

PART C – Decision under Appeal

The decision under review is the ministry's reconsideration decision dated January 23, 2012, which discontinued a supplement provided to the appellant under section 62 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) and Schedule C, section 2(3) of the EAPWDR. Specifically, the ministry determined that conditions on which the minister had originally decided to provide funding for the appellant's ongoing psychotherapy were no longer met, so the ministry denied further funding.

PART D – Relevant Legislation

Employment and Assistance for Persons with a Disability Regulation, (EAPDWR), section 62
EAPWDR Schedule C, section 2(3)

PART E – Summary of Facts

The evidence before the minister included the following:

1. The appellant has a condition known as a Non-verbal Learning Disorder (NVLD) as confirmed by the appellant's physician Dr. R by letter dated December 1, 2011. At all relevant times the appellant has been and continues to be a recipient of disability assistance.

According to a document submitted to the ministry by the appellant's counsellor and representative, H, titled Summary of Characteristics and Recommendations for Working with Adults Diagnosed with Nonverbal Learning Disabilities, NVLD is characterized by:

- *Bilateral tactile perceptual deficits. With age may come an increasing unwillingness to try new things involving touch or manipulation.*
 - *Bilateral psychomotor-coordination deficiencies.*
 - *Outstanding deficits in visual-spatial organizational abilities.*
 - *Very well developed rote verbal capacities along with well-developed rote verbal memory skills.*
 - *Extreme difficulty adapting to new or novel situations especially of a more complex nature.*
 - *Outstanding deficiencies in mechanical arithmetic as compared to proficiencies in reading.*
 - *Verbosity of a repetitive straightforward rote nature.*
 - *Significant deficits in social perception, social judgment and social interaction skills.*
2. It was the evidence of both the appellant and the appellant's counsellor and representative, H, that the appellant also suffers from depression, anxiety, and obsessive compulsive tendencies.
 3. On February 22, 2002, a decision of the then BC Benefits Tribunal (the 2002 Tribunal) held that "Psychotherapy is a health care service necessary for [the appellant] in a life-threatening situation, as verified by his physician, and he has no other sources of funding for this." The effect of this decision was that the appellant was eligible for funding provided under the then Disability Benefits Program Regulation BC Reg. 79/97, Schedule C section 2(3). On appeal by the ministry, this decision was upheld by the BC Benefits Appeal Board for the Province of British Columbia on May 29th, 2002.
 4. In making its decision, the 2002 Tribunal relied heavily on evidence from the appellant's physician Dr. R, and the appellant's therapist, Dr. W, that the appellant's life would be at risk without the appropriate counselling or psychotherapy.
 5. Evidence relied upon by the 2002 Tribunal included the following:
 - *[The appellant] would benefit from seeing [Dr. W] for psychological counselling. (Dr. R, July 5, 2001).*
 - *[The appellant] has a number of ongoing emotional problems. He requires psychotherapy to deal with these effectively. (Dr. R, October 2001).*
 - *I do not feel that appropriate counselling for [the appellant] is available through the mental health system as it exists in the [local] area and would suggest that he be allowed to continue with the psychological counselling which he is [illegible] from [Dr. W]. (Dr. R, November 21, 2001).*
 - *[The appellant's] problems must be considered potentially life threatening and to deny him this*

therapy would be unconscionable. (Dr. R, January 11, 2001).

6. The appellant underwent psychotherapy with Dr. W from July 3, 2002 to September 23, 2002.

There was then a gap in treatment of more than two years. (On questioning from this panel as to why he stopped seeing Dr. W, the appellant answered that the ministry had only authorized funding for 10 sessions with Dr. W.)

