Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction ("Ministry") Reconsideration Decision dated July 3, 2024 which held that the Appellant is not eligible for funding for a topical ointment (the "Cream") because the request failed to meet the required legislative criteria. The Ministry found that the Cream is not an item set out in the Employment and Assistance for Persons with Disabilities Regulation ("Regulation") Schedule C, sections 2 and 3. Therefore, the Ministry cannot provide funding for it.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation – Section 69 and Schedule C, Section 2 and 3.

The applicable legislation can be found in Appendix A.

Part E – Summary of Facts

Evidence at Reconsideration

- Prescription from the Appellant's doctor dated April 2, 2024. The doctor stated that the Appellant requires the Cream for a severe needle phobia impacted by ongoing need for medically required needles.
- Request of Reconsideration signed and dated June 10, 2024. The Appellant submitted a Request for Reconsideration that was left blank and did not provide a reason for the request.

Evidence on Appeal

Notice of Appeal signed and dated July 22, 2024, which stated "Extremely needed. There is new paperwork that I need to submit from my surgeon".

The Panel found that the Notice of Appeal is the Appellant's argument and accepted it accordingly.

Evidence at the Hearing

At the hearing the Appellant submitted the following:

- A prescription dated August 6, 2024 from her general surgeon for a topical ointment that contains 2 ingredients and is to be applied 4 times per day.

At the hearing, the Appellant, in part, indicated the following:

- Lidocaine alone does not work effectively. She needs the second ingredient which is in the Cream.
- The Cream is needed to deal with the pain and discomfort of fissures. The Cream is inserted 4 times a day.
- The cost of the Cream is prohibitively expensive and she cannot afford it.
- Others have qualified for the Cream.
- It is proven that the Cream works to numb the pain resulting from the fissures.
- The Cream adds to her quality of life.
- Recently, the cost of the Cream has increased and now her family cannot help purchasing the Cream.
- She previously purchased the Cream but it is almost used up now.
- The new prescription has the 2 ingredients that are needed to help with the pain.
- In the past, the Cream was used to numb the pain from needles. However, for this purpose less Cream is needed and it is needed less frequently.
- With the fissures more Cream is needed and it is needed more often and she cannot keep up with the cost.

- She has severe Chron's disease which require a lot of hospitalizations and blood work. The Cream mitigates the pain.
- The fissures are a result of the Chron's disease. The Cream is needed for both wound care and bowel care.

At the hearing, the Ministry relied on its Reconsideration Decision. The Ministry added the following:

- The Cream can be provided if the need meets the legislative criteria.
- The Ministry could not confirm the reason for the Appellant's Persons with Disabilities designation as the information was not readily available at the hearing.

Admissibility of Additional Information

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

The Ministry did not object to the admission of the August 6, 2024 prescription from the Appellant's surgeon.

The panel found that the August 6, 2024 prescription and the Appellant's testimony at the hearing provided additional detail or disclosed information that provides a full and fair disclosure of all matters related to the decision under appeal. The panel has admitted this new information as being in accordance with s. 22(4) of the *Employment and Assistance Act.* An analysis of each is provided in the panel's decision.

Part F – Reasons for Panel Decision

The purpose of the Panel is to review and assess whether the Ministry's Reconsideration Decision satisfied a standard of reasonableness - whether the Panel agrees or disagrees with the outcome. The standard applied is whether the applicable laws were reasonably applied and whether the evidence was also reasonably applied in the circumstances.

The issue on appeal is whether the Ministry's decision which held that the Appellant is not eligible for funding for the Cream because the request failed to meet the legislative criteria set out in the Regulation 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 Cream is not a health supplement item set out in Schedule C of the Regulation, and therefore it cannot provide funding for such item?

The Appellant's Position
The Appellant argued that due to fissures, she needs the Cream to manage pain and discomfort.

The Ministry's Position
The Ministry argued that the Appellant is not eligible for the Cream as a medical supply, medical equipment or any other section in Schedule C, and as a life-threatening need.

Medical Supply
In the Reconsideration Decision, the Ministry found that, pursuant to Schedule C of the Regulation:

- Medication for skin numbing due to a fear of needles is not a medical supply that is used for one of the purposes set out in subsection 2(1)(a)(i).
- Medication for skin numbing due to fear of needles is not set out as one of the medical or surgical supplies the ministry may cover under Schedule C, subsection 2(1)(a.1)
- Medications for skin numbing due to a fear of needles is not a medical supply that is used for one of the purposes set out in subsection 2(1)(a.2).
- Information was not submitted to establish the item requested is necessary to avoid an imminent and substantial danger to health. The doctor indicated that this item helps with the use of needles. Insufficient information has been provided to establish that this specific medication is necessary to avoid an imminent and substantial danger to health.

