PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "ministry") reconsideration decision of July 16, 2018 which denied the Appellant's request for Toothettes (disposable sponge swabs on a stick designed for oral care in healthcare facilities) on the grounds that they are not a health supplement which may be supplied pursuant to the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR). The ministry found that as the Appellant is a person with disabilities (PWD), he is eligible to apply to the ministry for health supplements under the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR). However, the ministry found that Toothettes are not an eligible item, as Toothettes are not listed under EAPWDR Schedule C, and therefore the ministry does not have the legislative authority to provide funding to purchase them.

PART D – RELEVANT LEGISLATION

EAPWDR sections 62, 69 and Schedule C, Sections 2(1)(a), 2(1)(a.1), 2(1)(a.2), 2(1.1), 3.1 to 2.12

PART E – SUMMARY OF FACTS

Documents and Information Before the Ministry at Reconsideration
The documents and information before the ministry at reconsideration included

A. The Decision to be Reconsidered
The ministry originally denied the Appellant's request for Toothettes, although approving all other items requested, because he was not eligible under sections 62 or 69 EAPWDR as well as sections 2(1)(a) and 2(1.1) of Schedule C.

B. Prescriptions
A physician's prescription dated May 14, 2018 for suction catheters and that same physician's prescription dated May 14th 2018 for Toothettes for oral care

C. A Letter dated June 5, 2018 Outlining Various Approved Supplies
In this letter, the ministry advises the Appellant that his request for many different medically required supplies/health supplements has been approved

D. A Letter Dated June 5 the 2018
The letter of June 5, 2018 to the Appellant denied the Appellant's request for Toothettes on the ground they are not a listed item which can be supplied as a health supplement. In the letter the ministry provided the Appellant with a Health Supplement (supplies) Decision Summary, advising that as Toothettes are part of regular oral hygiene there are not eligible for consideration, as well as because the physician has not indicated they are required to avoid an imminent and substantial danger to health, plus that there was no indication that they cannot be supplied due to no resources being available to pay the cost of or to obtain them.

E. The Appellant's Request for reconsideration (authored by one of his advocates who appeared at the hearing, and is a coordinator for the Appellant's health care providers),states that

- The Appellant's health does not fall under the regular policies and guidelines
- The Appellant has progressive COPD, causing him to bring up quantities of mucous between 5 and 8 times per day
- The amount of mucous brought up is increased by various environmental causes
- The suction machine cannot remove all of the mucous, so Toothettes are required to extract the thick mucous that remains in the back of the Appellant's throat when the machine has finished suctioning
- The Appellant is unable to swallow and will choke or aspirate (if the mucous is not removed)
- The staff at the care facility has tried other methods such as cloths and gauze to remove the mucous but because of the Appellant's infant brain injury he does not have the same reflexes as others, and will clamp his jaw and be unable to unlock it for periods of up to a minute
- The Appellant's clamping down his jaw has badly injured staff members' fingers in the past, so it is not safe to use hands for cleaning the un-suctioned mucous; Toothettes are a safe method
- In addition to cleaning the mucous from the Appellant's throat after suctioning, the Toothettes are used twice daily for oral care
- Staff takes extra precaution with the Appellant's care in order to prevent choking due to inability to swallow and aspiration
- In the past aspiration difficulties have caused a double pneumonia leading to many lengthy hospital stays
- The Appellant's health care provider staff have found no other alternative than Toothettes and believe it is required for the Appellant's health care needs

F. That the Appellant had requested suction catheters at the same time as he requested Toothettes; the suction catheters were approved but the Toothettes were not.

G. Appellant's Information at the Appeal

The Appellant provided no new information at appeal.

The Appellant had 2 advocates present at the appeal; one was the subject of a Consent to Disclosure of Information and at the appeal The Appellant is non-verbal. At the hearing by telephone the 2 advocates reported that he was present and, upon the chair's request, indicated consent to the second being present and speaking on his behalf.

H. Ministry Information at Appeal

The ministry provided no new information at appeal.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the reconsideration decision was reasonably supported by the evidence or was a reasonable application of the applicable enactment, namely sections 62 and 69 EAPWDR and sections 2(1)(a) and 2(1.1) of Schedule C to that *Regulation*. The ministry found that the Toothettes were not an item listed in the EAPWDR or Schedule C, and therefore the ministry did not have the legislative authority to provide funding to purchase them.

Relevant Legislation

Section 62 *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) …..
(c) …..

