

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction of (the “ministry”) July 18, 2018 reconsideration decision denying the appellant’s request for massage therapy (lymphedema) sessions because the ministry determined that the eligibility requirements set out in Schedule C, Section 2(1)(c) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) had not been met. Specifically, the ministry determined that the appellant had not provided evidence that the 10 visits available under the Medical and Health Care Services Regulation (known as MSP) for 2018 had been fully utilized as is required.

PART D – RELEVANT LEGISLATION

EAPWDR Schedule C Section 2(1)(c)

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 appellant is a recipient of Persons with Disabilities (PWD) designation.

The evidence before the ministry as reconsideration included:

- the appellant's request for reconsideration in which she noted that the clinic that provided the specialized lymphatic massage therapy had opted out of the MSP and that she cannot afford to pay for the treatments;
- a letter from the clinic dated June 14, 2018 indicating that the appellant requires special authority authorization for payment of services for her therapy and that it was for an acute on chronic problem;
- a member profile regarding the registered massage therapist;
- a referral dated June 4, 2018 from the appellant's physician to the massage therapy clinic; and
- an extended medical therapies decision summary from the ministry dated June 20, 2018 explaining that the appellant may have 2018 MSP visits available.

On the Notice of Appeal form signed by the appellant on July 30, 2018 she indicated that she had an acute need for treatment, that qualified therapists don't work for free: \$23 and that the clinic suggested by the ministry was not local.

The ministry submission for the written hearing was the reconsideration summary provided in the record of ministry decision.

The appellant did not provide additional information for the written hearing.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry decision of July 18, 2018 in which the ministry denied the appellant's request for massage therapy (lymphedema) sessions because the ministry determined that the eligibility requirements set out in Schedule C, Section 2(1)(c) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) had not been met. Specifically, the ministry determined that the appellant had not provided evidence that the 10 visits available under the Medical and Health Care Services Regulation (known as MSP) for 2018 had been fully utilized as is required.

The relevant legislation is as follows:

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>

The appellant's position is that her physician referred her to a specialized clinic to receive lymphatic massage therapy, that not all clinics specialize in this type of therapy, that this clinic has opted out of the MSP and that she cannot afford to pay for the sessions. The appellant noted that she had an acute need for the treatment and that the ministry's suggestion of another clinic is not local for her.

The ministry's position is that they may pay for massage therapy provided that the three required conditions of EAPWDR Schedule C Section 2(1)(c) are met. The ministry accepts that a medical practitioner has confirmed an acute need and that there are no resources available to cover the cost, however they note that there is no evidence that the visits available under MSP for 2018 have been provided to the appellant therefore they are unable to pay for the massage therapy.

Panel Decision

EAPWDR Schedule C Section 2(1)(c) is the legislation that permits the ministry to grant payment of massage therapy and has three criteria that must all be met. Criterion i) requiring an acute condition and (iii) requiring there be no other resources have been met, so the panel reviewed (ii) in making their determination.

The legislative requirement is that the person requesting massage therapy must have availed themselves of the visits available to them under the Medical and Health Care Services Regulation for the calendar year and for which payment is not available under the Medicare Protection Act. The panel agrees that the term MSP refers to this Act and Regulation. The panel notes that there is no supporting evidence in the record of appeal that indicates that the appellant has received massage therapy services for 2018 paid by MSP, and note in her request for reconsideration that the clinic she attends has opted out of the MSP, which further supports that no MSP payments were made. As such, the panel finds that the ministry reasonably concluded that the appellant did not meet the required criterion of the legislation.

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for massage therapy pursuant to Schedule C Section 2(1)(c) of the EAPWDR, was reasonably supported by the evidence, and therefore confirms the decision.

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister
for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Janet Ward

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/09/06

PRINT NAME

Ray Kirzinger

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/09/06

PRINT NAME

Dawn Martin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/09/06