

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated May 16, 2017, made by the Ministry of Social Development and Social Innovation (the ministry), which determined that the appellant was not eligible to receive funding for physiotherapy treatments because a medical practitioner has not confirmed that her condition is “acute” and the appellant has not provided evidence that she is not eligible to have her treatments paid for under the Medicare Protection Act (MSP) in accordance with section 2(1)(c) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPDWR).

PART D – Relevant Legislation

The relevant legislation is section 62 and section 2(1)(c) of Schedule C of the EAPDWR.

PART E – Summary of Facts

The appellant is in receipt of disability assistance.

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

- (1) A prescription dated March 29, 2017, from a physician which states: “Due to this patient’s musculoskeletal issues, she requires ongoing physiotherapy.”
- (2) A letter from the Workers Compensation Appeal Tribunal dated April 20, 2017, notifying the appellant that the tribunal has extended its statutory time limit to render a decision in her case to August 2, 2017.
- (3) A prescription dated April 24, 2017, from a physician which states: “Physio required for ongoing musculoskeletal issues related to work related injury 2012.”
- (4) A request for reconsideration dated May 2, 2017, in which the appellant writes:

This is not a first time process for me. I was injured at work May 22/2012. I’ve been dealing with Worksafe B.C. and WCAT and a lawyer for a long time now. Please read file – all information is there. ... Currently living on PTSD pension. The longer I go without physio the more pain I experience. Progress is lost, pain increase, becomes unbearable.

This appeal was held by written hearing by consent of the parties in accordance with section 22(3)(b) of the *Employment and Assistance Act*.

NEW EVIDENCE

At appeal, the appellant submitted a prescription from a physician dated June 15, 2017, which states: “1) Physio for acute low back pain”.

Section 22(4) of the *Employment and Assistance Act* provides that a panel may admit as evidence only the information and records that were before the minister when the decision being appealed was made and oral or written testimony in support of the information and records. In this case, the ministry did not object to the new evidence. The panel considers that the evidence here is in support of the information and records before the ministry at the time of the reconsideration decision in that it simply confirms the appellant’s need for physiotherapy. Accordingly, the panel finds the evidence admissible.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant is not eligible to receive funding for physiotherapy treatments was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is section 62 and section 2(1)(c) of Schedule C of the EAPDWR:

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.

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 Health Professions Act
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the Health Professions Act
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia under the Health Professions Act

4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia under the Health Professions Act
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia under the Health Professions Act
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia under the Health Professions Act

THE APPELLANT'S POSITION

In her Notice of Appeal the appellant writes: "I am in constant pain and discomfort with injury sustained at work, this is an ongoing case with WCB, WCAT, myself and my lawyer. Social services is only resource at present to obtain physio visits. Please reconsider."

THE MINISTRY'S POSITION

In its appeal submission, the ministry states that despite the prescription the evidence before the ministry does not make out that the appellant's condition is "acute". Both previous prescriptions and the appellant's own submissions state that her condition is long-standing, chronic and ongoing. This does not meet the legislative requirement of section 2(1)(c)(i) of Schedule C of the EAPWDR that the condition being treated is "acute".

The ministry also states that the appellant has not provided evidence that she is not eligible to receive 10 treatments under the MSP as required by the legislation so that the ministry cannot determine whether the appellant meets the legislative requirement of section 2(1)(c)(ii) of Schedule C of the EAPWDR.

THE PANEL'S DECISION

Section 2(1)(c)(i) of Schedule C of the EAPWDR requires that the minister be satisfied that a medical professional has confirmed that the condition being treated is "acute". In this case, despite the prescription submitted at appeal, all of the other evidence indicates that the appellant's condition is long-standing, chronic and ongoing. Given the predominance of the evidence in this regard, the panel finds that it was reasonable for the ministry to find that the requirement of section 2(1)(c)(i) of Schedule C of the EAPWDR was not met.

As there was and is no evidence as to whether the appellant has utilized the treatments available to her under the MSP, it was reasonable for the ministry to find that they could not determine whether the appellant meets the legislative requirement of section 2(1)(c)(ii) of Schedule C of the EAPWDR.

Based on the above analysis, the panel finds that the ministry's determination that the appellant did not meet the legislative requirements to receive funding for physiotherapy was a reasonable interpretation of the legislation and confirms the ministry's decision. The appellant is not successful in her appeal.