

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) reconsideration decision dated August 31, 2016 in which the Ministry denied the Appellant’s request for a health supplement, specifically, reimbursement for chiropractic services. The Ministry found that the Appellant did not meet the legislative criteria set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, sections 2(1) and 2.1. In particular, the Ministry found that:

- a medical practitioner or nurse practitioner had not confirmed an acute need for the services requested;
- there was no indication that the visits available under the Medical and Health Care Services Regulation for the calendar year had been provided and for which payment was not available under the *Medicare Protection Act*;
- and that the amounts paid for the services provided exceed the amount the Ministry would be authorized to pay if eligibility had been established.

Furthermore, the Ministry found that under section 5 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA), reimbursement cannot be made for payments for services for which the Appellant was not eligible at the time she received them.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 5

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

PART E – Summary of Facts

Information before the minister at reconsideration included:

- A statement from a chiropractor dated March 23, 2016, stating that fees of \$325.00 had been paid for professional services on January 4 and March 23, 2016.
- The Ministry's Extended Medical Therapies Decision Summary dated May 5, 2016.
- A copy of the Ministry's letter to the Appellant informing her of their decision, dated May 5, 2016.
- A copy of an X-ray requisition dated September 16, 2016.
- A statement from a chiropractor dated March 30, 2016, stating that \$45.00 was paid for professional services.
- A copy of a Release of Personal Information form dated April 21, 2016.
- The Appellant's Request for Reconsideration dated August 11, 2016, with a handwritten statement from the Appellant in which she wrote that she urgently needed treatment due to pain but she could not afford the cost of the chiropractic treatments and had to borrow the money to pay for them.

At the hearing the Appellant's husband, as witness, stated that the Appellant was injured by an elevator door when she fell because the elevator did not stop level with the floor. She was taken to hospital by ambulance, where she was treated with morphine for her pain, and the physician recommended chiropractic treatment and physiotherapy. The Panel admitted the witness's statement under section 22(4) of the Employment and Assistance Act as oral evidence corroborating the Appellant's statements to the Ministry.

The Appellant stated that she needed treatment urgently, so she called a chiropractor's office. She stated that she could not afford the cost of the treatments, so she borrowed the money. In response to questions from the Ministry, the Appellant stated that she paid the chiropractor, then submitted the receipts to the Ministry, but she did not submit the receipts to the Medical Services Plan (MSP) because she called them and was told that she was not eligible through MSP. She was told by the chiropractor's office that she had to pay in advance. She stated that she did not have the money to pay the top-up amount above the \$23.00 per visit that MSP would pay.

The Ministry stated that pre-approval is required for extended medical therapies in order to establish that the request meets the legislative criteria. The applicant is asked if they have accessed MSP, and if they say no, they are told to exhaust that benefit first. The applicant is also asked for a medical note and confirmation that the MSP entitlement has been exhausted, before the request is sent to the Health Adjudication Branch for approval. With respect to resources available, the Ministry is willing to take the applicant's word. However, where the bill has been paid, the Ministry presumes there are other resources available to the applicant and there is no reimbursement.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry decision in which the Ministry denied the Appellant's request for a health supplement, specifically, reimbursement for chiropractic services. The Ministry found that the Appellant did not meet the legislative criteria set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, sections 2(1) and 2.1. In particular, the Ministry found that:

- a medical practitioner or nurse practitioner had not confirmed an acute need for the services requested;
- there was no indication that the visits available under the Medical and Health Care Services Regulation for the calendar year had been provided and for which payment was not available under the *Medicare Protection Act*;
- and that the amounts paid for the services provided exceed the amount the Ministry would be authorized to pay if eligibility had been established.

Furthermore, the Ministry found that under section 5 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA), reimbursement cannot be made for payments for services for which the Appellant was not eligible at the time she received them.

Legislation

EAPWDA

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

EAPWDR

General health supplements

62 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) a family unit in receipt of disability assistance,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is a dependent child, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

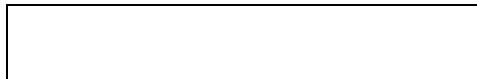
Schedule C

Definitions

1. In this Schedule:

"occupational therapist" means an occupational therapist registered with the College of Occupational Therapists of British Columbia established under the *Health Professions Act*;

"physical therapist" means a physical therapist registered with the College of Physical Therapists of British Columbia established under the *Health Professions Act*;



"physical therapy" has the same meaning as in the Physical Therapists Regulation, B.C. Reg. 288/2008

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>

(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.

Appellant's Position

The Appellant's position is that she needed treatment urgently, and she was told to pay first, then to submit her receipts for reimbursement. The Appellant stated that she does not have the resources to pay the remainder of the bill after the MSP portion of \$23.00 per visit is paid and that the money she did get to pay for the treatments was borrowed from her daughter.

Ministry's Position

The Ministry's position is that the Appellant's request does not satisfy the legislative requirements for approval: the Appellant did not submit information in advance that a medical practitioner or nurse practitioner has confirmed an acute need; there is no confirmation that the Appellant has exhausted her available visits under the *Medicare Protection Act*; and there were other resources available to the Appellant since she did pay the chiropractor's bill.

Panel's Decision

The Panel notes that there is no specific requirement for pre-approval of the payment for this health supplement; however, the Ministry is required to confirm that the criteria for approval have been met. The requirement under section 2(1)(c) is for a medical practitioner or nurse practitioner to confirm an acute need for treatment. There is no evidence that the Appellant forwarded this confirmation to the Ministry, therefore the Panel finds the Ministry reasonably concluded that this requirement was not met.

Section 2(1)(c) of Schedule C, EAPWDR requires that the visits, for which payment under the *Medicare Protection Act* is available, have been provided, before a service described may be provided. There is no evidence that the Appellant accessed these visits. The Panel finds that the Ministry reasonably determined that the Appellant did not meet this requirement.

With respect to whether the Appellant had resources available to meet the expense, the Panel notes the Ministry's statement in the Reconsideration Decision that because the Appellant was able to pay for the treatments, she had resources available. The Panel accepts the Appellant's statement that she borrowed the money to pay for this expense. The ability to incur debt is not equivalent to having resources available. The Panel finds that the Ministry did not reasonably conclude that the Appellant had resources available to meet this expense.

The Panel notes that the Appellant would have received \$23.00 per visit as a supplement under Schedule C, EAPWDR, the same amount as the MSP benefit, and would have had to pay the balance had her application been approved.

The Panel finds that the Ministry reasonably determined that the Appellant did not meet did not meet all of the legislative criteria for approval of the health supplement set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, sections 2(1) and 2.1, and therefore was not eligible for provision of the supplement under section 5, EAPWDA. The Panel therefore confirms the Ministry decision. The Appellant is not successful on appeal.