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PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the "Ministry") reconsideration decision dated February 15, 2019 which held that the appellant was not eligible for a raised toilet seat and TENS machine and accessories because the requests did not meet the requirements set out in Schedule C Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"). Specifically, the Ministry found that the appellant was not eligible for the raised toilet seat by reason that the request did not meet the eligibility requirements set out in s.3(2)(a) or 3(2)(b) or 3.5(1) of Schedule C EAPWDR. The Ministry found, with respect to the TENS machine, the device is not an eligible health supplement funded pursuant to Schedule C, ss.3.1 to 3.12 EAPWDR. Further the Ministry determined that the TENS machine was not a medical supply pursuant to s.2(1)(a) of Schedule C, and didn't fall into any other category in Schedule C. The Ministry also determined that the appellant was not eligible by reason of a life-threatening health need pursuant to s.69 EAPWDR.

PART D – RELEVANT LEGISLATION

s. 22 Employment and Assistance Act ("EAA")
s.62, s.69, Schedule C Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR")

PART E – SUMMARY OF FACTS

The evidence before the Ministry at reconsideration was:

- On November 16, 2019 the appellant submitted an application for a raised toilet seat
  - The application came from a medical supply store which stated "client requested these items for recurring hip issues and injuries associated with ankle, leg and hip problems. These items help mitigate pain and further problems. Please provide approval at your earliest convenience."
  - Price quote from the medical supply store listing the cost for a tall walking boot, black adjustable cane, and 4 inch raised toilet seat
- On February 13, 2019 the appellant submitted an application for a TENS machine (with accessories)
  - Letter from an Occupational Therapist stating:
    - The appellant has mobility limitations due to Legg-Calves Perthes disease in her left hip since childhood, tibia/fibula fracture dislocation to right ankle in 2015 requiring surgical plates/screws, post traumatic arthritis in right ankle, psoriatic arthritis, depression, anxiety and paranoid psychosis (2013).
    - The appellant has difficulty mobilizing due to left leg pain and right ankle pain.
    - The appellant found the TENS to be effective for pain relief and she requires the TENS unit, electrodes and wall charger.
    - She requires the bath seat and back rest for her safety and independence with showering and personal care activities.
    - The appellant relies on a cane to mobilize safety over short distances.
    - The recommended equipment is a raised toilet seat with armrests.
- Price quote from the Medical Supply store listing the cost of a TENS machine, TENS accessories, bath seat with back rest and cane for $319.12.
- March 1, 2019 handwritten note:
  - The appellant's current TENS machine no longer works
  - The appellant has experienced chronic pain for 30 years and the TENS machine has provided effective pain management
  - She has a possible left fibulae fracture and torn muscles around both knees
  - She has been diagnosed with a vascular necrosis (left hip), compressed spinal cord, 4 herniated discs, and cervical stenosis
- January 18, 2019 letter from the appellant's Physician
  - Long standing history of left hip arthritis secondary to Legg Calve Perthes disease
  - States x-ray findings: advanced and severe left hip degenerative changes with marked narrowing. She has complex hip arthritic joint with chronic pain on the background of possible ongoing infection.
- March 19, 2019 handwritten statement from the appellant:
  - She requests reconsideration for funding of a raised toilet sheet and TENS machine
  - Detailed description of his medical history, history of treatments, medical conditions, the impacts of chronic pain, the benefits of treatment by TENS machine and the need for a raised toilet seat

At the hearing, the appellant provided evidence that:

- The appellant stated that a TENS machine was prescribed because the Ministry would not cover the appellant in physiotherapy payments.
- The appellant was not able to see a chiropractor. The massage therapist was also not able to assist the appellant.
- The appellant was on 17 medications for pain to control pain.
- The appellant had braces, canes, walkers, and a borrowed wheelchair.
- The appellant stated that this TENS machine and the raised toilet seats are not luxury items to her. They are items that are necessary.
- The first TENS machine was replaced in 1999 and the second was replaced in January 15, 2009.
- The appellant says that in 2014 or 2015 she was told by the Ministry that the TENS machine would be replaced.

- The appellant states that she asked the Ministry to repair the TENS machine but was told that it was too costly to repair the TENS machine and that it would need to be replaced.
- Over the last 3.5 years the TENS machine stopped working.
- In April 16 two letters were sent from occupational therapists to the Ministry.

At the hearing the Ministry relied on their reconsideration decision. The Ministry did indicate that the appellant's request for a raised toilet seat was being reviewed. The Ministry confirmed that they do stand by their reconsideration decision denying the raised toilet seat at the time of their reconsideration decision.

The panel finds that the evidence from the appellant indicating that she originally asked the Ministry to repair her TENS machine is additional evidence that is in support of information before the Ministry at reconsideration, being that her TENS machine was no longer functioning. The panel admits this evidence pursuant to s.22(4)(b) EAA.

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PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's decision to deny the appellant a raised toilet seat and TENS machine and accessories because the requests did not meet the requirements set out in Schedule C EAPWDR was reasonably supported by the evidence or a reasonable interpretation of the legislation in the circumstances of the appellant.