Section 69 *EPWDR*

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 Sections 2(1)(a), 2.1(a.2), 2.2, 3, 3.9 4, 4.1, 5, 6, 7, 8 & 9

Section 2(1)(a) - General health supplements

2(1)(a) 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;

Section 2(1)(a.1)

(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;

Section 2(1)(a.2)
(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;

Section 2(1.1)
(1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

Sections 3.1 to 3.12
Medical equipment and devices — canes, crutches and walkers
3.1 (1) Subject to subsection (2) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:
(a) a cane;
(b) a crutch;
(c) a walker;
(d) an accessory to a cane, a crutch or a walker.
(2) A walking pole is not a health supplement for the purposes of section 3 of this Schedule.

Medical equipment and devices — wheelchairs
3.2(1) In this section, **"wheelchair"** does not include a stroller.
(2) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:
(a) a wheelchair;
(b) an upgraded component of a wheelchair;
(c) an accessory attached to a wheelchair.
(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 (2) of this section is 5 years after the minister provided the item being replaced.
(4) A high-performance wheelchair for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

Medical equipment and devices — wheelchair seating systems
3.3 (1) The following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain a person's positioning in a wheelchair:
(a) a wheelchair seating system;
(b) an accessory to a wheelchair seating system.
(2) 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 2 years from the date on which the minister provided the item being replaced.

Medical equipment and devices — scooters
3.4 (1) In this section, **"scooter"** does not include a scooter with 2 wheels.
(2) Subject to subsection (5) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (3) of this section are met:
(a) a scooter;
(b) an upgraded component of a scooter;
(c) an accessory attached to a scooter.
(3) The following are the requirements in relation to an item referred to in subsection (2) of this section:
(a) an assessment by an occupational therapist or a physical therapist has confirmed that it is unlikely that the person for whom the scooter has been prescribed will have a medical need for a wheelchair during the 5 years following the assessment;
(b) the total cost of the scooter and any accessories attached to the scooter does not exceed $3 500 or, if subsection (3.1) applies, $4 500;
(c) the minister is satisfied that the item is medically essential to achieve or maintain basic mobility.
(3.1) The maximum amount of $4 500 under subsection (3) (b) applies if an assessment by an occupational

therapist or a physical therapist has confirmed that the person for whom the scooter has been prescribed has a body weight that exceeds the weight capacity of a conventional scooter but can be accommodated by a bariatric scooter.
(4) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years after the minister provided the item being replaced.
(5) A scooter intended primarily for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

Medical equipment and devices — toileting, transfers and positioning aids
3.5 (0.1) In this section:
"positioning chair" does not include a lift chair;
"transfer aid" means a transfer board, transfer belt or slider sheet.
(1) The following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to facilitate toileting or transfers of a person or to achieve or maintain a person's positioning:
(a) a grab bar in a bathroom;
(b) a bath or shower seat;
(c) a bath transfer bench with hand held shower;
(d) a tub slide;
(e) a bath lift;
(f) a bed pan or urinal;
(g) a raised toilet seat;
(h) a toilet safety frame;
(i) a floor-to-ceiling pole in a bathroom or bedroom;
(j) a portable commode chair;
(k) a standing frame for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;
(l) a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;
(m) a transfer aid for a person for whom the transfer aid is medically essential to transfer from one position to another.
(2) 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 5 years from the date on which the minister provided the item being replaced.

Medical equipment and devices — hospital bed
3.6 (1) Subject to subsection (3) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to facilitate transfers of a person to and from bed or to adjust or maintain a person's positioning in bed:
(a) a hospital bed;
(b) an upgraded component of a hospital bed;
(c) an accessory attached to a hospital bed;
(d) a positioning item on a hospital bed.
(2) 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 5 years from the date on which the minister provided the item being replaced.
(3) The following items are not health supplements for the purposes of section 3 of this Schedule:
(a) an automatic turning bed;
(b) a containment type bed.

Medical equipment and devices — pressure relief mattresses
3.7 (1) A pressure relief mattress is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that the pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity.
(2) 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 5 years from the date on which the minister provided the item being replaced.

Medical equipment and devices — floor or ceiling lift devices

3.8 (1) In this section, **"floor or ceiling lift device"** means a device that stands on the floor or is attached to the ceiling and that uses a sling system to transfer a person.

