

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated November 9, 2017 in which the ministry denied the appellant additional therapy sessions not covered by the Medical Services Plan (MSP) of BC because all regulatory requirements for Extended Therapy Visits under Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) were not met.

The ministry was satisfied that the appellant was eligible to receive health supplements as set out in Section 62 of the EAPWDR, that chiropractic visits were included under the Extended Medical Therapies as set out in Subsection 2(1)(c) and that there are no resources available to the family unit pursuant to Subsection 2(1)(c)(iii) of Schedule C.

The ministry determined the following criteria were not met:

A medical practitioner or nurse practitioner has not confirmed an acute need for the therapy pursuant to Subsection 2(1)(c)(i) of EAPWDR of Schedule C.

There is no indication that the 10 annual therapy visits provided through the Medical Services Plan of BC for this calendar year have been exhausted as per Subsection 2(1)(c)(ii) of 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

With the consent of both parties, the hearing was conducted as a written hearing pursuant to Section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the minister at reconsideration consisted of the following:

A letter from the appellant's physician dated August 29, 2017 indicating that the appellant has benefited from chiropractor care and that he supports more sessions.

A Medical Imaging Report dated April 1 2017 which found that the appellant's spondylolisthesis at L5-S1 appears slightly more prominent than prior, it measures approximately 16mm compared to 14 mm before. "There is associated narrowing of the L-5-S1 disc space. Bilateral L5 pars defects are suspected. There are some mild facet degenerative changes at L4-5 and L5-S1. The remaining lumbar levels appear normal."

A Request for Reconsideration dated October 28, 2017 in which the appellant states the appellant was diagnosed with bipolar disorder at 20 years of age and has tried different treatments for her back pain, including acupuncture, massage therapy and a chiropractor. She indicates that she believes that she has used her 10 MSP visits for 2017 and is requesting an additional 10 visits in order to continue treatment.

Prior to the hearing

A Notice of Appeal dated November 19, 2017 indicating that the appellant's physician would be requested to provide more information.

A letter from the appellant's physician dated November 21, 2017 states that the appellant is well known to him with at least two (2) severe medical conditions, severe Bipolar mood disorder which "cycles" regularly affecting her whole being. She also has frequent acute chronic lower back pain from a presumed acquired Pars defect (stress fracture) of the lower spine. She has good results to chiropractic care in the past. Her mood can easily, and does frequently, also affect her back as consistent self-care (exercise) is essential for maintaining her back condition.

In response to the appellant's physician's recent letter, on December 18, 2017, the ministry wrote that had they the information at the time of reconsideration, the minister may have determined that the appellant's request met the requirement of Schedule C, Section 2(1)(c)(i) of the EAPWD Regulation. Although it is written that the appellant has had good results to chiropractic care in the past, the ministry is not satisfied this demonstrates that she has exhausted her ten visits available under her MSP as required by Schedule C, Section 2(1)(ii) of the EAPWD Regulation and therefore submits that not all eligibility requirements have been met.

Admissibility - additional documents

The panel does not admit the letter from the appellant's physician dated November 21, 2017 pursuant to Section 22(4)(b) of the Employment and Assistance Act as evidence, as the panel finds that it provides new medical information that was not before the ministry at reconsideration when the decision being appealed was made.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the reconsideration decision of November 9, 2017 in which the ministry denied the appellant additional therapy sessions not covered by the Medical Services Plan (MSP) of BC because all regulatory requirements for Extended Therapy Visits under Schedule C of the Employment and Assistance for Persons with Disabilities were not met, was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the appellant. While the ministry was satisfied that some of the requirements under Schedule C were met, it determined the following criteria were not met:

A medical practitioner or nurse practitioner has not confirmed an acute need for the therapy pursuant to Subsection 2(1)(c)(i) of EAPWDR of Schedule C.

There is no indication that the 10 annual therapy visits provided through the Medical Services Plan of BC for this calendar year have been exhausted as per Subsection 2(1)(c)(ii) of Schedule C.

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 Professions Act	acupuncturist	College of Traditional Chinese Medicine under the Health
2 chiropractic Professions Act	chiropractor	College of Chiropractors of British Columbia under the Health
3 massage therapy Health Professions Act	massage therapist	College of Massage Therapists of British Columbia under the
4 naturopathy the Health Professions Act	naturopath	College of Naturopathic Physicians of British Columbia under
5 non-surgical podiatry Health Professions Act	podiatrist	College of Podiatric Surgeons of British Columbia under the
6 physical therapy Health Professions Act	physical therapist	College of Physical Therapists of British Columbia under the

(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.

Ministry's Position

The ministry finds that the information provided does not establish that all regulatory criteria have been met. The services are to be provided in not more than 12 visits per calendar year; however, the medical

practitioner does not confirm an acute need and does not specify how many additional sessions are required. While an Imaging report has indicated “slightly more prominent today than on prior”, this does not constitute confirmation that there has been an acute exacerbation of the appellant’s symptoms. Information is not provided from the medical practitioner to confirm that the appellant requires additional therapy sessions to treat an acute exacerbation of her condition. Therefore, the request does not meet the eligibility requirement pursuant to Subsection 2(1)(c)(i) of EAPWDR of Schedule C.

Furthermore, the ministry is only authorized by the legislation to provide funding for 12 additional therapy sessions if the 10 visits under MSP have been exhausted. Information from a chiropractor is not provided to confirm that the appellant has used the 10 visits available to her under MSP. Therefore, the request does not meet the eligibility requirement pursuant to Subsection 2(1)(c)(ii) of EAPWDR of Schedule C.

The ministry is sympathetic with the circumstances of the appellant’s case and acknowledges that she would benefit from additional therapy sessions; however, as indicated above, the appellant’s request does not meet the eligibility requirements.

Appellant’s Position

The appellant’s position is that she believes that she has used her 10 MSP visits for 2017 and is requesting an additional 10 sessions. Also as indicated by her physician, she has benefited from chiropractic care and her physician supports her request to have more sessions.

Panel Decision

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 has confirmed an acute need and the family unit has no resources with which to cover the cost.

The panel finds that the ministry reasonably determined that a medical or nurse practitioner has not confirmed an acute need and does not specify how many additional sessions are required. While the physician indicates that the appellant has benefited from chiropractic care and supports the appellant’s need for additional sessions, the panel finds that the ministry is only authorized by the legislation to provide funding for 12 additional therapy sessions if the 10 visits under MSP have been exhausted. There is no evidence which could be accessed from the MSP or the chiropractor to confirm that the appellant has used the 10 visits available to her under MSP. The panel therefore, finds that the ministry reasonably determined that the requirements in section 2(1)(c)(i) and (ii) of Schedule C of the EAPWDR were not met.

Conclusion

The panel finds that the ministry’s reconsideration decision, which determined that the appellant was not eligible for additional chiropractic sessions, was reasonably supported by the evidence and was a reasonable application of the applicable enactment, and confirms the ministry’s reconsideration decision. The appellant is not successful on appeal