APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated June 24, 2019 which denied the appellant's request for reimbursement for the cost of sensors for a non-conventional glucose meter ($178). The ministry found that the appellant's request did not meet the requirement that the family unit has received the pre-authorization of the ministry for the medical equipment or device requested, pursuant to Section 3(1)(b)(i) of Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

PART D – RELEVANT LEGISLATION

Employment and Persons with Disabilities Regulation (EAPWDR), Sections 23 and 72, and

Schedule C, Sections 3 and 3.12

APPEAL NUMBER

PART E – SUMMARY OF FACTS

With the oral consent of the appellant, a ministry observer attended but did not participate in the hearing.

The evidence before the ministry at the time of the reconsideration decision included:

1) Prescription dated March 21, 2019 for a continuous glucose meter/CGM Freestyle Libre (1 reader and 26 sensors) supply for 12 months;
2) Fax dated March 22, 2019 from the appellant's advocate to the ministry attaching the prescription and product information for the meter and sensors;
3) Print out of dated March 22, 2019 of product information for the Freestyle Libre Sensor;
4) Letter dated April 2, 2019 to the appellant in which the ministry advised that additional information was required before her request could proceed, specifically a quote from the supplier for an annual supply of the product requested, and a completed Medical Equipment Request and Justification (MERJ). The ministry requested details from the endocrinologist of the appellant's current monitoring methods and barriers, an explanation of her inability to manage glucose levels using a basic glucose meter and an explanation of the care supports in place, her history of severe hypoglycemia and/or hypoglycemia episodes, her history of unpredictable swings in blood glucose levels, and her demonstrated ability to self-monitor blood glucose levels and use equipment technology;
5) Undated Annual Supply Quote for 1 Freestyle Libre reader ($49.00) and 26 Freestyle Libre sensors ($89.00), for a total of $2,314 for the sensors and $49 for the reader along with Product Catalogue page demonstrating the items;
6) MERJ form dated April 8, 2019 describing the appellant's medical condition as "(intensive insulin-requiring) diabetes mellitus" with the medical equipment recommended as "Freestyle Libre";
7) Flash Glucose Monitoring (Flash) Initial Request form 1- year approval dated April 25, 2019, completed for "Freestyle Libre" for the appellant, with the physician indicating that the appellant has Type 1 or Type 2 diabetes on basal/bolus therapy, A1C is not in acceptable range despite optimal therapy, has had frequent or severe hyper and hypoglycemia despite attempts to optimize therapy, has had at least 2 years of experience in self managing her diabetes, has recently attended diabetes education within last 2 years, and is aged 18 years and older, with instructions to "place your receipts loose and flat in the envelope- no staples, paper clips or tape. Also no cashier or Interac receipts." The physician wrote for the ministry to call with further questions;
8) Letter dated May 7, 2019 to the appellant in which the ministry denied the appellant's request and advised that her request did not meet the criteria under Section 3.12(2)(b) of the EAPWDR as the ministry must be satisfied that she is unable to use a conventional glucose meter. The ministry wrote that there has been no medical justification provided as to why she is unable to use a conventional glucose meter;
9) Receipt dated May 16, 2019 for 1 package of Freestyle Libre Sensors kit for the amount of $89.00;
10) Letter dated May 30, 2019 in which a physician who is a specialist in diseases and surgery of the retina and vitreous wrote that the appellant "has advanced loss of vision in both eyes due to proliferative diabetic retinopathy";

11) Letter dated June 5, 2019 in which the appellant's advocate wrote:
    - In January of 2019 the appellant's retina detached due to the severity of her diabetes. The appellant had to have eye surgery to re-attach her retina and gas-like fluid was also found in both eyes.
    - The appellant has lost vision and is only able to see some shadows and bright colors from her right eye and her left eye has complete vision loss and is unlikely to get better.
    - She has been supporting the appellant and has noticed that the appellant is unable to carry out daily tasks on her own because of vison loss.
    - The non-conventional glucose sensor has helped the appellant keep her diabetes under control. It has an iPhone App which reads out her insulin levels to her.
    - Conventional glucose meters are not ideal for the appellant because she is unable to see the numbers on the meter and it is hard for her to take her blood from her finger. Previously, it was hard for the appellant to check her glucose levels and that is why she lost her vision.
12) Prescription dated June 11, 2019 in which the physician wrote that the appellant "has benefited from Freestyle Libre glucose testing while on a medication trial and now would benefit for funding for same";
13) Receipt dated June 13, 2019 for 1 package of Freestyle Libre Sensors kit for the amount of $89.00;
14) |Letter dated June 24, 2019 to the appellant in which the ministry approved her request for 2 of the non-conventional glucose meter "Freestyle Libre" sensors per month; and,
15) Request for Reconsideration dated July 10, 2019.

