

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") reconsideration decision of March 13, 2019 which denied the Appellant's request for reimbursement for monies paid for naturopathic services incurred on January 8, 2019 on the grounds that

- The Appellant was not eligible because the need for naturopathic services has not been confirmed by a medical practitioner or nurse practitioner as an acute need,
- The 10 annual visits to which the Appellant is entitled under the Medical Services Plan of BC have not been exhausted, and
- The Appellant has not shown that there are no resources available with which to cover the cost

as is required by the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), Schedule C, section 2(1)(c)(i), (ii) & (iii).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 2(1)(c)(i), (ii) & (iii) and 2(2)

PART E – SUMMARY OF FACTS

Documents and Information Before the Ministry at Reconsideration

The documents and information before the Ministry at reconsideration included

A. The Decision to be Reconsidered

The Ministry originally denied the Appellant's request for reimbursement in its Extended Medical Therapies Decision Summary dated January 29, 2019. The Ministry found that although the Appellant was eligible for general health supplements and the requested therapy was one of those listed in EAPWDR section 2(2), an acute need for the naturopathic visit had not been confirmed by a medical practitioner or a nurse Practitioner. The Ministry also found that the Appellant had not used up all 10 MSP visits to which he is entitled and that the Appellant appears to have other resources available to him with which to pay for the visit for which he seeks reimbursement. The Ministry also noted that, while 12 pre-approved medical therapies are available to the Appellant under section 2 (2) EAPWDR, he has not used any of them.

B. The Request for Reconsideration dated March 1, 2019

In his Request for Reconsideration, the Appellant says that his naturopathic physician has

- reconfirmed the clinical diagnosis of persistent Lyme disease, along with the laboratory confirmation of it
- indicated that he should be working part-time after 6 months of treatment

The Appellant again asks that funding be considered for such treatment so that in 2-4 years time he will be able to work full-time and remove himself from assistance as a Person With Disabilities.

The Appellant repeats his request that the 10 (or 12) pre-approved annual visits at \$23 per treatment be allowed.

Regarding the Ministry's comment "*There appear to be other resources available as the applicant was able to pay for this visit and is asking for reimbursement*", the Appellant wants to know who made this determination and how the Ministerial Evaluation of this criterion was made.

The Appellant says he is therefore again asking that the Ministry seriously re-consider denying him funding for treatment leading to his re-employment.

C. A Bill from a Naturopathic Physician for the Visit of January 8, 2019

The bill was for an office visit charged at \$65 plus laboratory fees of \$375, totaling \$440. Attached to the bill was an Interac receipt for a debit card payment of \$440 from a chequing account.

D. A Letter from the Ministry to the Appellant Dated January 29, 2019

The letter to the Appellant advising him that his request was denied and advising him that he could request reconsideration.

Information Provided on Appeal

E. Notice of Appeal

In his Notice of Appeal, the Appellant states that he disagrees with the reconsideration decision because he has a diagnosis and laboratory confirmation of persistent Lyme disease received in January 2019.

F. Additional Evidence

Neither the Appellant nor the Ministry presented any additional evidence.



PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the Ministry of Social Development and Poverty Reduction's (the "Ministry") reconsideration decision of March 13, 2019 was reasonably supported by the evidence or was a reasonable application of the applicable enactment, specifically the *Employment and Assistance for Persons with Disabilities Regulation*, in the circumstances of the Appellant.

Specifically, the reconsideration decision denied the Appellant's request for reimbursement for monies paid for naturopathic services incurred on January 8, 2019 on the grounds that,

- The Appellant was not eligible because the need for naturopathic services has not been confirmed by a medical practitioner or nurse practitioner as an acute need,
- The 10 annual visits to which the Appellant is entitled under the Medical Services Plan of BC have not been exhausted, and
- The Appellant has not shown that there are no resources available with which to cover the cost

as is required by the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), Schedule C, section 2(1)(c)(i), (ii) & (iii).

Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation, section 62

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)

Employment and Assistance for Persons with Disabilities Regulation, Schedule C, section 2(1)(c), 2(2) & (2.1)

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

Parties' Positions at Appeal

Appellant's Position

At the Appeal the Appellant submitted that he should be entitled to reimbursement of the monies he paid out on the naturopath's bill, which was for \$65 plus \$375 for a 2019 laboratory report confirming his Lyme Disease. He pointed out that the report was not contained in the Appeal Record. He argued that he should be reimbursed the full amount, because he submitted the report to the Ministry, and the Ministry knew he had Lyme Disease; it was confirmed when he was granted Persons with Disability status in January 2014. He also argued that he had no money with which to pay the bill of \$440; He said he had saved for 6 months by utilizing the food bank and other community resources so that he could afford to visit the naturopathic physician and obtain the report. He argued that, if his naturopathic physician's recommendations of 6 months' treatment were followed, he could return to work; he is a chemist, a laboratory instructor and a computer programmer and work is available for him, but he has not worked since his diagnosis in 2014. In relation to both the 10 Medical Services Plan of BC annual visits and the 12 visits authorized pursuant to schedule C, *EAPWDR* sections 2(1)(c)(ii) and (2) to attend upon the 6 different types of healthcare providers ("complementary practitioners") authorized, he argued that he did not understand the situation entirely but he pointed out that in any event he had no money with which to pay the fees of those practitioners, over and above the \$23 authorized. His position was that he could not take advantage of those visits because he had no money with which to pay.

In relation to the reason given by the Ministry for refusing his request because there appeared to be other resources available as he was able to pay for the visit and is asking for reimbursement, he argued that this attacked his credibility and integrity and he was offended by this. He agreed that he had paid the \$440 required of him by the naturopathic physician, and said that he had saved for 6 months in order to be able to pay. He confirmed that the payment, as evidenced by an Interac receipt, came from his **own** chequing account.

He also argued that the naturopathic physician's bill and the laboratory cost should be covered without argument by the Ministry because about 4 years ago as a result of his Lyme disease they had provided him with orthopaedics and therefore the Ministry was aware of him having health concerns due to Lyme Disease.

He submitted that he has not obtained confirmation of an acute need for the naturopathic physician's recommended treatment from his family physician, or any other medical practitioner, because physicians in British Columbia can encounter trouble from the College of Physicians and Surgeons if they are seen to be treating someone for a condition that is not officially recognized, which is the case with Lyme Disease. He also said that Lyme Disease is recognized by the federal government so it is difficult to understand why it is not recognized in British Columbia by the College.

He stated that he has not asked a nurse practitioner to confirm an acute need for the naturopathic treatments recommended but could go to a local agency and see if such a confirmation was available.

The Appellant also argued that the Minister had total discretion, and this ministerial discretion should be exercised in his favour.

Ministry Position

The Ministry submitted that it stood by the Reconsideration Decision, and emphasized that the Appellant has not taken advantage of the visits available to him pursuant to the *Medical and Health Care Services Regulation*, BC Reg. 426/97. Further, the Ministry pointed out that it is a condition that there be a confirmation of an acute need for the recommended treatments, by either a medical practitioner or nurse practitioner, and that the appellant had not obtained such confirmation.

The Ministry also went on to say that the confirmation of the need being "acute" is, in the Ministry's eyes, something that is "severe and immediate".

Panel Findings

General Scheme of the Legislation

The general scheme of the legislation is that the Minister may provide general health supplements to a Person with Disabilities, up to 12 visits in a year, provided that the person has used up the 10 visits allowed under the Medical Services Plan, for services provided by any combination of 6 different types of health care providers ("complementary practitioners"), other than physicians or nurses, of which naturopathy services provided by a naturopath are one type.

In order for an individual to qualify for any of these visits, certain conditions must be met:

- the need for the service must be acute, and must be confirmed by either a medical practitioner or a nurse practitioner. A "medical practitioner" is defined as being a registrant of the College of Physicians and Surgeons of British Columbia entitled under the *Interpretation Act* and *Health Professions Act* to practice medicine and to use the title "medical practitioner" and a "nurse practitioner" is defined by the *EAPWDR* as having the same meaning as in the *Nurses (Registered) and Nurse Practitioner's Regulation*,
- the applicant must have used up the visits available to him under the *Medical and Health Care Services Regulation* which allows 10 visits under the Medical Services Plan of BC (*MSP* visits), and
- there must be no resources available to the family unit to cover the cost.