(2) A floor or ceiling lift device is a health supplement for the purposes of section 3 of this Schedule if the following requirements are met:

(a) the minister is satisfied that the floor or ceiling lift device is medically essential to facilitate transfers of a person in a bedroom or a bathroom;

(b) the cost of the floor or ceiling lift device does not exceed $4 200 or, if the cost of the floor or ceiling lift device does exceed $4 200, the minister is satisfied that the excess cost is a result of unusual installation expenses.

(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 (2) of this section is 5 years from the date on which the minister provided the item being replaced.

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.

Medical equipment and devices — orthoses

3.10 (1) In this section:

"off-the-shelf", in relation to an orthosis, means a prefabricated, mass-produced orthosis that is not unique to a particular person;

"orthosis" means

(a) a custom-made or off-the-shelf foot orthotic;

(b) custom-made footwear;

(c) a permanent modification to footwear;

(d) off-the-shelf footwear required for the purpose set out in subsection (4.1) (a);

(e) off-the-shelf orthopaedic footwear;

(f) an ankle brace;

(g) an ankle-foot orthosis;

(h) a knee-ankle-foot orthosis;

(i) a knee brace;

(j) a hip brace;

(k) an upper extremity brace;

(l) a cranial helmet used for the purposes set out in subsection (7);

(m) a torso or spine brace;

(n) a foot abduction orthosis;

(o) a toe orthosis;

(p) a walking boot.

(2) Subject to subsections (3) to (11) of this section, an orthosis is a health supplement for the purposes of section 3 of this Schedule if

(a) the orthosis is prescribed by a medical practitioner or a nurse practitioner,

(b) the minister is satisfied that the orthosis is medically essential to achieve or maintain basic functionality,

(c) the minister is satisfied that the orthosis is required for one or more of the following purposes:

(i) to prevent surgery;

(ii) for post-surgical care;

(iii) to assist in physical healing from surgery, injury or disease;

(iv) to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition, and

(d) the orthosis is off-the-shelf unless

(i) a medical practitioner or nurse practitioner confirms that a custom-made orthosis is medically required, and

(ii) the custom-made orthosis is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist.

(3) For an orthosis that is a custom-made foot orthotic, in addition to the requirements in subsection (2) of this section, all of the following requirements must be met:

(a) a medical practitioner or nurse practitioner confirms that a custom-made foot orthotic is medically required;

(b) the custom-made foot orthotic is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist;

(c) Repealed. [B.C. Reg. 144/2011, Sch. 2.]

(d) the custom-made foot orthotic must be made from a hand-cast mold;

(e) the cost of one pair of custom-made foot orthotics, including the assessment fee, must not exceed $450.

(4) For an orthosis that is custom-made footwear, in addition to the requirements in subsection (2) of this section, the cost of the custom-made footwear, including the assessment fee, must not exceed $1 650.

(4.1) For an orthosis that is off-the-shelf footwear, in addition to the requirements in subsection (2) of this section,

(a) the footwear is required to accommodate a custom-made orthosis, and

(b) the cost of the footwear must not exceed $125.

(4.2) For an orthosis that is off-the-shelf orthopaedic footwear, in addition to the requirements in subsection (2) of this section, the cost of the footwear must not exceed $250.

(5) For an orthosis that is a knee brace, in addition to the requirements in subsection (2) of this section, the medical practitioner or nurse practitioner who prescribed the knee brace must have recommended that the knee brace be worn at least 6 hours per day.

(6) For an orthosis that is an upper extremity brace, in addition to the requirements in subsection (2) of this section,

the upper extremity brace must be intended to provide hand, finger, wrist, elbow or shoulder support.
(7) For an orthosis that is a cranial helmet, in addition to the requirements in subsection (2) of this section, the cranial helmet must be a helmet prescribed by a medical practitioner or nurse practitioner and recommended for daily use in cases of self abusive behaviour, seizure disorder, or to protect or facilitate healing of chronic wounds or cranial defects.
(8) For an orthosis that is a torso or spine brace, in addition to the requirements in subsection (2) of this section, the brace must be intended to provide pelvic, lumbar, lumbar-sacral, thoracic-lumbar-sacral, cervical-thoracic-lumbar-sacral, or cervical spine support.
(9) Subject to section 3 of this Schedule, the limit on the number of orthoses that may be provided for the use of a person as a health supplement for the purposes of section 3 of this Schedule is the number set out in Column 2 of Table 1 opposite the description of the applicable orthosis in Column 1.

