

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision, dated November 28, 2017 (the “Reconsideration”), which determined that the Appellant was not eligible for replacement electrodes for a TENS machine as a health supplement because:

- TENS machines and their components are no longer medical equipment and devices which the Ministry is authorized to fund under sections 3.1 through 3.12 of Schedule C to the *Employment and Assistance for Persons With Disabilities Regulation* (“EAPWDR”);
- the components of TENS machines do not fall within the categories of general health supplements described in section 2(1) and 2(1.1) of Schedule C to the EAPWDR;
- the Appellant’s circumstances were such that the Appellant was no longer eligible, pursuant to section 2(3) of Schedule C to the EAPWDR, for replacement of electrodes for his TENS machine; and
- the Appellant did not meet the criteria for a health supplement under section 69 of the EAPWDR.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (“EAPWDA”), section 1
EAPWDR, sections 61.1, 62 and 69, and Schedule C, sections 2 and 3

PART E – SUMMARY OF FACTS

The Appellant's Circumstances

The Appellant is in receipt of Medical Services Only assistance, pursuant to section 61.1 of the EAPWDR, and is entitled to general health supplements under section 62(c) of the EAPWDR.

Information before the Ministry at Reconsideration

The following information was before the Ministry at the time of the Reconsideration:

- A referral note, dated August 25, 2017 (the "Referral"), from the Appellant's doctor, recommending a TENS machine for "chronic left ankle pain";
- A receipt from a Pharmacy, dated October 25, 2017 (the "Receipt") in the amount of \$11.54 for a "Bioston pre-wired electrode";
- A price quotation, dated August 25, 2017 (the "Quote") and quoting \$28.78 for electrodes "for TENS machines" from the healthcare department of the Pharmacy that later issued the Receipt;
- The October 30, 2017 letter from the Ministry denying the Appellant's request for replacement electrodes for his TENS machine;
- A medical report, dated August 26, 2017, from an orthopaedic surgeon, which sets out that:
 - the Appellant was seen for ongoing "follow-up of his left ankle fracture treated surgically";
 - the Appellant had "some persistent pain in his ankle" which "may be related to a past history of CRPS";
 - the Appellant's fracture showed as healed in X-rays;
 - the Appellant had reported that both "pain and function continue to improve slowly with physical therapy."
- The Appellant's Request for Reconsideration ("RFR"), to which was attached:
 - several of the documents described above;
 - a one page submission from the Appellant, which described how the Appellant had been approved for a TENS machine approximately 20 years ago, how he had been approved for the replacement of the electrodes for that TENS machine approximately 16 years ago, and the steps that the Appellant took in order to seek prior approval from the Ministry for the replacement of the electrodes prior to purchasing the electrodes himself because of the amount of time that it was taking to get approval;
 - a copy of sections 3, 3.1, and part of 3.2 of Schedule C to the EAPWDR with check marks next to specific provisions contained therein.

In his Notice of Appeal, the Appellant referenced sections 62 and 69 of the EAPWDR as well as section 2(3) of Schedule C to the EAPWDR and attached copies of those sections with check marks next to specific provisions which the Appellant submits apply to him. The Appellant also attached a copy of section 1 of the BC Benefits (Income Assistance) Regulation, which also had check marks next to specific provisions.

The Appellant also submitted, with his Notice of Appeal:

- the original letter from the Ministry, dated October 30, 2017, denying him a health supplement for replacement electrodes;
- the letter from the Ministry, dated November 28, 2017, following Reconsideration; and
- page 1 of the Reconsideration decision with check marks next to section 2(3) of Schedule C to the EAPWDR.

Finally, the Appellant re-submitted, with his Notice of Appeal, the one page submission that had been part of his RFR, as well as the Referral, the Receipt, and the Quote.

The panel accepts the Appellant's Notice of Appeal and the previously unsubmitted attachments as argument.