In her Request for Reconsideration, the appellant wrote:
- Using the Freestyle Libre the appellant has been able to keep her diabetes at a lower level.
- Due to her diabetes, the appellant has lost a lot of her vision. Her diabetes doctor has recommended that she use the Freestyle Libre as it has helped her understand her sugar levels.
- As the appellant is not able to see, the conventional meter is not ideal because she cannot adequately prick her finger and measure her blood. She is unable to use a [conventional] glucose meter because of her inability to see.

In her Notice of Appeal dated July 17, 2019, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote:
- The only source of income she has is [disability assistance].
- The cost of the Freestyle Libre [sensors] that she has already paid for has caused financial hardship.
- She has paid $178.00 out of her own pocket and, due to her limited income, she was unable to pay for her other monthly expenses.

Prior to the hearing, the appellant provided a statement dated July 25, 2019 in which she wrote:
- The cost of the sensors purchased on May 16 and June 13, 2019, for a total of $178.00, have caused financial hardship.
- The appellant owes money to multiple loans and paying out of pocket for the sensors

prevented her from contributing to monthly payments to her loans.

- The appellant's original request for funding for the sensors was made on March 22, 2019 and denied on May 7, 2019. The denial was overturned on June 24, 2019 and, therefore, the appellant is eligible to receive health supplements.
- If the appellant's original request for funding for the sensors was approved, then the sensor purchases made on May 16 and June 13, 2019 would have been covered under the appellant's eligibility to receive health supplements.
- The appellant does not disagree with the legislation but is asking for an exception to be made as she could not wait for the ministry's decision to review her eligibility to receive health supplements as the sensors are a necessary means for the appellant to monitor her diabetes, which directly impacts her health.

At the hearing, the appellant and her advocate stated:

- Her side of the story is set out in the statement dated July 25, 2019. The ministry decision has created financial hardship for her as she spent $178 on the sensors and was unable to make payments towards her outstanding loans.
- She made her request to the ministry for funding of the sensors on March 22, 2019 and the ministry denied her request on May 7, 2019. On June 24, 2019, the ministry overturned its earlier decision and, therefore, the appellant should be eligible to receive the supplement from the time of her request, which would include the sensors purchased on May 16 and June 13, 2019.
- The appellant has had complications from diabetes and she is unable to read the conventional glucose meter. The new, unconventional meter, will read out her glucose levels to her.
- Her left eye has had complications and it is easier to see the colour indication on the new meter. Each colour indicates a different level, and the sensors are helping her.
- She called the ministry before she purchased the sensors and explained that the ministry decision was taking too long and she needed the sensors. The ministry representative who she spoke with said that the ministry could consider reimbursing her after she purchased the sensors. The ministry representative did not suggest that she make a request for a crisis supplement at that time.

The ministry relied on its reconsideration decision, as summarized at the hearing. The ministry also clarified at the hearing:

- There is no ability for the ministry to reimburse for expenditures on medical equipment or supplies as there is no allowance code, as there is for a dietary allowance, for example. Health supplements must be pre-approved and the ministry has no discretion with this requirement.
- The ministry might have considered a request for a crisis supplement in the month that the appellant purchased the sensors, if this expenditure ran her short for a necessary expense such as food or rent. Even with the crisis supplement, the ministry cannot always pay the full amount that has been spent. If the crisis supplement was for food, for example, the limit is $40.
- On a review of the ministry file notes for the appellant, there were no notes apparent regarding the advice to the appellant that her purchase of the sensors could be reimbursed. There may have been a misunderstanding by the ministry representative.

