

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated October 30, 2020 which denied the appellant's request for a supplement to cover the cost of extended medical therapy for chiropractic treatments. The ministry found that the request for a health supplement for chiropractic treatments does not meet the legislated requirements of Section 2(1)(c)(i) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), for the reason that a medical practitioner or a nurse practitioner has not confirmed an acute need.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 62 and Schedule C, Section 2(1)(c)(i).

Interpretation Act, Section 29

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Letter dated August 31, 2020 in which the chiropractor wrote that:
 - The appellant has been receiving care at the clinic for “spinal related complaints” and has been diagnosed with “chronic lumbosacral and hip mechanical dysfunction and experiences frequent exacerbations in part due to [the appellant’s job].”
 - The appellant has experienced considerable improvement with chiropractic care and would benefit from an extension of treatment coverage.
 - Twelve chiropractic treatments should be sufficient for the appellant until the 2020 year-end. The appellant’s initial 10 MSP [Medical Services Plan] visits will be exhausted as of September 4, 2020.
- 2) Letter dated September 3, 2020 in which a physician requested an extension of coverage for chiropractic treatments for the appellant and wrote that the appellant “has chronic back and hip pain and these treatments are necessary to keep [the appellant’s] pain under control and to keep [the appellant] ambulating.”
- 3) Extended Statement dated September 4, 2020 indicating 10 chiropractic treatments of the appellant over the period August 11, 2020 through September 4, 2020;
- 4) Letter dated September 22, 2020 in which the chiropractor wrote that the appellant requested the chiropractor provide a point of clarification that the appellant “is currently experiencing an acute aggravation of [the appellant’s] diagnosed condition and is requesting care in an attempt to return to baseline so that [the appellant] can continue with [the appellant’s] employment and ADL’s [activities of daily living].”
- 5) Request for Reconsideration dated October 16, 2020 in which the appellant wrote:
 - Upon appealing for the extended package in September 2019, the appellant underwent numerous delays before the appellant finally got approval on November 19 of that year.
 - By that time, the appellant’s previous chiropractor was booked up, then again in January, February and was in the process of moving in March so booked no appointments for that month. Then COVID19 shut everything down.
 - When things reopened in June, the appellant tried to get an appointment with the previous chiropractor only to find out June 30th that he no longer wanted to treat the appellant.
 - In that time, the appellant took 3 falls, one in late winter, a bad one in May, then a bad fall off the appellant’s step ladder June 28th.
 - The appellant works at [a job requiring mobility] and suffers falls, sudden jerks to the appellant’s body.
 - Since last year, the appellant has suffered with “ribs out, bones out and, with all those falls, numerous bones out in [the appellant’s] neck, back and hips, curvature to [the appellant’s] spine.” All of which the appellant’s new chiropractor has been working on “to restabilize everything.”
 - As a result, all of the appellant’s treatments have been used up and the appellant still needs more.
 - The appellant cannot afford \$60 per treatment, which the appellant needs to keep working and do daily tasks.

- Going from October 2019 to August 2020 without treatment caused the appellant undue pain and suffering to the point that the appellant endured excruciating pain just trying to get dressed in the morning and does not wish to go through that again.
- The appellant has “put out bones in [the appellant’s] hips, back and neck so often it doesn’t take much to put them out so ongoing treatment is a necessity to replace them to keep [the appellant] mobile and prevent permanent problems.”

Appellant’s additional information

In the Notice of Appeal stamped received by the Tribunal on November 16, 2020, the appellant wrote:

- The appellant believes it is not right to be turned down because the appellant’s condition is deemed chronic rather than acute.
- The appellant needs chiropractic [treatments] to keep mobile and to be able to work and [perform] everyday essentials.

At the hearing, the appellant’s advocate stated that:

- In Section 4(1) of the Chiropractor Regulation (B.C. Reg. 414/2008) under the *Health Professions Act*, a chiropractor may do the following: “make a diagnosis identifying, as the cause of signs or symptoms of an individual, a disease, disorder or condition of the spine or other joints of the body and the associated tissue, and the nervous system.”
- Since the chiropractor can diagnose a disease or disorder, why is that not considered by the ministry when assessing an application for chiropractic treatments?
- In the Persons with Disabilities (PWD) applications, a chiropractor is considered a “prescribed professional” and yet the ministry does not accept the opinion of the chiropractor for the purposes of an application for chiropractic treatments. The ministry is contradicting itself in giving the chiropractor authority in some areas and not in others.
- The appellant was approved as a PWD and is surviving on disability benefits and relies on additional funds to cover the cost of the chiropractic treatments.
- With the restrictions due to the pandemic, it has been hard to get in to see the physician to have him write another letter. The time limits for this process makes it impossible to get hold of the doctor and then wait for additional information to be provided.
- The advocate has only been involved with the process when the appellant appealed the reconsideration decision. The appellant was acting alone and without assistance when making the application.
- The distinction made between a “prescribed professional” like the chiropractor and a “medical practitioner” is confusing for many clients, including the appellant.