7. The appellant requested funding for psychotherapy treatments again on November 26, 2004. After first denying the appellant's request, the ministry on reconsideration approved further funding on April 5th, 2005.
8. Evidence considered by the ministry in 2005 included the following:
- *Diagnosis: Depression with inadequate food intake and compromised nutritional status. (Dr. R, November 12, 2004.)*
 - *[The appellant] has chronic dysthymia [depression] and recurrent major depression. This is a life threatening illness. He would benefit from ongoing psychotherapy. (Dr. R, November 18, 2004).*
9. At the hearing before this panel, H submitted new evidence consisting of a letter dated February 17, 2012 in which she substantially reiterated information that was before the ministry at reconsideration. There was an attachment to the letter entitled "Young Children's Social Development: A Checklist". The panel provided the ministry representative with a copy of this new evidence by fax. The panel has determined that the new evidence is written testimony in support of information and records that that were before the minister at the time of the decision being appealed and accordingly admitted the evidence in accordance with section 22(4) of the *Employment and Assistance Act*.
10. H has been providing support to the appellant as a Community Support Counsellor since 1994. This consists of two hours a week of assisting and coaching the appellant in doing every day tasks such as shopping, meal planning, cleaning, laundry, recycling, bill paying, banking, support for maintaining personal hygiene, problem solving, trouble shooting as daily challenges come up, supporting exploration and participation in different community programs, social networking, and social/emotional skill building.
11. Although the ministry approved further funding for psychotherapy on April 5, 2005, the appellant did not utilize it for another 11 months. An invoice for counselling services was submitted to the ministry by H on September 10th, 2006 for the period February 28th to August 31st, 2006.
12. H has continued to provide Community Support Counselling to the appellant two hours a week to the present time. The Community Support Counselling is paid for by the appellant's parents. From February 28th, 2006, to the time of the ministry's decision to stop funding for psychotherapy as of September 20, 2011, H had also been providing the counselling treatment which is the subject of this appeal. This counselling was about 1 hour a week on average.

13. On questioning by the panel as to the difference between the Community Support Counselling which she provides, and the counselling for which she is billing the ministry, H advised that the subject counselling is a "direct" counselling, a "deeper" counselling which is aimed more at emotional issues, whereas the Community Support Counselling is aimed more at life skills and interpersonal relationships.
14. H advised the panel that since September 2011, she has been trying to hold some space in her schedule to do some transitional "deep" counselling in anticipation that the ministry's funding won't be renewed, or that if it is renewed it would be on the basis that the ministry might insist on a more credentialed counsellor or psychologist. H also advised that most of the extra time she has been giving to the appellant has been taken up with assisting him with this appeal.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision to discontinue funding for psychotherapy for the appellant on the basis that the conditions under which the funding was originally granted are no longer met.

The statutory criteria for eligibility for the funding are set out in section 2(3) of Schedule C of the EAPWDR:

(3) If the minister provided a benefit to or for a person under section 2 (3) of Schedule C of the Disability Benefits Program Regulation, B.C. Reg. 79/97, the Income Assistance Regulation, B.C. Reg. 75/97 or the Youth Works Regulation, B.C. Reg. 77/97, as applicable, for the month during which the regulation was repealed, the minister may continue to provide that benefit to or for that person as a supplement under this regulation on the same terms and conditions as previously until the earlier of the following dates:

- (a) the date the conditions on which the minister paid the benefit are no longer met;
- (b) the date the person ceases to receive disability assistance.

On the evidence, the legislative criterion regarding provision of the benefit under B.C. Reg. 79/97 is satisfied, as is the criterion that the appellant continues to receive disability assistance.

The remaining criterion - the criterion that is at issue - is whether the conditions under which the minister paid the benefit continue to be met.

Prior to the reconsideration decision which is under appeal, and again during the hearing before this panel, the ministry took the position that it was a condition of the benefit that the funding be for "psychotherapy", and that the deep counselling provided by H is not psychotherapy since H is not a Registered Clinical Counselor (RCC). The appellant, through H, argued that it is not possible to make a generally accepted distinction between counselling and psychotherapy. H did, however, acknowledge that it is within the ministry's discretion to change the qualifications it requires of the individual providing the counselling/psychotherapy services, and argued that funding for these services needs to continue regardless of whether it is H or someone else who delivers the service.

The ministry, in the decision under appeal, found that "The [2002] Tribunal Decision does not provide a definition of psychotherapy, or specify who is to deliver it and in what form." This panel finds that the ministry's conclusion on this issue is reasonable on the evidence and is an express finding that the distinction between "psychotherapy" and "counselling", is not a "condition" upon which the benefit was paid.

