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PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated February 27, 2019 which held that the visual therapy sessions the appellant had requested for her daughter were not eligible for funding, specifically because visual therapy is not one of the therapies that the Ministry currently funds as an extended medical therapy under the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 61.1, 62 and section 2 of Schedule C.

PART D – RELEVANT LEGISLATION

The following legislation applies to this situation:

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 61.01, 61.1, 62, 62.1, 62.2 and

Employment and Assistance for Persons with Disabilities Regulation Schedule C, sections 2, 2.1 and 2.2

PART E – SUMMARY OF FACTS

The following information was before the ministry at the time of reconsideration:

The appellant is a single parent of two children

The appellant's daughter has been diagnosed with visual deficiencies and would benefit from visual therapy

Documentation on file includes:

- A letter dated November 7, 2018 from the appellant's daughter's optometrist which recommends 20-30 weekly sessions of visual therapy at a cost of \$120 per session
- An Eyecare Assessment dated November 7, 2018
- Vision Therapy Denial Letter dated January 10, 2019
- Vision Therapy Denial Decision Summary dated January 10, 2019

At the hearing, the appellant stated the following:

- that her year old daughter has been diagnosed with visual deficiencies for which her optometrist has prescribed 20-30 visual therapy session, each costing \$120 per session
- that she is extremely frustrated because she has not received any assistance or support from the ministry to help her child
- that she has exhausted her resources paying for her daughter's health care needs
- that her daughter also has hearing losses
- that her daughter is not succeeding at school because she cannot see or hear properly
- that she has been lobbying for her daughter with local politicians

The ministry relied upon the reconsideration decision during the hearing, explaining at length that under Sections 61.01, 61.1, 62 and Schedule C section 2(1) of the EAPWDR, the ministry will pay for treatment acupuncturists, chiropractors, massage therapists, naturopaths, podiatrists and physical therapists. At this time however, visual therapists are not covered as service providers by the ministry.

PART F – REASONS FOR PANEL DECISION

The issue before the panel is to determine the reasonableness of the Ministry's reconsideration decision dated February 27, 2019 which held that the appellant's request for visual therapy for her daughter was denied, specifically because visual therapy is not a health supplement that is covered by the ministry at this time.

Applicable legislation is:

Division 4 — Health Supplements Definitions

61.01 In this Division:

"continued person" means

- (a) a main continued person under section 61.1 (1), or
- (b) a dependent continued person under section 61.1 (2);

Access to medical services only

61.1 (1) Subject to subsection (4), a person is a main continued person if

(a) the person was

- (i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for disability assistance, and
- (ii) a person with disabilities on that date,

(b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance, and

(c) in the case that the family unit referred to in paragraph (a) (i) was a family unit identified in subsection (3) (g), the agreement referred to in subsection (3) (g) is in force.

(2) Subject to subsection (6), a person is a dependent continued person if

(a) the person was a dependant of a main continued person under subsection (1) on the main continued person's continuation date and is currently a dependant of the main continued person, or

(b) the person is a dependant of a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (b), (c), (d), (e), (f) or (g).

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of disability assistance, ceases to be eligible for disability assistance

(a) on a date the family unit includes a person aged 65 or older,

(b) as a result of a person in the family unit receiving an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act*,

(c) as a result of a person in the family unit receiving a payment under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,

(d) as a result of a person in the family unit receiving employment income,

(e) as a result of a person in the family unit receiving a pension or other payment under the *Canada Pension Plan (Canada)*,

(f) as a result of a person in the family unit receiving money or value that is maintenance under a maintenance order or a maintenance agreement or other agreement, or

(g) as a result of a person in the family unit receiving financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*.

(4) Subject to subsection (5), a person's status as a main continued person under subsection (1) is suspended for a calendar month if

(a) the person fails to meet an applicable income test under subsection (7) in the calendar month and in each of the immediately preceding 12 calendar months, and

(b) the person's continuation date is before those immediately preceding 12 calendar months.

(5) Subsection (4) does not apply to a person who is a main continued person under subsection (1) as a result of having been part of a family unit described in subsection (3) (c) or (g).

(6) A person's status as a dependent continued person under subsection (2) of a main continued person under subsection (1) is suspended if the main continued person's status is suspended under subsection (4).