At the hearing, the appellant stated that:

- The ministry agrees that the appellant needs treatment but says that the appellant cannot have the treatment.
- The appellant talked to the doctor and the doctor said that the appellant’s condition is chronic. Both the chiropractor and the doctor say that the treatments are needed since they keep the appellant ambulatory.
- The appellant made a previous application and “got approval with no problem.”
- The appellant is not aware of a legal distinction between the chiropractor and other

health professionals such as medical practitioners and agreed that it is confusing.

- The appellant needs the treatment to control pain since the appellant cannot take strong medications due to stomach issues. The treatments keep the pain level down so the appellant can work and perform daily tasks. Without the treatments, the appellant can barely function.
- During the time the appellant has not been receiving treatments, the appellant continued to work at a job that the appellant has been doing for over 10 years but the appellant was in a lot of pain.
- The appellant had X-Rays taken after experiencing a fall but did not talk with the doctor about the application for chiropractic treatments. There were 3 very bad falls and the doctor had X-Rays done for the appellant's neck, back and hips and to detail the curvature of the spine.
- The appellant tries to be careful but sometimes the job requires work when it is dark and it is difficult to see hazards.
- The appellant has an immediate need for treatments since at times the pain has been so severe the appellant could not even bend over to put on socks and shoes.

The ministry relied on the reconsideration decision, as summarized at the hearing. At the hearing, the ministry stated:

- The ministry agreed that there are several health professionals that are qualified to complete a portion of the PWD application, but stated that for the section of the EAPWDR at issue in this appeal there is a specific requirement for a confirmation by a medical practitioner or a nurse practitioner. A medical practitioner is a particular type of health professional (that is, a registrant of the College of Physicians and Surgeons of this province); consequently, a confirmation from a chiropractor does not satisfy the statutory requirement.
- The ministry looks for a letter directly from a medical practitioner or a nurse practitioner confirming that the appellant has an acute need for the extended medical therapy.
- According to ministry policy, the definition of "acute" is "severe and immediate" whereas "chronic" refers to "ongoing conditions."
- If the appellant is not successful with this appeal, there is no bar to the appellant coming back to the ministry with a letter from the physician confirming that there is an acute need for the chiropractic treatments.
- The ministry is not aware whether there are brochures or information sheets published by the ministry that guides people making applications for extended therapies to avoid this confusion about the type of health professional required to confirm the acute need. There is a section on the ministry's website that sets out the requirements in the legislation as well as the applicable ministry policy.
- The ministry acknowledged that there is room for improvement in the information provided to applicants to highlight the difference between various types of medical professionals.

The panel considered that there was no additional information for which a determination of admissibility was required under Section 22(4)(b) of the *Employment and Assistance Act*. The advocate's arguments on the appellant's behalf will be addressed in Part F- Reasons for Panel Decision, below.

PART F – REASONS FOR PANEL DECISION

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of extended medical therapy for chiropractic treatments as not meeting the legislated requirement of Section 2(1)(c)(i) of Schedule C of the EAPWDR that a medical practitioner or a nurse practitioner confirm an acute need, was a reasonable application of the legislation in the circumstances of the appellant, or was reasonably supported by the evidence.

Under Section 62 of the EAPWDR, the applicant must be part of a family unit in receipt of disability assistance, a person under 19 years of age for a family unit in receipt of hardship assistance, or a continued person in the family unit. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that the person's family unit must meet to qualify for specified general health supplements. Please refer to the Schedule at the end of this decision for the full text of Section 62 and Section 2(1)(c) of Schedule C of the EAPWDR, as well as Section 29 of the *Interpretation Act*.

In the reconsideration decision, the ministry found that the appellant, as a person designated as a Person with Disabilities (PWD) and a "continued person," is eligible to receive health supplements under Section 62 of the EAPWDR; however, the ministry also found that the appellant's request for a supplement to cover the cost of extended medical therapy for chiropractic treatments does not meet the requirements specified in Section 2(1)(c)(i) of Schedule C of the EAPWDR. The ministry wrote that Section 2(1)(c)(i) of Schedule C of the EAPWDR requires that a medical or nurse practitioner confirm an acute need for treatment. The ministry wrote that while the appellant's chiropractor indicated the appellant has "an acute on chronic" need for treatment, this does not satisfy the requirement specifically set out in the EAPWDR that the acute need must be confirmed by a medical or nurse practitioner.

At the hearing, the appellant's advocate argued that since the chiropractor can diagnose a disease or disorder under the Chiropractors Regulation made under the *Health Professions Act* and is a "prescribed professional" qualified to make assessments for the purposes of an application for PWD designation, it is inconsistent for the ministry to accept the opinion of a chiropractor for some applications and not for confirming an acute need for the chiropractic treatments. The advocate argued that a specific requirement that a medical or nurse practitioner confirm an acute need for the treatments is confusing to many people requesting these therapies, including the appellant. The advocate stated that they were not able to get hold of the physician and it has been hard to get in to see the physician to have him write another letter with the restrictions due to the pandemic and the tight time limits for this process.

