Appeal Number	2024-0305

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) Reconsideration Decision dated July 17, 2024, which determined the appellant was not eligible for a health supplement - a two-month Continuous Positive Airway Pressure trial.

Specifically, the ministry is not satisfied a Continuous Positive Airway Pressure machine is essential for the treatment of sleep apnea, or that the appellant faces a direct and imminent life-threatening need.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (Regulation) sections 62, 69, and Schedule C, sections 3 and 3.9

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

Part E – Summary of Facts

The hearing was held as a written hearing on September 9, 2024.

Relevant Evidence Before the Minister at Reconsideration

- The appellant is in receipt of disability assistance.
- On March 5, 2024, the ministry received a request for a two-month Continuous Positive Airway Pressure (CPAP) trial, including:
  - Breathing Device Request and Justification form (March 1, 2024)
  - Quote for a two-month CPAP trial ($390.00) (March 1, 2024)
  - Prescription for Positive Airway Pressure (PAP) therapy (November 28, 2023)
  - Diagnostic report (October 28, 2023)

- On April 5, 2024, the ministry denied the request.
- The ministry received an updated Breathing Device Request and Justification form (June 5, 2024)

Breathing Device Request and Justification Form (June 5, 2024)

The following information is provided by a medical doctor (sleep specialist) (November 28, 2023).

The appellant's medical condition is mild obstructive sleep apnea. A CPAP machine, humidifier, tubing and mask are recommended.

Assessment – *provided by a Registered Respiratory Therapist (June 5, 2024)*

The CPAP machine and supplies are required for adequate treatment of obstructive sleep apnea.

Appeal Number	2024-0305

Pre-Authorization Form - *completed by Sleep Apnea Clinic (March 1, 2024)*

Product Name	Quantity	Item Price	Total
Ministry auto pressure CPAP and heated CPAP humidifier, Rental @ $195/month. AirSense 11 AutoSet with HumidAir and ClimateLineAir 11	2	$195.00	$390.00

Prescription for Positive Airway Pressure Therapy - *issued by the appellant's doctor (November 28, 2023)*

- Mask and accessories replacement for PAP therapy

- Titrate therapy as per respiratory therapist within prescribed mode

Diagnostic Report (October 28, 2023)

The report shows recorded details for monitoring time (flow), oxygen saturation and evaluation.

Respiratory Events Index - Apnea-Hypopnea Index - 9.7

Letter from the Ministry to the Appellant (April 5, 2024)

The ministry denied the appellant's request for a two-month CPAP trial and included the reasons for the denial.

Request for Reconsideration (May 7, 2024)

No information was provided for the reason for requesting the reconsideration.

Letter from the Appellant's Doctor (received June 13, 2024)

The doctor writes that the appellant was denied coverage for the purchase of a PAP Therapy unit. However, they feel this should be reconsidered due to co-morbid medical conditions of depression and chronic pain syndrome. There is clear evidence that treatment of sleep disordered breathing benefits these conditions.

The appellant suffers from chronic pain. It is well known that patients living with pain suffer from a litany of sleep issues including nonrestorative sleep with alpha-wave intrusions, insomnia, restless leg syndrome, and obstructive sleep apnea. The prevalence of sleep disordered breathing in patients with pain is greater than in the general population. Symptoms of untreated obstructive sleep apnea may worsen the ability to control pain.

The appellant suffers from anxiety/depression. The prevalence of sleep disordered breathing in patients with depression is greater than in the general population. Symptoms of untreated obstructive sleep apnea may mimic depressive symptoms. PAP therapy improves depressive symptoms.

This is a chronic disease associated with serious potential complications if left untreated including excessive daytime sleepiness, hypertension, and cardiac and neurological complications.

The doctor states that this is an initial purchase for this appellant. The standards of practice are based on the guidelines of the American Associations of Sleep Medicine and the Canadian Sleep Society.

Information Received after the Reconsideration Decision

Letter from the Appellant's Doctor (August 6, 2024)

The letter contains the same information as the letter received June 13, 2024, with the following additional information.

