

**PART C – Decision under Appeal**

In a reconsideration decision dated 29 March 2012, the Ministry denied the Appellant 's request for the cost of laser treatment for toe nail fungus because the treatment does not meet the legislated criteria as health or nutritional supplements as set out in EAPWDR, Schedule C or Section 67(3).

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 62(1)  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 67(3)  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C

## PART E – Summary of Facts

The Appellant did not attend the hearing. After confirming that the Appellant had received notification of the hearing, the Panel proceeded with the hearing, pursuant to EAR, Section 86(b).

The evidence before the Ministry at the time of the reconsideration decision included a letter dated January 17, 2012 from a podiatrist that states the Appellant has nail fungus in all ten toe nails, that the Appellant is not a candidate for oral treatment because of his Hep C and that he would like to provide a "New Health Canada Approved (2011) laser treatment" for it. He concludes that the cost of the treatment is \$750.

In the request of reconsideration the Appellant states his nails keep falling off and that he has pain and bleeding. He says there is no other way for his nails to get better.

In the Notice of Appeal, the Appellant reiterates that this is the only treatment to help with his toe nails, the he needs help to stop the pain and suffering and that he does not know the long term outcome without this treatment.

The Ministry states the Appellant is a recipient of assistance with PWD designation and is eligible to receive health supplements however a review of all the eligible health supplement legislation revealed that this specific treatment procedure did not fall into any of the legislated guidelines within the EAPWDR, Schedule C.

At the hearing the Ministry stated it does not have the legal authority to provide the cost for medical treatments not included in the legislated guidelines. The Ministry clarified that the guidelines allow only for "non surgical" podiatrist treatments and stated its understanding of the laser treatment is that it involves anesthetic and is a surgical procedure.

The Panel finds from the evidence presented that:

- the Appellant is a recipient of assistance with PWD designation and as such is eligible for health supplements,
- a podiatrist referred the Appellant for the laser treatment for toe fungus at a cost of \$750.

## PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the Ministry to deny the Appellant's request for the cost of laser treatment for toe nail fungus because the treatment does not meet the legislated criteria as health or nutritional supplements as set out in EAPWDR, Schedule C and Section 67. The criteria for these supplements are set out in the EAPWDR, Section 62 (1), Section 67(3) and Schedule C (relevant parts) as follows:

**Section 62 (1)** *Subject to subsections (1.1) and (1.2), 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 family unit if the health supplement is provided to or for a person in the family unit who is*

*(a) a recipient of disability assistance*

**Section 67 (3)** *The minister may provide a nutritional supplement for a period of 3 calendar months to or for a family unit if the supplement is provided to or for a recipient of disability assistance or a dependent child of a recipient of disability assistance if*

*(a) the recipient or dependent child is not receiving a supplement under subsection (1) of this section or section 2 (3) of Schedule C, and*

*(b) a medical practitioner or nurse practitioner confirms in writing that the recipient or dependent child has an acute short term need for caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from*

*(i) surgery,*

*(ii) a severe injury,*

*(iii) a serious disease, or*

*(iv) side effects of medical treatment.*

### **Schedule C – General Health Supplements**

**2 (1)** *The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 [general health supplements] of this regulation:*

*(a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:*

*(i) the supplies are required for one of the following purposes:*

- (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;

(ii) the supplies are

- (A) prescribed by a medical practitioner or nurse practitioner,
- (B) the least expensive supplies appropriate for the purpose, and
- (C) necessary to avoid an imminent and substantial danger to health;

(iii) there are no resources available to the family unit to pay the cost of or obtain the supplies.

(b) Repealed. [B.C. Reg. 236/2003, Sch. 2, s. 2 (b).]