Specifically, was it reasonable for the Ministry to determine that the appellant was not eligible for the raised toilet seat by reason that the request did not meet the eligibility requirements set out in s.3(2)(a) or 3(2)(b) or 3.5(1) of Schedule C EAPWDR. The Ministry found, with respect to the TENS machine, the device is not an eligible health supplement funded pursuant to Schedule C, ss.3.1 to 3.12 EAPWDR. Further the Ministry determined that the TENS machine was not a medical supply pursuant to s.2(1)(a) of Schedule C, and didn't fall into any other category in Schedule C. The Ministry also determined that the appellant was not eligible by reason of a life-threatening health need pursuant to s.69 EAPWDR.

The legislation provides:

EAPWDR

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

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

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

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 — 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.

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(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.

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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.

Medical Supply

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 *Health Professions Act*
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the *Health Professions Act*
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia under the *Health Professions Act*
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia under the *Health Professions Act*
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia under the *Health Professions Act*

6	physical therapy	physical therapist	College of Physical Therapists of British Columbia under the *Health Professions Act*

(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.

(2) No more than 12 visits per calendar year are payable by the minister under this section for any combination of physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services.

(2.1) If eligible under subsection (1) (c) and subject to subsection (2), the amount of a general health supplement under section 62 of this regulation for physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services is $23 for each visit.

(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.

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).

The panel finds:

The Ministry's position regarding the raised toilet seat is that the information before the Ministry at the time of reconsideration was not an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device. There is evidence from the occupational therapist that the appellant has "difficulty mobilizing". Further, the occupational therapist lists "raised toilet seat with armrests" in the recommended therapeutic equipment section of the health authority's internal form. Subsection 3(2)(b) of Schedule C EAPWDR requires "an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device." The panel finds that it was reasonable for the Ministry to determine that this was not an assessment as required by the legislation. While the occupational therapist made a recommendation, she did not give a detailed assessment or explain how the assessment led her to the conclusion that the raised toilet seat was medically necessary. The panel therefore finds that it was reasonable for the Ministry to deny the appellant a raised toilet seat.

The Ministry determined that the appellant was not eligible for a TENS machine with accessories by reason that the TENS machine and accessories was not medical equipment as defined in ss.3.1 to 3.12 Schedule C EAPWDR, or a medical supply as defined in s.2 Schedule C EAPWDR. The panel has reviewed these sections and finds the Ministry's determination to be reasonable given that the TENS machine and accessories is not equipment, or a type of equipment, listed in any of these sections of Schedule C EAPWDR. The Ministry also denied the TENS machine and equipment on the basis that it was not necessary to meet a life-threatening health need pursuant to s.69 EAPWDR. The panel finds this decision to be reasonable given that, even if a life-threatening health need was found, the item still does not meet with requirements specified in Schedule C EAPWDR.

In their decision, the Ministry did not consider whether the TENS machine and accessories could be replaced pursuant to s. 3(3) of Schedule C EAPWDR or repaired pursuant to s. 3(4) of Schedule C EAPWDR. The panel finds that given that this appellant did have a TENS machine and accessories previously provided by the Ministry, it

was necessary for the Ministry to determine if it was possible for the TENS machine and accessories to be replaced or repaired, as those remain options in the legislation.

The Ministry, in its reconsideration decision, states:

> "It is noted your [sic] were previously approved for a TENS machine on January 15, 2009. The decision to provided [sic] funding for a TENS machine in 2009 was made under the legislation that was in effect at the time. However, the [EAPWD] Regulation was substantially changed on April 1, 2010. The legislation that was in place prior [sic] April 1, 2010 did not set out itemized descriptions of medical equipment the ministry was authorized to provide or the specific eligibility requirements for each type, as it does now. The legislation that became effective on April 1, 2010 sets out several categories of equipment, supplies and other services the ministry is authorized to provide, with detailed eligibility requirements for each. A TENS machine is not an item that is set out in the EAPWD Regulation legislation currently in effect, as further discussed below."

At the hearing, the Ministry was not able to tell the panel under which section of the previous legislation the TENS machine was provided in 2009. If the TENS machine was granted under s. 3 Schedule C EAPWDR as it read in 2009, then it could be replaced under s.3(3) Schedule C EAPWDR as it reads currently. The Ministry did not consider that section of the legislation and did not explain why it would not apply. Therefore, the panel finds that the Ministry's decision that the appellant was not eligible for replacement of the TENS machine and accessories was not a reasonable application of the legislation in the circumstances of the appellant, because the Ministry did not consider the application of s.3(3) Schedule C EAPWDR.

S. 3(4) Schedule C EAPWDR applies to all equipment provided by the Ministry and is not limited to medical equipment and devices previously provided under subsection 3 Schedule C EAPWDR. The Ministry did not provide evidence of the cost of repairing the TENS machine or evidence as to why it was too expensive to repair the TENS machine. There was some evidence from the appellant that she requested her TENS machine and accessories to be repaired but that she was told by the Ministry that it was too costly to repair the TENS machine and accessories. The panel finds that it was not reasonable for the Ministry to not consider the appellant's circumstances pursuant to s.3(4) Schedule C EAPWDR, in their decision, given that this appellant may be eligible for repair of the TENS machine and accessories.

For these reasons, the panel finds the Ministry's decision was not reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant and rescinds the decision.

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 MEGHAN WALLACE	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY)

PRINT NAME Susan Ferguson	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY)
PRINT NAME Robert McDowell	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY)