

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision dated August 7, 2019, wherein the ministry denied the appellant’s request for reimbursement for physiotherapy sessions on April 12, 18, May 3, and June 13, 2019, and for hydrotherapy sessions on May 9, 16 and 30, 2019 because

- the information provided by the physiotherapist does not confirm that the 10 visits available under MSP for the 2019 calendar year have been provided. Therefore the appellant’s request does not meet the eligibility requirement set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C, section 2(1)(c)(ii); and because
- although a physiotherapist may provide hydrotherapy, a kinesiologist is not among the types of health professionals that may provide the services set out in section 2(1)(c).

The ministry also denied the appellant’s request for pre-approval for a pool/hot tub as requested by the appellant’s medical practitioner because a pool/hot tub for hydrotherapy is not among the items set out as health supplements in Schedule C of the EAPWDR. Furthermore, the ministry found that the appellant is not eligible for a pool/hot tub for hydrotherapy pursuant to section 69 of the EAPWDR as no life-threatening health need has been established.

The ministry noted that the appellant met the eligibility criterion of section 2(1)(c)(i) and confirmed that the appellant has an acute need for physiotherapy.

**PART D – RELEVANT LEGISLATION**

EAPWDR sections 62, 69 and Schedule C

**PART E – SUMMARY OF FACTS**

Information before the ministry at reconsideration included the following evidence:

The appellant is in receipt of disability assistance.

On June 14, 2019 the ministry received a statement from the appellant's physiotherapist indicating that the appellant had paid \$221.25 for 7 sessions from April 12, 2019 to June 13, 2019.

Physiotherapy account statement:

|                |                    |     |                     |               |
|----------------|--------------------|-----|---------------------|---------------|
| April 12, 2019 | Physio assessment  | MSP |                     | \$30.00 debit |
|                |                    |     | \$30 cash payment   |               |
| April 18, 2019 | Physio follow-up   | MSP |                     | \$30.00 debit |
|                |                    |     | \$30 cash payment   |               |
| May 3, 2019    | Physio follow-up   | MSP |                     | \$30.00 debit |
|                |                    |     | \$30 cash payment   |               |
|                |                    |     | \$126 Visa payment  |               |
| May 9, 2019    | Kinesiology - Pool |     |                     | \$52.50 debit |
| May 16, 2019   | Kinesiology - Pool |     |                     | \$24.50 debit |
| May 30, 2019   | Kinesiology - Pool |     |                     | \$24.50 debit |
| June 13, 2019  | Physio follow-up   | MSP |                     | \$30.00 debit |
|                |                    |     | \$5.50 cash payment |               |
| Total Paid     |                    |     | \$221.50            | \$0 balance   |

The May 9, 16 and 30, 2019 sessions were provided by a kinesiologist.

As reproduced above, it appears from the account statement that payment had been received from MSP for each of the following sessions: April 12, April 18, May 3 and June 13, 2019. The ministry writes: "It is assumed the \$ 30 charged to you for each session was in addition to the amount paid by MSP."

In a letter dated July 7, 2019 the appellant's General Medical Practitioner (GP) writes that the appellant is "currently experiencing left shoulder pain with adhesive capsulitis. She has been following a treatment program including hydrotherapy as per her physiotherapist but these appointments are not covered by MSP and are too expensive for her to continue. In an effort to continue making progress I agreed with her initiative of purchasing a pool that she can use at home... I am hopeful that some/all of her expenses for physical therapies and equipment can be reimbursed and potentially covered going forward."

In her self-report at reconsideration dated July 26, 2019 the appellant writes that her shoulder will not get better without physiotherapy. It is the only thing that is keeping her from surgery. The pain is so bad that she is on a narcotic so that she can sleep. She was getting better with physiotherapy but had to stop because the cost was too high. She is unable to use her arm for simple things like getting dressed, showering, doing her hair, and eating. Once she can use her arm again she will need physiotherapy until it fully heals. Her doctor suggested she purchase a pool so that she can do some of her physiotherapy at home. She was going to her community centre but she could not get there. She lives 10 miles out of town, has no car and would have to pay\$10 for a ride. There is no hourly bus service and a taxi costs \$30 one way. Physiotherapy is the only thing that will prevent her from having surgery.

The appellant's request for reconsideration included the following quotes:

Quote for a 8ft by 30in. round swimming pool for \$63.64

Quote for a pool cover for \$25.90.

Quote for a Filter pump for above round pools for \$69.99. Quote for a replacement cartridge:\$14.11

Quote for a salt water pool care product \$62.85.

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In her Notice of Appeal dated August 16, 2019 the appellant writes that this treatment is the only way she can get better. Physiotherapy costs too much and she is unable to pay any more.

**PART F – REASONS FOR PANEL DECISION**

There are several issues in this appeal.

One issue in this appeal is whether the ministry's decision to deny the appellant's request for reimbursement for physiotherapy sessions on April 12, 18, May 3, and June 13, 2019, and for hydrotherapy sessions on May 9, 16 and 30, 2019 was a reasonable application of the legislation or reasonably supported by the evidence.

