

APPEAL NUMBER
2020-00089

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated March 11, 2020 denying the Appellant's request for physical therapy services because the Ministry determined that the eligibility requirements set out in Schedule C, Section 2(1)(c) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) had not been met.

Specifically, the Ministry determined that the Appellant had not provided confirmation that the visits available under the Medical and Health Care Services Regulation (MHCSR) for the calendar year 2019 had been utilized.

PART D – RELEVANT LEGISLATION

EAPWDR Section 62 and Schedule C, Sections 2(1)(c), 2(2) and 2(2.1)

PART E – SUMMARY OF FACTS

The Appellant is a sole recipient of disability assistance.

The evidence before the Ministry at reconsideration included:

1. The Appellant's Request for Reconsideration (RFR) dated February 27, 2020, which included:
 - In the section of the RFR providing the reason for the request, a hand-written explanation, including:
 - A statement that the Appellant suffered a "life altering" stroke on March 08, 2019 and was designated by the Ministry as a Person with Disabilities (PWD) on November 1, 2019;
 - The Appellant's physiotherapy treatments were supported by an extended health benefit plan as long as the Appellant continued to work for their employer, and that this insurance covered \$95 of the \$100 daily cost of treatment for up to 21 daily treatments per month;
 - The Appellant began paying a premium of \$145.13 per month for extended health benefits once the Appellant was no longer covered by their employer's extended benefit plan in place when they were working, for a total out-of-pocket cost to the Appellant of \$250.13 per month, which they can no longer afford;
 - The Appellant "*would hope that the Ministry's outlook would be to help PWD recipients to get back to work instead of have them unable to work and be on the system permanently*", and that the only thing keeping them from getting back to work is a lack of physio treatments; and
 - The Ministry told the Appellant that the Ministry had denied a physical therapy treatment benefit because the Appellant "*never used up the 10 visits @ \$23 (that they are) allowed as a (PWD) recipient*";
 - Two letters from the Appellant's physiotherapy service provider and signed by a registered physical therapist, one dated October 28, 2019 and the other dated February 12, 2020, each stating that the Appellant "*will continue to benefit from ongoing physical therapy*" with appointments occurring 5 times per week "*with a re-evaluation to be made at the 3 month mark*";
 - Two certificates of health status, signed by a medical practitioner, one dated November 19, 2019 and the other dated February 26, 2020, both stating that the Appellant is gradually recovering from a cerebrovascular accident (CVA) that resulted in impairments of the Appellant's left arm and left leg, and that the Appellant "*is strongly encouraged to continue attending ... physiotherapy 5 sessions per week for another 3 months*"; and

- A letter from a neurologist dated August 15, 2019 summarizing the neurologist's findings with respect to an examination of the Appellant after a referral from the Appellant's medical practitioner, indicating, in part, that the Appellant "*continues to see ongoing improvement with rehab and as such ... should continue with this*".

Additional Information

In their Notice of Appeal (NOA) dated March 20, 2020, the Appellant refers to an attached letter, and states that they "*don't believe (their) original concern has been heard*".

Attached to the NOA is a letter from the Appellant's member of the legislative assembly (MLA), written on behalf of the Appellant and dated March 23, 2020 (the MLA's Letter), which states, in part, that once they had been approved for PWD benefits, the Appellant was informed that they would have to exhaust their 10 Medical Service Plan or MSP physiotherapy benefits before being eligible for additional visits. The MLA's Letter also stated that, because the Appellant's treatments had been covered by their employer's employee benefits plan while they were working and was still covered by that plan, the Appellant had their subsequent claims adjusted through their physiotherapist's office, and, in 2019 and the first weeks of 2020, exhausted their 10 MSP physiotherapy benefits each year. The MLA states that the Appellant has spent \$3,960 on physiotherapy treatments since their stroke, and as a result has depleted their savings. The MLA's Letter also says that the Appellant's intention was always to eventually return to work, and that when they did return to work for 20 hours per week in late March 2020, it became apparent that a more gradual return to work plan would be necessary, and as a result the Appellant's employer has agreed to two 4-hour shifts per week.

