

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated September 26, 2016 in which the ministry denied the appellant's request for chiropractic/ physiotherapy treatments that were not covered by the BC Medical Services Plan (MSP). The ministry found that all regulatory requirements for extended therapy treatments under subsection 2(1)(c) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) were not met. While the ministry accepted that the appellant is eligible to receive general health supplements as a recipient of disability assistance, the ministry found that there was no evidence that the therapy visits available under MSP for the calendar year had been exhausted as required by subsection 2(1)(c)(ii) of EAPWDR Schedule C.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - section 62 and Schedule C, subsections 2(1)(c), 2(2) and 2(2.1)

## PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following documents:

1. A Request for Reconsideration (RFR) signed by the appellant on August 26, 2016 in which he indicates he is seeing his doctor on August 30, 2016 and needs an extension for his submission.
2. A prescription from a physician dated July 7, 2016 indicating that the appellant continues to require chiropractic treatments for chronic back pain related to past vertebral fractures. The ministry notes that this doctor's note was submitted prior to the reconsideration as the appellant's original request for additional ministry-funded therapies.
3. A letter from a physician dated August 29, 2016 stating that the appellant has acute backache after a fall, has trouble bending and straightening his back, and will require physiotherapy for an acute mechanical backache. The ministry notes that this letter was submitted for the reconsideration.
4. A letter to the appellant from the ministry with attached *Extended Medical Therapies Decision Summary* dated July 26, 2016. The letter denies the appellant's request for health supplements [*chiropractic visits*] and the Decision Summary lists the regulatory criteria for therapies. The ministry notes that ten MSP-funded visits for the calendar year 2016 are available as of January 1, 2016 and the appellant has not provided confirmation that the MSP visits have been accessed.

### *Additional submissions*

The appellant did not attend the hearing. Upon confirming that he had been notified of the hearing date and time, the panel proceeded in his absence under section 86(b) of the Employment and Assistance Regulation. On October 14, 2016, the appellant faxed a statement to the tribunal office, from a physiotherapist, dated January 1 to October 4, 2016 (physiotherapy statement). The statement lists nine "Physiotherapy MSP" visits for the appellant from March 22 to July 4, 2016 at a cost of \$30 per visit.

At the hearing, the ministry stated that it was relying on the reconsideration decision and the ministry does not have any objection to admitting the physiotherapy statement as evidence. The ministry noted that it did not have this particular information at reconsideration and stated that if the ministry had had the information, the Reconsideration Officer might have made a different decision regarding the appellant's eligibility for ministry-funded therapy but the ministry cannot guarantee that the decision would have been different.

In response to questions from the panel regarding the process for applying for ministry-funded therapy sessions, the ministry explained that there is no application form or prescribed process for applying for the funding. The ministry stated that the appellant approached the ministry and asked for the visits to be approved but the ministry requires all of the regulatory criteria to be met before they can approve a health supplement for therapies. The ministry stated that the ministry must pre-approve a request for additional ministry-funded therapy sessions and in the appellant's case,

additional sessions were not pre-approved. The ministry explained that where the sessions are approved, the ministry will pay \$23 per visit for a maximum of twelve sessions and the recipient is required to make up the balance of the cost.

*Admissibility of additional evidence*

Although the ministry had no objection to the physiotherapy statement, the panel finds that it is not admissible under subsection 22(4)(b) of the *Employment and Assistance Act* (EAA) as it is not evidence in support of the information and records before the minister at the time the decision being appealed was made. The panel finds that the physiotherapy statement does not substantiate or corroborate the information that was before the minister as the ministry's decision record indicates that the ministry did not have any information regarding MSP-funded visits as of the date of the reconsideration decision. Furthermore, the information from the appellant prior to his appeal submission does not make any mention of MSP-funded therapy. The panel admits the ministry's oral testimony, finding that it is in support of the information before the minister at reconsideration, providing detail about the ministry's process for administering the appellant's request for additional therapy sessions.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision of September 26, 2016 in which the ministry denied the appellant's request for chiropractic/ physiotherapy treatments that were not covered by MSP was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that all regulatory requirements for extended therapy treatments under subsection 2(1)(c) of Schedule C of the EAPWDR were not met. While the ministry accepted that the appellant is eligible to receive general health supplements as a recipient of disability assistance, the ministry found that there was no evidence that the therapy visits available under MSP for the calendar year had been exhausted as required by subsection 2(1)(c)(ii) of EAPWDR Schedule C.

