

APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

Under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated September 25, 2019, in which the ministry denied the appellant's request for a supplement for physical therapy because a medical or nurse practitioner has not confirmed an acute need as required by section 2(1)(c)(i) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (the Regulation).

**PART D – RELEVANT LEGISLATION**

Section 2(1) of Schedule C of the Regulation

## **PART E – SUMMARY OF FACTS**

The appellant did not attend the hearing. After confirming delivery of the Notice of Hearing to the appellant, the hearing proceeded in the appellant's absence in accordance with section 86(b) of the Employment and Assistance Regulation.

### Information before the ministry at reconsideration

- 1) A letter dated July 23, 2019 from the appellant's gynecologist who requests an extension of the appellant's physiotherapy benefits writing that the appellant was referred to pelvic physiotherapy for a condition that started with an acute episode but has lapsed into chronicity, symptoms now being present for over six months.
- 2) A second letter dated July 23, 2019 from the appellant's gynecologist confirming the above information and explaining that treatment from a publicly funded clinic is not available due to a moratorium on referrals.
- 3) A letter dated July 30, 2019 from physiotherapist #1 who wrote:
  - the appellant has received physiotherapy treatment for fibromyalgia and chronic fatigue syndrome which cause pain in the appellant's spinal joints and wrists;
  - the appellant's MSP visits were "maxed out" in June 5, 2018 [subsequently confirmed by the physiotherapist's office to the ministry that the year should have read 2019]; and,
  - the appellant would benefit from further physiotherapy visits once every 2-3 weeks until the year end, which probably amounts to 16 visits.
- 4) A letter dated September 31, 2019 from physiotherapist #1 stating that although the appellant has chronic pain and fatigue, the appellant seeks physiotherapy for acute neck and back issues that are of recent onset and are related to computer use. [The panel notes that this date appears to be incorrect given that the appellant references this letter in the September 9, 2019 request for reconsideration and as it was considered by the ministry in the Reconsideration Decision dated September 25, 2019].
- 5) A letter dated July 30, 2019 from physiotherapist #2 indicating that pelvic physiotherapy is required 2-3x/month for 2-3 months (may vary based on client's progression).
- 6) A letter dated August 13, 2019 from a physician [not the gynecologist] who writes that the appellant reports suffering from multiple conditions including fibromyalgia, chronic fatigue syndrome, pelvis and other problems for which different specialized physiotherapists are required. The physician requests further physiotherapy coverage for the appellant's two therapists for the next six months adding that the appellant suffers "from these chronic conditions" for which physiotherapy treatments are needed on an ongoing basis.
- 7) The appellant's request for reconsideration dated September 9, 2019, in which the appellant writes that despite chronic fatigue, the appellant has acute exacerbations and acute new pains. "I'm pursuing physio for acute back pain (see physio note) which interferes with sleep & work & adds to my fatigue and struggle." The appellant reports not having a family doctor and therefore relying on the appellant's regular walk-in doctor who quickly wrote a note without details. The "physio note is most detailed as I've been getting treatment for my back @ PT [physiotherapist] not at the doctor."

*Information provided on appeal*

The appellant's Notice of Appeal (NOA) in which the appellant writes that "the physio note has the most details" and that it has been difficult knowing what forms to fill out as "overall many ministry workers can't give right info." The appellant concludes by stating that "the pertinent notes are the PT note of 31/09/2019 and a new Dr. note Oct. 9/19 which I will send over once I get proper forms or questions. I was told the ministry will give me opportunity after to submit notes."

At the hearing, the ministry explained the reconsideration decision but did not provide additional evidence. The ministry also checked its record of the appellant's file and stated that it had not received documents from the appellant other than those referenced in the reconsideration decision.

The panel determined that the information provided in the appellant's NOA did not include additional evidence and therefore an admissibility determination under section 22(4) of the Employment and Assistance Act was not required.

The arguments of both parties are set out in Part F of this decision.

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

The issue on appeal is whether the ministry's decision was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable when determining that the appellant is not eligible for physiotherapy because a medical or nurse practitioner has not confirmed an acute need?

**Relevant Legislation****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, 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.

### **Panel Decision**

#### **Appellant's Argument**

The appellant's position is that physiotherapy for acute back pain is being requested and that the ministry should rely on the more detailed information provided by the physiotherapist who is providing the treatment, not the doctor. The appellant also argues that it is discriminatory to deny coverage on the basis of a chronic condition.

#### **Ministry Argument**

The ministry's position is that while it appreciates that the appellant may encounter difficulty in receiving written confirmation from a physician, especially considering the appellant does not yet have a regular family doctor, section 2(1)(c)(i) of the Regulation is very specific in requiring that an acute need for physiotherapy must be confirmed by either a medical practitioner or a nurse practitioner. The ministry notes that the gynecologist writes that the appellant's condition started as an acute episode but has now lapsed into chronicity. The ministry is therefore not satisfied that a medical practitioner or nurse practitioner has confirmed an "acute" need.

#### **Panel Analysis**

In accordance with section 2(1)(a) of Schedule C of the Regulation, the ministry may provide a supplement for not more than a total of 12 visits to specific service providers, including physical therapy provided by a physical therapist, also commonly described as physiotherapy. The amount of the supplement is limited to \$23 each visit by subsection 2.1 and the three eligibility requirements for the supplement are described in subsection 2(1)(c). In this case, the ministry concluded that two of the three requirements were met but that the third requirement was not met: that a medical practitioner or nurse practitioner confirms an acute need for the physiotherapy services.

In support of the request for physiotherapy, the appellant provided letters from two physiotherapists, with one of the letters, the letter from physiotherapist #1 dated September 13, 2019, describing the need for physiotherapy to treat an acute back condition. However, as the ministry notes, this does not satisfy the requirement of confirmation from a medical or nurse practitioner. The appellant also submitted two letters dated July 23, 2019 from a gynecologist and a letter dated August 13, 2019 from another medical practitioner; however both medical practitioners describe the need for physiotherapy relating to chronic medical conditions, with the gynecologist expressly stating that what began as an acute episode has lapsed into chronicity. The panel also notes that "acute" is defined by the Merriam-Webster online dictionary as pain "characterized by sharpness or severity of sudden onset" or an illness "having a sudden onset, sharp rise, and short course." For these reasons, the panel finds that the ministry was reasonable to determine that the information from the medical practitioners does not meet the legislated requirement of confirming an acute need for the physiotherapy and that the requirement of section 2(1)(a)(i) was not met.

### Conclusion

The panel concludes that the ministry's reconsideration decision is reasonably supported by the evidence. The reconsideration decision is confirmed and the appellant is not successful on appeal.

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**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

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/10/31

PRINT NAME

Bob Fenske

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/31

PRINT NAME

Donald Stedeford

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/31