

### PART C – Decision under Appeal

Under appeal is the ministry's August 22, 2013 reconsideration decision denying coverage for physiotherapy treatments in addition to the 12 visits in one calendar year provided pursuant to Schedule C of the Employment and Assistance Act for Persons with Disabilities Regulation.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C, General health supplements, 2(1)(c), 2(2).

EAPWDR section 69, Health supplement for persons facing direct and imminent life threatening health need, and the requested health supplement necessary to meet that need.

## PART E – Summary of Facts

The evidence before the ministry at reconsideration was

- The appellant is a recipient of disability assistance, eligible to receive health supplements
- An April 16, 2013 letter from the ministry to the appellant approving 12 physiotherapy visits in excess of those funded by the Medical Services Plan. The visits were to be provided between April 16 and December 31, 2013.
- A July 3, 2013 letter from the appellant's physician stating the appellant was having physiotherapy because of a balance problem resulting from surgery, that she required more treatments, and supporting the appellant's request for funding of her ongoing physiotherapy treatments.
- A July 8, 2013 letter from a physiotherapist saying that in consultation with the family physician it is recommended that the appellant continue treatments to assist with her balance, neck flexibility and gait training for an extended 20 treatments over a 6 to 8 week period.
- An August 21, 2013 a letter from another physiotherapist at the same clinic, saying that in consultation with the family physician it is recommended that the appellant continue receiving life altering interventions to assist with her balance, neck flexibility and gait training for an extended 20 treatments over a 6 to 8 week period.
- An August 21, 2013 letter from the appellant's physician supporting the appellant's appeal for funding for continuing physiotherapy for her chronic neurological deficit following craniotomy and revision of craniotomy, saying the physiotherapy helps the appellant with her balance and lessens the possibility of a fall and injury to her head.
- The Employment and Assistance request for reconsideration form signed August 8, 2013 by the appellant, who states she needs more physio, that she had a tumor removed from her brain and that she had no balance on her right side.

In her notice of appeal signed August 27, 2013, the appellant states "Without this medical treatment, I will be unable to regain balance and motor skills. My doctor and physiotherapist have stated that the procedures are medically required and life-altering."

At the hearing the appellant's advocate acknowledged the physiotherapy treatment coverage was "maxed out", but referring to the August 21, 2013 physiotherapist report and the August 21, 2013 report from the appellant's physician, he argued that without further treatments the appellant's life was put in danger. The appellant has had two surgeries, having a tumor removed from her brain and a metal plate inserted in her head, resulting in deficits requiring the appellant to re-learn physical and motor skills and to walk again. She has not yet regained complete balance and motor skills. Her doctor has recommended follow up with the neurosurgeon. The advocate described the dangers of living in a northern community in winter. The appellant relies on walking and public transit, and when walking on ice and snow she is at risk of serious injury. Even at home she must be careful to avoid risking injury.

The appellant said she had two back-to-back surgeries, the second to insert the steel plate. She has a November 4, 2013 appointment with the neurosurgeon. She does some home-based exercises, but other physiotherapy treatments need supervision and equipment not available at home. She had some needles in her head at a cost of \$100 a time. She runs into things because of lack of coordination. She uses a cane. Additional physiotherapy treatments would be two or three times a week.

The ministry representative said the applicable legislation is specific, and does not take into consideration life-altering or life threatening conditions. In the new year the benefits would start over. She did not view the need for physiotherapy treatments as life threatening, and said Section 69 did not apply to physiotherapy.

The advocate said he did not see where Section 69 would exclude health supplements, and argued that life altering or life threatening could apply in the appellant's circumstances.

The appellant added she cannot go down stairs without rails or assistance, and is asking for more help so she can get better. She is not working and cannot afford the treatments.

The panel determined the additional oral evidence was admissible under section 22(4) of the Employment and Assistance Act as it was in support of the records before the ministry at reconsideration.

## PART F – Reasons for Panel Decision

The issue is the reasonableness of the ministry's denial of coverage for physiotherapy treatments in addition to 12 visits in one calendar year as a health supplement specified in Schedule C of the EAPWD Regulation.

### Relevant Legislation

#### **Employment and Assistance for Persons with Disabilities Regulation Schedule C (excerpts)**

##### **(i) 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...and

(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;

(a.1) the following medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies...

(a.2) consumable medical supplies, if the minister is satisfied that all of the following requirements are met:

- (i) the supplies are required to thicken food;
- (ii) all the requirements described in paragraph (a) (ii) and (iii) are met in relation to 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:

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

(f) the least expensive appropriate mode of transportation...

Specific to the service of physiotherapy provided by a registered physiotherapist, the EAPWD Regulation, Schedule C, subsection 2(2) reads:

**(2) No more than 12 visits per calendar year are payable by the minister under this section for**

**any combination of physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services.**

**(ii) 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.....

**(iii) Health supplement for persons facing direct and imminent life threatening health need**

69 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 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 3.12, other than paragraph (a) of section 3 (1).

***Discussion***

The legislation funding general health supplements provides that the ministry may pay for up to 12 medically required physiotherapy treatments per calendar year, in addition to treatments funded under the Medical Services Plan.

Separately, Section 69 "*Health supplement for persons facing direct and imminent life threatening health need*" funds health supplements for specified medical or surgical supplies, transportation and medical equipment and devices, in cases of direct and imminent life threatening need.

The appellant argues that as a result of post surgery motor and balance problems, she is at risk of serious and possibly life threatening injury aggravated by severe winter condition in her community, and should qualify for funding of additional physiotherapy treatments.

The ministry argues the applicable legislation is specific in limiting the number of treatments to 12 per calendar year, that there is not a life threatening need, and that Section 69 does not apply to physiotherapy treatments.

The panel finds the ministry's decision was a reasonable application of the applicable enactment, as the legislation does not provide for additional funding for physiotherapy treatments beyond 12 per calendar year, that Section 69 does not apply to physiotherapy treatments. The panel confirms the decision.