Specifically, did the ministry reasonably determine that

- the information provided by the physiotherapist does not confirm that the 10 visits available under MSP for the 2019 calendar year have been provided whereby the appellant's request does not meet the eligibility requirement set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C, section 2(1)(c)(ii)? and/or
- although a physiotherapist may provide hydrotherapy, a kinesiologist is not among the types of health professionals that may provide the services set out in section 2(1)(c)?

Another issue in this appeal is also whether the ministry reasonably denied the appellant's request for pre-approval for a pool/hot tub as requested by the appellant's medical practitioner because a pool/hot tub for hydrotherapy is not among the items set out as health supplements in Schedule C of the EAPWDR. Furthermore, did the ministry reasonably determine that the appellant is not eligible for a pool/hot tub for hydrotherapy pursuant to section 69 of the EAPWDR as no life-threatening health need has been established?

**EAPWDR****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.

**Schedule C of the EAPWDR****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:

- (a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:
  - (i) the supplies are required for one of the following purposes:
    - (A) wound care;
    - (B) ongoing bowel care required due to loss of muscle function;
    - (C) catheterization;
    - (D) incontinence;

- (E) skin parasite care;
- (F) limb circulation care;
- (ii) the supplies are
  - (A) prescribed by a medical practitioner or nurse practitioner,
  - (B) the least expensive supplies appropriate for the purpose, and
  - (C) necessary to avoid an imminent and substantial danger to health;
- (iii) there are no resources available to the family unit to pay the cost of or obtain the supplies;
- (a.1) the following medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies:
  - (i) lancets;
  - (ii) needles and syringes;
  - (iii) ventilator supplies required for the essential operation or sterilization of a ventilator;
  - (iv) tracheostomy supplies;
- (a.2) consumable medical supplies, if the minister is satisfied that all of the following requirements are met:
  - (i) the supplies are required to thicken food;
  - (ii) all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies;
- (b) Repealed. [B.C. Reg. 236/2003, Sch. 2, s. 2 (b).]
- (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.

### **2.1 Optical supplements**

### **2.2 Eye examination supplements**

### **3.1 Medical equipment and devices — canes, crutches and walkers**

### **3.2 Medical equipment and devices — wheelchairs**

### **3.3 Medical equipment and devices — wheelchair seating systems**

### **3.4 Medical equipment and devices — scooters**

### **3.5 Medical equipment and devices — toileting, transfers and positioning aids**

(1)

- (a) a grab bar in a bathroom;
- (b) a bath or shower seat;
- (c) a bath transfer bench with hand held shower;
- (d) a tub slide;
- (e) a bath lift;
- (f) a bed pan or urinal;
- (g) a raised toilet seat;
- (h) a toilet safety frame;
- (i) a floor-to-ceiling pole in a bathroom or bedroom;
- (j) a portable commode chair;
- (k) a standing frame for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;
- (l) a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;
- (m) a transfer aid for a person for whom the transfer aid is medically essential to transfer from one position to another...

### **3.6 Medical equipment and devices — hospital bed**

### **3.7 Medical equipment and devices — pressure relief mattresses**

### **3.8 Medical equipment and devices — floor or ceiling lift devices**

### **3.9 Medical equipment and devices — breathing devices**

### **3.10 Medical equipment and devices — orthoses**

### **3.11 Medical equipment and devices — hearing instruments**

### **3.12 Medical equipment and devices — non-conventional glucose meters**

### **4 Dental supplements**

#### **4.1 Crown and bridgework supplement**

#### **5 Emergency dental supplements**

#### **6 Diet supplements**

#### **7 Monthly nutritional supplement**

#### **8 Natal supplement**

#### **9 Infant formula**

**EAPWDR****General health supplements**

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- (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.

**69 Health supplement for persons facing direct and imminent life threatening health need**

The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
- (b) the health supplement is necessary to meet that need, ...

Appellant's position

The appellant argues that she needs the ministry to pay for her physiotherapy and hydrotherapy sessions as well as for a pool because she needs these therapies for her shoulder to heal and to avoid surgery but cannot afford to pay for them. Her shoulder will not improve without physiotherapy. The pain is so bad that she is on a narcotic just so she can sleep. She is unable to use her arm for simple things like getting dressed, showering, doing her hair, or eating. Once she can use her arm again she will need physiotherapy until it fully heals.

Her doctor suggested she purchase a pool so that she could do some of her physiotherapy at home. She could not use the pool at her community centre because she lives 10 miles out of town and there is no hourly bus service. She has no car and would have to pay \$10 for a ride or \$30 for a taxi one way.

Ministry position

The ministry determined that the appellant was not eligible for reimbursement for physiotherapy because the information provided does not establish that the following eligibility criteria of section 2(1)(c) of Schedule C of the EAPWDR have been met.

