

APPEAL NUMBER
2020-00100

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 March 24, 2020, in which the ministry determined that the appellant did not meet the statutory requirements of Schedule C, section 2 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) for funding of extended therapy sessions.

The ministry found that the appellant met the basic eligibility requirement as a recipient of disability assistance with the persons with disabilities designation (PWD). The ministry also found that the appellant had not requested more than 12 visits. However, the ministry found that the requirements for: acute need, confirmed by a medical practitioner or nurse practitioner; exhaustion of visits available under the Medicare Protection Act; and no resources available to the family unit had not been met.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act, section 62

Employment and Assistance for Persons with Disabilities Regulation, Schedule C, section 2

PART E – SUMMARY OF FACTS

Evidence before the ministry at reconsideration consisted of the following:

The appellant is a sole recipient of disability assistance with PWD designation. The appellant suffers from Wernicke's Aphasia.

On January 16, 2020 the appellant sought ministry approval for funding of physiotherapy sessions.

On January 17, 2020 the ministry denied the appellant's request, finding that he did not qualify for coverage.

On February 9, 2020 the appellant's advocate contacted the ministry seeking an extension of time to file a Request for Reconsideration.

On February 24, 2020 the appellant filed a Request for Reconsideration requesting an extension of time. This request was granted and the deadline for reconsideration was extended to March 23, 2020.

On March 24, 2020 the ministry determined, on reconsideration, that the appellant did not qualify for funding of extended therapy sessions.

Documents before the ministry at reconsideration:

1. Physiotherapy receipt in the amount of \$40 dated January 7, 2020.
2. 1 page letter from the appellant's physician, dated January 6, 2020, indicating that the appellant requires weekly physiotherapy sessions for 8 weeks due to recurrent [omitted] leg symptoms consistent with iliotibial band syndrome related to pes cavus. The letter also states that the appellant had a right-sided stroke at age [omitted] and has custom casted orthotics.
3. Record of the ministry's January 17, 2020 decision.
4. 1 page letter from an advocacy organization requesting an extension of time accompanied by a signed consent to disclosure form signed by the appellant.
5. Signed request for reconsideration dated February 24, 2020, requesting an extension.

Additional information before the panel on appeal consisted of the following:

Notice of Appeal

In the Notice of Appeal dated March 30, 2020, the following reasons for appeal are provided: *I have a lot of pain on my [omitted] leg and its getting worse. The [orthotist] and a doctor said I can't wait for something like that as I've had a lot of difficulty since my stroke and honestly it's hard to pay the bills and rent. In this situation is either food or help my [omitted] leg better. Trust me getting a stroke at [omitted] years old, the money is the issue.*

Appeal Submissions

Appellant

The appellant explained at the hearing that they had a stroke almost 10 years ago at a young age and, as a result, now suffers from one-sided loss of sensation and function. The appellant stated that they wear orthotics that are replaced or updated every 3 years. At the most recent replacement, there was some recognition by the orthotist that the appellant was having difficulty with walking and had pain in their right foot, knee and leg. The appellant stated that after their stroke, they were progressing well and had even been able to run but were now losing some function and could not walk properly, placing increased weight on their non-stroke side. As a result, the appellant attended 2 physiotherapy sessions but was unable to continue with these sessions because of the cost. The appellant emphasized the need for people who had had a stroke to continuously work on rehabilitation and

improving function. In their case, they argued that it was important to continue this work with a physiotherapist to ensure that they were performing their exercises correctly to ensure that they didn't create more damage.

Ministry

The ministry relied on the reconsideration decision.

Admissibility

The panel finds that the information provided in the appellant's Notice of Appeal and Appeal submissions consist of argument, which does not require an admissibility determination in accordance with section 22 (4)(b) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue is whether or not the ministry’s reconsideration decision of March 24, 2020, in which the ministry denied the appellant’s request for funding for physiotherapy sessions, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

Relevant Legislation

The following sections of the EAPWDR applies in this appeal:

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.

General Scheme of the Legislation

The legislation provides that a Person with Disabilities may receive funding from the ministry for up to 12 treatments in any calendar year by specified health professionals, over and above the 10 paid for by the Ministry of Health through the Medical Services Plan (MSP), provided that a medical practitioner or nurse is confirmed an acute need and the family unit has no resources with which to cover the cost.

In this appeal, there was no disagreement that the appellant is designated as a Person with Disabilities and has not requested funding for more than 12 physiotherapy treatments

Acute need

The legislation stipulates that in order to qualify for a supplement for therapies or services with one of the listed providers, a medical practitioner or nurse practitioner must confirm an acute need for that service.

