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated June 12, 2017 which denied the appellant's request for funding for Lidocaine pain management medication and an infuser apparatus (together referred to as LI), on the basis that the request did not meet the legislative criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 62, 69 and Schedule C Sections 2 and 3, specifically that:

- Lidocaine infusion (LI) is not a "medical supply" listed in Schedule C, Section 2(1)(a), (a.1) or (a.2);
- L I is not one of the "extended therapies" listed in Schedule C, Section 2(1)(c);
- L I is not included in the list of "medical equipment or devices" pursuant to Schedule C, Sections 3 to 3.12;
- the appellant does not meet any of the remaining criteria for a health supplement under Schedule C, Sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, 9 or for a monthly nutritional supplement under Section 67; and
- the appellant does not qualify for a health supplement under EAPWDR Section 69 because he is otherwise eligible under Schedule C and does not face a direct and imminent life threatening health need.

PART D – Relevant Legislation

EAPWDR:

Sections 62, 69
Schedule C, Sections 2 and 3

PART E – Summary of Facts

The appellant is a recipient of disability assistance.

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

1. March 29, 2017 list of the appellant's prescriptions filled during the period October 1, 2015 – December 31, 2016 for LI and butterfly needles;
2. April 7, 2017 letter from the appellant's family doctor (the GP) confirming that the appellant is prescribed LI to be administered every 21 days. The GP also notes that the appellant is allergic to other pain medication, which limits his options for pain management, and adds that the LI is considered a long-term treatment for so long as it is effective;
3. August 25, 2015 report from a pain specialist (Dr. L) describing the appellant's:
    a. medical history;
    b. pain levels, which are constant, rated 8 out of 10;
    c. allergies to narcotic and non-narcotic pain medication including a description of life-threatening allergic events.
4. one page of an undated assessment by Dr. C containing similar information to the letter from Dr. L;
5. February 15, 2017 note from the GP confirming that the LI treatment is helpful in controlling the appellant's chronic pain;
6. December 12, 2016 letter from an orthopaedic and spinal surgeon (Dr. S) noting that the appellant is not a candidate for surgery to alleviate his pain;
7. April 26, 2017 letter from the GP noting that special authority for LI was not granted by BC Pharmacare;
8. May 29, 2017 request for reconsideration with the following enclosures:
    i. self report completed by the appellant;
    ii. May 18, 2017 letter from Dr. L noting that because the appellant's pain is being effectively managed with LI he is not causing a strain on the provincial health system and is not using opioid narcotics.

<u>Information Received after Reconsideration</u>

In his Notice of Appeal dated January 19, 2017 the appellant wrote that he cannot afford the cost of LI and the necessary appliances necessary to administer the drug.

Prior to the hearing the appellant tendered a 20 page written submission, much of which contained argument that will be discussed in part F of this appeal decision. Relevant new information included:

- list of medications to which the appellant is allergic;
- description of near-fatal allergic reactions at hospitals in the USA;
- explanation that his wife's employment wages are sent overseas to care for a disabled child and provide him with an education and he thus has no available resources with which to purchase the LI ;
- statement that he cannot use the infuser apparatus for more than 3 infusions;
- further description that when the intensity of his pain reaches its highest point he requires more LI than usual to control it;
- a statement that there are times when he wishes he was dead because the pain is so intense;
- information that he is also a diabetic.

At the hearing the appellant provided a demonstration of the Lidocaine infusion system. It consists of 3 parts:

1. Lidocaine liquid **medication** costing $31.77 every 3 weeks (not approved);
2. **infuser apparatus**, consisting of a clear plastic bottle with an inner finger-shaped expandable bladder and a thin plastic tube to pump the medication to the butterfly needle, costing $80 (not approved);
3. **butterfly needle** for intravenous injection (approved).

Because he is unable to pay the $1,000 Pharmacare deductible his doctors asked that he be considered under Special Authority, but Pharmacare denied the request. He has been on a physiotherapy waiting list for 3 years.

The appellant added that in addition to his PWD shelter and support allowances he receives $35 monthly to assist in paying for a specialized diabetic diet. His GP will be prescribing insulin in the near future.

Admission of Evidence Received after Reconsideration:
The ministry did not object to admission of the appellant's written and oral evidence.

The panel determined that all of the oral and written evidence submitted by the appellant was admissible under EAA Section 22(4) as in support of the information before the ministry at reconsideration because it provided additional detail to the matters already considered by the ministry at reconsideration.