Medical Equipment

The Ministry stated that it has the authority to provide items that are listed under Schedule C sections 3.1-3.12 of the Regulation, if 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. The Ministry must also receive either (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device; or (b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device. However, the Cream is not an item listed as medical equipment in these sections and the information provided did not establish that the other legislated criteria set out in these sections were met.

Other sections of Schedule C

The Ministry noted that Schedule C, sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8, and 9 of the Regulation set out that the Ministry may provide: optical supplements, eye examination supplements, dental supplements; crown and bridgework supplements; denture supplements, emergency dental supplements; diet supplements; natal supplements; and infant formula. Section 67 of the Regulation sets out that the Ministry may provide a monthly nutritional supplement for a chronic progressive deterioration of health or a short-term nutritional supplement for an acute short-term need. The Ministry found that the Cream is not one of these supplements.

Life-Threatening Need

Section 69 of the Regulation sets out that the minister may provide to a family unit any health supplement set out in sections 2 (1)(a) [medical supplies] and (f) [medical transportation] 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) the person's family unit is receiving 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 3.11, other than paragraph (a) of section 3 (1).

Section 69 applies to health supplements set out under Schedule C, sections 2(1)(a) to (f) [general health supplements] and section 3 [medical equipment and devices]. It is intended to provide a remedy for those persons who are facing a direct and imminent life-threatening health need for these supplements and who are not otherwise eligible to receive them.

The Ministry found that since the Appellant is a recipient of disability assistance, she is eligible to receive health supplements under the Regulation, Schedule C, and does not require the remedy under section 69. The Ministry also found that the Cream is not a health supplement set out in Schedule C, sections 2(1)(a) and (f) or section 3. As the request does not meet the legislated criterion, the Appellant is not eligible for the Cream under Section 69 of the Regulation.

Panel Decision

Medical Supply

A review of the legislation establishes that the Cream, when used as a numbing agent to alleviate a phobia related to needles, is not a supply listed as a medical supply or surgical supply. As such the Panel finds that the Ministry was reasonable to determine that the Cream is not an item it can provide funding for as it is not used for one of the purposes set out in the legislation. The Panel also finds that the Ministry was reasonable to determine that the evidence does not establish that the Cream is needed to avoid an imminent and substantial danger to health as there is no evidence that .

Medical Equipment

A review of the legislation establishes that the Cream is not a supply listed as a medical equipment. As such the Panel finds that the Ministry was reasonable to determine that the Cream is not an item it can provide funding for as it is not listed as medial equipment in the legislation. The Panel also finds that the Ministry was reasonable to determine that the evidence does not establish that the Cream is medical device as it is not listed as a medical device in the legislation. Additionally, there is no evidence that the Cream is the least expensive appropriate option as no quotes were provided nor was it indicated if there are other generic options for the Cream.

Other Sections of Schedule C

A review of the legislation establishes that the Cream is not optical supplements, eye examination supplements, dental supplements; crown and bridgework supplements; denture supplements, emergency dental supplements; diet supplements; natal supplements; or infant formula. As such the Panel finds that the Ministry was reasonable

to determine that the Cream is not an item it can provide funding for as it is not listed in other sections of the legislation.

Life-Threatening Need

Section 69 is intended to provide a remedy for those persons who are facing a direct and imminent life-threatening health need for health supplements and who are not otherwise eligible to receive them. A review of the legislation and evidence establishes that the Appellant is a recipient of PWD benefits and therefore eligible for health supplements under schedule C of the Regulation. The legislation and evidence also established that the Cream is not listed as a health supplement that can be provided under schedule C of the Regulation.

As such, the Panel finds that the Ministry was reasonable in its determination that the Appellant is a recipient of disability assistance, she is eligible to receive health supplements under the Regulation, Schedule C and does not require the remedy under section 69. The Ministry also was reasonable when it determined that the Cream is not a health supplement set out in Schedule C, sections 2(1)(a) and (f) or section 3. As the request does not meet the legislated criterion, the Panel finds that the Ministry was reasonable when it determined that the Appellant is not eligible for the Cream under Section 69 of the Regulation.

At the hearing, the Appellant stated that the Cream was for numbing the pain and discomfort resulting from fissures. The Appellant explained that the fissures resulted from her severe Chron's disease. The Appellant indicated that the Cream is now needed in a larger dose and more frequently. The Appellant argued that the Cream is for wound and bowel care. The August 6, 2024 prescription from the Surgeon confirms that the prescribed medication must be applied 4 times daily. Though the Panel finds the Appellant's testimony creditable, it notes that there is no evidence corroborating her testimony. That is, there is no evidence to support a diagnosis of Chron's disease, that she suffers from fissures and that the Cream is prescribed for discomfort and pain resulting from fissures. Therefore, it cannot be confirmed that the Cream is required for wound and/or bowel care. As such, the Panel finds that the Ministry was reasonable in its determination that the Appellant's request for the Cream did not meet the requirements set out in the Regulation.

