

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated April 9, 2019, which determined the appellant was not eligible for extended acupuncture treatments under the Employment and Assistance for Person with Disabilities Regulation (EAPWDR), section 62 and schedule C, subsections 2(1)(c)(i) and 2(1)(c)(ii).

Specifically, the ministry determined that a medical practitioner has not confirmed that the appellant has an acute need for the therapies requested and the 10 visits provided under the Medical Services Plan (MSP) have not been fully utilized, as required under the legislation.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Person with Disabilities Regulation (EAPWDR), section 62 and schedule C, subsections 2(1)(c)(i) and 2(1)(c)(ii).

PART E – SUMMARY OF FACTS

Relevant Evidence Before the Minister at Reconsideration

Reason for Request for Reconsideration

- Information provided by the appellant's Registered Practitioner of Traditional Chinese Medicine (R.TCM Practitioner) (March 14, 2019).

After the first observation, the R.TCM Practitioner realized that the appellant had big shoulder and back muscle pain and a problem with her spine. She was diagnosed with scoliosis in 2013 and became more ill after a car accident in 2013. The appellant is having sharpness pain, stiffness, tightness in her shoulder, upper middle, lower back, and headaches. She has tingling in legs, poor posture and a pinched nerve in her back and neck.

The appellant's pain is caused by blood stasis. A traffic accident can cause blood stasis. The pain is "sharpness" pain. This is an internal blood stasis symptom. "So promote blood circulation by acupuncture treatment."

The appellant has stiffness and tightness in her muscles, which can be relieved by acupuncture treatment.

The appellant has scoliosis, which affects the nerves near the vertebrae and causes a variety of neuropathic pain. Acupuncture can calm the spinal nerves and reduce nerve pain.

Ministry records show:

- The appellant is a recipient of disability assistance.
- On February 4, 2019 the ministry received the appellant's request for extended medical therapy visits (acupuncture).
- "The 2019 MSP visits may be available. The 10 MSP visits for the calendar year 2019 are available as of January 1, 2019; and confirmation has not been provided that the MSP visits have been accessed."

Letter dated February 4, 2019

- "To Whom It May Concern" from appellant's R.TCM Practitioner

The letter confirmed that the appellant came to the R.TCM Practitioner's clinic on February 1, 2019 having pain, stiffness and tightness on her shoulder, upper back, middle back, lower back and leg area.

The appellant advised that she had a shoulder, back and leg pain for 10 years. She became more ill after a car accident in 2013 and was diagnosed with scoliosis in 2013.

After the first observation, the R.TCM Practitioner realized that the appellant had big shoulder and back muscle pain and problems with her spine. This is chronic pain.

The appellant received treatment for acupuncture, cupping and herb. The appellant will receive acupuncture, cupping acupress and moxibustion treatments. "And she was still experiencing muscle pain." The R.TCM Practitioner made a 12 session plan for the appellant.

Letter dated February 6, 2019

- To the appellant from the ministry advising her the ministry has denied her request for Health Supplements as she did not meet the eligibility criteria for the health supplement – acupuncture visits.

The rationale is as follows.

A medical practitioner or nurse practitioner has not confirmed an acute need for Pre-Approved Extended Medical Therapies as per Schedule C, section 2(1)(c)(i). There is no information to indicate that there is an acute exacerbation of their [sic] condition.

A letter from the Acupuncturist was submitted requesting sessions as the applicant “has big shoulder and back muscle pain and problem [sic] with her spine. This is chronic pain.” The therapist has confirmed a chronic need for pain management; however an Acupuncturist is not a nurse practitioner and is not a medical practitioner; that is; a registrant of the College of Physicians and Surgeons of BC entitled under the Health Professional Act to practice and to use the title “medical practitioner”.

The 2019 MSP visits may be available. The 10 MSP visits for the calendar year 2019 are available as of January 1, 2019; and confirmation has not been provided that the MSP visits have been accessed...

Additional Evidence**Notice of Appeal dated April 16, 2019**

In the “Reasons for Appeal” in the Notice of Appeal the appellant states, “I have scoliosis and have been in a Major Car accident, My Doctor has already sent something that says I am acute”

Letter submitted to Medical Services Plan dated April 25, 2019

- “To whom it may concern” from appellant’s doctor of chiropractic services
The letter is to clarify the treatment provided for the appellant in order to apply for additional physiotherapy/chiropractor/massage treatments under the ministry program for premium assistance. The appellant has a chronic condition due to a motor vehicle accident with multiple injuries to her head, spine, and ankle with weekly acute flareups.

“Recommendations for treatment are 1 visit per week for Chiropractic services, for a total of 36 additional visits. “Date of last visit for Chiropractic treatment covered under Medical Services Plan was February 11, 2019.”

At the hearing, the appellant clarified that she has used up all 10 of her allowed MSP visits for 2019, split between acupuncture and chiropractic services.

