

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated April 3, 2019, which held that, pursuant to Schedule C of the *Employment and Assistance Act for Persons with Disabilities Regulation*, the appellant was not entitled to extended physiotherapy treatments.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA)
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 62 and Schedule C

PART E – SUMMARY OF FACTS*Information Before The Ministry at Reconsideration*

1. The Appellant is a recipient of disability assistance;
2. The Appellant had been prescribed physiotherapy and it was anticipated that she could require 10 appointments, with the first two being 60 minutes long and the other eight visits being 45 minutes long;
3. The anticipated cost for 10 physiotherapy appointments would be \$1,330.00; and
4. The Appellant had not used all the treatment visits available under the *Medical and Health Care Services Regulation*; and
5. The Appellant did not have resources to pay for the cost of the prescribed physiotherapy.

Information Provided on Appeal

1. The Appellant's Notice of Appeal dated April 17, 2019. In that Notice, the Appellant provided further information regarding the benefits of her prescribed physiotherapy;
2. At the hearing, the Appellant provided a pamphlet describing her prescribed physiotherapy. The ministry had no objection to the panel considering the information in the pamphlet. The panel determined, pursuant to *Employment and Assistance Act*, section 22(4), that this pamphlet was admissible because it was in support of the information before the ministry at reconsideration that the Appellant had been prescribed physiotherapy;
3. At the hearing, the Appellant provided a letter from a nurse practitioner describing some of the ailments effecting the Appellant. The ministry had no objection to the panel considering the information in the pamphlet. The panel determined, pursuant to *Employment and Assistance Act*, section 22(4), that this pamphlet was admissible because it was in support of the information before the ministry at reconsideration that the Appellant had been prescribed physiotherapy;
4. At the hearing, the Appellant provided an Operative Report. The panel determined, pursuant to *Employment and Assistance Act*, section 22(4), that this report was admissible as evidence because it was in support of the information regarding the Appellant's medical conditions that was before the minister at reconsideration;
5. At the hearing, the Appellant provided a page from her clinical records related to an MRI of her spine. The panel determined, pursuant to *Employment and Assistance Act*, section 22(4), that this extract was admissible as evidence because it was in support of the information regarding the Appellant's medical conditions that was before the minister at reconsideration;
6. At the hearing, the Appellant provided a prescription from a MD for a fibromyalgia programme. The panel determined, pursuant to *Employment and Assistance Act*, section 22(4), that this prescription was not admissible as evidence because it was not before the minister at reconsideration;
7. At the hearing, the Appellant provided an info page about Fibromyalgia from The Arthritis Society. The panel determined, pursuant to *Employment and Assistance Act*, section 22(4), that this prescription was not admissible as evidence because it was not before the minister at reconsideration; and
8. At the hearing, the Appellant provided a portion of an application for Canada Pension Plan benefits. The panel determined, pursuant to *Employment and Assistance Act*, section 22(4), that this prescription was not admissible as evidence because it was not before the minister at reconsideration.

Summary of Relevant Evidence

1. The Appellant is a recipient of disability assistance;
2. The Appellant had been prescribed physiotherapy; and
3. The Appellant had not used all the treatment visits available under the *Medical and Health Care Services Regulation*; and
4. The Appellant did not have resources available to pay for the cost of the prescribed physiotherapy.

PART F – REASONS FOR PANEL DECISION**Issue on Appeal**

The issue on appeal is whether the ministry's decision that the Appellant was not entitled to a general health supplement for physiotherapy was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Relevant Legislation

EAPWDR section 62 states:

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.

EAPWDR Schedule C states (in part):

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:

(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.

Ministry Position

The ministry stated that the Appellant was a family unit in receipt of disability assistance and therefore the Appellant met the requirement of section 62.

The ministry stated that Schedule C, section 2(1)(c)(i) required a medical practitioner or nurse practitioner to confirm there was an acute need for the health supplement. The ministry stated that the word "acute" did not need to be explicitly used to establish an entitlement and that acute meant that there was a 'severe and immediate' need for the therapies requested.