Table 1

Item	Column 1 **Orthosis**	Column 2 **Limit**
1	custom-made foot orthotic	1 or 1 pair
2	custom-made footwear	1 or 1 pair
3	modification to footwear	1 or 1 pair
4	ankle brace	1 per ankle
5	ankle-foot orthosis	1 per ankle
6	knee-ankle-foot orthosis	1 per leg
7	knee brace	1 per knee
8	hip brace	1
9	upper extremity brace	1 per hand, finger, wrist, elbow or shoulder
10	cranial helmet	1
11	torso or spine brace	1
12	off-the-shelf footwear	1 or 1 pair
13	off-the-shelf orthopaedic footwear	1 or 1 pair
14	foot abduction orthosis	1 or 1 pair
15	toe orthosis	1

(10) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an orthosis is the number of years from the date on which the minister provided the orthosis being replaced that is set out in Column 2 of Table 2 opposite the description of the applicable orthosis in Column 1.

Table 2

Item	Column 1 **Orthosis**	Column 2 **Time period**
1	custom-made foot orthotic	3 years
2	custom-made footwear	1 year
3	modification to footwear	1 year
4	ankle brace	2 years
5	ankle-foot orthosis	2 years
6	knee-ankle-foot orthosis	2 years
7	knee brace	4 years
8	hip brace	2 years
9	upper extremity brace	2 years
10	cranial helmet	2 years
11	torso or spine brace	2 years
12	off-the-shelf footwear	1 year
13	off-the-shelf orthopaedic footwear	1 year
14	toe orthosis	1 year

(11) The following items are not health supplements for the purposes of section 3 of this Schedule:

(a) a prosthetic and related supplies;
(b) a plaster or fiberglass cast;
(c) a hernia support;
(d) an abdominal support.
(e) Repealed. [B.C. Reg. 94/2018, App. 2, s. 1 (b).]
(f) Repealed. [B.C. Reg. 144/2011, Sch. 2.]

(12) An accessory or supply that is medically essential to use an orthosis that is a health supplement under subsection (2) is a health supplement for the purposes of section 3 of this Schedule.

Medical equipment and devices — hearing instruments

3.11 (1) A hearing instrument is a health supplement for the purposes of section 3 of this Schedule if

(a) the hearing instrument is prescribed by an audiologist or hearing instrument practitioner, and
(b) an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument.

(2) The minister may provide a hearing instrument under this section only if the person is not receiving a hearing assistance supplement under section 70.02 of this regulation.

Medical equipment and devices — non-conventional glucose meters

3.12 (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.

(3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of a non-conventional glucose meter is 5 years from the date on which the minister provided the glucose meter being replaced.

Parties' Positions at Appeal

Appellant's Position at Appeal
The Appellant acknowledged that although the Toothettes are not an item authorized under Schedule C, the Appellant does not fit into the usual categories either and presents a special case. The advocates submitted that the Toothettes are used daily because the Appellant coughs a lot during the day. The advocate says that the Appellant coughs more during allergy season and the current smoky air from forest fires. Although the suction machine removes most of the Appellant's mucous, it does not remove it all. The advocate submitted that if the Appellant can't swallow and if they cannot remove the clumps of mucous, the appellant will die, because the mucous has the consistency of cottage cheese and prevents the Appellant breathing.

The advocate emphasized that the staff cannot use their fingers due to the danger posed by the Appellant clamping down. The Advocates submitted that just because Toothettes are not one of the items that falls within the legislation, because of the Appellant's health risks, they should be supplied anyway. When asked if they had considered using a speculum to keep the appellant's mouth open while his throat was manually cleaned, the advocate said that a speculum was not recommended by an oral care specialist. The advocates acknowledged that Toothettes are not an item authorized under Schedule C, but said that because of the Appellant's special circumstances, the ministry should supply them anyway.

Ministry Position at Appeal
The ministry submitted that Toothettes are not an item specifically mentioned in Schedule C *EAPDWR* and that it only has legislative authority to provide items that are specifically mentioned. The ministry said that the Appellant was eligible to receive health supplements under section 62 and Schedule C *EAPWDR.* The ministry said that in the reconsideration decision, it had considered all of the sections allowing the ministry to provide various items, but that Toothettes did not fall under any of those sections, namely Disposable or Reusable Medical or Surgical Supplies [section 2 (1)], Canes, Crutches and Walkers [section 3.1], Wheelchairs [section 3.2], Wheelchair Seating Systems or accessories [section 3.3], Scooters and accessories [section 3.4], Bathing and Toileting Aids [section 3.5], Hospital Beds and accessories [section 3.6], Pressure Relief Mattress [section 3.7], Lifting Devices [section 3.8], Positive Airway Pressure devices and accessories [section 3.9], Orthotics, Braces, and Helmets [section 3.10], which Hearing Instruments [section 3.11], and Non-Conventional Glucose Meters [section 3.12].