(7) For the purposes of subsection (4),

(a) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (a), (b), (d) or (f) meets the income test for a calendar month if,

(i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main

continued person or another person in the family unit is eligible to receive premium assistance under the *Medicare Protection Act*, and

(b) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (e) meets the income test for a calendar month if,

(i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main continued person or another person in the family unit receives a pension or other payment under the *Canada Pension Plan (Canada)*.

(8) Despite this Division, a person is not eligible, as a main continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the person's continuation date occurs.

(9) Despite this Division, a person is not eligible, as a dependent continued person under subsection (2) of a main continued person under subsection (1), to receive a health supplement under this Division for a calendar month in which the main continued person's continuation date occurs. [en. B.C. Reg. 145/2015, Sch. 2, s. 4.]

General health supplements

62 The minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for

(a) a family unit in receipt of disability assistance,

(b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is under 19 years of age, or

(c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4; am. B.C. Reg. 161/2017, App. 2, s. 2.]

Optical supplements

62.1 The minister may provide any health supplement set out in section 2.1 [*optical supplements*] of Schedule C to or for

(a) a family unit in receipt of disability assistance,

(b) a family unit in receipt of hardship assistance, or

(c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4.]

Eye examination supplements

62.2 (1) Subject to subsections (2) and (3), the minister may provide a health supplement under section 2.2 [*eye examination supplements*] of Schedule C to or for

(a) a family unit in receipt of disability assistance,

(b) a family unit in receipt of hardship assistance, or

(c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

(2) A health supplement under subsection (1) may only be provided to or for a person once in any 24 calendar month period.

(3) A health supplement under subsection (1) may only be provided if payment for the service is not available under the *Medicare Protection Act*. [en. B.C. Reg. 145/2015, Sch. 2, s. 4.]

Schedule C

Health Supplements

Definitions

1 In this Schedule:

"**occupational therapist**" means an occupational therapist registered with the College of Occupational Therapists of British Columbia established under the *Health Professions Act*;

"**physical therapist**" means a physical therapist registered with the College of Physical Therapists of British Columbia established under the *Health Professions Act*;

"**physical therapy**" has the same meaning as in the Physical Therapists Regulation, B.C. Reg. 288/2008;

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>

Optical supplements

2.1 The following are the optical supplements that may be provided under section 62.1 [*optical supplements*] of this regulation:

- (a)basic eyewear and repairs;
- (b)pre-authorized eyewear and repairs.

Eye examination supplements

2.2 The minister may pay a health supplement under section 67.2 [*eye examination supplements*] of this regulation for an eye examination that,

- (a)if provided by an optometrist, is provided for a fee that does not exceed \$44.83, or

(b)if provided by an ophthalmologist, is provided for a fee that does not exceed \$48.90.

Conclusion:

In her submissions and during the hearing, the appellant provided compelling information regarding her daughter's vision and hearing deficiencies and the potential effects that these deficiencies could have on her abilities to learn. The appellant advocated strongly for her daughter, believing that the legislation on this matter was unfairly preventing her daughter from getting the therapy she needs.

The ministry relied upon the reconsideration decision during the hearing, explaining at length that under Sections 61.01, 61.1, 62 and Schedule C section 2(1) of the EAPWDR, the ministry will pay for treatment acupuncturists, chiropractors, massage therapists, naturopaths, podiatrists and physical therapists. At this time however, visual therapists are not covered as service providers by the ministry. There is no flexibility in the legislation to allow alternative treatments.

The panel finds that the ministry's reconsideration decision of February 27, 2019 which held that the appellant's daughter was not eligible for benefits, specifically visual therapy, because the ministry only pays for treatment from acupuncturists, chiropractors, massage therapists, naturopaths, podiatrists and physical therapists at this time. Consequently, the panel has decided that this was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the ministry's decision. The appellant is unsuccessful in her appeal.

PART G—ORDERS

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

PRINTNAME

Jan Lingford

SIGNATURE OF CHAIR

DATE(YEAR/MONTH/DAY)

2019/03/26

PRINTNAME

Sarah Bijl

SIGNATURE OF MEMBER

DATE(YEAR/MONTH/DAY)

2019/03/26

PRINTNAME

David Kendrick

SIGNATURE OF MEMBER

DATE(YEAR/MONTH/DAY)

2019/03/26