

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated 06 February 2018 that denied the appellant's request for extended chiropractic therapy sessions beyond those available under the Medical Services Plan (MSP). The ministry determined that the appellant's request did not meet the criterion set out in section 2(1)(c)(i) of the Schedule C of the Employment and Assistance for Persons with Disabilities Regulation, requiring that a medical practitioner has confirmed that the appellant has an acute need for the requested extended therapy sessions.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C, sections 2(1)(c), 2(2) and 2(2.1).

PART E – SUMMARY OF FACTS

The evidence before the ministry at reconsideration included the following:

1. The appellant is a recipient of disability assistance.
2. Letter from the appellant dated 28 November 2017 requesting extended chiropractic therapy sessions. She states that she is enclosing a note from her doctor and from her chiropractor. She writes:
“Going helps my mobility, as I have scoliosis and [second-degree] deteriorating discs in my back. More visits could be a huge improvement on my mind and my body.”

Attached to this letter is a prescription note dated 22 November 2017 from the appellant’s physician, who writes:

“She needs ongoing chiropractic treatments once a week to keep up her mobility.”

Also attached is letter dated 23 November 2017 from the appellant’s chiropractor. He writes:

“This is to confirm that [the appellant] has:

- been my patient since May 26/95.
- has recurrent need for chiropractic care since spraining her back (full-spine) due to a MVA in 1995.
- also has a history of tendinitis & injuries due to repetitive strain for elbow, wrists, ankles, etc., along with severe recurrent headaches.
- she typically needs chiropractic treatments weekly (approx.) or so to be able to work & function (as per MD’s note).
- she had 29 visits in 2017 to date (finances do not allow more).”

The chiropractor lists the dates of 33 visits in 2016 (total cost paid by patient: \$230); and the dates of 29 visits in 2017 (total cost paid by patient: \$425).

3. Letter from the ministry dated 01 December 2017 advising the appellant that her request for funding of extended chiropractic services was denied.
4. The appellant’s signed Request for Reconsideration is dated 09 January 2018. Under Reasons, she writes that she has an appointment with her physician on 15 January 2018 and requests an extension.

Notice of Appeal

The appellant’s Notice of Appeal is dated 22 February 2018. Under Reasons, and continuing onto separate pages, she writes that she couldn’t understand why she had to wait so long for the approval of her Request for Reconsideration extension. She even went down to the office and was told that no decision would be made until 06 February 2018. She states that she was told at that time that she had to wait until 06 February 2018 to submit her doctor’s note for the appeal process. When she called at that time she was told that her request was denied – due to no documents submitted. She argues she would have submitted them had she had the go ahead to do so. She feels she was given the run-around and not had adequate proper service.

She continues by explaining that in 2010 she was diagnosed with inoperable scoliosis and inoperable deteriorating discs at L2 and L3. This is been a long, painful journey. She is now in her mid 40s and her body is getting old. She has to find relief to her acute pain by going and seeing her chiropractor. The cost of seeing him is \$45 per visit. He sees her put up with the pain she is in for as long as she can before she breaks down and goes to see him. When she does go, she regrets not going sooner. He adjusts her and fixes her curved back, relieving the pain. She tries to stretch out her 10 [MSP] visits as long as she can, but the pain overwhelms her. Upon further discussion with both her chiropractor and her physician, they all agree that one visit per week is sufficient to get realigned and cracked to relief her acute pain.

The appellant calculates that the annual costs to her would be \$1050. (52 visits, less 10 covered by MSP, or 42 visits, X \$25.) These rates are unaffordable and sometimes she puts it off until she can barely stand straight. Her health and well-being is important and that is why she got a doctors note saying she requires these visits.

The appellant also attaches a prescription note from her physician dated 15 January 2018. The note reads; "Chiropractic treatments weekly due to scoliosis and degenerative disc lumbar spine."

The Hearing

At the hearing, the appellant began by reviewing how she had requested a reconsideration extension to allow time for her to obtain another note from her physician at an appointment with him on 15 January 2018, and how soon thereafter, as described in her Notice of Appeal, she had contacted the ministry by phone and with a visit to the ministry office and been told that she would not be able to submit the physician's note until after the reconsideration decision was made on 06 February 2018. The ministry was not able to comment on the details of these interactions but stated that there must have been some misunderstanding on the part of the appellant or the ministry and that the appellant should have been able to submit the physician's note before the expiration of the reconsideration extension.

The appellant then explained the need for weekly chiropractic treatments much along the lines of that set out in her Notice of Appeal. She stated that the regular rate for her chiropractic treatment had gone up to \$45 per visit, but her chiropractor charges her only \$25 per visit. She can manage this financially for the 10 \$23 MSP funded treatments but requires the \$23 ministry subsidy for subsequent visits. She stated that she has had approximately 8 MSP treatments so far this 2018 calendar year.

She described how, if she has a treatment on a Monday, by Thursday she will be experiencing severe pain, but will try to hang on until the next Monday for another treatment. The exception might be when her back gives out and she is "hit" with acute pain. This can happen unexpectedly, even in bed or sitting on her sofa, leaving her immobilized. When this happens, she will make an appointment with the chiropractor for the next day and have the problem fixed. She stated that the chiropractor is always amazed at the difference between how much she looks to be in pain on going to the office and how well she is after he has "cracked" her back.

The ministry stood by its position at reconsideration.