The ministry submitted that the items listed in each of the foregoing sections are an exhaustive list of items that the ministry may provide, and although it considered each of those sections, it could not fit Toothettes into any of them. The ministry stated that it is only authorized to provide items specifically mentioned in Schedule C, and because Toothettes are none of these, it did not have the legislative authority to provide Toothettes.

Panel Finding
There was no disagreement that the Appellant is designated as a Person with Disabilities and therefore entitled under section 69 *EAPDWR* to health supplements if they are authorized under the legislation.

The legislation also requires that if someone is otherwise eligible for a health supplement, that person must show that there are no resources available with which to pay the cost. At reconsideration, the ministry determined that the Appellant had not shown that he had no resources available with which to pay for the Toothettes, but at the appeal, the ministry agreed that the Appellant had no resources available with which to pay for the Toothettes.

The panel finds that the requirement of the Appellant showing he had no resources available with which to pay for the Toothettes was therefore not an issue, having been resolved in the Appellant's favour.

At reconsideration, the ministry determined that the criterion of EAPDWR section 69(a) established that in order to qualify for a health supplement, the Appellant needed to be facing a direct and imminent

threat to his life had not been met. The evidence before the reconsideration officer found in the request for reconsideration stated that the Appellant is unable to swallow and will choke or aspirate if the back of his throat is not cleared of mucous immediately following suctioning. That submission also set out that the Appellant was liable to dangerous double pneumonia if he aspirated. The advocates argued that if the Appellant's throat was not cleared, he could to die. The Appellant's advocates said that the Toothettes were required for two purposes: to clear the Appellant's throat so he would not choke or aspirate and for oral care as prescribed by the Appellant's physician.

The panel finds that the ministry failed to consider the other use of Toothettes when it decided that Toothettes "*are part of regular oral hygiene. As a result they are not eligible for consideration*". Specifically the ministry failed to take account of their use to clear the Appellant's throat so that he would not choke or aspirate. That failure to consider the other use was not reasonable in the circumstances of the Appellant.

The panel also finds that the ministry failed to properly apply the legislation in its reconsideration decision where it stated that "*Although the physician has not indicated this item was required to avoid an imminent and substantial danger to health, the item is still not eligible for consideration as it does not meet the criteria of question three*". That was in reference to *EAPWDR* section 2(1)(a)(ii)(C) of Schedule C, which requires that the supply be "*necessary to avoid an imminent and substantial danger to health*". There is no requirement in the legislation that the imminent danger to the Appellant's health be the opinion of a physician, or be in any particular form or at all. It only requires that the Minister be satisfied. It was open to the ministry to consider the evidence provided that the Appellant could aspirate the mucous and face pneumonia or choke to death and it was unreasonable for the ministry to dismiss the evidence is not meeting the legislative criteria on this point.

Notwithstanding the findings above, the panel finds that the ministry reasonably applied the legislation in its determination that the Toothettes are not an item that was listed under section 2(1)(a)(i) of Schedule C *EAPWDR* or in any of the other sections of Schedule C, and because they are not there is no legislative authority for the ministry to provide them. This is determinative of the outcome here. The panel finds that this is a reasonable application of the applicable enactment in the circumstances of the Appellant.

Conclusion

Having reviewed and considered all the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for Toothettes, was reasonably supported by the evidence and was a reasonable application of the applicable enactment, and confirms the ministry's reconsideration decision dated July 16, 2018.

The appellant is not successful in his appeal.

PART G – ORDER

THE PANEL DECISION IS: (Check one) ☒**UNANIMOUS** ☐**BY MAJORITY**

THE PANEL ☒**CONFIRMS THE MINISTRY DECISION** ☐**RESCINDS THE MINISTRY DECISION**

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? ☐Yes ☐No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) ☒ or Section 24(1)(b) ☒
and
Section 24(2)(a) ☒ or Section 24(2)(b) ☐

PART H – SIGNATURES

PRINT NAME	
Donald (Dan) McLeod	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018/AUG/21

PRINT NAME	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/AUG/21
PRINT NAME Lowell Johnson	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/AUG/21