The ministry relied on the reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision which denied the appellant's request for funding for Lidocaine pain management medication and an infuser apparatus (together referred to as LI), on the basis that the request did not meet the legislative criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 62, 69 and Schedule C Sections 2 and 3, specifically that:

- LI is not a "medical supply" listed in Schedule C, Section 2(1)(a), (a.1) or (a.2);
- LI is not one of the "extended therapies" listed in Schedule C, Section 2(1)(c);
- LI is not included in the list of "medical equipment or devices" pursuant to Schedule C, Sections 3 to 3.12;
- the appellant does not meet any of the remaining criteria for a health supplement under Schedule C, Sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, 9 or for a monthly nutritional supplement under Section 67; and
- the appellant does not qualify for a health supplement under EAPWDR Section 69 because he is otherwise eligible under Schedule C and does not face a direct and imminent life threatening health need.

Relevant legislation:

EAPWDR:

General health supplements

62 (1) Subject to subsections (1.1) and (1.2), 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 family unit if the health supplement is provided to or for a person in the family unit who

(a) a recipient of disability assistance,

Nutritional supplement

67 (1) The minister may provide a nutritional supplement in accordance with section 7 *[monthly nutritional supplement]* of Schedule C to or for a family unit in receipt of disability assistance, if the supplement is provided to or for a person in the family unit who

(a) is a person with disabilities, and
(b) is not described in section 8 (1) *[people receiving special care]* of Schedule A, unless the person is in an alcohol or drug treatment centre as described in section 8 (2) of Schedule A,

if the minister is satisfied that

(c) based on the information contained in the form required under subsection (1.1), the requirements set out in subsection (1.1) (a) to (d) are met in respect of the person with disabilities,
(d) the person is not receiving another nutrition-related supplement,
(e) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 7 (c).]
(f) the person complies with any requirement of the minister under subsection (2), and
(g) the person's family unit does not have any resources available to pay the cost of or to obtain the items for which the supplement may be provided.

(1.1) In order for a person with disabilities to receive a nutritional supplement under this section, the minister must receive a request, in the form specified by the minister, completed by a medical practitioner or nurse practitioner, in which the practitioner has confirmed all of the following:

(a) the person with disabilities to whom the request relates is being treated by the practitioner for a chronic, progressive deterioration of health on account of a severe medical condition;
(b) as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the following symptoms:

(i) malnutrition;
(ii) underweight status;
(iii) significant weight loss;
(iv) significant muscle mass loss;
(v) significant neurological degeneration;
(vi) significant deterioration of a vital organ;
(vii) moderate to severe immune suppression;

(c) for the purpose of alleviating a symptom referred to in paragraph (b), the person requires one or more of the items set out in section 7 of Schedule C and specified in the request;
(d) failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life.

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)

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,

(i) for which a medical practitioner or nurse practitioner has confirmed an acute need,
(ii) if the visits available under the Medical and Health Care Services Regulation, B.C. Reg. 426/97, for that calendar year have been provided and for which payment is not available under the *Medicare Protection Act*, and
(iii) for which there are no resources available to the family unit to cover the cost:

Item	**Service**	**Provided by**	**Registered with**
1	acupuncture	acupuncturist	College of Traditional Chinese Medicine under the *Health Professions Act*
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the *Health Professions Act*
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia under the *Health Professions Act*
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia under the *Health Professions Act*
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia under the *Health Professions Act*
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia under the *Health Professions Act*

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.

The appellant's argues that he suffers lethal allergies to narcotics and NSAID medications, which leaves him with only LI to manage his constant pain. He wishes to be considered under EAPWDR Section 69 because he is facing a direct and imminent life-threatening health need. He believes that he has "fallen through the cracks", in that he cannot afford to pay the $1000 Pharmacare deductible,

is not eligible for LI through Phamacare's Special Authority, and does not meet any of the remaining criteria in the EAPWDR.

The ministry's position is set out in the reconsideration decision, enumerated as follows:

1. LI is not a "medical supply" listed in Schedule C, Section 2(1)(a), (a.1) or (a.2);
2. L I is not one of the "extended therapies" listed in Schedule C, Section 2(1)(c);
3. L I is not a "medical equipment or device" pursuant to Schedule C, Sections 3 to 3.12;
4. the appellant does not meet any of the remaining criteria for a health supplement under Schedule C, Sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, 9 or for a monthly nutritional supplement under Section 67; and
5. the appellant does not qualify for a health supplement under EAPWDR Section 69 because he is otherwise eligible under Schedule C and does not face a direct and imminent life threatening health need.