At the hearing of the Appeal, the Appellant brought with him seven new documents for the panel's consideration, as follows:

- an outline (the "Outline") of the Appellant's intended submissions at the hearing;
- a two page article about the role that Chronic Regional Pain Syndrome ("CRPS") may have in causing high blood pressure
- a two page article describing Reflex Sympathetic Dystrophy Syndrome ("RSD"), which is another name for CRPS;
- a two page article about the impact that CRPS can have on the heart;
- a one page printout entitled "Living With CRPS/RSD";
- a medical report, dated April 26, 2017, from an orthopedic surgeon, which describes:
 - the Appellant's recovery from left ankle surgery;
 - the plan to start the Appellant on physiotherapy imminently;
- a medical report, dated February 16, 2017, from an orthopedic surgeon, which describes:
 - the Appellant as having had surgery six weeks earlier;
 - the Appellant's pain as "well controlled";
 - the Appellant as having "minimal swelling about the left ankle joint"; and
 - the Appellant as having begun to do some range of motion exercises on his own by removing an aircast boot.

After having the opportunity to review the above-described documents, the Ministry representative did not object to the admissibility of any of them.

As each of the articles and the printout entitled "Living With CRPS/RSD" described CRPS and/or RDS, which were also referenced in the medical report, dated August 26, 2017, the panel admits the articles as written testimony in support of information that was before the Ministry at Reconsideration, pursuant to section 22(4) of the *Employment and Assistance Act* (the "EAA"). Likewise, the two additional medical reports describe the Appellant's recovery from the same surgery described in the August 26, 2017 medical report, which was before the Ministry at Reconsideration. Accordingly, the panel admits the two additional medical reports as written testimony in support of information that was before the Ministry at Reconsideration, in accordance with section 22(4) of the EAA.

In his oral evidence, the Appellant made a number of submissions including:

- That people sometimes die from RSD/CPRS and its complications;
- That the TENS machine was used for the purpose of limb circulation and that it met the criteria of section 2(1)(a)(i)(F) of Schedule C to the EAPWDR;
- That he was diagnosed with RSD approximately 20 years ago;
- That several of the electrodes for his TENS machine no longer stick and that he was unable to get new ones through a hospital;
- That, after receiving a quote for \$19 per electrode at one local pharmacy, he attended the same pharmacy from which he had previously obtained electrodes and asked them to fax a request for approval to the Ministry, a response to which, he was advised, should take 6 to 7 weeks;
- That, after receiving no response for approximately two months, he purchased the electrodes himself for \$11.54, the receipt for which he faxed, with the prescription and the pharmacy's fax, to the Ministry;
- That he is eligible, pursuant to section 62 of the EAPWDR, for health supplements;
- That section 69 of the EAPWDR applies to him because, without the new electrodes, he faces an imminent threat to his health;
- That he meets all of the criteria under section 3 of Schedule C to the EAPWDR.

The Appellant also described the history of his RSD/CRPS, his current injury, and some of his past dealings with the Ministry.

The panel admits the Appellant's oral evidence at the hearing as oral testimony in support of information that was before the Ministry at the time of Reconsideration, pursuant to section 22(4) of the EAA.

PART F – REASONS FOR PANEL DECISION

The issue on this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for replacement electrodes for a TENS machine as a health supplement because:

- TENS machines and their components are no longer medical equipment and devices which the Ministry is authorized to fund under sections 3.1 through 3.12 of Schedule C to EAPWDR;
- the components of TENS machines do not fall within the categories of general health supplements described in section 2(1) and 2(1.1) of Schedule C to the EAPWDR;
- the Appellant's circumstances were such that the Appellant was no longer eligible, pursuant to section 2(3) of Schedule C to the EAPWDR, for replacement of electrodes for his TENS machine; and
- the Appellant did not meet the criteria for a health supplement under section 69 of the EAPWDR.