The ministry accepted that the Appellant had a severe need for the prescribed physiotherapy. However, the ministry found that the Appellant did not have an immediate need for the prescribed physiotherapy.

The ministry stated that Schedule C, section 2(1)(c)(ii) required that the visits available to the Appellant under the Medical and Health Care Services Regulation be provided before the ministry was authorized to provide a general health supplement. The ministry explained that the legislative purpose of the general health supplement was to provide a supplement for individuals who had exhausted the benefits provided under MSP; essentially it provided a supplement for 12 additional treatments and is not to double the amount of the per treatment funding supplement available. The ministry stated that because the Appellant had not exhausted the benefits provided under MSP that the ministry could not provide a supplement under the EAPWDR. However, once the Appellant had exhausted her MSP benefits, she could apply for a general health supplement.

The ministry stated that Schedule C, section 2(1)(c)(iii) required that the Appellant have no resources available to cover the cost of the prescribed physiotherapy and that the ministry was satisfied that this requirement was met.

The ministry also noted that Schedule C, section 2.1, limited the amount of the supplement for physical therapy sessions to "\$23 for each visit."

Appellant Position

The Appellant's position was that she had an acute need for the prescribed physiotherapy because she considered it a requirement of her rehabilitation.

The Appellant explained that the type of physiotherapy she was prescribed required a specialized technique for which physical therapists required additional training. The Appellant said that because of this additional training physical therapists charged between \$160 and \$170 per hour and the MSP coverage of \$23.00 per unit was not sufficient. The Appellant stated that she did not have the resources to cover the difference between the actual cost and the supplement provided by MSP.

The Appellant stated that she wanted to do everything she could to recover her health and that she wanted the ministry to pre-approve that it would cover the cost of the treatments before she incurred the costs.

Panel Decision

The panel is very sympathetic to the Appellant's situation and understands that the Appellant does not have the resources to cover the difference between the supplement provided by MSP or EAPWDR Schedule C and the cost charged by a physiotherapist.

That the Appellant satisfies the criteria of EAPWDR section 62, and Schedule C, section 2(1)(c)(iii) was not in dispute on the appeal.

Regarding Schedule C, section 2(1)(c)(i) the panel accepts the ministry interpretation that an acute need means that the need must be severe and immediate. The panel also accepts that the word "acute" does not need to be used by a medical practitioner or nurse practitioner in order to satisfy this statutory requirement. The panel is satisfied that the Appellant has a severe need for the prescribed physiotherapy. However, the panel is not satisfied that the need for the prescribed physiotherapy is immediate. The panel notes that the prescription for this

physiotherapy was made on September 6, 2018 and the Appellant did not apply for the supplement until January 9, 2019 and finds that the Appellant does not have an immediate need for the prescribed physiotherapy.

The panel also notes, that the supplement under the EAPWDR would not be available to the Appellant until she exhausted her MSP benefits so the EAPWDR benefit could not be provided immediately, even if a medical practitioner or nurse practitioner indicated that the prescribed physiotherapy was required immediately. Consequently, the panel finds that the ministry's decision that the Appellant did not satisfy the requirement imposed by EAPWDR Schedule C, section 2(1)(c)(i) is reasonably supported by the evidence and is a reasonable application of the enactment.

Regarding Schedule C, section 2(1)(c)(ii), the Appellant informed the panel that she had not exhausted all of her MSP visits. The Appellant stated that she could not afford to cover the difference between the actual cost and the supplement provided by MSP. Consequently, the panel finds the ministry's decision that the Appellant did not satisfy the requirement imposed by EAPWDR Schedule C, section 2(1)(c)(ii) is reasonably supported by the evidence and is a reasonable application of the enactment.

In conclusion, the panel finds that the ministry's decision that the Appellant was not entitled to a general health supplement for physiotherapy, pursuant to EAPWDR section 62 and Schedule C, was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry's decision is confirmed and the Appellant is not successful on appeal.

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

Trevor Morley

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/06/03

PRINT NAME

Melissa McLean

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/06/03

PRINT NAME

Jane Nielsen

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/06/03