At the hearing, the Appellant explained that they had worked full-time all of their life until suffering a devastating stroke a year ago. The Appellant stated that there was no reason why they could not eventually go back to work full time with regular physiotherapy treatments.

The Appellant argued that everyone in the province is eligible for MSP benefits, including the 10 physiotherapy visits per year. The Appellant stated that the \$23 available is not nearly enough to cover a reasonable portion of the \$100 a day cost of treatment, and that even though they now have been designated as a PWD, the Appellant still can't qualify for the additional physical therapy health supplement. The Appellant further argued that people who have experienced a stroke absolutely need extensive rehabilitation services in order to recover and become independent again, and that the current legislation does not take this into account.

The Appellant explained that if they can get back to work full-time by March 2021 they will re-qualify for their employer's extended health benefit plan, which covers \$95 of the \$100 cost of physical therapy treatment, but that in the meantime they have to pay the approximate \$145 extended health insurance premium every month to be eligible for the \$95 coverage, and that they can't afford to pay the premium anymore, as the \$250 monthly cost of treatment and premiums reduces the amount the Appellant has to spend on food and other necessities. The Appellant also stated that the 10 annual MSP covered sessions had been used up in both 2019 and 2020.

At the hearing, the Ministry relied on its RD and reconfirmed that the Ministry had determined that Appellant had not exhausted their 10 MSP-covered visits, referring to the December 5, 2019 telephone

conversation between the Ministry and the Appellant in which the Appellant stated that the Appellant had not exhausted their MSP visits as of that date. The Ministry also restated that the maximum benefit available for both the 10 MSP visits and, if applicable, the additional 12 physical therapy visits available to qualifying PWD designates, was \$23 per session.

In response to a question from the Panel, the Ministry stated that it does not have the resources to follow-up with MSP directly to determine if benefits have been paid on behalf of a client, and that the onus is on the client to provide confirmation that MSP-covered visits have been exhausted. The Ministry also confirmed that the details of the December 5, 2019 telephone conversation between the Appellant and the Ministry in which the Appellant stated that they had not exhausted their MSP visits *as of that date* (emphasis added) was supported by notes made by the Ministry at the time and was not supported by any written documentation.

Admissibility of Additional Information

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once the panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, panels must determine whether the decision under appeal was reasonable based on all admissible evidence.

The Panel considered the written information in the NOA to be argument and most of the evidence presented in the MLA's Letter to be information that the Ministry had when the RD was made. The Panel considered the written evidence in the MLA's Letter stating that the Appellant had all claims adjusted through their physiotherapist's office and consequently their 10 MSP physiotherapy benefits for both 2019 and 2020 were used up in the final weeks of 2019 and first weeks of 2020 to be evidence that is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal. Therefore, the Panel admitted the additional information in accordance with Section 22(4) of the EAA. However, because that evidence was based on information given to MLA by the Appellant which had not been confirmed by the Ministry of Health (the ministry responsible for the MSP) the Panel assigns little weight to this evidence.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the Ministry’s RD which denied the Appellant’s request for physical therapy services because the Ministry determined that one of the eligibility requirements set out in Schedule C, Section 2(1)(c) of the EAPWDR had not been met, as the Ministry determined that the Appellant had not provided confirmation that the visits available under the MHCSR for the calendar year had been provided, or for which payment was not available under the *Medicare Protection Act*.

The relevant legislation is as follows:

General health supplements

62 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 ...

Schedule C
Health Supplements

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 ...
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 ...

* * * *

The Appellant's position is that they had used up the 10 annual MSP visits in 2019 and 2020 so they should qualify for the additional health supplement, and that the \$23 per session is far less than the total cost of the physiotherapy, such that the Appellant is unable to continue with physiotherapy because they can no longer afford to pay for the out-of-pocket portion of the cost, and as a result they will not be able to return to work full time and will have to remain on social assistance.