At the hearing, the appellant described an immediate need for treatments since at times the pain has been so severe the appellant could not even bend over to put on socks and shoes. In

the Request for Reconsideration, the appellant wrote that the appellant experienced three falls: one in late winter, a bad one in May, then a bad fall off the appellant's step ladder on June 28th. The appellant wrote that the appellant works at a job requiring mobility and the appellant suffers falls and sudden jerks to the appellant's body. The appellant wrote that, since last year, the appellant has suffered with "ribs out, bones out and, with all those falls, numerous bones out in [the appellant's] neck, back and hips, curvature to [the appellant's] spine." The appellant wrote that the appellant's new chiropractor has been working "to restabilize everything." The appellant stated at the hearing that the appellant needs the chiropractic treatments to control pain since the appellant cannot take strong medications due to stomach issues. The appellant stated that without the treatments, the appellant can barely function.

Section 2(1)(c) of Schedule C requires that a "medical practitioner" or "nurse practitioner" has confirmed an acute need for the extended therapy. As the advocate pointed out, this is a very particular requirement that does not allow for the authority of a chiropractor, although the chiropractor is a prescribed professional qualified to make assessments relied upon by the ministry for the purposes of applications for PWD. In the reconsideration decision, the ministry acknowledged that the chiropractor wrote in the letter dated September 22, 2020 that the appellant "is currently experiencing an acute aggravation of [the appellant's] diagnosed condition." While the advocate argued that the ministry's failure to rely on the confirmation by the chiropractor is unreasonable as resulting in inconsistency in treatment of information from this medical professional in different legislative provisions, the panel finds that the ministry was reasonable to apply the requirement in Section 2(1)(c)(i) of Schedule C of the EAPWDR as currently written and did not have the discretion to do otherwise. The panel finds that an argument for resolving any perceived inconsistencies in the legislative requirements is beyond the scope of the appeal and the jurisdiction of the panel as set out in Section 24(1) of the *Employment and Assistance Act (EAA)*. At the hearing, the ministry acknowledged that there is room for improvement in the information provided to applicants to highlight the difference between various types of medical professionals.

Section 29 of the *Interpretation Act* defines "medical practitioner" to mean a registrant of the College of Physicians and Surgeons of British Columbia entitled under the *Health Professions Act* to practise medicine and to use the title "medical practitioner," while a chiropractor is listed in Section 2(1)(c)(iii) of Schedule C of the EAPWDR as being a registrant of the College of Chiropractors of British Columbia. In the letter dated September 3, 2020, the medical practitioner requested an extension of coverage for chiropractic treatments for the appellant and indicated that the appellant "has chronic back and hip pain and these treatments are necessary to keep [the appellant's] pain under control." At the hearing, the ministry clarified that the definition of "acute" as set out in ministry policy is "severe and immediate" whereas "chronic" refers to "ongoing conditions." While the chiropractor confirmed that the appellant "is currently experiencing an acute aggravation of [the appellant's] diagnosed condition..." (see above, Part E, Summary of Facts, numbered sub-paragraph 4), the panel finds that the ministry reasonably

determined that the medical practitioner did not confirm an acute need for the treatments but, rather, confirmed in his letter of September 3, 2020 that the appellant's condition is chronic and requires ongoing pain management. Therefore, the panel finds that the ministry reasonably concluded that a medical practitioner has not confirmed an acute need for extended medical therapy for chiropractic treatments and consequently the requirement of Section 2(1)(c)(i) of Schedule C of the EAPWDR was not met.

Conclusion

In conclusion, the panel finds that the ministry's decision to deny the request for a supplement to cover the cost of extended therapy for chiropractic treatments, as not meeting the legislated requirement of Section 2(1)(c)(i) of Schedule C of the EAPWDR, was a reasonable application of the enactment in the circumstances of the appellant, pursuant to Section 24(1)(b) of the *Employment and Assistance Act*. Therefore, the panel confirms the ministry's reconsideration decision. The appellant is not successful in the appeal.

Schedule

Section 62 of the EAPWDR provides as follows:

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.

Section 2(1)(c) of Schedule C of the EAPWDR provides as follows:

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>

Section 29 of the *Interpretation Act* provides as follows:

Expressions defined

29 In an enactment: . . .

"medical practitioner" means a registrant of the College of Physicians and Surgeons of British Columbia entitled under the *Health Professions Act* to practise medicine and to use the title "medical practitioner." . . .

"nurse practitioner" means a person who is authorized under the bylaws of the College of Registered Nurses of British Columbia to practise nursing as a nurse practitioner and to use the title "nurse Practitioner." .

APPEAL NUMBER
2020-00258

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
S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)
2020-12-04

PRINT NAME
Michael Skinner

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2020-12-04

PRINT NAME
Margarita Papenbrock

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2020-12-08