PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated December 20, 2018 which held that the appellant did not meet the legislated criteria in sections 62 and 69 and Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) to receive the benefit she had requested. Specifically, that the appellant's application for funding to purchase a TENS unit was not within the legislated criteria for acceptance.

PART D – RELEVANT LEGISLATION

Sections 62 and 69 the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)
Schedule C of the Employment and Assistance for Persons with Disabilities regulation (EAPWDR)

PART E – SUMMARY OF FACTS

Key dates and information before the Ministry at the time of reconsideration were as follows:

October 29, 2018: appellant's application for funding to purchase a TENS unit was received by the ministry
December 3, 2018: the application was denied
December 5, 2018: appellant requested reconsideration
December 13, 2018: signed request for reconsideration submitted to the ministry
December 20, 2018: ministry reviewed request for reconsideration and denied the benefit

October 17, 2018: a prescription from the appellant's physician
December 12, 2019: price quotes from two sources for a TENS machine
December 12, 2019: typewritten statement from the appellant describing her medical conditions and the need for a TENS machine. She also outlines her fears of becoming addicted to pain medication if she doesn't receive the TENS machine

At the hearing, the appellant provided the following information:

She is year old woman suffering from multiple medical conditions that cause her chronic pain. She has received treatment from a chiropractor and physiotherapist; however these treatments are beyond her budget at $45.00 per visit and not that effective in alleviating her symptoms. She stated that she is afraid of becoming addicted to pain medication if she doesn't have the TENS unit to help manage her chronic pain. She has researched TENS units and has concluded that she requires the brand and model of TENS unit that she has provided quotes for. She also noted that in her opinion had she applied for funding under schedule C of the EAPWDR, rather than under section 3, general health supplement provision, she may have been successful in her application.

The ministry relied upon the reconsideration decision at the hearing.

PART F – REASONS FOR PANEL DECISION

The issue before the panel is to determine the reasonableness of the Ministry's reconsideration decision dated December 20, 2018 which held that per sections 62 and 69 and Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the appellant did not qualify for funding to purchase a TENS machine to help alleviate her chronic pain.

Applicable Legislation:

Employment and Assistance for Persons with Disabilities Regulation

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.]

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).

[en. B.C. Reg. 61/2010, s. 4; am. B.C. Regs. 197/2012, Sch. 2, s. 8; 145/2015, Sch. 2, s. 12.]

Schedule C of 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.

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.

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;

In the reconsideration decision, the ministry went into detail explaining why the appellant was not eligible to receive funding for a TENS unit under the "medical equipment", "medical supply", "health supplement" or "life threatening need" criteria of the EAPWDR as she did not meet any of these. They reviewed all of the categories of health

supplements to determine if the appellant's request could be accommodated. At the hearing, the ministry representative suggested that the appellant seek alternative services or equipment within her community to help manage her health.

The appellant asked for some leniency in the interpretation of the regulations in her circumstances, sighting the possibility that she may become addicted to pain medication, which would surely cost the health care system and the ministry more money than a TENS unit would cost.

Conclusion:

The panel finds that the ministry's reconsideration decision, which held that the appellant was not eligible for funding to purchase a TENS unit under sections 62 and 69 and Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) as she does not meet the criteria for funding, was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the ministry's decision. The appellant is unsuccessful in her appeal.

PART G–ORDER

THE PANELDECISIONIS:(Check one) ☒**UNANIMOUS** ☐**BYMAJORITY**

THEPANEL ☒**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

LEGISLATIVEAUTHORITYFORTHEDECISION:

Employment and Assistance Act

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

and

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

PARTH–SIGNATURES

PRINTNAME	
Jan Lingford	
SIGNATUREOFCHAIR	DATE(YEAR/MONTH/DAY) 2019/02/07

PRINTNAME	
Chris McKewan	
SIGNATUREOFMEMBER	DATE(YEAR/MONTH/DAY) 2019/02/07
PRINTNAME	
Jean Lorenz	
SIGNATUREOFMEMBER	DATE(YEAR/MONTH/DAY) 2019/02/07