Admissibility of New Information

The ministry did not object to the admissibility of the additional information provided by the appellant in her written statement dated July 25, 2019. The panel reviewed the statement, which provided more information about the appellant's financial circumstances and the timing of her expenditures on the sensors, and the panel admitted this additional information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act.*

APPEAL NUMBER

PART F – REASONS FOR PANEL DECISION

The issue on the appeal is whether the ministry's reconsideration decision, which denied the appellant's request for reimbursement for the cost of sensors for a non-conventional glucose meter ($178) because the request did not meet the requirement that the family unit has received the pre-authorization of the ministry for the medical equipment or device requested, pursuant to Section 3(1)(b)(i) of Schedule C of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Pursuant to Section 62 of the EAPWDR, the applicant must be a recipient of disability assistance, or be a dependent of a person in receipt of disability assistance in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has not disputed that the requirement of Section 62 has been met in that the appellant has been approved as a recipient of disability assistance.

Section 3.12 of Schedule C of the EAPWDR provides:

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.

Section 3 of Schedule C of the EAPWDR provides in part:

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. . . .

Section 2 of Schedule C of the EAPWDR provides:

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; . . .

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

Section 23(3.01) of the EAPWDR provides:

Effective date of eligibility

23 . . .

(3.01) If the minister decides, on a request made under section 16 (1) [reconsideration and appeal rights] of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of

(a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and

(b) the applicable of the dates referred to in section 72 of this regulation.

Section 72 of the EAPWDR provides:

Time limit for reconsidering decision

72 The minister must reconsider a decision referred to in section 16 (1) of the Act, and mail a written determination on the reconsideration to the person who delivered the request under section 71 (1) [how a request to reconsider a decision is made],

(a) within 10 business days after receiving the request, or

(b) if the minister considers it necessary in the circumstances and the person consents, within 20 business days after receiving the request.

Section 3.12 of Schedule C of the EAPWDR

In the letter dated May 7, 2019, the ministry denied the appellant's request for a supplement for the cost of sensors for a non-conventional glucose meter because the ministry was not satisfied that the appellant is unable to use a conventional glucose meter, as required by Section 3.12(2)(b) of the EAPWDR. In response to the appellant's initial request for the supplement, the ministry sent a letter to the appellant dated April 2, 2019 advising her that additional information was required before her request could proceed, including a completed MERJ and an explanation of her inability to manage glucose levels using a basic glucose meter. On June 13, 2019, the appellant provided her Request for Reconsideration, in the form specified by the ministry and the appellant also provided additional information to the ministry, which included a letter in which a physician who is a specialist in diseases and surgery of the retina and vitreous wrote that the appellant "has advanced loss of vision in both eyes due to proliferative diabetic retinopathy," as well as a letter in which the appellant's advocate wrote that conventional glucose meters are not ideal for the appellant because she is unable to see the numbers on the meter and it has been hard for the appellant to check her glucose levels and that is why she lost her vision. Based on the new information provided by the appellant, the ministry was satisfied at reconsideration that the appellant is unable to use a conventional glucose meter and the ministry approved the appellant's request for a supplement for the cost of sensors for a non-conventional glucose meter.

Section 2 of Schedule C of the EAPWDR

Although the ministry reviewed the provisions of Section 2 of Schedule C and found that sensors for a non-conventional glucose meter are not directly required for one of the purposes set out in Section 2(1)(a)(i) and are not included in the list of items in sub-section 2(1)(a.1) or 2(1)(a.2) of Schedule C of the EAPWDR, this was a moot point as the ministry approved the appellant's request for a supplement for the cost of sensors for a non-conventional glucose meter under Section 3.12 of Schedule C of the EAPWDR. The panel finds that the ministry's conclusion that the sensors for a non-conventional glucose meter are not directly required for the purposes of wound care, ongoing bowel care, catheterization, incontinence, skin parasite care or limb circulation care [Section 2(1)(a)(i)] and are not lancets, needles and syringes, ventilator supplies, or tracheostomy supplies [Section 2(1)(a.1)] or consumable medical supplies [Section 2(1)(a.2] was reasonable.

Section 3(1) of Schedule C of the EAPWDR

In the reconsideration decision, the ministry denied the appellant's request for reimbursement for the cost of sensors for a non-conventional glucose meter ($178) as the appellant had not obtained the pre-authorization of the ministry before purchasing the sensors as required by Section 3(1)(b)(i) of Schedule C of the EAPWDR. The ministry wrote that the appellant purchased the sensors on May 16 and June 13, 2019, which was after the ministry initially denied the appellant's request on May 7, 2019 and before the request was approved by the ministry on June 24, 2019.

