

PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision of 9 July 2012 which denied the appellant a medical transportation supplement to see a physiotherapist under Schedule C, Section 2(1)(f) of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR),
Section 62 General Health Supplements

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR),
Schedule C

PART E – Summary of Facts

The appellant elected a hearing based on written submissions; however no submissions were received from either the appellant or the Ministry. The panel therefore proceeded with the information available through the Reconsideration Decision and through the appellant's Notice of Appeal

The records before the ministry at reconsideration included:

- The appellant is in receipt of disability assistance as a Person with Disabilities.
- The appellant resides in community A.
- The appellant submitted a request for a medical transportation supplement to see a physiotherapist in community B.
- Community B is outside the appellant's local area.
- A letter dated June 28, 2012 from a medical practitioner, addressed "To Whom It May Concern", setting out the following information:

"I am the patient's family physician. I can confirm that she suffers from chronic neck and low back pain, needing strong analgesia to control her pain. She would definitely benefit from a course of physiotherapy."

From the ministry's evidence as stated in the Reconsideration Decision, the panel makes the following findings of fact:

- Community C has a hospital that provides physiotherapist services.

In the appellant's Notice of Appeal, the appellant states she cannot accept the changes to the PWD, that have denied her vital care which is now impossible for her to access. The appellant has not used her allowable physiotherapy appointments and would go to community C if her transportation were paid.

From the Notice of Appeal the panel makes the following finds of fact:

- The appellant has physiotherapy visits left to use, within the allowable yearly limits.
- The appellant seeks a travel supplement to access physiotherapy in the more distant community B.
- The appellant went to community B for physiotherapist services previously.

The panel finds the evidence in the Notice of Appeal to be in support of the information and records before the ministry at the time of reconsideration. The panel therefore admits the information pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry acted reasonably in denying the appellant's request for a transportation subsidy to community B for physiotherapist services. The appellant is in receipt of disability assistance as a Person with Disabilities and is therefore eligible for certain supplements including the medical transportation supplement, provided all eligibility criteria are met.

The relevant legislation is set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C:

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 prescribed by a medical practitioner or nurse practitioner has confirmed an acute need, (B.C. Reg. 317/2008)

(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> (B.C. Reg. 420/2008) |
| 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> (B.C. Reg. 169/2010) |
| 6 | physical therapy | physical therapist | College of Physical Therapists of British Columbia under the <i>Health Professions Act</i> |

(B.C. Reg. 75/2008) (B.C. Reg. 318/2008) (B.C. Reg. 85/2012)

(d) Repealed (B.C. Reg. 75/2008)

(e) Repealed (B.C. Reg. 75/2008)

(f) the least expensive appropriate mode of transportation to or from

(i) an office, in the local area, of a medical practitioner or nurse practitioner, (B.C. Reg. 317/2008)

(ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,

(B.C. Reg. 317/2008)

(iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or

(iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*,

(1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications. (B.C. Reg. 66/2010)

(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. (B.C. Reg. 10/2004) (B.C. Reg. 75/2008) (B.C. Reg. 318/2008) (B.C. Reg. 85/2012)

(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. (B.C. Reg. 318/2008) (B.C. Reg. 85/2012)

(3) If the minister provided a benefit to or for a person under section 2 (3) of Schedule C of the Disability Benefits Program Regulation, B.C. Reg. 79/97, the Income Assistance Regulation, B.C. Reg. 75/97 or the Youth Works Regulation, B.C. Reg. 77/97, as applicable, for the month during which the regulation was repealed, the minister may continue to provide that benefit to or for that person as a supplement under this regulation on the same terms and conditions as previously until the earlier of the following dates:

- (a) the date the conditions on which the minister paid the benefit are no longer met;
- (b) the date the person ceases to receive disability assistance.

In the EAPWD Regulation Schedule C, section 1 Definitions, a physical therapist (which the panel takes as being the same as a physiotherapist) is defined separately from a specialist:

“**physical therapist**” means a physical therapist registered with the College of Physical Therapists of British Columbia established under the *Health Professions Act*; (B.C. Reg. 85/2012)

“**physical therapy**” has the same meaning as in the Physical Therapists Regulation B.C. Reg. 288/2008; (B.C. Reg. 85/2012)

“**specialist**” means a medical practitioner recognized as a specialist in a field of medicine or surgery in accordance with the bylaws made by the board for the College of Physicians and Surgeons of British Columbia under section 19 (1) (k.3) and (k.4) of the *Health Professions Act*. (B.C. Reg. 423/2008)

The position of the appellant is that she is being denied vital care which she had previously received because she is not being granted a transportation subsidy.

The ministry found that the appellant's request did not meet all the legislated criteria for the following reasons: the physiotherapy services were available at the hospital in community C; a physiotherapist is not recognized as a specialist in the legislation; and the letter from the medical practitioner is not a referral.

The ministry has stated that community C offers physiotherapy services through the hospital. The panel finds community C is the nearest suitable general hospital or rehabilitation hospital as set out under Schedule C, Section 2(1)(f), not community B.

The panel finds that a physical therapist/physiotherapist is not a medical practitioner and therefore cannot be a specialist within the meaning of Section 2(1)(f)(ii) the *Regulation*. Further, if the intent was to include the profession of physiotherapist as a specialist, the terms physical therapist and physical therapy would not be defined separately within Schedule C, section 1, Definitions of the *Regulation*. Therefore the ministry reasonably determined this criterion was not met.

The panel finds the letter from the medical practitioner addressed To Whom it May Concern stating that the appellant would definitely benefit from a course of physiotherapy, is a medical opinion and while the letter is supportive of the appellant's request, it is not a medical referral as required by Schedule C, Section 2 (1)(f)(ii). Therefore the ministry reasonably determined this criterion was not met.

The panel notes that the appellant applied for the transportation subsidy to community B to receive physiotherapy services and states that she previously received these services in Community B, since back in the mid-80's for treatment.

Regardless of what may have happened in the past, the panel's jurisdiction is limited to looking at this request for a medical transportation supplement and whether the ministry acted reasonably in applying the legislation. The panel finds that the ministry determination in denying the medical transportation supplement to see a physiotherapist in community B was a reasonable application of the applicable enactment in the circumstances of the appellant in this instance. The panel therefore confirms the ministry's decision.