Admissibility of additional information

The panel finds that the information provided by the appellant in her Notice of Appeal and in her testimony at the hearing is in support of the information and records before the ministry at reconsideration, as this information largely corroborates information provided by the physician in his note on 22 November 2017 and by the chiropractor in his letter of 23 November 2017. In particular, the panel finds that the physician's note of 15 January 2018 is in support of the information provided by the chiropractor regarding the appellant's spinal conditions. The panel therefore admits this information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry was reasonable in denying the appellant's request for extended chiropractic therapy sessions beyond those available under the MSP. More specifically, the issue is whether the following ministry determination was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant:

- The appellant's request did not meet the criterion set out in section 2(1)(c)(i) of the Schedule C of the EAPWDR, as a medical practitioner has not confirmed that the appellant has an acute need for the requested extended therapy sessions.

The relevant legislation is from 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 <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.

Analysis

In the reconsideration decision, the ministry noted that the chiropractor confirmed that, as of 23 November 2017, the appellant had 29 visits. The ministry stated that, presumably, 10 of those visits (at \$23.00) were covered by MSP and that therefore the appellant's request meets the eligibility requirement set out in EAPWDR Schedule C, section 2(1)(c)(ii). The ministry also found that the appellant does not have any resources to pay for the cost of therapy sessions beyond the 10 available under MSP, and therefore found that the request meets the requirements set out in Schedule C, section 2(1)(c)(iii).

The ministry's denial of the appellant's request is therefore based on its determination that information is not provided by the appellant's medical practitioner to confirm that she has an acute need for the additional therapy sessions requested, as required under Schedule C, section 2(1)(c)(i) [hereinafter the subparagraph (i) criterion].

The position of the appellant, as argued at the hearing, is that while she has chronic medical conditions with her back, these conditions lead to acute pain that, as explained by her physician in his 22 November 2017 note, requires regular chiropractic treatments in order for her to maintain her mobility.

In the reconsideration decision, the ministry did not provide reasons why it was not satisfied that the physician's note failed to establish that the appellant has an acute need for the additional therapy. At the hearing, the ministry explained that, as the appellant suffers from a chronic condition, the requested treatment for such a condition cannot be said to meet an acute need.

Central to the sub-paragraph (i) criterion is the context and meaning of *acute*. To the panel, *acute* has several meanings, depending on context. Apart from specialized meanings related to angle and accent, two relevant meanings (Oxford) are either

- (of controversy, difficulty, shortage) critical, serious, or
- (of a disease or its symptoms) severe but of short duration.

In subparagraph (i), *acute* modifies *need*, with need here reflecting a *shortage*; this leaves the panel to understand *acute* in this context as meaning “critical” or “serious.”

The panel has found useful guidance in the interpretation of sub-paragraph (i) by examining one other instance in the EAPWDR of the use of the words *acute* and *need* in a provision with somewhat parallel construction:

Nutritional supplement — short-term

67.001 The minister may provide a nutritional supplement for up to 3 months to or for a family unit in receipt of disability assistance, if

- (a) the supplement is provided to or for a person in the family unit who is not receiving another nutrition-related supplement, and
- (b) a medical practitioner or nurse practitioner confirms in writing that the person has an **acute short-term need** for caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from
 - (i) surgery,
 - (ii) a severe injury,
 - (iii) a serious disease, or
 - (iv) side effects of medical treatment.

In examining section 67.001, the panel notes the following:

- It is clear that the *acute* (albeit short-term) *need* might arise from either an acute or chronic medical situation.
- There are no constraints as to the frequency of administering the treatment provided – in this case the caloric supplementation would be administered on a daily basis, while the subparagraph (i) requested chiropractic treatment is for a weekly basis.
- There is no requirement in section 67.001 for a regular exacerbation of the medical condition to justify ongoing administration of the caloric supplementation. While there is a regular exacerbation of the appellant's condition (and resulting chronic pain) that requires chiropractic treatment, this is not central to the interpretation of subparagraph (i).
- The addition of “short-term” between and *acute* and *need* in section 67.001 implies that, without this wording, that *acute need* could be construed as including a longer-term *acute need*.
- Section 67.001 provides that a medical practitioner must confirm both the object for the *acute need* – a specific product that provides caloric supplementation to a regular dietary intake – and the reason for the need – to prevent critical weight loss while recovering from a specified medical situation. This reason can be viewed as a factor that is critical or serious for the person's well-being. By comparison, with regard to subparagraph (i) under appeal, the medical practitioner has confirmed the object of acute need as “ongoing chiropractic treatments once a week,” and provided as a reason “to keep up her mobility.” In panel’s view, maintaining the appellant's mobility is a similarly critical or serious factor for the appellant’s well-being.

Based on the foregoing analysis and given the background information provided by the chiropractor, the panel finds the ministry was not reasonable in determining that the physician's note did not establish that she met the criteria set out in subparagraph (i).

Timing of eligibility

In the reconsideration decision, under the heading “For Information Purposes Only,” the ministry noted that at the time of writing (06 February 2018) a new calendar year had begun. Referring to EAPWDR Schedule C, section 2(1)(c)(ii), the ministry stated that in order to provide funding for 12 additional therapy sessions, the visits available under MSP *for that calendar year* must have been exhausted. The ministry took the position that it may not provide retroactive funding for additional therapy visits for the previous year.

Under section 24(1) of the *Employment and Assistance Act*, the panel's jurisdiction is limited to the reasonableness of the reconsideration decision (not the original decision, made on 01 December 2017). Even if the ministry had found that the appellant’s request met the subparagraph (i) criterion, given the 2018 timing of the reconsideration decision and the subparagraph (ii) “for that calendar year” wording, the ministry would have been reasonable in not providing retroactive funding for additional therapy visits in 2017.

Thus, this panel decision applies to the current calendar year, and any additional chiropractic sessions up to the prescribed limit of 12 visits, once the 10 MSP-funded visits have been exhausted.

Conclusion

On the basis of the above considerations, the panel finds that the ministry decision that denied the appellant's request for extended chiropractic therapy sessions is not reasonably supported by the evidence. The panel therefore rescinds the ministry's decision in favour of the appellant.