

APPEAL NUMBER
2021-0171

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated August 20, 2021 which held that the appellant was not eligible for Extended Medical Therapies for massage therapies.

The appellant had requested a supplement because he had to pay the costs of that treatment.

The ministry determined that it was not satisfied regarding the following factors: that the appellant was not entitled to payment under the Medicare Protection Act; that there was an acute need for this service; and that there were no resources available to the appellant to cover the cost of massage therapies.

Part D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (PWDR), s. 62; and
Employment and Assistance for Persons With Disabilities Regulation Schedule C (Schedule C), s. 2.

Part E – Summary of Facts

The information before the ministry at reconsideration included:

1. The appellant was designated as a person with disabilities and was in receipt of disability assistance.
2. The appellant received massage therapy treatments from a Registered Massage Therapist on at least three occasions:
 - a. April 13, 2021;
 - b. May 18, 2021; and
 - c. June 28, 2021.
3. The appellant's treating physician, on July 8, 2021, wrote that the appellant has a history of cerebral palsy with associated chronic discomfort involving the back, shoulders, and neck and that the appellant would benefit from massage therapy.
4. The appellant had paid for the massage therapy treatments.

In the Notice of Appeal, the appellant stated that the reason for appeal was that they needed massage because of increasing neck and shoulder pain.

At the hearing, the appellant provided additional information which the panel determined was appropriate to admit under section 22(4) of the *Employment and Assistance Act* because the panel considers it reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

That information included:

1. The appellant never received any coverage under the Medicare Protection Act and the RMT providing the massage therapy communicated to the appellant that no coverage was available.
2. The appellant never applied for reimbursement or coverage under the Medicare Protection Act and was not aware if the clinic where they received the massage therapy ever applied for coverage under the Medicare Protection Act.
3. The appellant paid the invoices for the massage therapy because they believed they had no other option.
4. The appellant had selected the RMT providing the treatment because they provided a massage bed that was suitable in the context of the appellant's disability.
5. The appellant's condition causes difficulty moving and the appellant's neck and back tighten to the point where after three to four weeks there is a crucial, urgent and intense need for massage therapy.

At the hearing, the ministry confirmed that it was relying upon the information in the reconsideration decision.

The ministry explained that the health supplement provided under the PWDR is intended to be in addition to the coverage provided under the Medicare Protection Act and that an applicant must provide the ministry with information showing that coverage had been exhausted. The ministry further stated that a person can apply for a supplement before there is no coverage available under the Medicare Protection Act provided that the supplement is for services provided after that time. As an example, the ministry stated that if a person was entitled to coverage for 10 massage therapy sessions under the Medicare Protection Act, they could apply for a supplement after 8 sessions were completed if the applicant had scheduled 11 or more sessions in total.

In this situation, the ministry stated that the appellant was not disputing that there was payment available to them under the Medicare Protection Act because the appellant had not exhausted their available coverage and that the reason the appellant did not receive coverage under that program was because they did not know how to apply. The ministry stated that if the appellant applied for coverage and it was denied, the appellant could provide that information to the ministry as part of a subsequent application for a supplement.

The ministry explained that the requirement for the ministry to be satisfied that there was an acute need could be met without a medical practitioner or nurse practitioner using the word "acute". However, the ministry stated that the legislation required that a medical practitioner or nurse practitioner "has confirmed an acute need." The ministry confirmed that a medical practitioner or nurse practitioner could confirm an acute need that extended in time, for example an acute need could be confirmed to arise on a monthly basis for a specific period of time and there is no requirement for the confirmation of an acute need for each treatment received.

In the appellant's situation, the ministry stated that the medical practitioner acknowledged that the appellant

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experienced chronic discomfort and would benefit from massage therapy but did not provide enough information to confirm an acute need. Furthermore, the ministry at the time of reconsideration, had no further information from the appellant to permit the ministry to determine that a medical practitioner or nurse practitioner had confirmed an acute need.

Part F – Reasons for Panel Decision

Introduction

The issue at appeal is whether the reconsideration decision dated August 20, 2021 which held that the appellant was not eligible for a supplement for Extended Medical Therapies for massage therapy was reasonably supported by the evidence or a reasonable application of the enactment in the appellant's circumstance.

Summary of The Relevant Legislation

Section 62 of the EAPWD permits the ministry to provide a health supplement set out in Schedule C to a family unit in receipt of disability assistance.