Conclusion

The Panel confirms the Ministry's June 25, 2024 Reconsideration Decision which denied the Appellant's request for the Cream. The Appellant is not successful at appeal.

Appendix A

Health supplement for persons facing direct and imminent life threatening health need

69 (1)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)the adjusted net income of any person in the family unit, other than a dependent child, does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation, 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).

(2)For the purposes of subsection (1) (c),

(a)**"adjusted net income"** has the same meaning as in section 7.6 of the Medical and Health Care Services Regulation, and

(b)a reference in section 7.6 of the Medical and Health Care Services Regulation to an "eligible person" is to be read as a reference to a person in the family unit, other than a dependent child.

Schedule C

General health supplements

Section 2(1) provides for “medical or surgical supplies” that are disposable or reusable provided that:

(i) the supplies are for one of the purposes listed including 2(1)(a)

(ii) (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;

(iii) the supplies are
   a. prescribed by a medical or nurse practitioner,
   b. the least expensive supplies appropriate for the purpose and
   c. necessary to avoid an imminent and substantial danger to health; and

(iv) there are no resources available to the family unit to pay for the supplies.

Section 2(1)(a.1) sets out that the following medical or surgical supplies may be paid for by the minister if the minister is satisfied that all the requirements described in paragraph (a)(ii) and (iii) are met in relation to the supplies: v. lancets; vi. needles and syringes; vii. ventilator supplies required for the essential operation or sterilization of a ventilator; viii. tracheostomy supplies

Section 2(1)(a.2) sets out that consumable medical supplies may be paid for by the minister if the minister is satisfied that the following requirements are met: iii. the supplies are required to thicken food; iv. all the requirements described in paragraph 2(ii) and (iii) are met in relation to the supplies.

Section 2(1)(c) provides that the following items are health supplements if the other criteria of the section are met: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy.

Section 2(1)(f) of Schedule C provides that the following items are health supplements if the other criteria of the section are met: the least expensive appropriate mode of transportation.

Section 2(1.1) sets out that for the purposes of subsection (1)(a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications

Section 2.1 of Schedule C provides that the following are the optical supplements that may be provided under Section 62.1 of the EAPWDR: basic eyewear and repairs, pre-authorized eyewear and repairs.

Section 2.2 of Schedule C provides that the minister may pay a health supplement under Section 62.2 of the EAPWDR for an eye examination if the other criteria of the section are met.

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.

Section 3.1 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a cane, a crutch, a walker, an accessory to a cane, a crutch or a walker.

Section 3.2 provides that the following items are health supplements for the purposes of section 3 if the other criteria of the section are met: a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair.

Section 3.3 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a wheelchair seating system, an accessory to a wheelchair seating system.

Section 3.4 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a scooter, an upgraded component of a scooter, an accessory attached to a scooter.

Medical equipment and devices — toileting, transfers and positioning aids
3.5 (0.1) In this section: **"positioning chair"** does not include a lift chair; and **"transfer aid"** means a transfer board, transfer belt or slider sheet.

Section 3.5 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: grab bar in a bathroom, a bath or shower seat, a bath transfer bench with hand held shower, a tub slide, a bath lift, a bed pan or urinal, a raised toilet seat, a toilet safety frame, a floor-to-ceiling pole in a bathroom or bedroom, a portable commode chair, a standing frame for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility**, a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility, a transfer aid for a person for whom the transfer aid is medically essential to transfer from one position to another,** and (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.

Section 3.6 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed, and a positioning item on a hospital bed.

Section 3.7 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a pressure relief mattress.

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.

Section 3.9 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: breathing devices.

Section 3.10 provides that the following items are an orthosis which is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a custom-made or off-the-shelf foot orthotic, custom-made footwear, a permanent modification to footwear, off-the-shelf footwear for a specific purpose, off-the-shelf orthopaedic footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, a hip brace, an upper extremity brace, a cranial helmet, a torso or spine brace, a foot abduction orthosis, or a toe orthosis.

Section 3.10 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a prosthetic and related supplies, a plaster or fiberglass cast, a hernia support, an abdominal support, a walking boot for a fracture.

Section 3.11 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hearing instrument.

Section 3.12 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a non-conventional glucose meter.

2024-0279

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: 2024/08/08

Print Name John Pickford	
Signature of Member	Date: 2024/08/12
Print Name Perihan Sucu	
Signature of Member	Date: 2024/08/11