In the reconsideration decision the ministry determined that the appellant had not met this criterion, finding that the physician's note provided did not confirm an acute need. The ministry observed that the physician had stated that the appellant requires physiotherapy for "recurrent" symptoms and did not state that there had been an acute exacerbation of a medical condition. The appellant argued, at the hearing and in their Notice of Appeal, that there was some urgency to their need for physiotherapy and both the physician and orthotist had advised them not to wait to seek these treatments.

The panel finds that the ministry's determination was reasonably supported by the evidence. The panel finds that the physician's note does not confirm an acute need as described by the legislation. The panel's view is that the term "acute need" as employed by the EAPWDR, but which the panel notes is not defined in the EAPWDR, refers to a need that is urgent or severe in nature and of a short duration. As observed by the ministry, the physician refers to a need for treatment arising from a recurrent condition rather than an acute need. In the absence of any other information from a medical practitioner or nurse practitioner, the panel finds this criterion has not been met. The panel notes that its decision is not whether it agrees with the ministry's determination but whether that determination was reasonably supported by the evidence and a reasonable application of the legislation. Considering all accepted submissions and the discussion above, the panel finds that the ministry's determination, that an acute need has not been established, is reasonable.

Exhaustion of MSP visits

The legislation stipulates that in order to qualify for a supplement for therapies or services with one of the listed providers, a recipient must first exhaust the 10 visits funded by MSP.

In the reconsideration decision the ministry determined that the appellant had not met this criterion, finding that the appellant had not submitted verification that their 10 MSP visits for the year had been used prior to their application for funding for additional visits. In reaching this conclusion the ministry noted that the appellant had submitted a receipt for a \$40 treatment on January 6, 2020 and that the request for assistance was received on January 16, 2020. The appellant did not argue that they had exhausted their 10 MSP visits prior to applying for a therapies supplement and was unsure, in response to the panel's questions, as to whether their 2 physiotherapy sessions in 2020 had been billed to MSP.

The panel finds that the ministry's determination that this criterion has not been met was reasonable. The panel

notes that appellant's testimony is that they attended 2 physiotherapy sessions in 2020 and paid for both sessions. Despite this, the panel finds that it is unclear whether MSP was also billed for a portion of these two sessions. However, the panel finds that it need not make a determination in this regard because it is clear that the appellant had not used 10 MSP visits in 2020 prior to applying for a therapies supplement. The ministry's conclusion that the appellant had not exhausted their MSP coverage for physiotherapy is reasonably supported by the evidence.

No resources

The legislation stipulates that in order to qualify for a supplement for therapies or services with one of the listed providers, a recipient must demonstrate that there are no resources available to the family unit to cover the cost.

In the reconsideration decision the ministry determined that the appellant had not met this criterion, finding that the appellant had paid for their January 6th visit and had not exhausted their MSP coverage. The appellant argued that they did not have resources to cover the cost of the physiotherapy sessions and this lack of resources was the reason that they had not continued to pursue the recommended 8 sessions. The appellant argued that with rent and bills, there was no money left to pay for physiotherapy. The appellant further argued that the physician had prescribed 8 weekly sessions followed by a reassessment.

The panel finds the ministry's determination that this criterion had not been met is not reasonable. The panel finds the ministry's reliance on the appellant's receipt for payment for a single \$40 visit as evidence of resources available to the appellant's family unit is unreasonable. The panel finds that this evidence is not sufficient to establish the appellant's ability, or inability, to afford the cost of even the initial 8 physiotherapy sessions prescribed by the physician, much less any additional sessions prescribed upon reassessment after 8 sessions, particularly in light of the appellant's evidence that they do not have resources available to cover the cost as evidenced by their inability to continue attending physiotherapy sessions that they clearly believe are necessary and important. As well, the panel finds that the ministry has unreasonably conflated its analysis of this criterion and the previous criterion in considering that the appellant had not exhausted their MSP coverage as evidence of resources available to the appellant. The panel finds that the ministry's conclusion that the appellant has failed to establish that there are no resources available to cover the cost of physiotherapy sessions is not reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

Conclusion

The panel finds that the ministry's reconsideration decision, determining that the appellant had not met all of the legislated criteria for a supplement for physiotherapy sessions, was a reasonable application of the legislation in the circumstances of the appellant and was reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. 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

Jennifer Smith

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/04/21

PRINT NAME

Angie Blake

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/21

PRINT NAME

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/21