

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 October 13, 2022 (the “**Reconsideration Decision**”), in which the Ministry found the Appellant not eligible to receive a general health supplement as provided for by Schedule C, section 2 [general health supplements] of the *Employment and Assistance for Persons with Disabilities Regulation* (the “**Regulation**”). More specifically, the Ministry denied the Appellant’s request for additional funding for podiatrist appointments as she did not meet the eligibility requirements as set out in Schedule C, section 2(1)(c)(ii) of the *Regulation*.

Part D – Relevant Legislation

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

Full text of the legislation is provided in the Schedule of Legislation at the end of the decision.

Part E – Summary of Facts

(a) The Reconsideration Decision

The evidence before the Ministry at the Reconsideration Decision consisted of:

- The Appellant has been designated as a person with disabilities (“**PWD**”) and is in receipt of disability assistance.
- On August 31, 2022, the Ministry received the Appellant’s request for a general health supplement, also characterized as an extended medical therapy, so that she could obtain additional funding for podiatrist appointments (the “**Application**”).
- The Application was accompanied by:
 - a note from the Appellant’s doctor stating, “[the Appellant] is suffering from onychogryphosis related to the toenail changes. Her toenails are thick, deformed and painful interfering with her ambulation. She requires ongoing management done by a podiatrist.”; and
 - a business card for a podiatrist.
- On September 1, 2022, the Ministry denied the Application and provided the following reason(s) in support of same:

“The 2022 MSP visits may be available. The 10 MSP visits for the calendar year 2022 are available as of January 1, 2022, and confirmation has not been provided that the MSP visits have been exhausted. The pre-approved 12 Extended Medical Therapies are available, at \$23.00 per treatment, but will not be authorized until the 10 MSP sessions have been exhausted. As with MSP, the ministry can approve additional visits at \$23.00 per visit for eligible applications; any additional office fees or charges above this amount are to be paid by the applicant.”

- On October 3, 2022, the Ministry received the Appellant’s Request for Reconsideration (the “**Request**”) wherein she wrote:

“My family physician has diagnosed my toenails with onychogryphosis. If I don’t treat them now, they will become more chronic and very hard and more expensive to manage and treat. So far I have so much pain in my toe feet nails and few time of bleeding under my nails. To treat this kind of nails diseas (sic), it has to be diagnosed properly and accurately by a podiatrist. The cost is \$95 per visit and really cannot afford it. So please reconsider your decision for assisting me. Thank you”.

- On October 13, 2022, the Ministry issued the Reconsideration Decision wherein it denied the Request. In doing so, the Ministry noted:

"...the ministry finds that your request does not meet the eligibility requirements set out in the EAPWD Regulation, Schedule C, subsections 2(1)(c)(i), 2(1)(c)(ii) and 2(1)(c)(iii).

- a) There is no evidence the 10 visits provided under the MSP have been fully utilized.*
- b) There is no legislation, policy, or practice, which would enable the ministry to pay additional funding towards podiatry appointments in addition to the \$23 provided through MSP or, once the MSP visits are exhausted, extended health supplements."*

(b) The Appeal

On November 2, 2022, the Appellant filed a Notice of Appeal (the "**Appeal Notice**"). In her reasons for the Appeal, the Appellant wrote:

"Because the pain in my toe makes my walking very hard and it reflects on my well being and exercises and my health".

The Appellant's November 24, 2022 Appeal hearing was adjourned as the Appellant required additional time to source an advocate. On December 16, 2022, the hearing of the Appeal continued.

(c) Oral Submissions and Evidence

The Appellant was joined by an advocate during the Appeal hearing.

Briefly, the Appellant restated much of the information found in the Application, the Request and the Appeal Notice. She explained that her feet suffer from onychogryphosis which is a disorder of nail plate growth. Further, the Appellant explained how her onychogryphosis impacted her activities of daily living; for example, her ability to exercise has been curtailed due to the pain she experiences from wearing socks and closed-toed shoes. In addition, the Appellant conveyed her belief that her onychogryphosis may have spread to her hands; however, she confirmed this was merely speculation.

In terms of treatment, the Appellant explained that she had yet to see a podiatrist. The Appellant noted that her prospective podiatry appointments would cost anywhere between \$95.00 and \$150.00. As the Appellant is on disability, she submitted that she is unable to cover the costs of the recommended podiatry appointments; as a result, she has yet to see a podiatrist for her onychogryphosis. In addition, the Appellant stated that she is aware of the MSP visits available to her; however, only \$23.00 per visit would be covered and the podiatrist appointments are much more expensive than that.

In closing, the Appellant explained that her health was being negatively impacted, and that she required additional funding to mitigate further impacts to her overall health as they arise from her onychogryphosis.

In response, the Ministry referred to and relied upon the Appeal Record which largely consisted of the Reconsideration Decision. Effectively, the Ministry provided a statutory explanation for the Reconsideration Decision noting that the only reason the Appellant was denied a general health supplement was because she had failed to exhaust the ten (10) MSP visits available to her. Further, the Ministry explained that, even if the Appellant exhausted the MSP visits available to her, the Ministry would only be able to fund up to twelve (12) more visits at a maximum value of \$23.00 per visit. In other words, even if the Appellant qualified for a general health supplement, it would be less than the \$95.00 she requires.