(c) subject to subsection (2), a service provided by a person described opposite that service in the following table, delivered in not more than 12 visits per calendar year,

(i) for which a medical practitioner or nurse practitioner has confirmed an acute need,

(ii) if the visits available under the Medical and Health Care Services Regulation, B.C. Reg. 426/97, for that calendar year have been provided and for which payment is not available under the Medicare Protection Act, and

(iii) for which there are no resources available to the family unit to cover the cost:

<b>Item</b>	<b>Service</b>	<b>Provided by</b>	<b>Registered with</b>
1	acupuncture	acupuncturist	College of Traditional Chinese Medicine under the Health Professions Act

2	<i>chiropractic</i>	<i>chiropractor</i>	<i>College of Chiropractors of British Columbia under the Health Professions Act</i>
3	<i>massage therapy</i>	<i>massage therapist</i>	<i>College of Massage Therapists of British Columbia under the Health Professions Act</i>
4	<i>naturopathy</i>	<i>naturopath</i>	<i>College of Naturopathic Physicians of British Columbia under the Health Professions Act</i>
5	<i>non-surgical podiatry</i>	<i>podiatrist</i>	<i>College of Podiatric Surgeons of British Columbia under the Health Professions Act</i>
6	<i>physiotherapy</i>	<i>physiotherapist</i>	<i>College of Physical Therapists of British Columbia under the Health Professions Act</i>

*(d) to (e) Repealed. [B.C. Reg. 75/2008, s. (a).]*

*(1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.*

*(2) No more than 12 visits per calendar year are payable by the minister under this section for any combination of physiotherapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services.*

*(2.1) If eligible under subsection (1) (c) and subject to subsection (2), the amount of a general health supplement under section 62 of this regulation for physiotherapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services is \$23 for each visit.*

*(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.

## **2.1 Optical Supplements**

## **2.2 Eye Exam Supplements**

## **3. Medical equipment and devices**

**Section 3(2)** For medical equipment or devices referred to in sections 3.1 to 3.8, 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.

**Sections 3.1- 3.11** as follows:

**Medical equipment and devices – canes, crutches and walkers**

**Medical equipment and devices – wheelchairs**

**Medical equipment and devices – scooters**

**Medical equipment and devices – bathing and toileting aids**

**Medical equipment and devices – hospital bed**

**Medical equipment and devices – pressure relief mattresses**

**Medical equipment and devices – floor or ceiling lift devices**

**Medical equipment and devices – positive airway pressure devices**

**Medical equipment and devices – orthoses**

**Medical equipment and devices – hearing aids**

## **4. Dental Supplements**

**5. Emergency Dental****6. Diet Supplements****7. Monthly Nutritional Supplements****8. Natal Supplements****9. Infant Formula**

The Ministry argues that laser treatment for toe nail fungus is not eligible as medical equipment and devices as defined in Schedule C, Section 3 or as medical or surgical supplies as defined in Schedule C, Section 2(1)(a) or as a nutritional supplement as defined in Section 67(3). Furthermore under Section 2(1)(c) an acute need for the non- surgical podiatrist treatment must be confirmed by a medical practitioner or nurse practitioner and the podiatrist has not been established as either. The Ministry also argues the treatment cannot be defined as non- surgical podiatry therapy. The Appellant argues this treatment is approved by Health Canada, has been recommended by his podiatrist and is the only treatment that will help him.

Because the request by the Appellant is a treatment not a piece of equipment, device or a medical or surgical supply, the Panel finds the Ministry reasonably determined that the laser treatment does not fall within the description of medical equipment and devices as defined in EAPWDR, Schedule C, Section 3.1 – 3.11 or a description of medical or surgical supplies as defined in EAPWDR, Schedule C, Section 2(1)(a) or supplements as defined in Sections 2.1, 2.2 and 4 through 9, or as a nutritional supplement as defined in Section 67(3). In this case, there is no submitted prescription from a medical practitioner or a nurse practitioner, or no submitted assessment by an occupational therapist or physical therapist therefore the Panel finds the Ministry reasonably determined that the treatment does not meet the criteria for medical equipment and devices as set out in EAPWDR, Schedule C, Section 3(2).

The only service specified under Schedule C, Section 2(1)(c) provided by a podiatrist is “non- surgical podiatry”. The information provided regarding the laser treatment does not describe a non-surgical podiatry service therefore the Panel finds the Ministry reasonably determined that the laser treatment does not fall within the description of podiatry services as defined in EAPWDR, Schedule C, Section 2(1)(c).

The Panel finds the Ministry decision was a reasonable application of the applicable enactment in the circumstances of the Appellant and confirms the decision.