

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the "ministry") reconsideration decision of July 13, 2017 which denied the appellant's request for more physiotherapy sessions in 2017, in addition to the 10 funded by the Medical Services Plan and a further 12 which were funded by the ministry in 2017.

It should be noted that between the time this appeal was commenced and the tribunal rendered its decision, the ministry has been renamed as the "Ministry of Social Development & Poverty Reduction".

## PART D – Relevant Legislation

*Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) Schedule C, sections 2(1)(c), 2 (2)*

## PART E – Summary of Facts

### **Nature of the Appellant's Application**

The appellant, who has been designated as a Person with Disabilities, underwent surgery to correct a congenital condition, following which physiotherapy was prescribed by his physician. The appellant used in the maximum number of visits allowed by MSP, and applied for and received a further 12 ministry-funded physiotherapy treatments, but says that those were insufficient to treat his condition and applied for more physiotherapy visits, but was denied by the ministry.

By consent of the appellant, a ministry observer being trained was present but did not participate in the appeal hearing.

### **Documents and Information Before the Minister at Reconsideration**

The evidence before the ministry at the time of the reconsideration decision included

#### **A. Prescription - Physiotherapy**

A prescription for physiotherapy with explanatory note dated June 7, 2017 from a physician advising the appellant requires further ongoing physiotherapy following the surgery, because of surgery, advising the physiotherapy is required to get the appellant back to independence.

#### **B. Progress Note dated June 1, 2017**

Progress note from an orthopedic surgeon advising on the appellant's condition nine months post surgery

#### **C. Progress Note**

An outpatient clinic progress note 3 months post surgery

#### **D. Record of Physiotherapy Sessions bulldog**

A record of the appellant's MSP funded physiotherapy sessions with user fees dated June 14, 2017, identifying 12 sessions in 2017

#### **E. Purchase Authorization**

A purchase authorization dated March 28, 2017 for 12 physiotherapy visits funded by the Ministry of Social Development and Social Innovation

#### **F. Letter from the Ministry dated June 13, 2017**

A letter to the appellant denying him further physiotherapy visits

#### **G. An Extended Medical Therapies Decision Summary dated June 13, 2017**

In this Decision Summary, which was before the ministry at reconsideration, the ministry stated that

- on June 3, 2016 the appellant had been approved for the maximum 12 therapy visits for the 2016 calendar year under schedule C section 2 (2) and that therefore an additional 12 therapy visits for the same calendar year cannot be approved
- the appellant is eligible for general health supplements under EAR section 67 or EAPWDR section 62
- the Extended Medical Therapy being requested was one of the ones outlined in schedule C section 2(1)(c)
- a medical practitioner or nurse practitioner had confirmed an acute need under schedule C, section 2(1)(c)(i)
- the 10 annual visits provided by MSP have been exhausted (and also that they have not been exhausted)
- there are no resources available to the family unit to cover the cost per schedule C, section

2(1)(c)(iii), and

- the 12 combined visits per calendar year allowable as Extended Medical Therapies have been exhausted per schedule C section 2 (2) (and also that they have not been exhausted)

#### **H. An Extended Medical Therapies Decision Summary dated June 29, 2017**

In this Decision Summary, which was before the ministry at reconsideration, the ministry stated that:

- on March 28, 2017 the appellant had submitted documents confirming that his MSP visits for 2017 had been used, and he was seeking 12 extended therapy sessions;
- the 12 extended therapy sessions were approved for 2017 but these were used as at June 6 2017 and therefore an additional 12 visits in the same calendar year (2017) cannot be approved, and the request is denied;
- the appellant is eligible for general health supplements under EAR section 67 or EAPWDR section 62;
- the Extended Medical Therapy being requested was one of the ones outlined in schedule C section 2(1)(c);
- a medical practitioner or nurse practitioner had confirmed an acute need under schedule C, section 2(1)(c)(i);
- the 10 annual visits provided by MSP have been exhausted;
- there are no resources available to the family unit to cover the cost per schedule C, section 2(1)(c)(iii); and
- that the 12 combined visits or calendar year allowable as Extended Medical Therapies has been exhausted per schedule C section 2 (2).

#### **I. The Request for Reconsideration dated June 28, 2017**

The request for Reconsideration contained a letter dated June 27, 2017 from the appellant's parents who are also his Attorneys-in-Fact explaining why more physiotherapy is requested for the appellant

#### **Evidence Provided on Appeal**

The appellant confirmed that he has had his 10 MSP funded physiotherapy treatments plus 12 more physiotherapy treatments funded by the ministry. His challenge is with his outdoor job where he has to be on his feet all day, but as it was a foot operation that he underwent, he must have a further therapy before he can be on his feet all day and thus return to work.

#### **Additional Evidence - Appellant**

The appellant submitted that he has a job but his employer requires him to work full days rather than part-days and he cannot do so. He said that as he uses a cane, his employer will not have him return to work until he no longer uses it. He said that without more physiotherapy he cannot get back to work and as his work is outdoor and seasonal he can only work part of the year. He said that he was laid off in the middle of November 2016 and had his surgery about a week later. He said that he earned enough in 2016 so that he did not need his PWD allowance and he was proud of that. He gave evidence that his goal is to become independent and of his age and the fact that he works out of doors, but his work is seasonal. He said that because of his intellectual disabilities he is not suited to a desk job.

