PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated 4 January 2018, which determined that the appellant was not eligible for funding for a continuous positive airway pressure ("CPAP") machine and mask because she had not met all of the legislated criteria under the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR). The ministry found that as the appellant has PWD designation and she has met the basic eligibility criteria under section 62 and Schedule C, section 3(1)(a) of the EAPWDR. However, the ministry determined that the appellant had not demonstrated that she suffers from moderate to severe sleep apnea, as set out in Schedule C, section 3.9(2)(c).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation, section 62 and Schedule C, section 3 and 3.9.

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration consisted of the following:

- Medical Equipment Request and Justification form dated 25 October 2017, signed by a pulmonologist (the specialist) and respiratory therapist.
- Home Sleep Recorder Interpretation Report dated 9 August 2017, signed by the specialist.
- Prescription from the specialist for CPAP machine and mask dated 21 September 2017.
- Letter from the appellant's GP (the GP) to the specialist dated 25 October 2017.
- Sleep Apnea reports dated 1 November 2017.
- Quote for CPAP machine, mask and accessories in the amount of $2,000, dated 19 October 2017.

A **Request for Reconsideration** dated 17 December 2017, in which the reasons provided for the request were: *Although it is mild obstructive sleep apnea, this condition will only worsen in time and will have detrimental health impacts and a negative quality of life if not treated. Without this CPAP machine, [the appellant] cannot stay awake for most everyday activities, including on the bus, movie theatre, day program, meals and personal care activities. This fatigue contributes to depression and anxiety. The falling asleep at inappropriate times is a major safety concern. Please see attached letters from [specialist] and [respiratory therapist] indicating the need for this therapy.*

Additional documents submitted with the **Request for Reconsideration**, included:

- Letter from the specialist to the GP dated 18 July 2017.
- Apnea Monitoring Report dated 13 August 2017.
- Letter from the specialist to the GP dated 21 September 2017.
- PAP Titration Report dated 19 October 2017, signed by the respiratory therapist.
- CPAP usage report for the period 25 September to 24 October 2017.
- Letter from the specialist dated 14 December 2017.

Notice of Appeal

In the Notice of Appeal dated 14 January 2018, the following was provided as reasons for appeal: *The more in-depth sleep study was not asked for so wasn't taken into consideration.*

Hearing Submissions

At the hearing the appellant's mother spoke on behalf of the appellant and the appellant expressed her agreement with her mother's submissions.

The appellant's mother stated that there are a number of serious safety concerns that result from the appellant's sleepiness, including: leaving the stove on, forgetting what she is doing and falling asleep abruptly in the middle of the day. She explained that the appellant also sometimes holds her mother's arm and closes her eyes while walking. She stated that the appellant is as independent as someone with vision problems can be and has an amazing ability to do tasks alone and in order. However, without the CPAP machine, the appellant forgets things (such as going to the bathroom before leaving the house, eating, tooth brushing and medications) and needs more help in the form of verbal reminders and physical help. The appellant's funding does not cover round the clock support seven days a week and the appellant's family cannot provide this level of support.

The appellant also submitted several documents at the hearing, including:

1. A letter from the GP, dated 19 January 2018, in which the GP states that the appellant desperately requires a CPAP and is not able to use her CPAP device due to lack of funding. The GP states that her health is seriously impacted in an adverse way, with severe daytime fatigue, sleepiness and high Epworth score. The appellant's optimal health is dependent on appropriate oxygenation at night and she must be able to restart CPAP therapy.
2. Sleep Analysis Report- Diagnostic Interpretation, dated 5 February 2018 and signed by the specialist, relating to a sleep study performed on 23 January 2018. The impression provided in this report includes a statement that mild to moderate snoring was accompanied by overall Severe Obstructive Sleep Apnea in

the supine position and the appellant slept in supine 80% of the night.
The appellant's mother explained that this document became available on the day of the hearing and relates to an overnight sleep study that took place on 23 January 2018. She explained that this study is the most sensitive one that can be performed. She stated that the results of this study show severe sleep apnea while the initial at-home (less intrusive) study indicated mild sleep apnea.

