

APPEAL NUMBER  
2020-00230

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social development and Poverty Reduction (ministry) reconsideration decision dated September 22, 2020, which denied appellant's request for physical therapy services not covered by the Medical Services Plan of B.C. (MSP). The ministry found that the appellant's physician had not requested more than the 12 visits per calendar year available from the ministry, had not reported the frequency or amount required for the calendar year and a medical practitioner or nurse practitioner had not confirmed an acute need as required under section 2(1)(c)(i) of Schedule C, Employment and Assistance for Persons with Disabilities Regulation. In addition, the ministry found that there was no confirmation to establish that the appellant had already utilized the ten visits available for 2020 under the Medicare Protection Act.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 61.01, 61.1, 61; Schedule C sections 2(1)(c), 2(2), 2(2.1).

## **PART E – SUMMARY OF FACTS**

Information before the minister at reconsideration included:

- A *Consent to Disclosure of Information Service Authorization* form signed by the appellant on Sept. 9, 2020.
- A ministry *Extended Medical Therapies Decision Summary* dated Aug. 20, 2020.
- A copy of a letter from the ministry to the appellant dated Aug. 20, 2020 stating their decision.
- A physician's prescription dated Aug. 17, 2020 stating "Ongoing need for physiotherapy. Pt with central cord syndrome with partial spastic paresis upper limbs and clumsy hand movements. Needs long term, ongoing physiotherapy."
- The appellant's *Request for Reconsideration*, signed Sept. 10, 2020.

The appellant wrote on the Notice of Appeal to the Tribunal "Acute condition due to spinal cord injury compression fracture C3 and C4. Recommendation letter to follow from doctor. Required therapy for consistent improvement of throw-out [sic] body. Currently unemployed and on disability." The Panel accepted the appellant's note as argument.

At the hearing, the appellant stated that they understood that if their condition is improving the physiotherapy would be extended. The fact that the condition is acute or improving should weigh in their favour, but the ministry considers it a chronic condition. With respect to this the appellant stated that 2 years ago they were paralyzed and completely paraplegic and now walks with aids, so the physiotherapy is working. The appellant stated that without support, there are no options and the condition will become chronic.

In response to questions from the Panel, the appellant stated that they are paying for the physiotherapy currently and the physiotherapist says the MSP benefits are exhausted. The appellant stated there is confirmation that the MSP benefit is exhausted. They were used in January to March this year, and now are being paid out of pocket at \$140.00 per session. The appellant stated that if the sessions stopped, they would probably end up in a power wheelchair or in assisted living with less quality of life and be unable to return to work, which is the goal. There would be deterioration if the physiotherapy stopped.

In response to questions from the ministry, the appellant stated that the physician saw the ministry letter denying additional sessions.

The ministry responded by referring to the Regulation, which states that to be eligible there must be an acute need that is confirmed, the available sessions from MSP must have been utilized and no resources are available to pay. The ministry noted that the appellant's physician did not request more sessions than the 12 available, didn't report the frequency or amount of sessions needed, did not confirm an acute need for the therapy or that the 10 sessions provided by MSP have been exhausted. The ministry accepted that there are no resources available.

In response to questions from the appellant, the ministry responded that the letters from the physician and therapist were received, however there is a requirement that the acute nature of the condition be confirmed specifically by a medical practitioner or nurse practitioner.

## **PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is the reasonableness of the ministry decision which denied appellant's request for physical therapy services not covered by the Medical Services Plan of B.C. (MSP). The ministry found that the appellant's physician had not requested more than the 12 visits per calendar year available from the ministry, had not reported the frequency or amount required for the calendar year and a medical practitioner or nurse practitioner had not confirmed an acute need as required under section 2(1)(c)(i) of Schedule C, Employment and Assistance for Persons with Disabilities Regulation. In addition, the ministry found that there was no confirmation to establish that the appellant had already utilized the ten visits available for 2020 under the Medicare Protection Act.

### **Legislation**

*EAPWDR*

#### **Definitions**

**61.01** In this Division:

"continued person" means

- (a) a main continued person under section 61.1 (1)

### **Access to medical services only**

**61.1** (1) Subject to subsection (4), a person is a main continued person if

- (a) the person was
  - (i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for disability assistance, and
  - (ii) a person with disabilities on that date,
- (b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance

### **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*

### **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 Physicians and 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.

### Parties positions

The appellant's position is that their condition is acute, not chronic, and that all of the benefits under MSP for physiotherapy have been exhausted.

The ministry's position is that not all of the legislative requirements have been met. There is no confirmation that all of the physiotherapy benefits under MSP have been used and there is no confirmation by a medical practitioner or nurse practitioner that the appellant's condition is acute.

### **Panel analysis**

The Panel accepts the appellant's oral evidence that all of the physiotherapy 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 as required under section 2(1)(c)(ii) of Schedule C, EAPWDR. However, the requirement of section 2(1)(c)(i) that a medical practitioner or nurse practitioner has confirmed an acute need has not been met. The physician's note is not helpful in that regard; he does not address the question of whether the appellant has an acute need for the requested therapy.

The Panel notes that the other factors reported by the ministry in denying the appellant's request, that the appellant's physician had not requested more than the 12 visits per calendar year available from the ministry, had not reported the frequency or amount required for the calendar year are not found in the legislation.

As the requirement of section 2(1)(c)(i) is specific, the Panel finds that the ministry reasonably concluded that the appellant's request for physical therapy services not covered by the MSP did not meet the legislative requirements for approval.

The Panel confirms the ministry decision. The appeal is not successful.

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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

Reece Wrightman

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020 Oct 21

PRINT NAME

Susan Mackey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 Oct 21

PRINT NAME

Edward Wong

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 Oct 21