#### **Ministry's Position Concerning the Appellant's Additional Evidence**

The ministry did not object to the admissibility of the appellant's additional evidence but said it was irrelevant to the issues.

**Panel Finding Concerning the Additional Evidence**

Pursuant to section 22(4)(b) of the *EAA*, the panel may admit as evidence only the information and records that were before the minister when the decision being appealed was made or oral or written testimony in support of that information and records.

The panel finds that at the time of reconsideration there was evidence concerning the appellant's work, that he could not perform his job duties following surgery and that he needed therapy before he could return to work.

The panel finds that the additional evidence is in support of information or records that were before the minister when the decision being appealed was made and is therefore admissible.

## PART F – Reasons for Panel Decision

### Issue on Appeal

The issue is whether or not the Ministry of Social Development and Social Innovation's (the "ministry") reconsideration decision of July 13, 2017 which denied the appellant's request for more physiotherapy sessions in 2017, in addition to the 10 funded by the Medical Services Plan and a further 12 which were funded by the ministry in 2017, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

### Relevant Legislation

#### General Health Supplements

2(1)(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.

#### General Scheme of the Legislation

The legislation provides that a Person with Disabilities may receive funding from the ministry for up to 12 treatments in any calendar year by specified health professionals, over and above the 10 paid for by the Ministry of Health through the Medical Services Plan provided that a medical practitioner or nurse is confirmed an acute need and the family unit has no resources with which to cover the cost.

#### Parties' Positions at Appeal

##### *Appellant's Position*

The appellant said that as a Person with Disabilities, he was entitled to the applicable General Health Supplements allowed for in section 2(1) of the *EAPWDR*. The appellant argued that since his foot surgery in the fall of 2016 he has had the 10 physiotherapy treatments paid for by MSP and an additional 12 paid for by the ministry. His surgery was major foot surgery, described by his parents, his Attorneys-in-Fact, in a letter of June 27, 2017. He has made excellent progress, but he needs more physiotherapy sessions and both his physiotherapist and his family physician have confirmed

the need to be acute, in their letters of June 6 the 2017 and June 7, 2017 respectively. The appellant further argued that because he had his foot surgery out of town he may have been eligible for physiotherapy at the hospital's on-site clinic at no cost, but as he lives in another urban centre and the physiotherapy must be twice per week, it is not practical to travel back and forth between cities that frequently. Furthermore he is not independent and so one of his parents must accompany him if he were to travel back and forth. He argued that because his medical advisors had prescribed further physiotherapy, and because physiotherapy is available at no cost in the city where the surgery occurred but not in the city where the appellant lives there is an inequality in treatment, and therefore the ministry should provide funding for the physiotherapy treatments he is requesting. The appellant also said that although the reconsideration decision determined that he was not eligible for a pulse oximeter, he had never applied for one.

#### *Ministry Position*

The ministry submitted that although it was sympathetic to the appellant's need, it was restrained by the legislation. The ministry submitted that the legislation provides that the appellant must first use up the 10 physiotherapy treatments provided through the Ministry of Health (MSP) and then, if the need had been confirmed to be acute by a physician, which the ministry agreed it had been, then up to 12 additional physiotherapy treatments could be funded by the ministry. The ministry submitted that the appellant had used up all 22 allowable physiotherapy treatments by June 6, 2017, and there is no exception in the legislation which would allow the ministry to pay for more physiotherapy treatments in 2017. The reconsideration decision stated that the ministry was satisfied that the appellant did not have resources to pay for physiotherapy sessions beyond of the 10 available under the Ministry of Health (MSP).

The ministry also determined at reconsideration that the appellant was not eligible for a pulse oximeter under "Life-Threatening Health Need". The analysis of the appellant's need focused on his eligibility for extended physiotherapy treatments under section 69 *EAPWDR*. The ministry explained that section 69 is the authority to provide general health supplements and medical equipment and devices for people in different circumstances than the appellant, and specifically those people who are not designated as Persons with Disabilities. The ministry was unable to explain why the reconsideration decision dealt with a pulse oximeter when none had been requested.

#### *Panel Finding*

There was no disagreement that the appellant is designated as a Person with Disabilities, did not have the resources to pay for the cost of physiotherapy treatments beyond those provided by the Ministry of Health (MSP), and that a medical practitioner had confirmed that the appellant has an acute need for further physiotherapy treatments.

The panel finds that the legislation allows for a maximum of 12 ministry-funded physiotherapy sessions over and above the 10 provided by the Ministry of Health, and that there is no discretion in the legislation for the ministry to allow for more treatments to be funded, regardless of need.

The panel finds that as at June 6, 2017 the appellant had used all physiotherapy sessions allowed under section 2(1)(c) *EAPWDR*; therefore the appellant was not eligible for more ministry-funded physiotherapy treatments for the balance of 2017.

**Conclusion**

Having reviewed and considered all the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for more ministry-funded physiotherapy treatments, was reasonably supported by the evidence and was a reasonable application of the applicable enactment, and confirms the ministry's reconsideration decision dated July 13, 2017.

The appellant is not successful in his appeal.