Panel Decision

Eligibility

EAPWDR Section 62 allows the ministry to provide a health supplement under Section 2 (*general)* or 3 (*medical equipment and supplies)* of Schedule C to a person who is in receipt of disability assistance. As a preliminary finding the panel agrees that the ministry reasonably determined that the appellant is eligible for a Section 62 health supplement because he is a recipient of PWD.

The panel will deal with issues 1 – 5 separately.

1. Not a "Medical Supply":

A person is not eligible to receive a "general" health supplement under Section 2 (1) unless the following criteria are met:

i. the medical or surgical supplies are required for one of the following purposes: wound care, ongoing bowel care due to loss of muscle function, catheterization, incontinence, skin parasite care or limb circulation care;
ii. the supplies are prescribed by a medical practitioner or nurse practitioner; are the least expensive supplies appropriate to the purpose, are necessary to avoid imminent and substantial danger to health, and
iii. there are no resources available to the family unit to pay the cost.

The panel finds that the ministry reasonably determined that the appellant is not eligible for a general health supplement under EAPWDR subsection 2(1)(a)(i) because LI is not required for one of the purposes set out in subsection (ii).

The panel finds that the ministry reasonably determined that the appellant is eligible for a general health supplement for butterfly needles because needles and syringes are eligible medical supplies under EAPWDR subsection 2(1)(a.1).

2. Not an "Extended Therapy":

A person is eligible for a health supplement under EAPWDR Schedule C, subsection 2(1)(c) for the following therapies: acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry or podiatry.

The panel finds that the ministry reasonably determined that the appellant is not eligible for a health supplement under subsection 2(1)(c) because pain management or pain reduction is not one of the allowable extended therapies listed under this section.

3. Not "Medical Equipment or Device":
Eligible medical equipment and devices are listed in EAPWDR Schedule C, subsections 3.1 – 3.12. They are limited to: canes, crutches, walkers, wheelchairs, wheelchair seating systems, scooters, bathing and toileting aids, hospital beds, pressure relief mattresses, lift devices, airway pressure devices, orthoses, hearing aids and non-conventional glucose meters.

The item requested must fall into one of these categories before the remaining criteria (pre-authorization, lack of available resources, least expensive item, medical practitioner's prescription and assessment by an occupational or physical therapist) can be considered.

The panel finds that the ministry reasonably determined that the appellant is not eligible for a health supplement for medical equipment or devices under Section 3 of Schedule C because LI is not one of the allowable items listed in subsections 3.1 – 3.12.

4. No other applicable legislative criteria:
None of the remaining legislation in Schedule C includes pain reduction medication or an infusion pump to administer pain reduction medication.

The panel therefore finds that the ministry reasonably determined that the appellant is ineligible for a health supplement under any other provision of EAPWDR Schedule C.

5. Not eligible under EAPWDR Section 69:
The appellant's evidence indicates that his pain levels can reach such a degree that he no longer wishes to live. It is also clear from the evidence that any pain reduction medication other than LI, such as narcotics or NSAIDs, will have life-threatening consequences for him. These two factors indicate a direct and imminent life-threatening health need. However, Section 69 enables the ministry to provide a health supplement included in Sections 2 and 3 of Schedule C if a person is not otherwise eligible for a health supplement under the EAPWDR. As noted earlier in the panel decision, the appellant is already eligible for a health supplement under Schedule C because he is a recipient of PWD.

The panel therefore finds that the ministry reasonably determined that the appellant is not eligible for a health supplement under EAPWDR Section 69 because he does not meet the eligibility criteria set out in this section.

Conclusion

The panel acknowledges that the appellant is suffering extreme pain, is limited to only one effective pain reduction medication which must be administered by an infusion pump and intravenous needle, and lacks the resources to pay the annual Pharmacare deductible of $1,000. However, the ministry lacks the discretion to provide a health supplement that is not included in the legislation, which unfortunately is the case in this appeal.

In conclusion the panel finds that the ministry's determination that the appellant is ineligible for a health supplement for LI because he does not meet any of the legislative criteria is a reasonable application of the applicable enactments in the appellant's circumstances, and confirms the decision. The appellant is not successful in his appeal.