At the hearing, the ministry reiterated that a medical practitioner or nurse practitioner has not provided the required information, and the ministry had no information to show there was an acute need. As well, the ministry stated that it did not have any information stating that MSP had been exhausted.

The panel determined that the oral evidence, stating that the appellant has used up all 10 of her allowed MSP visits for 2019, was admissible under section 22(4) of the *Employment and Assistance Act* as it was in support of the records before the minister at reconsideration.

The panel determined that the additional evidence, the word “acute” in the Notice of Appeal and the letter submitted to Medical Services Plan, dated April 25, 2019, was not admissible under section 22(4) of the *Employment and Assistance Act* as it was not in support of the records before the minister at reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry’s reconsideration decision, which determined that the appellant was not eligible for extended acupuncture treatments under the EAPWDR, section 62 and schedule C, subsections 2(1)(c)(i) and 2(1)(c)(ii) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

Specifically, did the ministry reasonably determine that a medical practitioner has not confirmed that the appellant has an acute need for the therapies requested and the 10 visits provided under the MSP have not been fully utilized, as required under the legislation?

The ministry was satisfied that the appellant does not have any resources to pay for the cost of therapy sessions beyond the 10 available under MSP and therefore determined that the requirement under schedule C, subsections 2(1)(c)(iii) of the EAPWDR was met.

The legislation provides:

Employment and Assistance for Persons with Disabilities Regulation

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,

...

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 medical practitioner or nurse practitioner has confirmed an acute need,
 (ii) if the visits available under the Medical and Health Care Services Regulation 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.

...

Interpretation Act

Expressions defined

29 In an enactment:

"medical practitioner" means a registrant of the College of Physicians and Surgeons of British Columbia entitled under the *Health Professions Act* to practise medicine and to use the title "medical practitioner"

"nurse practitioner" means a person who is authorized under the bylaws of the College of Registered Nurses of British Columbia to practise nursing as a nurse practitioner and to use the title "nurse practitioner"

Panel Decision

Ministry Argument

The ministry's position is that there was no evidence to show that a medical practitioner confirmed that the appellant has an acute need for the therapies requested and there was no evidence to show that the 10 visits provided under the MSP had been fully utilized, as required under the legislation.

Appellant Argument

At the hearing, the appellant stated she initially thought her acupuncturist was considered a medical practitioner. Then she thought she understood that if she got a letter from her doctor (chiropractor) this would meet the requirements. During the hearing it was clarified that her chiropractor was not a medical doctor and therefore does not meet the requirements; both the ministry and appellant did not dispute this.

As well, the panel determined that the letter from the doctor of chiropractic medicine, dated April 25, 2019, was not admissible under section 22(4) of the *Employment and Assistance Act* as it was not in support of the records before the minister at reconsideration.

Section 62 of the EAPWDR states, "The minister may provide any health supplement set out in section 2 [general health supplements]...of Schedule C to or for (a) a family unit in receipt of disability assistance..." Ministry records show the appellant is a recipient of disability assistance. The panel notes the ministry may provide health supplements to the appellant, under this section.

Ministry records also show that on February 4, 2019 the ministry received a request for extended medical therapy visits (acupuncture). Schedule C, 2(1)(c) of the EAPWDR states, "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:...a service provided by a person described opposite that service in the following table..." The panel notes that acupuncture, provided by an acupuncturist registered with the College of Traditional Chinese Medicine under the *Health Professions Act* is included in the table.

However, schedule C, 2(1)(c)(i) of the EAPWDR states that a medical practitioner or nurse practitioner has to confirm an acute need for the service (acupuncture). The panel notes the facts indicate that the information in the letter dated February 4, 2019, was provided by the appellant's Registered Practitioner of Traditional Chinese Medicine and not by a medical practitioner or a nurse practitioner as defined in the *Interpretations Act*. For this reason, the panel finds the ministry reasonably determined that the appellant was not eligible for extended acupuncture treatments under the EAPWDR, schedule C, subsections 2(1)(c)(i).

Schedule C, 2(1)(c)(ii) of the EAPWDR indicates that the service (acupuncture) may be paid, "if the visits available under the Medical and Health Care Services Regulation for that calendar year have been provided..." Although at the hearing, the appellant clarified that she has used up all 10 of her allowed MSP visits for 2019, the panel placed little weight on this evidence. Greater weight was placed on the evidence before the ministry at reconsideration that the 2019 MSP visits may be available and confirmation had not been provided that the MSP visits had been accessed. For this reason, the panel finds the ministry reasonably determined that the appellant was not eligible for extended acupuncture treatments under the EAPWDR, schedule C, subsections 2(1)(c)(ii).

Conclusion

Therefore, the panel finds the ministry's decision was reasonably supported by the evidence, and confirms the decision. The appellant's appeal is unsuccessful.

APPEAL NUMBER

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

Connie Simonsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/05/08

PRINT NAME

Susanne Dahlin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/05/08

PRINT NAME

Diane O'Connor

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/05/08