PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated June 1, 2017, made by the Ministry of Social Development and Social Innovation (the ministry), which determined that the appellant was not eligible to receive funding for a nasal positive airway pressure device (CPAP) in order to address his sleep apnea because he had not received pre-authorization from the ministry and because the legislation requires that the condition be moderate to severe while the appellant has been diagnosed with mild sleep apnea.

PART D – Relevant Legislation

The relevant legislation is section 62 and sections 3(1) to 6 of Schedule C the *Employment and Assistance for Persons with Disabilities Regulation* (EAPDWR).

PART E – Summary of Facts

The appellant is in receipt of disability assistance. He has been diagnosed with spastic quadriplegia, cerebral palsy and complex mental health issues.

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

(1) A letter dated May 4, 2017, from the appellant's specialist stating that the appellant has been diagnosed with sleep apnea and needs to be on a CPAP immediately to prevent "daytime sleepiness and long term complications such as hypertension, congestive heart failure, coronary artery disease and stroke."

(2) A sleep laboratory report dated December 4, 2016, indicating that the appellant has an Apnea Hypopnea Index of 7.5 events per hour, which is classified as "Very mild obstructive sleep hyponea".

(3) A Medical Equipment Request and Justification Form dated May 10, 2017.

(4) A letter dated May 11, 2017, from a sleep clinic stating that, "This patient is set up for a two-month trial of CPAP [unit] with mask according to Doctor's prescription".

(5) The ministry's initial decision dated June 7, 2017, denying the appellant funding for the CPAP on the basis that he has been diagnosed with mild sleep apnea and so does not meet the legislative criteria that his sleep apnea be "moderate to severe".

(6) A request for reconsideration dated June 21, 2017, in which the appellant's father writes:

I would like you to reconsider your decision. My son … before the apnea machine had very little energy from his [illegible] sleep every night being awake on and off; he had trouble concentrating at school and almost every day had to come home and sleep for 2 hours at least. Without the machine [the appellant] will start to go back to that pattern and will not be able to have a productive day.

(7) A prescription dated June 19, 2017, completed by the appellant's specialist which states:

The above-named patient has been diagnosed to have mild obstructive sleep apnea based on clinical and polysomnographic features. The patient has been started on nasal CPAP, which is the most effective treatment for sleep apnea. He is feeling much better with treatment. I understand that [the ministry] has declined funding for the CPAP machine. I strongly urge the Ministry to reconsider this decision and approve the funding as he is so much better with treatment. The symptoms of sleep apnea do not always run parallel to the severity of sleep apnea.

(8) A letter dated June 21, 2017, from a sleep clinic stating that the appellant has responded well to the CPAP therapy and that it is considered a long-term treatment.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant is not eligible to receive funding for a CPAP was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is section 62 and section 3(1) to 6 of Schedule C to the EAPWDR:

General health supplements

62 The minister may provide any health supplement set out in section 2 *[general health supplements]* or 3 *[medical equipment and devices]* of Schedule C to or for

(a) a family unit in receipt of disability assistance,

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

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

Medical equipment and devices

3 (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.12 of this Schedule are the health supplements that may be provided by the minister if

(a) the supplements are provided to a family unit that is eligible under section 62 *[general health supplements]* of this regulation, and

(b) all of the following requirements are met:

(i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;

(ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;

(iii) the medical equipment or device is the least expensive appropriate medical equipment or device.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

(a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;

(b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

(a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;

(b) an assessment by a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

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

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

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

(4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.

(5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if

(a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and

(b) it is more economical to repair the medical equipment or device than to replace it.

(6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

This appeal was held by written hearing by consent of the parties in accordance with section 22(3)(b) of the *Employment and Assistance Act*.

THE APPELLANT'S POSITION

The appellant's appeal submission is an undated letter from a community support association. The letter states that, while it is recognized that the appellant did not meet the legislated criteria that his sleep apnea be moderate to severe, the appellant's specialist has, in his letter of June 19, 2017 quoted above, written to strongly urge the ministry to reconsider its decision and that, "the symptoms of sleep apnea do not always run parallel to the severity of the sleep apnea."

THE MINISTRY'S POSITION

The ministry relied on its reconsideration decision at the appeal hearing. That decision found that:

1. The appellant's request did not meet the requirement of section 3(1)(b)(i) of Schedule C to the EAPWDR (pre-authorization) as the evidence before the ministry indicated that the appellant had begun with the CPAP before approval was provided. Specifically, the ministry refers to the letters of June 19 and 21, 2017, which state that, "the patient has been started on nasal CPAP …" and "Upon usage of the CPAP … [the appellant] has noticed improvement in all aspects of his symptoms".

2. The appellant has been diagnosed with mild sleep apnea while section 3.9(2)(c) of Schedule C to the EAPWDR requires that the sleep apnea be "moderate to severe".

THE PANEL'S DECISION

1. Pre-approval: Section 3(1)(b)(i) of Schedule C to the EAPWDR requires that "the family unit has received the pre-authorization of the minister for the medical equipment". The appellant began his trial with the CPAP sometime before June 19, 2017. As the appellant has never "received the preauthorization of the minister", it was reasonable for the ministry to find that the appellant did not meet the requirement of section 3(1)(b)(i) of Schedule C to the EAPWDR.

2. Sleep Apnea: As the appellant has been diagnosed with ("very") mild sleep apnea it was reasonable for the ministry to find that the appellant has not been diagnosed with moderate to severe sleep apnea as required by section 3.9(2)(c) of Schedule C to the EAPWDR.

Based on the above analysis, the panel finds that the ministry's determination that the appellant did not qualify for funding for the 2-month trial of a CPAP was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant.