

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision dated October 20, 2015 wherein the ministry denied the appellant’s request for reimbursement for the cost of treatment of an ingrown toe nail (the “Treatment”). The appellant is a recipient of disability assistance, and the ministry determined that the appellant was not eligible for the reimbursement as the Treatment did not satisfy legislative criteria:

- as an extended therapy, as provided in section 2(1)(c), 2(2) and 2(2.1) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”). In particular, the ministry found that the treatment was not non-surgical podiatry, was not prescribed by a medical or nurse practitioner, there was no evidence as to whether therapy visits under the *Medicare Protection Act* had been utilized, and the cost exceeded the statutory limit of \$23.00 per visit;
- as a medical supply, as provided in sections 2(1)(a), (a.1) or (a.2) of Schedule C;
- as medical equipment or devices, as provided in sections 3 to 3.12 of Schedule C; or
- as a health supplement for a person facing a direct and imminent life threatening need under s. 69 of the EAPWDR.

PART D – Relevant Legislation

EAPWDR section 69 [*health supplement for persons facing direct and imminent life threatening health need*]; and Schedule C.

PART E – Summary of Facts

With the consent of the parties the hearing was conducted in writing in accordance with section 22(3) of the *Employment and Assistance Act*.

The information before the ministry at the time of reconsideration included the following:

- An invoice – dated July 30, 2015 – in the amount of \$152.00 from a foot specialist in respect of the Treatment.
- The appellant’s written reconsideration submission, included with his Request for Reconsideration form dated September 25, 2015.
- A letter from the foot specialist dated October 5, 2015.
- A three page paper (the “Paper”) giving a description of nail avulsion, titled “Surgical Therapy – Nail avulsion”. It explains that nail avulsion essentially is removal of the nail from its attachments, stating that nail avulsion is “the most common surgical procedure” performed on the nail unit. The Paper also refers to a non-surgical form of nail avulsion by using urea paste, “...ideal for the treatment of [nail degeneration] in patients with diabetic neuropathy, vascular disease, or immunosuppression.” There is no indication of the source of the Paper.

For the purposes of this hearing the appellant made the following submissions:

1. A written submission in his Notice of Appeal which substantially reiterates his reconsideration submission.
2. A letter from his social worker dated October 29, 2015. In the letter the social worker supported the appellant’s descriptions of the emergency nature of the Treatment and attempts made by the appellant to seek the ministry’s approval prior to the Treatment.

The panel finds that the appellant’s submissions are consistent with and tend to corroborate information that was before the ministry at the time of reconsideration. Accordingly the panel as accepted both documents into evidence in accordance with section 22(4) of the *Employment and Assistance Act*.

The panel has assessed the evidence as follows:

On July 29, 2015 the appellant was seen by a physician at a clinic regarding a painful and infected ingrown toe nail. The physician provided the appellant with a prescription for pain medication and advised him to see a podiatrist. The following day the appellant was in extreme pain. He had no transportation to get to the ministry’s office for approval and, according to the appellant’s reconsideration submission, he is frequently unsuccessful in reaching anyone at the ministry by telephone. The appellant bicycled the short distance to the foot specialist’s office.

In his letter of October 5, 2015 the foot specialist described an acute presentation of nail infection with areas of yellow, necrotic tissue. He provided the Treatment, consisting of anesthesia of the infected toe and a partial nail avulsion, and also prescribed a five day course of antibiotics. The foot specialist stated that if left untreated the infection would have worsened and correcting the nail would

have been more challenging.

In her letter of October 29, 2015 the social worker stated that:

- The Treatment was an emergency procedure.
- The appellant stated he had tried several times to contact the ministry to get authorization for the procedure but was unable to get through by phone.
- He was in severe pain and distress and the foot specialist recommended he undergo the procedure immediately.

The ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision to deny reimbursement for the Treatment is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was it reasonable for the ministry to determine that the appellant was not eligible for reimbursement based on its finding that the Treatment did not satisfy the legislative criteria:

- as an extended therapy, as provided in section 2(1)(c), 2(2) and 2(2.1) of Schedule C of the EAPWDR. In particular, the ministry found that the treatment was not non-surgical podiatry, was not prescribed by a medical or nurse practitioner, there was no evidence as to whether therapy visits under the *Medicare Protection Act* had been utilized, and the cost exceeded the prescribed limit of \$23.00 per visit;
- as a medical supply, as provided in sections 2(1)(a), (a.1) or (a.2) of Schedule C;
- as medical equipment or devices, as provided in sections 3 to 3.12 of Schedule C; or
- as a health supplement for a person facing a direct and imminent life threatening need under s. 69 of the EAPWDR?

The relevant legislation is as follows:

EAPWDR 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;

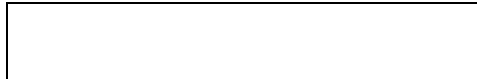
(ii) the supplies are

- (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;

(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:

- (i) lancets;
- (ii) needles and syringes;



(iii) ventilator supplies required for the essential operation or sterilization of a ventilator;

(iv) tracheostomy 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; ...

(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>

Section 2(1.1) of Schedule C, provides that for the purposes of subsection 2(1)(a), "medical or 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 physical therapy 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 physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services is \$23 for each visit.

Section 2(1)(f) of Schedule C provides that the following items are health supplements if the other criteria of the section are met: the least expensive appropriate mode of transportation.

Section 2(3) of Schedule C provides that "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.

Section 2.1 of Schedule C provides that the following are the optical supplements that may be provided under Section 62.1 of the EAPWDR: basic eyewear and repairs, pre-authorized eyewear and repairs.

Section 2.2 of Schedule C provides that the minister may pay a health supplement under Section 62.2 of the EAPWDR for an eye examination if the other criteria of the section are met.

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 by the minister if

- (a) the supplements are provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation, and
- (b) all of the following requirements are met:
 - (i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;
 - (ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
 - (iii) the medical equipment or device is the least expensive appropriate medical equipment or device.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, 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. ...

Section 3.1 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a cane, a crutch, a walker, an accessory to a cane, a crutch or a walker.

Section 3.2 provides that the following items are health supplements for the purposes of section 3 if the other criteria of the section are met: a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair.

Section 3.3 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a wheelchair seating system, an accessory to a wheelchair seating system.

Section 3.4 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a scooter, an upgraded component of a scooter, an accessory attached to a scooter.

Section 3.5 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a grab bar in a bathroom, a bath or shower seat, a bath transfer bench with hand held shower, a tub slide, a bath lift, a bed pan or urinal, a raised toilet seat, a toilet safety frame, a floor-to-ceiling pole in a bathroom, a portable commode chair, a standing frame, a positioning frame, a transfer aid.

Section 3.6 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed, or a positioning item on a hospital bed.

Section 3.7 provides that a pressure relief mattress is a health supplement for the purposes of section 3 of the Schedule if the other criteria of the section are met.

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Section 3.8 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a floor or ceiling lift device.

Section 3.9 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: specified breathing devices.

Section 3.10 provides that each of the following items is an orthosis which is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a custom-made or off-the-shelf foot orthotic, custom-made footwear, a permanent modification to footwear, off-the-shelf footwear required for the prescribed purpose, off-the-shelf orthopaedic footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, a hip brace, an upper extremity brace, a cranial helmet, a torso or spine brace, a foot abduction orthosis, a toe orthosis.

Section 3.11 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hearing instrument.

Section 3.12 provides that a non-conventional glucose meter is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met.

Section 4 of the Schedule provides that the health supplement that may be paid under section 63 [*dental supplements*] are basic dental services, if the other criteria of the section are met.

Section 4.1 provides that the health supplement may be paid under section 63.1 for crown and bridgework, if the other criteria of the section are met.

Section 5 of Schedule C provides that the health supplement that may be paid for under Section 64 of the EAPWDR is emergency dental services.

Section 6 of the Schedule provides that the amount of a diet supplement that may be provided under section 66 [*diet supplements*] is set out for various conditions, if the other criteria of the section are met.

Section 7 of the Schedule provides as follows:

- 7 The amount of a nutritional supplement that may be provided under section 67 [*nutritional supplement*] of this regulation is the sum of the amounts for those of the following items specified as required in the request under section 67 (1) (c):
- (a) for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to \$165 each month;
 - (b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]
 - (c) for vitamins and minerals, up to \$40 each month.

Section 8 of the Schedule provides that the amount of a natal supplement that may be provided under section 68 [*natal supplements*] is set out, if the other criteria of the section are met.

Section 9 of the Schedule provides that the minister may provide infant formula under section 67.1 of the EAPWDR if the other criteria of the section are met.

EAPWDR

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

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- (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) a person in the family unit is eligible to receive 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).

* * *

The appellant's position is that he disagrees with the ministry's reconsideration decision because infection and resulting pain of his ingrown toe nail required the Treatment to be performed immediately. He argued that he attempted to get authorization prior to the Treatment, but could not reach the ministry by telephone and was unable to get to the ministry's office. The appellant relied on evidence from the foot specialist and the social worker to point out that his medical condition would have worsened without the immediate Treatment recommended by the foot specialist.

The ministry, while expressing sympathy for the appellant's circumstances, took the position that the Treatment for which the appellant is requesting reimbursement does not meet the criteria for any of the extended therapies, medical equipment and devices, medical/surgical supplies, or any other health supplement prescribed in Schedule C. Specifically with respect to extended therapies provided in section 2(1)(c) of Schedule C, the ministry argued that that the treatment was not non-surgical podiatry, was not prescribed by a medical or nurse practitioner, there was no evidence as to whether therapy visits were available under the *Medicare Protection Act*, and the cost exceeded the prescribed limit of \$23.00 per visit. Finally, the ministry argued that the evidence does not establish that the appellant met the criteria for a health supplement to meet a direct and imminent life-threatening need as required by section 69 of the EAPWDR.

Panel Decision

The ministry is only authorized to provide health supplements as provided by the legislation. This means that a requested health supplement, such as reimbursement for the Treatment, must fall into one of the categories set out in legislation and must satisfy any relevant statutory criteria. The appellant bears the onus of proving on the balance of probabilities that he satisfies the criteria.

Section 2(1)(c) of Schedule C expressly provides podiatry therapy only if it is non-surgical. Nail avulsion is generally a surgical procedure. There is no evidence to indicate that the non-surgical form of nail avulsion was performed on the appellant, and no evidence that he suffered from a medical condition for which non-surgical treatment was indicated. There is no evidence to indicate that the Treatment was prescribed by a medical or nurse practitioner, or whether reimbursement was available under the Medicare Protection Act. Considering the evidence, the panel finds that the ministry reasonably concluded that the Treatment did not satisfy the legislated criteria for a therapy available under section 2(1)(c) of Schedule C.

In the panel's view, the Treatment does not reasonably meet the definition or criteria for any of the other health supplements prescribed in Schedule C. Accordingly, the panel finds that the ministry

reasonably determined that it could not reimburse the appellant for the Treatment as a health supplement under Schedule C.

The coverage under section 69 of the EAPWDR applies to “a person in the family unit who is otherwise not eligible for the health supplement under this regulation.” As the appellant is a recipient of disability assistance, he is eligible for general health supplements under section 62. Accordingly, section 69 does not apply to him. Furthermore, section 69 expressly applies only to medical supplies and medical transportation as set out in sections 2(1)(a) and (f) respectively of Schedule C of the EAPWDR, and to medical equipment and devices as identified in section 3 of Schedule C. Section 69(d) specifies that the requirements prescribed in those provisions must be satisfied. As found by the panel above, the Treatment does not fit any these categories of prescribed health supplement and so is not covered by section 69. Accordingly, the panel finds the ministry reasonably concluded that the appellant was not eligible for reimbursement for the Treatment under section 69 of the EAPWDR.

Conclusion

The panel acknowledges the appellant’s need for the Treatment, however this panel is bound to apply the legislation as it stands. Based on the foregoing reasons and analysis, the panel concludes that the ministry’s reconsideration decision is a reasonable application of the applicable enactment in the circumstances of the appellant. Accordingly, the ministry’s reconsideration decision is confirmed.