3. Abstract from a 2014 journal article entitled "Obstructive sleep apnea syndrome and cognition in Down syndrome".
The appellant's mother stated that, while she realizes that this is not something contemplated by the legislation, this information shows that sleep apnea can have more severe effects for individuals with Down syndrome (the appellant has Down syndrome).

The ministry relied on the reconsideration decision.

Admissibility
The panel finds that the information provided by the appellant at the hearing and in the Notice of Appeal consists of argument. The panel finds that the GP's 19 January letter reiterates information and argument that was before the ministry at reconsideration and is, therefore, admissible in accordance with section 22(4)(b) of the *Employment and Assistance Act*. Likewise, the panel finds that the information contained in the journal article abstract is consistent with information and argument that was before the ministry at reconsideration and is admissible in accordance with section 22(4)(b) of the *Employment and Assistance Act*. The panel finds that the information contained in the specialist's Diagnostic Interpretation is not in support of information previously provided but is significantly different from the information and records available to the ministry at reconsideration and is not admissible under section 22(4)(b) of the *Employment and Assistance Act*. The panel notes that the ministry did not object to the admission of any of the documents submitted by the appellant at the hearing.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry decision, determining that the appellant did not meet the statutory requirements of Schedule C, section 3.9 of the *EAPWDR* for funding for a CPAP machine, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The following sections of the EAPWDR apply to this appeal:

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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4; am. B.C. Reg. 161/2017, App. 2, s. 2.]

SCHEDULE C

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.

Medical equipment and devices — breathing devices

3.9 (1) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule:

(a) if all of the requirements set out in subsection (2) of this section are met,

(i) a positive airway pressure device,

(ii) an accessory that is required to operate a positive airway pressure device, or

(iii) a supply that is required to operate a positive airway pressure device;

(b) if the minister is satisfied that the item is medically essential to monitor breathing,

(i) an apnea monitor,

(ii) an accessory that is required to operate an apnea monitor, or

(iii) a supply that is required to operate an apnea monitor;

(c) if the minister is satisfied that the item is medically essential for clearing respiratory airways,

(i) a suction unit,

(ii) an accessory that is required to operate a suction unit, or

(iii) a supply that is required to operate a suction unit;

(d) if the minister is satisfied that the item is medically essential for clearing respiratory airways,

(i) a percussor,

(ii) an accessory that is required to operate a percussor, or

(iii) a supply that is required to operate a percussor;

(e) if the minister is satisfied that the item is medically essential to avoid an imminent and substantial danger to health,

(i) a nebulizer,

(ii) an accessory that is required to operate a nebulizer, or

(iii) a supply that is required to operate a nebulizer;

(f) if the minister is satisfied that the item is medically essential to moisturize air in order to allow a tracheostomy patient to breathe,

(i) a medical humidifier,

(ii) an accessory that is required to operate a medical humidifier, or

(iii) a supply that is required to operate a medical humidifier;

(g) if the minister is satisfied that the item is medically essential to deliver medication,

(i) an inhaler accessory device,

(ii) an accessory that is required to operate an inhaler accessory device, or

(iii) a supply that is required to operate an inhaler accessory device.

(2) The following are the requirements in relation to an item referred to in subsection (1) (a) of this section:

(a) the item is prescribed by a medical practitioner or nurse practitioner;

(b) a respiratory therapist has performed an assessment that confirms the medical need for the item;

(c) the minister is satisfied that the item is medically essential for the treatment of moderate to severe sleep apnea.

(3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is as follows:

(a) in the case of an item referred to in subsection (1) (a) (i), 5 years from the date on which the minister provided the item being replaced;

(b) in the case of an item referred to in subsection (1) (a) (ii) or (iii), one year from the date on which the minister provided the item being replaced;

(c) in the case of an apnea monitor, suction unit, percussor, nebulizer or medical humidifier, 5 years from the date on which the minister provided the item being replaced;

(d) in the case of an inhaler accessory device, one year from the date on which the minister provided the device being replaced;

(e) in the case of an accessory or supply for an item referred to in paragraph (c) or (d), one year

from the date on which the minister provided the device being replaced.
(4) A ventilator is not a health supplement for the purposes of section 3 of this Schedule.