The ministry was satisfied that the appellant's request for chiropractic / physiotherapy sessions meets the following regulatory criteria that apply to a request for ministry-funded therapies:

### 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.*

The ministry acknowledges that the appellant is eligible to receive health supplements pursuant to section 62 because he is in receipt of disability assistance [*The panel notes a typographical error in the reconsideration decision under Basic Eligibility where the ministry wrote section 2 rather than section 62*].

#### Schedule C – General Health Supplements

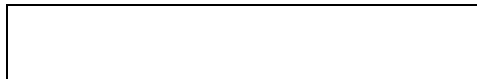
**2 (1)** *The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 [general health supplements] of this regulation*

**(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...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.

The ministry states in the reconsideration decision that more than twelve visits per calendar year have been requested per the physician's note of July 7, 2016 which indicates that the appellant achieves the best result when receiving chiropractic treatments at least once per week. The ministry states that while this would not be a reason to deny the appellant's request, the ministry is only authorized to provide funding for twelve additional visits, at a rate of \$23 per visit.

While the ministry determined in its original decision that the prescription note from a physician confirmed a need for chiropractic treatments for an ongoing back problem, rather than an acute need for treatment, the ministry was satisfied that the letter from a physician dated July 26, 2016, provided for the reconsideration, confirms that the appellant requires physiotherapy for an acute backache. The ministry was therefore satisfied that the criteria in subsections 2(1)(c) and 2(1)(c)(i) of Schedule C were met. The ministry also states in the reconsideration decision that it has been established that the appellant does not have any resources to pay for the cost of physiotherapy sessions beyond the ten sessions that are available under MSP and, therefore, the criterion in subsection 2(1)(c)(iii) was met.

The ministry found at reconsideration that the following criteria under Schedule C were still not met:

**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...

**(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.

*Panel's decision*

The appellant argues in his Notice of Appeal that the ministry did not interpret the legislation correctly. He did not provide an additional explanation. While the ministry states that it is sympathetic with the appellant's circumstances, the ministry's position is that his request for additional ministry-funded therapy sessions does not meet the criteria in subsection 2(1)(c)(ii) of EAPWDR Schedule C because information is not submitted to confirm that the ten visits available under MSP have been utilized. The ministry notes that the appellant's MSP coverage "entitles you to ten combined visits with a chiropractor and/or physiotherapist which are paid by MSP at the rate of \$23 per visit". The ministry argues that "it is only when you have utilized the ten visits available through MSP that you become eligible to apply to the ministry for twelve additional visits at \$23 per session."

The panel finds that the ministry reasonably determined that the criteria in subsection 2(1)(c)(ii) of Schedule C of the Regulation were not met as of the date of the reconsideration decision. This subsection requires the ten visits available under the MSP Regulation to "have been provided" and for payment under the MSP Act to not be available.

While there is no evidence to indicate whether the ministry asked the appellant to provide confirmation of MSP-funded therapy visits for the reconsideration, and the Regulation does not specifically ask for documentation confirming that ten MSP-funded therapy visits have been used, the panel finds that the ministry reasonably required such information in order to determine whether the MSP-funded visits "have been provided" as set out in subsection 2(1)(c)(ii) of Schedule C. The ministry's evidence in the reconsideration decision is that the appellant provided "no explanation" on whether the ten annual visits through MSP have been accessed for 2016. The ministry argues that "the 2016 MSP visits may be available".

The panel acknowledges that the appellant provided confirmation of nine MSP-funded physiotherapy visits during 2016, in the physiotherapy statement that he filed on appeal. However, the panel did not admit the statement because it is not in support of the information and records before the minister when the decision being appealed was made and, therefore, does not meet the test for admissibility of additional information under subsection 22(4)(b) of the EAA. Moreover, the panel notes that even if the statement was admissible and the panel accepted it, the information indicates nine "physiotherapy MSP" and the Regulation requires ten MSP-funded sessions.

Based on the information that was before the minister, which did not include any evidence of MSP-funded therapies, the panel finds that the reconsideration decision was reasonably supported by the evidence and that the ministry reasonably determined that the criteria in subsection 2(1)(c)(ii) of EAPEDR Schedule C were not met.

*Conclusion*

The panel confirms the ministry's reconsideration decision as reasonably supported by the evidence pursuant to sections 24(1)(a) and 24(2)(a) of the EAA and the appellant is not successful in his appeal.