

Reasons for Decision:

Order # AP1920-0290

On <date removed>, <name removed> filed an appeal of the Director's decision to deny funding for a Libre Freestyle Reader/Sensor. The decision was communicated in a letter dated <date removed>.

The decision letter stated funding had been denied because any testing method other than lancets and testing strips was not considered basic and essential.

At the hearing, the Department referenced its written report entered as evidence. The Department stated that funding was denied because lancets and testing strips provided the same outcome as the blood glucose meter, and therefore the meter was not basic and essential. The Department noted that Pharmacare does not fund the meter either.

The Department noted that the Board has upheld the Department's position on this particular blood glucose meter model in other appeals.

<name removed> was assisted at the hearing by <name removed>, case manager at New Directions, and accompanied by their parents, <names removed>.

The advocate told the Board <name removed> began using the Libre Freestyle Reader/Sensor in <date removed>. The meter was given to them on a trial basis by their doctor. At present, the monthly cost of the sensors, which is approximately <amount removed>, is being funded by the appellant's parents. The parent noted the meter produces trend graphs, which the doctor downloads at their office.

The advocate told the Board that <name removed> experienced numerous diabetes-related hospital visits prior to using the meter. In <year removed>, <name removed> required eight hospital visits (three by ambulance). In <year removed>, the appellant required four hospital visits, with one episode resulting in a significant injury. In <year removed>, the appellant experienced six incidents, with four requiring an ambulance trips. In the first four months of <year removed>, the appellant experienced three incidents, with two requiring an ambulance trip.

The advocate noted that, since beginning use of the meter, <name removed> has not required an ambulance or visited an emergency department. The advocate drew the Board's attention to a letter from <name removed>'s doctor, who asserted that the use of the meter reduced the cost of medical care by several thousand dollars. <doctor's name removed> stated that the denial of the meter jeopardized <name removed>'s health.

The advocate noted that these diabetes-related incidents not only have serious implications for <name removed>'s life and health, but also are a significant drain on health resources. The appellant noted the additional cost to the Department would be approximately <amount removed> per month, which they asserted paled in comparison to the cost of ambulance trips.

The advocate asserted that the meter has a significant advantage over test strips, because it indicates if glucose levels are rising or falling rapidly. They noted that <name removed> was unable to discern on their own if their levels are changing. The meter has reduced their health complications by providing a warning if a problem is developing.

<name removed> told the Board that they preferred to use the meter, as they found it easier to use than lancets and test strips. The appellant asserted that use of the meter has made their life easier, as they do not feel glucose highs or lows.

The parent confirmed that the meter had made a significant difference because of its ability to provide information on the direction of change in glucose levels. They added that the traditional testing kit is bulky, cumbersome and takes time to administer.

The parent told the Board the appellant has been unable to successfully control their glucose level. They noted the appellant has cognitive difficulties, which impede their understanding of complex concepts. <name removed> has been diagnosed with <health conditions removed>.

The advocate asserted that *The Manitoba Assistance Act Regulation* provided the Department with the authority to fund the meter. Specifically, she cited three provisions of Section 9 of Schedule A:

The following amounts are payable to a person in respect of his or her health care:

- (a) essential medical and surgical care;
- (e) such other remedial care, treatment and attention including physiotherapy as may be prescribed by a duly qualified medical practitioner;
- (h) such other rehabilitative treatment or care as the director may authorize.

The advocate also noted that the Department's own policy circulars outline the Department's discretionary powers.

In response to a question from the Board, the Department stated <name removed> receives <amount removed> at the beginning of the month and <amount removed> in the middle of the month for basic needs, not including rent. Each month they receives <amount removed> for basic needs, <amount removed> for Assistance for Persons with Disabilities, <amount removed> for a health telephone and <amount removed> for a <text removed> diet.

The Department noted <name removed> receives 50% of the standard basic needs for persons with disabilities because they are in a residential care setting, and their meals are covered. <name removed> stated they also earns <amount removed> bi-weekly from work.

The advocate noted that the funding for health telephone and the <text removed> diet are based on the cost of those items, and is not available for other expenses. <name removed>'s monthly basic needs funding totals <amount removed>, and their sensor expenses are approximately <amount removed>.

In response to a question from the Board, the parent stated the appellant graduated with a modified Grade 12 diploma.

<name removed> told the Board they use the meter a minimum of four times per day. <name removed> deferred to their parent when asked about the steps they take when the meter indicates their glucose level is rising or falling. The parent told the Board the appellant still consults with their parents on how to react when their levels are high or low.

In response to a question from the Board, the Department stated it has not granted funding for uncovered medical expenses as the result of extenuating circumstances in the past. The Department stated it only covers medical needs that are covered by Manitoba Health, Pharmacare, or that have Exception Drug status.

The Board agrees that the sections of *The Manitoba Assistance Regulation* cited by the advocate provided flexibility to the Department to determine what services may be funded. The Board notes that subsections (a) through (d) of Section 9 use the term "essential", while the remedial treatments in subsection (e) and (h) are not limited by that term.

The Board notes *The Manitoba Assistance Act* and *The Manitoba Assistance Act Regulation* are silent on the issue of blood glucose monitoring. The Department's administration of requests for testing devices or supplies is based almost entirely in policy, under the broad authority of the Director to determine basic needs.

The Department has set bounds on its authority through its policy. Specifically, the Department will fund only basic and essential needs, and the Department will not fund any device or supply that provides the same outcome as lancets and test strips. The Department's implicit rationale appears to be that lancets and test strips meet basic and essential needs, and any other testing device or supply constitutes an enhancement.

The question for the Board is whether the Libre Freestyle Reader/Sensor is a basic and essential need for <name removed>. Their support team argued that it was basic and essential, because the use of the device all but eliminated the number of life-threatening incidents experienced by <name removed>. Their support team also argued that denial

of the meter was a false economy, because the amount of money expended by the Department on ambulance fees and by the Manitoba Government on hospital costs exceeded the incremental monthly cost of the meter.

The Board notes the *Regulation* provides authority for the Director to fund the meter. However, the Department has restricted its authority with an internal policy that bars funding for the meter, without considering the individual circumstances of the recipient making the request for funding.

The Board has the power to make any decision the Director has the power to make. The Board is not bound by any internal restrictions the Director may place on their own powers. However, the Board recognizes the important role policy has in ensuring large programs are administered efficiently and equitably. Generally, the Board defers to Department policy except where the individual circumstances of an appellant differ so markedly from other recipients as to warrant an exception.

The Board notes there are three factors to consider when determining if their situation warrants an exception:

1. The appellant lives with certain disabilities that hinder their ability to be aware of their glucose levels and to react to rapid changes;
2. Their financial ability to self-fund the incremental costs is limited by fact they receives the reduced basic needs rate for recipients in a residential shelter; and
3. The Board heard undisputed evidence that there were significant financial costs to the Department and the Government when <name removed> was not using the meter.

Based on the evidence presented to it, including the three distinguishing factors noted above, the Board determines that the Libre Freestyle Reader/Sensor is a medically necessary service for <name removed>. Therefore, the Board rescinds the decision of the Director and orders the Department to provide the appellant with a Libre Freestyle Reader/Sensor, including funding the monthly cost.

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