In order for a person to qualify for funding for medical equipment and devices a person must first be eligible for a health supplement under section 62 of the EAPWDR, which is reflected in Schedule C, section 3(1)(a). In addition, Schedule C, section 3(1)(b) specifies that pre-authorization must be obtained from the minister, there are no resources available to the family unit to cover the expense, and the equipment/device is the least expensive appropriate equipment/device. Schedule C, section 3(2.1) specifies that qualification for funding of breathing devices (under section 3.9 (1) (b) to (g)) a prescription of a medical practitioner or nurse practitioner and/or an assessment by a respiratory therapist, occupational therapist or physical therapist confirming medical need for the equipment/device (as requested by the minister). Schedule C, section 3.9(1)(a)(i) specifies that the requirements of Schedule C, section 3.9(2) must be met in order for a person to qualify for funding for a positive airway pressure device. The requirements of Schedule C, section 3.9(2) are: (a) the item is prescribed by a medical practitioner or nurse practitioner; (b) a respiratory therapist has performed an assessment that confirms the medical need for the item; (c) the minister is satisfied that the item is medically essential for the treatment of moderate to severe sleep apnea.

In the reconsideration decision, the ministry denied funding to the appellant for a CPAP machine and mask because it was not satisfied that item was medically essential for treatment of moderate to severe sleep apnea. As such, the only issue in this appeal relates to the requirement set out at Schedule C, section 3.9(2)(c). The ministry considered a number of factors in reaching its conclusion, including: Apnea-Hypoxia Index, (AHI), Respiratory Disturbance Index (RDI), Oxygen Desaturation Index (ODI), daytime sleepiness, and 'strong indicators for the presence of sleep apnea (BMI, impaired cognition, mood disorders, insomnia, hypertension, ischemic heart disease, or stroke). The ministry found that the appellant's low average BMI and blood pressure and regular heart rate were not indicative factors contributing to moderate to severe sleep apnea. The ministry also considered the appellant's daytime sleepiness as reflected in an Epworth Sleepiness Scale of 15/24 but noted that this score is based on a person's self-reported information and the oxygen levels reflected when the appellant was asleep reflected mild sleep apnea. The ministry noted that the AHI information provided in the Home Sleep Recorder Information Report, Apnea Monitoring Report and PAP Titration Report falls into the mild range for sleep apnea. As well, the ministry noted that the RDI and ODI provided in the Apnea Monitoring Report also fall into the mild range. The ministry also considered the specialist's October 25 letter, which reported decreased with CPAP and improved Epworth Sleepiness Scale but noted that the without CPAP the appellant's AHI reflected mild sleep apnea and the Epworth Scale is based on a simple questionnaire using self-reported information. The ministry considered the specialist's statement in the December 14 letter that the appellant's AHI is in the mild to moderate range but noted that according to the American Academy of Sleep Medicine the appellant's AHI falls squarely into the mild range.

The panel finds that the ministry's conclusion that it is not satisfied that funding for a CPAP machine and mask is medically essential for the treatment of moderate to severe sleep apnea is reasonable. The panel notes that the specialist has stated in his 14 December letter that the appellant's sleep apnea is "likely moderate" and that the Level 3 study tends to underestimate severity and is less sensitive than a Level 1 study. However, as noted by the ministry a Level 1 study was not done and the information before the ministry (from the Level 3 study) reflects scores in the mild range. The panel notes that the appellant's Epworth Sleepiness Scale of 14/24 is in the moderate range. However, this is the only scale before the ministry reflecting moderate as opposed to mild sleep apnea as reflected by the AHI, RDI and ODI. In light of this, the panel finds that the ministry's determination is reasonably supported by the evidence.

Conclusion

The panel finds that the ministry's reconsideration decision, determining that the appellant is not eligible for funding for CPAP machine and mask, is reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not successful on appeal.