

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated June 14, 2022, which found that the appellant is not eligible for funding for a continuous glucose monitoring system. Though the appellant met most of the eligibility requirements, the ministry found that pursuant to section 3(1)(b)(ii) and (iii) of Schedule C of the Employment and Assistance Regulation (EAR), the appellant did not demonstrate that:

- (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.

Part D – Relevant Legislation

Employment and Assistance Regulation (EAR) - Schedule C section 3(b)(ii) and (iii).

Part E – Summary of Facts**Evidence at Reconsideration**

1. Request for Reconsideration (RFR) dated June 10, 2022, which included the submission of the following documents:
 - Ministry Service Request Number 1 which was signed by the appellant's physician (the physician) and dated February 14, 2022.
 - Medical Equipment Request and Justification Form, dated February 14, 2022, requested a Freestyle Libre Glucometer (FLG).
 - A letter from the physician dated May 2, 2022, which stated that the appellant faces imminent life-threatening health need, the nurses at the Diabetes clinic (the clinic) recommended the FLG and the physician recommended a non-conventional glucose meter (Freestyle Libre).

Evidence at Appeal

Notice of Appeal (NOA), dated July 22, 2022, which included the following documents:

- An email letter dated July 19, 2022, from the appellant's social worker (SW) to a ministry supervisor. The letter indicated that the SW "called Health insurance BC/BC Pharmacare last week and they explained that the Freestyle Libre is not covered under BC Pharmacare benefits, only DEXCOM G6 blood glucose monitoring system under special authority. Special authority for the DEXCOM G6 requires the client MUST be using multiple daily injections and [the appellant] would not be eligible".
- A second copy of the May 2, 2022 letter from the physician.
- Special Authority Request Continuous Glucose Monitoring System (DEXCOM G6) form with a handwritten note which stated, "Doesn't use daily injections therefore not eligible for Dexcom G6" next to the statement "Patient is 2 years of age or older with diabetes melitus (DM) and requires multiple daily injections of insulin or insulin pump therapy as part of intensive insulin therapy".
- 2-page pamphlet titled "Drug Coverage Decision for B.C. PharmaCare".

Evidence at the Hearing

At the hearing, the appellant submitted a note written by the clinic nurse (the nurse), dated November 16, 2021. The letter indicated the following:

- The appellant received a FLG from the clinic but was unable to scan it and did not have data for 2 weeks.
- The appellant is unable to do his own finger pricks to test his diabetes levels.
- The clinic is unable to provide another FLG and will refer the appellant to Pharmacare.
- The FLG is likely the best option for the appellant.

At the hearing, the appellant and/or his advocate (the SW) stated the following:

- Under BC Pharmacare the FLG system is not a benefit. Only the DEXCOM G6 is covered by BC Pharmacare but the eligibility requirement for the DEXCOM G6 is that the recipient requires daily insulin injections which the appellant does not.

- The appellant does not have research on comparative pricing because the FLG was recommended by the clinic and may be the only option given the appellant's inability to do finger pricks.

When asked, the appellant and/or the SW indicated the following:

- The appellant attempted to apply for Persons with Disabilities Designation but he did not complete the application process and did not do a Persons with Persistent Multiple Barriers application.
- The special authority form was never completed and submitted because BC Pharmacare stated that the appellant would not be eligible because he does not require daily insulin injections.
- The FLG the appellant originally received (which came from the clinic) was too expensive to repair and they only give one per patient.
- Other brands of continuous glucose monitoring systems were not reconsidered because the clinic recommended the FLG because it is easier to use.
- The SW is not aware of other funding options to obtain a continuous glucose monitoring system. They think all avenues have been exhausted.
- The appellant's physician's recommendation is based on the clinic's recommendation.

At the hearing, the ministry relied on its reconsideration decision and added that the ministry is not certain that the FLG would have been denied under the special authority. Therefore, the ministry is of the opinion that the appellant has not exhausted all of the resources available to him.

Admissibility of Additional Information

The ministry did not object to the admission of the information submitted at appeal or at the hearing.

A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The panel found that the information submitted at appeal (email from SW dated July 19, 2022; Special Authority Form with handwritten note; and the BC Pharmacare pamphlet) and at the hearing (note from the nurse dated November 16, 2021) provided additional detail or disclosed information that was required for a full and fair disclosure of all matters related to the decision under appeal. Accordingly, the panel has admitted this additional information in accordance with s. 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision to deny the appellant funding for a continuous glucose monitoring system was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant failed to meet the criteria listed in Schedule C, section 3(b)(ii) and (iii) of the EAR?

The relevant legislation can be found in Appendix A.

The Appellant's Position

The appellant's position is that there is an imminent danger to his life if he does not receive the FLG, there are no resources available to him to pay for continuous glucose monitoring system and that the FLG was recommended to him by the clinic and may be his only option.

The Ministry's Position

The ministry's position is that the appellant is not legislatively eligible for funding for a continuous glucose monitoring system because he has not demonstrated that he has no resources to pay for or obtain the device and that the FLG is the least expensive appropriate option for him.

The Panel's Decision

Schedule C section 3(b)(ii) requires that there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device. The appellant has not applied for funding for the FGL from BC Pharmacare via the special authority because he thinks he will not qualify as he does not require insulin injections to manage his diabetes. Though there is reason to believe that the appellant will not qualify, as indicated on the form, the ministry argued that by not applying for the FLG via the special authority, he has not exhausted all the resources available to him and it does not know for certain that his special authority application would be denied. Based on this uncertainty, the panel finds that the ministry was reasonable in its determination that appellant failed to demonstrate that there are no resources available to pay for the cost of the FLG.

Schedule C Section 3(b)(iii) requires that the medical equipment or device is the least expensive appropriate medical equipment or device. The evidence demonstrates that the appellant did not provide any comparative pricing. The appellant argued that the FLG was recommended by the clinic and the physician. However, the note from the nurse dated November 16, 2021 stated that the FLG is likely the appellant's best option. In the May 2, 2022 letter, the physician stated that recommendation of the FLG came from the clinic and that the physician supports the need for a "non-conventional glucose meter (Free Style Libre)". The panel finds that based on the nurse's November 16, 2021 note and the physician's May 2, 2022 letter, the FLG is not the only option for the appellant, and therefore pricing for other brands of a continuous glucose monitoring system is needed to demonstrate the FLG was the least expensive appropriate option. The panel finds that the ministry was reasonable in its determination that the appellant failed to demonstrate that the FLG monitoring system is the least expensive appropriate medical equipment or device.

Conclusion

The panel finds that the ministry reasonably concluded the evidence establishes that all of the required criteria set out in section 3(b)(ii) and (iii) of Schedule C of the EAR have not been met. The panel therefore finds that the ministry's decision to deny the appellant's request for funding for a continuous glucose monitoring system was a reasonable application of the legislation and was supported by the evidence. Thus, the panel confirms the ministry's reconsideration decision, and the appellant is not successful at appeal.

Appendix A

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 67 [*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.

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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)

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

Part H – Signatures

Print Name

Neena Keram

Signature of Chair

Date: (Year/Month/Day)

2022/08/12

Print Name

Kevin Ash

Signature of Member

Date: (Year/Month/Day)

2022/08/12

Print Name

Effie Simpson

Signature of Member

Date: (Year/Month/Day)

2022/08/12