

APPEAL #

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated July 8, 2014, which found the Appellant ineligible for provision of a health supplement, psychotherapy, because it is not an eligible health supplement listed among those that may be provided under Section 2 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 62; Schedule C, Section 2(1).

## PART E – Summary of Facts

Information before the Ministry at reconsideration included:

- A copy of a letter from the Ministry to the Appellant dated May 29, 2014, advising him that his request for a health supplement had been denied.
- A copy of a letter from the Appellant's physician dated May 12, 2014, addressed To Whom It May Concern, stating that the Appellant suffers from chronic anxiety, PTSD and depression, that he is receiving psychotherapy from a private counsellor and seems to be deriving benefit from therapy, but he is unable to afford it.
- The Appellant's Request for Reconsideration, dated June 26, 2014, with cover letter and an appendix.

At the hearing the Appellant submitted a bound package of documents under reference tabs 1 to 7. The Appellant asked that the material under Tab 7, a letter from his physician dated July 16, 2014 stating that he has multiple medical difficulties including PTSD and associated anxiety and depression, that he is currently receiving psychotherapy and that it is strongly advised that he continue to do so, be admitted as evidence and the remainder of the material be regarded as part of his submission. The Panel determined that the item numbered as Tab 7 was admissible under s. 22(4) of the EAA as it was in support of the records before the minister at reconsideration. The Panel accepted the Appellant's submission that items numbered 1 to 6 be regarded as argument, not evidence. The Ministry had no objection to the admission of the document.

The Appellant argued that the Ministry representative at the hearing should not be a person who was involved in making the reconsideration decision. He argued that he asked the Ministry directly at the start of the hearing whether he had been involved in the decision-making process, and was told that he was not; however, later it was stated by the Ministry that he had prepared the reconsideration package which was mailed to the Appellant, but had no part in the actual reconsideration decision. The Panel finds that involvement of the Ministry representative in preparation of the decision package is not participation in the decision making process and does not constitute bias on their part in attending the hearing. The role of the Ministry at the hearing is to represent the point of view of the Ministry.

The Appellant referred to the letter dated July 16, 2014, which states that his physician strongly advises that he continue with psychotherapy and asked that he be accommodated under the B.C Human Rights Code.

In response to a question from the Panel, the Ministry stated that they make no submission with respect to the Human Rights Code.

**PART F – Reasons for Panel Decision**

The issue in this appeal is the reasonableness of the Ministry's reconsideration decision dated July 8, 2014, which found the Appellant ineligible for provision of a health supplement, psychotherapy, because it is not an eligible health supplement listed among those that may be provided under Section 2 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation.

**Legislation**

*EAPWDR*

**General health supplements**

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...

*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:...

- (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:

Item	Service	Provided by	Registered with
1	acupuncture	acupuncturist	College of Traditional Chinese Medicine under the <i>Health Professions Act</i>
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the <i>Health Professions Act</i>
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia under the <i>Health Professions Act</i>
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia under the <i>Health Professions Act</i>
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia under the <i>Health Professions Act</i>

6	physical therapy	physical therapist	College of Physical Therapists of British Columbia under the <i>Health Professions Act</i>
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The Appellant's position is that the Ministry does have discretion to supply the requested health supplement as an accommodation under the B.C. Human Rights Code. The Appellant argued that a licensed medical practitioner in the Province of British Columbia has strongly advised that he continue psychotherapy, and that even if the legislation does not normally cover such a service, it should be regarded as a request for accommodation due to mental disability under the Code, and denying it is discriminatory.

The Ministry's position is that there is no provision in legislation to provide psychotherapy as a health supplement, and there is no discretion available under the legislation to allow them to do so. The Ministry argued that psychotherapy is not listed as one of the services that may be provided under Section 2 of Schedule C of the EAPWDR; therefore there is no legal authority to provide it, and the legislation does not confer discretion to the Minister to provide it. In response to a question from the Appellant, the Ministry stated that the words Ministry and Minister are used synonymously.

With respect to the Appellant's argument concerning the provisions of the B.C. Human Rights Code, the Panel notes that section 19.1 of the Employment and Assistance Act states that section 46.3 of the Administrative Tribunals Act applies to the tribunal. Section 46.3 of the Administrative Tribunals Act states that the tribunal does not have jurisdiction to apply the B.C. Human Rights Code.

The Panel notes that the list of health supplements that may be provided under Section 2(1)(c) of Schedule C, EAPWDR is definitive, with no provision for discretion, and does not include psychotherapy. The Panel therefore finds that the Ministry reasonably denied the Appellant's application for psychotherapy as a health supplement because it is not an eligible health supplement listed among those that may be provided under Section 2(1)(c) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation.

The Panel therefore confirms the Ministry's decision as a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.