Relevant Statutory Provisions

Section 1 of the Employment EAPWDA sets out the definition of "disability assistance" as follows:

"disability assistance" means an amount for shelter and support provided under section 5 [*disability assistance and supplements*];

Section 61.1 of the EAPWDR describes the circumstances under which a recipient is entitled to medical services only:

Access to medical services only

61.1 (1) Subject to subsection (4), a person is a main continued person if

(a) the person was

(i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for disability assistance, and

(ii) a person with disabilities on that date,

(b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance, and

(c) in the case that the family unit referred to in paragraph (a) (i) was a family unit identified in subsection (3) (g), the agreement referred to in subsection (3) (g) is in force.

(2) Subject to subsection (6), a person is a dependent continued person if

(a) the person was a dependant of a main continued person under subsection (1) on the main continued person's continuation date and is currently a dependant of the main continued person, or

(b) the person is a dependant of a person who is a main continued person

under subsection (1) as a result of having been part of a family unit identified in subsection (3) (b), (c), (d), (e), (f) or (g).

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of disability assistance, ceases to be eligible for disability assistance

(a) on a date the family unit includes a person aged 65 or older,

(b) as a result of a person in the family unit receiving an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act*,

(c) as a result of a person in the family unit receiving a payment under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,

(d) as a result of a person in the family unit receiving employment income,

(e) as a result of a person in the family unit receiving a pension or other payment under the *Canada Pension Plan* (Canada),

(f) as a result of a person in the family unit receiving money or value that is maintenance under a maintenance order or a maintenance agreement or other agreement, or

(g) as a result of a person in the family unit receiving financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*.

...

Section 62 of the EAPWDR authorizes the Ministry to provide health supplements generally and confirms that “continued persons”, as described in section 61.1 of the EAPWDR continue to be eligible for health supplements:

General health supplements

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

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

(b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is under 19 years of age, 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.

Sections 2(1) through (1.1) of Schedule C to the EAPWDR set out various types of health supplements that the Ministry is authorized to provide, pursuant to section 62 of the EAPWDR:

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;

(b) Repealed. [B.C. Reg. 236/2003, Sch. 2, s. 2 (b).]

(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 <i>Health Professions Act</i>
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the <i>Health Professions Act</i>
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia under the <i>Health Professions Act</i>
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia under the <i>Health Professions Act</i>

5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia under the <i>Health Professions Act</i>
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia under the <i>Health Professions Act</i>

(d) and (e) Repealed. [B.C. Reg. 75/2008, s. (a).]

(f) the least expensive appropriate mode of transportation to or from

(i) an office, in the local area, of a medical practitioner or nurse practitioner,

(ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,

(iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or

(iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*,

provided that

(v) the transportation is to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, and

(vi) there are no resources available to the person's family unit to cover the cost.

(g) Repealed. [B.C. Reg. 75/2008, s. (a).]

(1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

Section 2(3) of Schedule C to the EAPWDR authorizes the Ministry to continue to provide benefits for items which had previously been provided under previously repealed regulations where certain criteria are met:

(3) If the minister provided a benefit to or for a person under section 2 (3) of Schedule C of the Disability Benefits Program Regulation, B.C. Reg. 79/97, the Income Assistance Regulation, B.C. Reg. 75/97 or the Youth Works Regulation, B.C. Reg. 77/97, as applicable, for the month during which the regulation was repealed, the minister may continue to provide that benefit to or for that person as a supplement under this

regulation on the same terms and conditions as previously until the earlier of the following dates:

- (a) the date the conditions on which the minister paid the benefit are no longer met;
- (b) the date the person ceases to receive disability assistance.

Finally, section 3 of the EAPWDR authorizes the Ministry to provide a benefit in respect of the medical equipment and devices specifically enumerated in sections 3.1 through 3.12 of Schedule C to the EAPWDR:

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.