The doctor states they feel the denial for coverage of a PAP Therapy unit should be reconsidered due to the appellant's co-morbid medical condition of shortness of breath at rest, fatty liver, family history of stroke and heart attack, depression and chronic pain syndrome. There is clear evidence that treatment of sleep disordered breathing, benefits these conditions.

The appellant is being seen by another doctor for stress testing due to shortness of breath at rest. She has a family history of stroke and heart attack on both sides of the family. As a result, she has a greater risk of stroke and heart attack. The appellant is also being seen by yet another doctor for fatty liver, which confers additional cardiovascular risk.

There are multiple studies that demonstrate that depression and untreated obstructive sleep disorder may increase risk of suicide, which is life-threatening. The combination of exacerbated pain and depression are risk factors for suicide.

This is a chronic disorder associated with serious potential complications if left untreated, including excessive daytime sleepiness, hypertension, and cardiac and neurological complications.

Notice of Appeal (August 13, 2024)

The appellant highlights the additional justification and medical recommendation, as per the prescribing doctor regarding a life-threatening health need, (note dated August 6, 2024).

Appellant Submission

The letters from the appellant's doctor received June 13, 2024 and dated August 6, 2024 were included with the appellant's submission.

Letter from a Registered Polysomnographic Technologist (August 21, 2024)

In the letter, the technologist provides a response to the reasons for the denial by the ministry. The response is included in the appellant's position, later in the decision.

Oximetry Comprehensive Report from a Sleep Clinic (March 21, 2024)

The report provides details on the recording time, sampling, pulse and blood oxygen level percentages.

Ministry Submission (August 28, 2024)

The ministry states its submission will be the reconsideration summary provided in the Record of Ministry Decision.

Admissibility

The panel determined all the information in the appellant's submission is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act.*

The ministry did not provide any additional information.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's Reconsideration Decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

Specifically, did the ministry reasonably determine the appellant is not eligible for a health supplement - a two-month CPAP trial, as it is not satisfied a CPAP machine is essential for the treatment of sleep apnea, or that the appellant faces a direct and imminent life-threatening need?

The issue on appeal is whether the ministry's Reconsideration Decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

Specifically, did the ministry reasonably determine the appellant is not eligible for a health supplement - a two-month CPAP trial, as it is not satisfied a CPAP machine is essential for the treatment of sleep apnea, or that the appellant faces a direct and imminent life-threatening need?

Ministry Position

The ministry states that as the appellant is in receipt of disability assistance, she is eligible to receive health supplements, provided all other eligibility requirements are met.

The ministry finds the eligibility requirements in section 3(1)(b) of Schedule C of the Regulation have been met.

- The appellant requested pre-authorization for the medical equipment.
- She does not have resources available to obtain the medical equipment.
- The medical equipment is the least expensive appropriate for her needs.

The eligibility requirements in section 3(2.1) of Schedule C of the Regulation have also been met.

- The equipment requested has been prescribed by a medical practitioner.
- An assessment by a respiratory therapist confirming the medical need for the equipment has been submitted.

The ministry also finds the request meets the eligibility requirement in section 3.9(2)(a) and (b) of Schedule C of the Regulation. A prescription from a medical practitioner for the medical equipment, was provided.

However, the ministry finds the request does not meet the eligibility requirement in Section 3.9(2)(c) of Schedule C of the Regulation. This legislation sets out that the ministry must be satisfied that the item is medically essential for the treatment of moderate to severe sleep apnea.

Factors used in diagnosing and assessing sleep apnea include the Apnea-Hypopnea Index (AHI). In general, the AHI can be used to classify the severity of disease (normal 0-5, mild 5-15, moderate 15-30, and severe greater than 30).

The ministry notes the following:

- The Sleep Study Report submitted with the request shows an AHI of 9.7, which is in the mild range for sleep apnea, as per the current consensus of the American Academy of Sleep Medicine.
- The doctor confirms the appellant has mild obstructive sleep apnea. They also confirm the appellant has chronic pain and depression, which can cause sleep issues and state that uncontrolled obstructive sleep apnea may worsen these symptoms. However, they do not provide any information or assessments to suggest the appellant has a life-threatening health condition (such as a heart condition) that would be impacted due to mild sleep apnea.