If all 3 conditions are met, then an applicant is entitled to a further maximum of 12 visits in any calendar year from any combination of the 6 different health care providers.

Regardless of whether the visits to the non-physician medical service providers are the *MSP* visits or the additional 12 visits, each practitioner is paid \$23 per visit.

Panel Findings

Ministry Failure to Provide All Relevant Documents

The panel finds it unacceptable that the Ministry failed to provide the laboratory report given it by the Appellant for inclusion in the Appeal Record. The Ministry is required to provide all material submitted to it, not simply the material that it considers relevant or appropriate. The panel notes that if the laboratory report had been provided, and if it had been signed by a medical practitioner confirming that treatment as

recommended by the naturopathic physician was recommended, the outcome of this Appeal may have been different. However, without the report being available and without it being known if it was signed by a medical practitioner, the panel is unable to make a finding concerning it.

Ministerial Discretion

The Appellant had argued that the Minister has discretion which should be exercised in his favour. The panel finds that if such discretion exists, it is that of the Minister, and is not within the jurisdiction of the Employment and Assistance Tribunal to consider.

Confirmation of an Acute Need for the Recommended Treatment

The panel finds that the Appellant has not provided confirmation from either a medical practitioner or nurse practitioner that there is an acute need for the treatment recommended by the naturopathic physician.

The panel notes that the term "acute" as used in *EAPWDR* section 2(1)(c)(ii) is not defined in the legislation, and therefore must have the everyday dictionary meaning. The Ministry defines the term to mean "*severe and immediate*". The panel finds that it is not reasonable to define the term in that way, because no dictionary definition does so. Dictionary definitions define the term as being things such as sharp, severe, and the like, but do not require immediacy.

However, without a confirmation from either a medical practitioner or nurse practitioner that there is a need, whether acute or not, for the recommended treatment, the panel cannot say that the Ministry did not reasonably apply the legislation in the circumstances of the appellant and cannot say that the Ministry's conclusion to the effect that there was no confirmation of an acute need was not a reasonable application of the legislation.

Exhaustion of the 10 MSP/12 Extra Visits to Complementary Practitioners

The panel finds that the appellant has not exhausted the 10 MSP visits authorized because of his lack of funds. The *EAPWDR* section 2(1)(c)(ii) requires an applicant to exhaust the MSP visits provided, if they are available. The panel finds that if an individual cannot pay the difference between the Ministry rate of \$23 per visit and the cost charged by the complementary practitioners, then in practical terms the visits are not available.

The Ministry found that the Appellant was not entitled to the cost of the naturopathic physician or the laboratory cost because he had not exhausted the 10 MSP visits.

The panel finds that it is not reasonable for the Ministry to require an applicant to exhaust the 10 MSP visits to a complementary practitioner, when the applicant cannot pay. The Ministry, in basing its decision on the fact that the Appellant had not exhausted those visits, was not applying the legislation reasonably in the circumstances of the Appellant.

Other Resources Available

The Ministry found that because the appellant paid the \$440, it could not be said that there were no other resources available with which to cover the cost. The Ministry ought to have known, because the Appellant told it, that the Appellant was using family resources and food banks, and that he must do so because he had diverted resources to pay for the naturopathic physician's services and the laboratory test.

The panel finds that the only conclusion possible is that the appellant did not have resources available to cover the cost.

The panel finds that the Ministry, in determining that there appeared to be other resources available to the Appellant arrived at a conclusion that was neither reasonably supported by the evidence nor a reasonable application of the legislation in the circumstances of the Appellant.

Conclusion

The panel finds that although the Ministry did not reasonably apply 2 of the 3 the required criteria in the circumstances of the Appellant, and that its conclusions in those 2 were not reasonably supported by the evidence, it did reasonably apply 1 of the 3 required criteria of the legislation in the circumstances of the Appellant, and its conclusion was reasonably supported by the evidence, when it found that the Appellant had not provided confirmation of the need for the treatment recommended by the naturopathic physician.

The panel therefore confirms the Reconsideration Decision, and the Appellant is not successful in his Appeal.

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 DONALD (DAN) McLEOD	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/APRIL/17

PRINT NAME WESLEY NELSON	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/APRIL/17
PRINT NAME EMILY DROWN	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/APRIL/17