Schedule C, section 2(1)(c) permits the ministry to pay for a health supplement for massage therapy if:

1. that service is provided by a massage therapist registered with the College of Massage Therapists of British Columbia;
2. there is an acute need for massage therapy confirmed by a medical practitioner or nurse practitioner;
3. the massage therapy treatments available under the Medical and Health Care Services Regulation for the year have been provided;
4. there is no payment available under the Medicare Protection Act; and
5. there are no resources available to the family unit to cover the cost of the service.

The Appellant's Position

The appellant during the hearing recognized and agreed that they had not made any application under the Medicare Protection Act for payment for the massage therapy provided. The appellant stated this was because of misunderstanding the required process and a miscommunication with the RMT that provided the service.

The appellant stated that there was an acute need for massage therapy on a periodic basis and that the medical practitioner that provided the information to the ministry was aware of that need. The appellant agreed that they would advise the medical practitioner that the use of the word "acute" in a future prescription would reduce the ambiguity in the prescription.

The appellant stated that they paid for the massage therapy only because they did not want the service provider to be denied payment while the appellant was applying for a supplement.

The Ministry's Position

The ministry affirmed its position on reconsideration. It emphasized that the ministry had no discretion regarding the legislative criteria that the visits available under the Medical and Health Care Services must be accessed prior to a supplement being provided.

The ministry also stated that despite a medical practitioner confirming chronic pain and the benefit of massage therapy, that the ministry did not have sufficient information to be satisfied that the note from the medical practitioner "confirmed an acute need" as required under the legislation.

In the context of the issue of whether resources were available to the family unit, the ministry stated that unless the other two requirements were met, the availability of resources was not determinative of the entitlement to a supplement.

The Panel's Decision

The panel's review of Schedule C indicates that the ministry is only authorized to provide a supplement for massage therapy when all the following conditions are satisfied:

1. that service is provided by a massage therapist registered with the College of Massage Therapists of British Columbia;

2. there is an acute need for massage therapy confirmed by a medical practitioner or nurse practitioner;
3. the massage therapy treatments available under the Medical and Health Care Services Regulation for the year have been provided;
4. there is no payment available under the Medicare Protection Act; and
5. there are no resources available to the family unit to cover the cost of the service.

The panel finds that the service was provided by a registered massage therapist based on the invoices provided by the appellant to the ministry indicating that the services were provided by a person using the designation RMT and providing a registration number.

The panel accepts the statement from the appellant that on a periodic basis they experience an acute need for massage therapy due to the compounding pain and discomfort from their chronic condition. However, the panel is not satisfied that the prescription from the medical practitioner confirms an acute need because it does not sufficiently convey this information. Consequently, the panel finds the ministry was reasonable in determining this criterion was not met.

The appellant agreed that the massage therapy treatments available to them under the Medical and Health Care Services Regulation were not accessed and this requirement was not a disputed issue before the panel. The panel finds the ministry was reasonable in determining that this criterion was not met.

The panel notes that there is a distinction between the provision of massage therapy treatments under the Medical and Health Care Services Regulation and the availability of payment for treatments under the Medicare Protection Act. There was no information at the hearing whether there was an availability for payment regarding the treatments already received by the appellant. However, the panel notes that it is only the appellant that can supply that information and in the absence of any information the only reasonable inference is that payments are available in accordance with the Medicare Protection Act. Therefore, the panel finds the ministry was reasonable in its interpretation of the legislation and its determination that it was not satisfied that there was no payment available under the Medicare Protection Act.

The panel finds that the appellant has not provided sufficient financial information to the ministry regarding the resources available to the family unit. However, unless the other conditions are satisfied this criterion is not determinative. The panel confirms that the ministry was reasonable in its decision that it was not satisfied that there were no resources available to the family unit.

Conclusion

The panel confirms the ministry decision and the appellant is not successful in his appeal.

Extracts of The Relevant 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:

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>

(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:

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PART G – ORDER

THE PANEL DECISION IS: (Check one) X UNANIMOUS BY MAJORITY

THE PANEL X 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

X Section 24(1)(a) or Section 24(1)(b) and
X Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Trevor Morley

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/09/30

PRINT NAME

John Pickford

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/09/30

PRINT NAME

Carmen Pickering

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/09/30