The Ministry's position is that the Appellant does not qualify for the physical therapy health supplement because it had determined that the Appellant had not exhausted their 10 annual MSP visits.

Panel Decision

The Panel notes that the Appellant's original request for funding included a request for occupational therapy services, but that the subsequent RFR did not include a request for occupational therapy services and only requested funding for physical therapy services. Therefore the Panel limits its decision to the question of whether the Ministry was reasonable in denying funding for physical therapy services.

EAPWDR Schedule C Section 2(1) (c) permits the Ministry to provide payment if three criteria have been met: the Ministry must be satisfied that a medical practitioner or a nurse practitioner has confirmed an acute need, the visits available under MHCSR for that calendar year have been provided and payment is not available under the *Medicare Protection Act*, and there are no resources available to the family unit to cover the cost.

In its RD, the Ministry stated that it was satisfied that a medical practitioner has confirmed an acute need for physical therapy services and that there are no resources available to the Appellant to cover the cost. However, the Ministry found that the Appellant was not eligible for Ministry assistance because in a telephone conversation between the Ministry and the Appellant on December 5, 2019, the Appellant confirmed that the required 10 MSP visits for 2019 had not been utilized by that date, and therefore the Ministry determined that the visits available under the MHCSR for that calendar year had not been provided and that payment was available under the *Medicare Protection Act*.

The Panel notes that EAPWDR Schedule C Section 2(1)(c) states that the Ministry may provide the physical therapy health supplement if it determines that "*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*", but does not specify the method by which the Ministry determines whether the MSP visits for a calendar year have been provided and whether payment is available in any particular instance. The Panel assumes that the methods by which it determines if these criteria are met is set by Ministry policy.

The Panel further notes that the Ministry relied on the evidence that the Appellant had not satisfied these criteria in the form of a Ministry note summarizing a telephone conversation between the Ministry and the Appellant which, even if it were an accurate summary of the conversation, occurred before the end of 2019. The Panel notes that, while the Appellant stated in the RFR that they make up to 20 visits per month to the physiotherapist, there is no evidence that the Ministry attempted to determine whether the 10 MSP visits have been exhausted for either 2019 or 2020.

The Panel also notes that, while the Ministry has relied upon a verbal statement made by the Appellant on December 5, 2019 that, at that time, they had not used up their 10 MSP visits for that calendar year, it would require written evidence of an unspecified form as confirmation if they *had* used up their annual MSP visits. In addition the Panel notes that, subsequent to its conversation with the Appellant on December 5, 2019, there is no evidence that the Ministry attempted to determine whether the Appellant had used up all of their MSP covered visits during the remainder of the calendar year ending December 31, 2019, or at any time between January 1, 2020 and the date of its RD. The Ministry confirmed that they had not made any effort to instruct the Appellant that written confirmation is required, nor had they informed the Appellant about how and by whom that confirmation should be provided.

The Panel notes that the available evidence suggests that the Appellant consistently attends physiotherapy 5 times per week, and therefore would have used up their 10 available visits for each year in 2 weeks. The Panel finds that there is no evidence to support the Ministry's determination that the Appellant had not used up all of their available MSP visits for the calendar years 2019 and 2020.

The Panel also finds that the Ministry did reasonably determine that the maximum benefit for the physical therapy health supplement, where it applies, is \$23 per session as set out in EAPWDR Schedule C Section 2(2.1).

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, including the evidence and testimony admitted at the hearing, the Panel finds that the Ministry's RD, which determined that the Appellant was not eligible for physical therapy services because the Appellant had not provided confirmation that they had used the visits available for that calendar year under the MHCSR, or for which payment was not available under the Medicare Protection Act, was not reasonably supported by the evidence and was not a reasonable application of the EAPWDA in the circumstances of the Appellant, and therefore rescinds the decision. The Appellant's appeal, therefore, is successful.

APPEAL NUMBER
2020-00089

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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/04/17

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/17

PRINT NAME

Carla Tibbo

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/17