Upon questioning by the Panel, the Ministry acknowledged some confusion arising from the Reconsideration Decision pertaining to the Ministry's finding that "... *[the Appellant's] request does not meet the eligibility requirements set out in the EAPWD Regulation, Schedule C, subsections 2(1)(c)(i), 2(1)(c)(ii) and 2(1)(c)(iii)... a) There is no evidence the 10 visits provided under the MSP have been fully utilized...*" As the Ministry submitted that the only reason the Appellant was denied a general health supplement was because she had failed to exhaust the ten (10) MSP visits available to her, it agreed that she had met the eligibility requirements set out in Schedule C, section 2(1)(c)(i) and (iii) of the *Regulation*. The Ministry explained that the confusion described may have arisen from a drafting error; but maintained that the Appellant met the requirements set out in Schedule C, section 2(1)(c)(i) and (iii) of the *Regulation*.

The Ministry had no objection to the Appellant's oral submissions which contained additional evidence. The Panel determined that the Appellant's submissions were admissible as additional evidence pursuant to section 22(4) of the *Employment and Assistance Act* as it was reasonably required for a full and fair disclosure of all matters related to the decision under Appeal. More specifically, the additional evidence contributed to the Panel's understanding of the circumstances surrounding the Appeal.

Part F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry's Reconsideration Decision in which the Ministry found the Appellant not eligible to receive a general health supplement as provided for by Schedule C, section 2 [general health supplements] of the *Regulation*.

Appellant's Position

The Appellant argues she should be eligible for a general health supplement given the impacts on her health arising from her *onychogryphosis*.

Ministry's Position

The Ministry maintains that the Appellant does not qualify for a health supplement as provided for by Schedule C, section 2 [general health supplements] of the *Regulation* for the same reasons as stated in the Reconsideration Decision.

Panel Decision

Section 62 of the *Regulation* permits the Ministry to provide a health supplement as set out in Schedule C to a family unit in receipt of disability assistance ("**Eligibility Criteria #1**").

Schedule C, section 2(1)(c) of the *Regulation* permits the Ministry to pay for a health supplement for non-surgical podiatry services if:

1. the service is provided by a podiatrist registered with the College of Physicians and Surgeons of British Columbia under the *Health Professions Act* ("**Eligibility Criteria #2**");
2. there is an acute need for non-surgical podiatry services confirmed by a medical practitioner or nurse practitioner ("**Eligibility Criteria #3**");
3. visits for the non-surgical podiatry services, 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* ("**Eligibility Criteria #4**"); and
4. there are no resources available to the family unit to cover the cost of the non-surgical podiatry service ("**Eligibility Criteria #5**").

If an applicant qualifies for a health supplement, they are limited to a maximum of twelve (12) additional visits per year. The Ministry can contribute up to \$23.00 per visit. Recipients of health supplements may be required to pay an additional amount if the practitioner has opted out of MSP or charges above the MSP fee schedule as the Ministry does not pay for any extra billing charges.

(i) Eligibility Criteria #1

It is undisputed that the Appellant has been designated as a PWD and is in receipt of disability assistance. As a result, the Panel finds that the Ministry reasonably assessed the

Appellant in determining that she met the threshold established by section 62(a) of the *Regulation*.

(ii) Eligibility Criteria #2

Given the Ministry's clarification of the Reconsideration Decision, it is undisputed that the Appellant is to receive non-surgical podiatry services from a podiatrist registered with the College of Physicians and Surgeons of British Columbia under the *Health Professions Act*. As a result, the Panel finds that the Ministry reasonably assessed the Appellant in determining that she required a service provided by a person described in the table found in Schedule C, section 2(1)(c)(iii) of the *Regulation*.

(iii) Eligibility Criteria #3

Given the Ministry's clarification of the Reconsideration Decision, it is undisputed that the Appellant has an acute need for non-surgical podiatry services confirmed by a medical practitioner, her doctor. As a result, the Panel finds that the Ministry reasonably assessed the Appellant in determining that she met the threshold established by Schedule C, section 2(1)(c)(i) of the *Regulation*.

(iv) Eligibility Criteria #4

The Appellant admits that she has not availed herself of the non-surgical podiatry services available to her under the *Medical and Health Care Services Regulation* for the calendar year. In other words, the Appellant has not exhausted the ten (10) MSP visits currently available to her.

As a result, the Panel finds that the Ministry reasonably assessed the Appellant in determining that she did not meet the threshold established by Schedule C, section 2(1)(c)(ii) of the *Regulation*.

(v) Eligibility Criteria #5

Given the Ministry's clarification of the Reconsideration Decision, it is undisputed that neither the Appellant nor her family unit have the resources to cover the cost of the recommended non-surgical podiatry services. As a result, the Panel finds that the Ministry reasonably assessed the Appellant in determining that she met the threshold established by Schedule C, section 2(1)(c)(iii) of the *Regulation*.

Even if the Appellant was eligible for a health supplement as provided for by Schedule C, section 2(1)(c) of the *Regulation*, the Panel finds that the Ministry reasonably determined that the most the Appellant could receive is funding for twelve (12) additional visits at a maximum amount of \$23.00 per visit (see Schedule C, section 2(2) and (2.1) of the *Regulation*).

Conclusion

The Panel finds that the Ministry's decision to deny the Appellant a general health supplement as provided for by section 62 and Schedule C, section 2(1)(c)(ii) of the *Regulation*, was a reasonable application of the legislation in the circumstance of the Appellant.

Legislation

Employment and Assistance for Persons with Disabilities Regulation

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.

...

Health Supplements

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
...			
5	non-surgical podiatry	podiatrist	College of Physicians and Surgeons 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.

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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)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Anil Aggarwal

Signature of Chair

Date (Year/Month/Day)

2022/12/16

Print Name

Susan Ferguson

Signature of Member

Date (Year/Month/Day)

2022/12/16

Print Name

Connie Simonsen

Signature of Member

Date (Year/Month/Day)

2022/12/16