The equipment and devices set out in section 3.1 through 3.12 of Schedule C to the EAPWDR are as follows:

3.1 — canes, crutches and walkers

3.2 — wheelchairs

3.3 — wheelchair seating systems

- 3.4 — scooters
- 3.5 — toileting, transfers and positioning aids
- 3.6 — hospital bed
- 3.7 — pressure relief mattresses
- 3.8 — floor or ceiling lift devices
- 3.9 — breathing devices
- 3.10 — orthoses
- 3.11 — hearing instruments
- 3.12 — non-conventional glucose meters

Finally, section 69 of the EAPWDR sets out the criteria for a health supplement where there is an imminent life threatening health need:

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).

Position of the Ministry

The position of the Ministry is that the Appellant is not eligible for funding for electrodes for his TENS machine by virtue of the fact that TENS machines and their components are no longer in the list of medical equipment, specifically set out in sections 3.1 through 3.12 of Schedule C to the EAPWDR, which the Ministry is authorized to fund under section 62 of the EAPWDR, as a result of amendments to the EAPWDR in or about 2010.

Although the Ministry acknowledges that section 2(3) of Schedule C to the EAPWDR does authorize it to provide health supplements for items that it is no longer authorized to provide under the EAPWDR, where specific conditions are met, the Ministry states that the Appellant does not meet those conditions as he currently receives Medical Services Only.

The Ministry also takes the position that the electrodes for the Appellant's TENS machine do not meet the criteria of any of the medical or surgical supplies listed under section 2(1)(a) through 2(1)(a.ii) of Schedule C to the EAPWDR.

Finally, the Ministry's position is that the Appellant does not meet the criteria set out in section 69 of the EAPWDR because the Appellant was otherwise eligible for health supplements under section 62 of the EAPWDR, that the Appellant does not face an imminent like threatening need for replacement electrodes, and that electrodes for the Appellant's TENS machine are not supplements set out in sections 2 and 3.1 through 3.12 of Schedule C to the EAPWDR.

Position of the Appellant

The Position of the Appellant is that

- he does qualify for health supplements under section 62;
- the electrodes are a form of "limb circulation care", as contemplated by section 2(1)(a)(ii)(F) of Schedule C to the EAPWDR;
- that the electrodes he purchased were the least expensive appropriate supply for his purpose;
- he had sought prior approval by the Ministry for the electrodes but purchased them himself only because of the length of time it took to get approval; and
- he faces an imminent health threatening need for the electrodes and points to articles discussing the relationship between high blood pressure and CRPS/RDS in support of this assertion.

The Appellant also takes the position that because he is eligible for disability assistance as a "continued person", as defined by section 61.1 of the EAPWDR, he receives disability assistance and is entitled to continued supplements for items that are no longer covered by the Ministry by operation of section 2(3) of Schedule C to the EAPWDR.

Panel's Reasons

The Appellant describes the purpose of a TENS machine as being to assist with limb circulation care and asserts that the electrodes should be covered under section 2(1)(a)(ii)(F) of Schedule C to the EAPWDR. While the Appellant is eligible for benefits for medical supplies under section 2 of Schedule C to the EAPWDR by virtue of being a "continued person", as described in section 62(c) of the EAPWDR, and while the TENS machine electrodes appear to have been prescribed by a "medical practitioner or nurse practitioner" and may well have been "the least expensive supplies appropriate for the purpose", as required by section 2(1)(a)(ii)(A) and 2(1)(a)(ii)(B) of Schedule C to the EAPWDR, there is not sufficient evidence to confirm that the electrodes are "necessary to avoid an imminent and substantial danger to health", as required by section 2(1)(a)(ii)(C). More problematic, however, is the fact that the electrodes do not conform to any of the categories of supplements described in section 2 of the EAPWDR. The electrodes are not, in and of themselves, "supplies" which have the purpose of assisting with "limb circulation care" and the TENS machine itself is not a disposable or reusable medical supply, even if the panel were to find that its purpose is to assist with "limb circulation care." In the result, the panel finds that the Ministry reasonably determined that the electrodes are accessories to a medical device and not a disposable or reusable medical supply, as required by section 2(1) of the EAPWDR.

