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PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated September 19, 2019 which held that the appellant was not eligible for Interdry fabric (the "Fabric") as a medical supply. While the Ministry acknowledged that the appellant requires the Fabric to prevent wounds, the Ministry denied the appellant eligibility for the Fabric as there was no indication that the Fabric was required for wound care at the time of the reconsideration decision. Section 2(1)(a)(i)(A) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation provides that "wound care" is one of the purposes for which a medical supply may be provided.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation ("EAPDR") Section 62 (General Health Supplements) and Schedule C, Section 2

PART E – SUMMARY OF FACTS

Preliminary Matter – Representative for the Appellant

At the outset of the hearing the Panel noted that the Appellant was not in attendance. The Appellant's spouse did attend with a hard copy of the Appeal record in hand. The Panel did not have before it a Release of Information from the appellant, to confirm consent to representation by the appellant's spouse. The Ministry was asked if the Ministry could confirm from its file consent from the Appellant to representation by the appellant's spouse. The hearing was adjourned while the Ministry reviewed its file and consulted by phone with the relevant Ministry office. On re-commencement of the hearing, the Ministry confirmed that there was a consent in writing in their office file from the Appellant, providing consent to representation by the appellant's spouse. The Ministry also confirmed that the Ministry had no objection to the hearing proceeding with the Appellant being represented by the appellant's spouse. In these circumstances, the Panel chair considered it in order to proceed with the hearing.

Evidence at reconsideration

The evidence before the minister at reconsideration included:

- August 8, 2019 letter from the appellant's doctor supporting the appellant's application for funding for the Fabric
- September 6, 2019 submission from the appellant's representative, endorsed by the appellant's doctor
- April 9, 2018 Ministry letter approving funding for the Fabric to be supplied to the appellant for a six month period
- April 5, 2018 prescription form from the appellant's doctor in support of the appellant's April 2018 application to the ministry for funding of the Fabric

It is important to note that the April 5, 2018 prescription form from the appellant's doctor indicated that the Fabric was necessary because, at that time, the appellant "has open wound to treat".

By contrast, the letter from the doctor dated August 8, 2019 indicated that the appellant "experiences chronic Intertrigo in multiple locations that is best managed with the" Fabric. The submission from the appellant's representative dated September 6, 2019 referred to this same condition, and stated that "it becomes an open wound if not dressed within 24 hrs." The endorsement by the appellant's doctor on the September 6, 2019 submission states: "I agree with this statement and endorse same. This product has been used sparingly and has prevented open ulceration and the need for more intensive medical intervention."

Evidence at hearing

At the hearing, the appellant's representative provided extensive evidence regarding the serious and ongoing medical conditions suffered by the appellant. It is not necessary to provide detail of these conditions in this decision. However, the evidence given by the appellant's representative was compelling, and the Panel has no hesitation in accepting all the evidence that was presented by the appellant's representative as sincere and truthful. The appellant's multiple conditions clearly do create the chronic Intertigo that the appellant and the appellant's doctor wish to have treated with the Fabric. The Ministry had no questions for the appellant's representative, and took no issue with any of the evidence that the appellant's representative presented at the hearing. The oral

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evidence elaborated on evidence available at reconsideration and was therefore admitted by the panel as supporting information in accordance with section 22(4) of the Employment and Assistance Act.

PART F – REASONS FOR PANEL DECISION**Panel Majority Reasons**

The issue to be decided is whether the ministry decision is a reasonable application of the legislation in the circumstances of the appellant. The relevant legislation is set out below, being the relevant extract from Schedule C to the EAPDR.

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;

The Ministry was satisfied that all required criteria were satisfied for supply of the Fabric to the appellant, except that the Ministry says that one of the purposes under section 2(1)(a)(i) was not established by the evidence at the time of reconsideration. In the reconsideration decision, the Ministry stated: "Although it is recognized that you require Interdry fabric to prevent wounds, there is no indication that it is required for wound care at this time."

The representative for the appellant submits that "wound care" should be read broadly, to include prevention of wounds. While this is a possible, and perhaps even reasonable, interpretation of the legislation, the panel is not able to conclude that the Ministry interpretation of the legislation is unreasonable. There is no definition of wound in the legislation. Where there is no definition in the legislation, words should be given their ordinary meaning.

Merriam Webster dictionary defines wound as “an injury to the body (as from violence, accident, or surgery) that typically involves laceration or breaking of a membrane (such as the skin) and usually damage to underlying tissues.” To re-state the Ministry’s position, there must be a wound before there can be a need for wound care. The evidence before the Ministry at the time of reconsideration- in particular the endorsement from the appellant’s doctor on the September 6, 2019 – indicates that the Fabric is needed to continue to prevent a wound, not care for one. This is a reasonable interpretation and application of the legislation in the circumstances, and having regard to the above cited dictionary definition of wound.

The panel therefore confirms the Ministry reconsideration decision – the appellant is not successful on the appeal.

Dissenting Opinion

There is no definition of “wound” or “wound care” in the legislation which leaves the definition open to wide interpretation. Assuming that a wound must be a “break” in the skin is inappropriate given the lack of definition. The Ministry did approve the Interdry product when the skin was broken. There is no reason to not supply it for wound care at the specific location of the former break in the skin as requested by the medical doctor familiar with the condition and patient.

The appellant testified that other products had been tried without success, “We have tried zinc oxide ointments, and other topical creams, they help but, when you try to remove used cream, the skin breaks down. We use the Interdry as sparingly as possible. It becomes an open wound if not dressed within 24 hours.” No-one at the hearing suggested that this is not what would happen.

The doctor’s written note states “This product has been used sparingly and has prevented open ulceration and the need for more intensive medical interventions (ie antibiotics, doctor visits, hospital admission, ED visits, etc). I highly recommend the use of this product.”

In the Ministry’s Health Supplement (supplies) Decision Summary, two things are important to note. The first is that the appellant could have applied for and received the product in question under the “incontinence” provision presented in Section 3 as the appellant is fully incontinent, a fact that is not challenged. The second is that in Section 4, the Interdry is considered to be a “quite costly item.” The notion of “quite costly” is incredibly difficult to defend. No-one at the hearing, including the Ministry representative could specifically identify the cost of the product. In terms of overall healthcare then, then the question becomes, “Is that product more expensive than travel by ambulance to a hospital or whatever other remedy is required when the former wound is not cared for properly?”

The dissenting panel member cannot confirm the Ministry reconsideration decision – the appellant is successful on appeal

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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

Chris McEwan

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/10/23

PRINT NAME

Bill Reid

SIGNATURE OF MEMBER - Dissenting

DATE (YEAR/MONTH/DAY)

2019/10/23

PRINT NAME

Jane Nielsen

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/23