In her Notice of Appeal, the appellant wrote that the only source of income she has is disability assistance and the cost of the Freestyle Libre sensors that she has already paid for has caused financial hardship. The appellant wrote that she paid $178.00 out of her own pocket and, due to her limited income, she was unable to pay for her other monthly expenses. In her statement dated July 25, 2019, the appellant reiterated that the cost of the sensors purchased on May 16 and June 13, 2019, for a total of $178.00, has caused her financial hardship. The appellant wrote that she owes money to multiple loans and paying out of pocket for the sensors prevented her from contributing to monthly payments to her loans. The appellant wrote that she does not disagree with the legislation but is asking for an exception to be made as she could not wait for the ministry's decision to review her eligibility to receive health supplements as the sensors are a necessary means for her to monitor her diabetes, which directly impacts her health.

The ministry stated at the hearing that a request for a crisis supplement in the month that the appellant purchased the sensors might have been considered by the ministry if this expenditure ran her short for a necessary expense such as food or rent. The ministry explained that, even with the crisis supplement, the ministry cannot always pay the full amount that has been spent. The appellant stated at the hearing that she had spoken with a ministry representative at the time and was not provided with information about making a request for a crisis supplement.

At the hearing, the ministry emphasized that the requirement in Section 3(1)(b)(i) of Schedule C of the EAPWDR must be met, that the family unit must receive the ministry's pre-authorization for the medical equipment or device requested, and there is no discretion or process for the ministry to do otherwise. The appellant stated at the hearing that she had spoken with a ministry representative at the time and was advised that the ministry could consider reimbursement for the sensors. At the hearing, the ministry reviewed the appellant's file and could not find a note documenting this conversation with the appellant, and stated that there may have been a misunderstanding by the ministry representative at the time. The panel finds that the ministry reasonably determined that Section 3(1)(b)(i) of Schedule C of the EAPWDR applied to the appellant's request, with no exception provided in the Section, and required that the appellant receive the "pre-authorization" of the ministry, or approval by the ministry prior to the purchase of the medical equipment or device requested.

Effective date of eligibility- Section 23(3.01) of the EAPWDR

In her statement dated July 25, 2019, the appellant wrote that her original request for funding for the sensors was made on March 22, 2019 and denied by the ministry on May 7, 2019 and, since the denial was overturned in the reconsideration decision on June 24, 2019, the appellant should be eligible to receive reimbursement for the health supplements. The appellant argued that if her original request for funding for the sensors was approved, then the sensor purchases made on May 16 and June 13, 2019 would have been covered under the appellant's eligibility to receive health supplements.

Section 23(3.01) of the EAPWDR provides that if the ministry decides, on a request made under section 16 (1) [reconsideration and appeal rights] of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of the date the ministry makes the decision on the request made under section 16 (1) of the Act, and the applicable of the dates referred to in Section 72 or, in the appellant's circumstances, within 10 business days after receiving the request under Section 71 (1) [the request for reconsideration in the form specified by the ministry delivered to the ministry office].

In the appellant's circumstances, the date the ministry made the decision on the request under Section 16(1) of the EAPWDA is the date of the reconsideration decision, or June 24, 2019. In the reconsideration decision, the ministry wrote that the appellant's Request for Reconsideration completed in the form required by the ministry was received on June 13, 2019 and 10 business days after this date is June 27, 2019. The earlier of the dates [June 24, 2019 and June 27, 2019] is June 24, 2019. Therefore, pursuant to Section 23(3.01) of the EAPWDR, the appellant is eligible for the supplement as of June 24, 2019, which is after the dates of her expenditures for the sensors on May16 and June 13, 2019.

Conclusion

In conclusion, the panel finds that the ministry's decision to deny the appellant's request for reimbursement for the cost of sensors for a non-conventional glucose meter ($178) because the request did not meet the requirement that the family unit has received the pre-authorization of the ministry, pursuant to Section 3(1)(b)(i) of Schedule C of the EAPWDR, was a reasonable application of the applicable enactment in the appellant's circumstances and the panel confirms the ministry's reconsideration decision. Therefore, the appellant's appeal is not successful.

APPEAL NUMBER

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 S. Walters	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019-08-07

PRINT NAME Jane Nielsen	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019-08-07
PRINT NAME Joe Rodgers	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019-08-07