Therefore, the ministry is unable to confirm that the appellant's co-morbid medical conditions of chronic pain and depression result in an increase to the severity of her sleep apnea.

Based on the above information, the ministry finds there is not enough evidence to demonstrate that a CPAP machine is medically essential for the treatment of moderate to severe sleep apnea.

Appellant Position

Letter from a Registered Polysomnographic Technologist (advocate for appellant) (August 21, 2024)

Reasons for Appeal

The advocate writes the following response to the ministry position.

Although the criterion is reported as needing an AHI greater than 15, it also indicates that mild apnea with a life-threatening health need is considered on a case-by-case basis. The medical specialist recommending trial/lifelong treatment has documented relevant life-threatening health needs.

The advocate also refers to the additional support document from the specialist (August 6, 2024), with additional updates regarding other co-morbidities, illustrating that depression and obstructive sleep apnea may increase risk of suicide, which is life-threatening.

Additional documents were also attached indicating quantitative clinical benefit.

Panel Analysis

Section 62 Regulation – general health supplements

Section 62 of the Regulation states the minister may provide any health supplement set out in section 3 *[medical equipment and devices]* of Schedule C for a family in receipt of disability assistance. Ministry records show the appellant is in receipt of disability assistance.

As the ministry is satisfied that subsections 3(1), (2.1) and 3.9(2)(a) and (b) in Schedule C have been met, the panel will focus its reasons on subsection 3.9(2)(c) of Schedule C and Section 69, the criteria that the ministry states are not met.

Subsection 3.9(2)(c), Schedule C, Regulation

Subsection 3.9(2)(c) states the minister must be satisfied that the item is medically essential for the treatment of moderate to severe sleep apnea. The panel notes in the Breathing Device Request and Justification Form, the appellant's doctor states the appellant's medical condition is "mild" obstructive sleep apnea.

As the doctor has assessed the appellant's obstructive sleep apnea as "mild" and there is insufficient evidence to suggest the obstructive sleep apnea has been assessed at any other level of severity, the panel finds the ministry decision that Section 3.9(2)(c) of Schedule C of the Regulation, has not been met, reasonable. Section 3.9)(2)(c) requires that the minister is satisfied that the item is medically essential for the treatment of "moderate to severe" sleep apnea.

Section 69, Regulation – life-threatening health need

Section 69 states the minister may provide any health supplement in section 3 *[medical equipment and devices]* of Schedule C, if the health supplement is provided for a person who is otherwise not eligible for the health supplement under this Regulation, if the minister is satisfied that the person faces a direct and imminent life-threatening health need and sections 3 to 3.12, in Schedule C are met.

As ministry records show the appellant is in receipt of disability assistance and so would otherwise be eligible (if all other conditions were met), the panel finds the appellant cannot be considered eligible for a health supplement under section 69 of the legislation.

In addition, the panel finds although the doctor states the combination of exacerbated pain and depression are risk factors for suicide, they also state that treatment of sleep disordered breathing, benefits these conditions, untreated obstructive sleep apnea may worsen the ability to control pain, the disease is associated with serious potential complications if left untreated and fatty liver confers additional cardiovascular risk.

The panel finds words such as, "benefits" "may worsen", "potential complications" and "risk", do not have the same meaning as "direct and imminent life-threatening".

As well, as section 69 also states that sections 3 to 3.12 in Schedule C must be met, and the panel has determined that the ministry reasonably determined that section 3.9(2)(c) of Schedule

C of the Regulation has not been met, it follows that section 69 of the Regulation cannot be met as well.

Conclusion

In conclusion, the panel finds the ministry's Reconsideration Decision that determined the appellant is not eligible for a health supplement - a two-month Continuous Positive Airway Pressure trial, was a reasonable application of the legislation in the circumstances of the appellant.

The panel confirms the ministry's decision. The appellant's appeal is not successful .

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Regulation

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...

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

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.

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.

APPEAL NUMBER 2024-0305

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 Connie Simonsen	
Signature of Chair	Date (Year/Month/Day) 2024/09/10

Print Name Mimi Chang	
Signature of Member	Date (Year/Month/Day) 2024/09/10
Print Name Warren Fox	
Signature of Member	Date (Year/Month/Day) 2024/09/13