

APPEAL NUMBER
2020-00275

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) Reconsideration Decision dated November 25, 2020 which denied the appellant's application for a health supplement, massage therapy. The ministry found the appellant's application did not meet all of the requirements of the Employment and Assistance for Persons with Disabilities Regulation, Schedule C, section 2(1)(c), specifically that the service requested may be paid for by the minister if the visits available under the Medical and Health Care Services Regulation have been provided and for which payment is not available under the *Medicare Protection Act*.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 62; Schedule C, sections 2(1)(c), 2(2) and 2(2.1).

PART E – SUMMARY OF FACTS

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

Information before the minister at reconsideration included:

- A note "To Whom it May Concern", dated October 9, 2020 stating that the appellant "requires massage therapy for medical reasons".
- A ministry Expended Medical Therapies Decision Summary dated October 14, 2020.
- A letter dated October 14, 2020 from the ministry to the appellant stating their decision.
- A letter from the appellant's physician to Dear Sir/Madam, stamped as received by the ministry November 4, 2020 stating that the appellant recently suffered a compression fracture of L1 which is an acute injury with chronic symptoms and that massage therapy is required.
- The appellant's Request for Reconsideration signed October 26, 2020.

The appellant included a statement with the Notice of Appeal to the Tribunal: "The 10 MSP visits to a massage therapist have to be paid for, they were never free to anyone on Medical Services. A doctor can only recommend you see a massage therapist, not make them free. The book is not updated that the first 10 MSP massages are not free. Been in touch with MSP and they're not paying for it." The Panel accepted this statement as part of the appellant's argument.

At the hearing, the ministry referred to the legislative criteria of EAPWDR Schedule C, section 2(1)(c) for approval of this supplement, which states that the minister may pay for massage therapy services if the visits available under the Medical and Health Care Services Regulation for that calendar year have been provided and for which payment is not available under the *Medicare Protection Act*. The appellant has not provided confirmation that this criterion has been met, and it appears from the statement in the Notice of Appeal that the appellant may not be aware that the ministry pays \$23.00 per visit; they are not free of charge.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry's decision which denied the appellant's application for a health supplement, massage therapy. The ministry found the appellant's application did not meet all of the requirements of the Employment and Assistance for Persons with Disabilities Regulation, Schedule C, section 2(1)(c), specifically that the service requested may be paid for by the minister if the visits available under the Medical and Health Care Services Regulation have been provided and for which payment is not available under the *Medicare Protection Act*.

Legislation

EAPWDR

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>

(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 the massage therapy visits provided under MSP are not free and that he contacted MSP to confirm this.

The ministry position is that the provisions of EAPWDR Schedule C, section 2(1)(c) must be complied with in order to have additional treatments paid for by the ministry. It is clear that the appellant has not done this, therefore the eligibility requirements have not been fulfilled.

Panel Decision

The Panel notes that neither the MSP-provided therapy visits nor the subsidy provided by the ministry covers the whole cost of the visits. The appellant would be required to pay the difference between \$23.00 and the total cost in each case. It is not clear what remedy the appellant is seeking.

As the appellant has stated that the visits available under the Medical and Health Care Services Regulation, B.C. Reg. 426/97, for that calendar year have not been provided, the Panel finds that the ministry reasonably determined that the requirements of EAPWDR Schedule C, section 2(1) have not been met and reasonably denied the appellant's application for the health supplement of massage therapy.

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

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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 Dec 30

PRINT NAME

Wendy Marten

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 Dec 30

PRINT NAME

Robert McDowell

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 Dec 30