- coverage for extended therapies (acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry and physical therapy) are to be delivered in not more than 12 visits per calendar year.
- The visits available under the Medical and Health Care Services Regulation for the calendar year have been provided and payment is not available under the Medicare Protection Act.

The information provided by the physiotherapist does not confirm that the 10 visits available under MSP for the 2019 calendar year have been provided. Only 4 sessions with a physiotherapist are listed from April 12 to June 13, 2019. Therefore the appellant's request does not meet the eligibility requirement set out in the EAPWDR, Schedule C, section 2(1)(c)(ii).

From May 9 to May 30, 2019, 3 sessions with a kinesiologist were provided. The EAPWDR Schedule C section 2(1)(c)(i) specifies the health supplements that may be paid by the ministry are services provided a person described as follows:

- acupuncture provided by acupuncturist
- chiropractic provided by chiropractor
- massage therapy provided by massage therapist
- naturopathy provided by naturopath
- non-surgical podiatry provided by podiatrist
- physical therapy provided by physical therapist.

Although a physiotherapist may provide hydrotherapy, a kinesiologist is not one of the persons described in this table. Therefore, the ministry is not authorized to pay for these services and the appellant's request for coverage does not meet the requirements set out in section 2(1)(c)(i).

The appellant's request for a hot tub for hydrotherapy does not meet the legislated requirements of Schedule C:

- It is not a medical item described in Sections 2(1)(a), 2(1)(a.1), 2(1)(a.2) and 2(1.1) and it does not meet the legislated criteria of extended therapy sessions set out in sections 2(1)(c); 2(2) and 2(2.1);
- It does not fall under any category of medical equipment and devices the ministry is authorized to provide under section 3. It is not among the medical equipment and devices listed in section 3.1 to 3.12;
- It is not a health supplement set out in any other sections of Schedule C (sections 2.1, 2.2, 4, 4.1, 5, 6, 7, 8 and 9).

Furthermore, the appellant is not eligible for a hot tub under a Life-Threatening Health Need (section 69 of the EAPWDR). Information submitted does not establish that a medical practitioner has confirmed a direct and imminent need for the requested item. Even if the appellant had met this requirement, a hot tub for hydrotherapy is not a health supplement set out in Schedule C and he would not have met all the requirements specified in sections 2(1)(a) and (f) and 3 to 3.12.

### **Panel decision**

#### **Physiotherapy sessions:**

While the appellant requests reimbursement for the 4 physiotherapy sessions that have been provided to her on April 12, 18, May 3, and June 13, 2019, the panel finds there is no evidence that the 10 visits available for 2019 under the Medical and Health Care Services Regulation have been provided and for which payment is not available under the Medicare Protection Act. Therefore the panel finds the ministry reasonably determined that pursuant to section 2(1)(c)(ii) of schedule C the appellant was not eligible for reimbursement of monies paid by her for these 4 sessions.

#### **Hydrotherapy sessions:**

While the appellant requests reimbursement for 3 Kinesiology/Hydrotherapy sessions provided by a kinesiologist on May 9, 16 and 30, 2019 the panel finds that kinesiology/hydrotherapy sessions are not set out among the extended therapies listed under section 2(1)(c) which are: acupuncture provided by an acupuncturist, chiropractic provided by a chiropractor, massage therapy provided by massage therapist, naturopathy provided by a naturopath, non-surgical podiatry provided by a podiatrist, and physical therapy provided by a physical therapist. Consequently, the panel finds that the ministry reasonably determined that it is not authorized to pay for kinesiology/hydrotherapy sessions.

#### **Request for a pool/hot tub for hydrotherapy**

While the appellant argues the ministry should pre-authorize funds to pay for a pool/hot tub the panel finds that a pool/hot tub for hydrotherapy is not set out Schedule C; neither a hot tub nor a pool for hydrotherapy is listed among the legislated items of section 2 or 3. Consequently, the panel finds the ministry was reasonable in its determination that the appellant is not eligible for a pool/hot tub under Schedule C of the EAPWDR.



The panel further finds that there is insufficient evidence that the appellant was facing a direct and imminent and life-threatening health need. Therefore the panel finds the ministry reasonably determined that the appellant is not eligible for a hot tub/pool under a life-threatening health need as set out in section 69 of the EAPWDR.

Conclusion

The panel finds that the ministry's determination that the appellant is not eligible for re-imburement of physiotherapy and hydrotherapy sessions as well as for pre-authorization of funds to purchase a pool/hot tub for hydrotherapy is reasonably supported by the evidence and is a reasonable application of the legislation in the appellant's circumstances. The ministry's reconsideration decision is confirmed and the appellant is not successful on appeal.

APPEALNUMBER

**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)  and Section 24(1)(b)

and

Section 24(2)(a)  or Section 24(2)(b)

**PART H-SIGNATURES**

PRINT NAME

Inge Morrissey

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/10/03

PRINT NAME

Joan Coatie

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/03

PRINT NAME

Donald Stedeford

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/03