



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry)'s reconsideration decision dated October 31, 2016, finding the appellant is not eligible to receive payment for physiotherapy sessions because he does not meet the legislative requirements in section 2(2) and 2(1)(c)(i) of Schedule "C" of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) that the services are to be provided in not more than 12 visits per calendar year and a medical practitioner or nurse practitioner has confirmed an acute need for the service.

### PART D – Relevant Legislation

The relevant legislation is sections 2(1) and (2) of Schedule "C" of the EAPWDR.

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of the following:

1. A prescription dated September 23, 2016, completed by the appellant's physician which states:

*NON-DRUG Rx – Physiotherapy*

*Details:*

*Above patient suffers from chronic back and neck pain due to degenerative Disc disease and that due to this he has chronic soft tissue stiffness and discomfort. He will benefit from active assisted rehabilitation, core strengthening and stretches. He might also benefit from intramuscular stimulation. He will need weekly to 2 weekly visits for 3 months, though I feel the physio should determine this after assessment.*

2. A screenshot of a page of the appellant's MSP Teleplan Web Access site stating "Subsidy Insured Service: SERVICES PD TO DATE – 10".

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision finding the appellant is not eligible to receive payment for physiotherapy sessions because he does not meet the legislative requirements in sections 2(2) and 2(1)(c)(i) of Schedule "C" of the EAPWDR that a medical practitioner or nurse practitioner has confirmed an acute need for the services and the services are to be provided in not more than 12 visits per calendar year.

The relevant legislation is sections 2(1) and (2) of Schedule "C" of the EAPWDR:

### 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 <u>Health Professions Act</u>
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the <u>Health Professions Act</u>
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia under the <u>Health Professions Act</u>
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia under the <u>Health Professions Act</u>
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia under the <u>Health Professions Act</u>
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia under the <u>Health Professions Act</u>

(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.

### The Appellant's Position

In his appeal submission the appellant writes:

*... If medical practitioner deems chronic then acute is part of cycle and in need of long term assistance.*

At the hearing the appellant's advocates did not argue that the appellant meets the legislative criteria but stated that without this physiotherapy his condition would not improve.

The Ministry's Position

The ministry relied on its reconsideration decision. In that decision the ministry found that the appellant was not eligible to receive payment for the physiotherapy because his physician describes a chronic rather than an acute need for the physiotherapy and prescribes more than the maximum of 12 visits per year.

The Panel's Decision

The ministry's position is that as the appellant's physician prescribes more than 12 treatments he does not meet the legislative requirement in section 2(2) of Schedule "C" of the EAPWDR. The panel finds that this is not a reasonable interpretation of the legislation because this provision is a limit rather than a prerequisite. That is, this legislative provision does not state that no more than 12 visits per year may be prescribed, but rather that, if the ministry does fund the services, it can fund no more than 12 visits per year.

At the hearing neither the appellant nor the appellant's advocate argued that the ministry's decision was unreasonable. In his appeal statement, the appellant states if his condition is chronic then "acute is part of the cycle". However, in this case the appellant's physician clearly indicates that the appellant requires the physiotherapy in order to help address his long-term health issues which can only be described as "chronic". Therefore, appellant does not meet the legislative requirement in section 2(1)(c)(i) of Schedule "C" of the EAPWDR.

Accordingly, the Panel finds that the ministry's reconsideration decision was a reasonable interpretation of the legislation and confirms the ministry's reconsideration decision.