Likewise, the Appellant is eligible, as a continued person, for supplements for the medical equipment and devices described in sections 3.1 through 3.12 of Schedule C to the EAPWDR. Neither a TENS machine nor its accessories, including electrodes, is among the devices listed under sections 3.1 through 3.12. In the result, the panel finds that the Ministry reasonably determined that it is not authorized to provide a supplement, under section 62 of the EAPWDR, for electrodes for the Appellant's TENS machine.

It does appear, however, that the Ministry was, at one time, authorized to provide health supplements for TENS machines and their components/accessories and actually did so in the case of the Appellant. The Appellant gave

specific evidence about having previously received funding for both a TENS machine and electrodes and the Reconsideration decision also references the Ministry's prior approval of a TENS Machine under previous legislation.

Section 2(3) of Schedule C to the EAPWDR does authorize the Ministry to continue to provide supplements to a recipient who was eligible "under section 2 (3) of Schedule C of the *Disability Benefits Program Regulation*, B.C. Reg. 79/97, the *Income Assistance Regulation*, B.C. Reg. 75/97 or the *Youth Works Regulation*, B.C. Reg. 77/97, as applicable, for the month during which the regulation was repealed". However, such supplements can only be provided to a recipient up to the earlier of "the date the conditions on which the minister paid the benefit are no longer met" or "the date the person ceases to receive disability assistance."

Disability assistance is defined in section 1 of the EAPWDA as "an amount for shelter and support provided under section 5." It is not in dispute that the Appellant ceased receiving disability assistance at the age of 65 and that he is currently a "continued person", as defined by 61.1(1)(a) by virtue of the operation of section 61.1(3)(a). While section 62(c) makes the Appellant eligible for health supplements generally, as a continued person, the cessation of his disability assistance at age 65 precludes the Ministry from providing health supplements to the Appellant for items that have were provided under previous legislation that has now been replaced. The result is that the Appellant's move to being in receipt of Medical Benefits Only is that he is only eligible for health supplements that the Ministry is *currently* authorized to provide. As such, the panel finds that the Ministry reasonably determined that it was not authorized to provide health supplements in respect of electrodes for the Appellant's TENS machine, despite the Appellant having previously been eligible to receive such a supplement , by virtue of the fact that the Appellant is no longer receiving disability assistance and is currently receiving Medical Services Only, pursuant to section 61.1 of the EAPWDR.

Finally, section 69 of the EAPWDR authorizes the Ministry to provide any of the health supplements "set out in sections 2 (1) (a) and (f) [general health supplements] and 3 [medical equipment and devices] of Schedule C" where a recipient is "otherwise not eligible for the health supplement" and where the Ministry 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).

In the Appellant's circumstances, there is not sufficient evidence which confirms that he faces a direct and imminent life threatening need for the electrodes and, as noted previously, the Ministry is only able to provide supplements under this provision of the EAPWDR that are "set out in sections 2 (1) (a) and (f) [general health supplements] and 3 [medical equipment and devices] of Schedule C." As noted above, the electrodes for the Appellant's TENS machine do not fall within the categories of supplements which the Ministry is authorized to provide under sections 2(1)(a) and (f) or 3.1 through 3.12 of Schedule C to the EAPWDR. Additionally, the Appellant is eligible for health supplements generally by virtue of his being a "continued person," as defined in section 62(c) of the EAPWDR. In the result, the panel finds that the Ministry reasonably determined that the Appellant was not eligible for a health supplement, pursuant to section 69 of the EAPWDR.

In view the foregoing, the panel finds that the Ministry's Reconsideration decision was a reasonable application of sections 2, 2(3), and 3 of Schedule C to the EAPWDR in the Appellant's circumstances and was reasonably supported by the evidence and the panel confirms the Ministry's decision. The Appellant is not successful in this appeal.