The ministry found that the relevant "condition" that must be met is that the appellant's physician is to verify that psychotherapy continues to be necessary for [the appellant] in a life-threatening situation.

The appellant argues that while he may be stable now, he continues to suffer from NVLD, his depression occurs cyclically, and that without the psychotherapy he would revert back to his obsessive behaviours. During those times he questions his value as a human being and whether he should continue living. On behalf of the appellant, H argued that even with the deep counselling that the appellant has been receiving, he still cycles into suicidal thoughts at least once a year and then has to go on suicide watch at the local hospital. In the new documentation provided at the hearing, H argued that "The degree of severity of the suicidal ideation, anxiety, and OCD tendencies goes up and down which is common with these health conditions and which [the appellant's] doctor, Dr. R. is still treating [the appellant] for. These facts continue to meet [the conditions on which the minister paid the benefits]."

The panel finds that the ministry's decision that the physician's verification is a "condition" that must be met in addition to the existence of a "life-threatening situation" is not unreasonable. It's clear that the 2002 Tribunal relied heavily on Dr. R's opinion in reaching its conclusion that "Psychotherapy is necessary for [the appellant] in a life threatening situation." This panel, too, is inclined to give Dr. R's evidence significant weight. The appellant has been under Dr. R's care for many years and Dr. R is thoroughly familiar with the appellant's diagnosis and circumstances. On questioning by the panel, the appellant advised that he sees Dr. R monthly or sometimes every two weeks, and that he most recently saw Dr. R on January 19, 2012. The panel feels that Dr. R can provide a more objective opinion as to the risk to the appellant's life given that he is very familiar with the appellant's condition, and yet doesn't spend as much time with the appellant as does H who is with the appellant at least two hours a week, and who also has a financial interest in the outcome. The latter observation is not intended in any way to impugn H's motivation.

During both the 2001/02 and 2004/05 time periods, Dr. R was very clear regarding the life-threatening nature of the appellant's condition. By contrast, Dr. R's letter of December 1, 2011 is brief, and contains no reference to the proposition that the appellant's life is at risk: "[The appellant] has a non verbal leamig [sic] disorder. He has a number of psychological issues around this. It is my opinion that he would benefit from ongoing psychological counselling and support."

On January 18, 2012 the ministry expressly asked Dr. R for clarification as to whether "psychotherapy continues to be necessary for [the appellant] in a life-threatening situation." Dr. R replied that: "If [the appellant] does not receive ongoing counselling and support he is at risk of significant malnutrition and other complications related to a disorganized, chaotic existence." It's apparent to the panel that Dr. R does not identify the same life-threatening risk presently that he did in 2001/02 and 2004/05. The risks that he does identify appear to be more related to the benefits that can be achieved from the Community Support Counselling that H provides rather than the "deep counselling" or psychotherapy that are the subject of this appeal.

This conclusion is indirectly supported by the evidence of the appellant's parents in the form of a letter that was before the minister. In their letter marked as being received by the ministry on December 2, 2011, the parents detail the benefits that have accrued to the appellant under H's care. These benefits include increased confidence and dealing with problems such as personal banking, the purchase of foods and the preparation of meals, his general interpersonal relationships with other people, and his capacity to function on his own. The appellant's parents express the view that more needs to be done to bring the appellant to the status of an independent citizen, and the fear that if H's direction and guidance are withdrawn the appellant may regress from the status he has now attained.

The panel discerns no reference to a life-threatening risk.

The 2002 Tribunal decision was based substantially on the evidence of Dr. R. Dr. R, even when expressly asked does not currently confirm that the appellant's condition puts his life at risk. Given that Dr. R has been involved with two previous rounds of decision-making by the ministry and is familiar with the process and criteria, and based on the panel's conclusion that Dr. R's evidence is likely to be more objective and worthy of significant weight, we find that the ministry's decision that the "conditions on which the minister paid the benefit" are no longer met was reasonably supported by the evidence.

Accordingly, the ministry's decision is confirmed, as per section 24(2)(a) of the *Employment and Assistance Act*.