

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision dated December 13, 2023, which denied the Appellant's request for reimbursement of photodynamic therapy treatments. The Ministry found that the item requested is not an eligible item pursuant to the Employment and Assistance for Persons with Disabilities Regulation section 62 and Schedule C.

Part D – Relevant Legislation

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

(The relevant legislation is set out in Appendix A)

Part E – Summary of Facts

The Appellant receives Medical Services Only benefits and has Persons with Disabilities designation with the Ministry.

Information Before the Ministry at Reconsideration

- A letter dated September 22, 2023 from a dermatology clinic which describes the Appellant has a medical condition and the recommended treatment for chronic sun damage is photodynamic therapy annually and that the treatment is not covered under the Medical Services Plan.
- An invoice/receipt from the clinic dated July 27, 2023 for medication costing \$410, paid by card.
- An invoice/receipt from the clinic dated September 6, 2023 for photodynamic therapy for skin cancer prevention costing \$575, paid by card.
- A letter from the Ministry's Health Assistance Branch dated October 24, 2023 denying the Appellant's request for photodynamic therapy. Included with the denial is the extended medical therapies decision summary. The summary indicates:
 - The Appellant is eligible for general health supplements under the Regulation section 62.
 - The requested extended medical therapy is not one of the therapies listed in Schedule C section 2(1)(c).
 - A statement of explanation indicates that the Appellant's request appears to be a request for reimbursement of a medication and for photodynamic therapy for skin cancer prevention rather than a request for extended therapies.
 - A statement of explanation notes that the practitioner indicates "treatment for chronic sun damage" and that no additional medical information was provided. The Ministry writes that this appears to be a request for ongoing maintenance of a chronic condition rather than an acute need for extended medical therapies.
 - In response to the question whether 10 annual visits provided through the Medical Services Plan of BC have been exhausted, the Ministry indicates "No" and writes that there is no confirmation that MSP visits have been accessed.
 - In response to the question whether there are other resources available to the Appellant the Ministry notes "there appears to be other resources available as you were able to pay for the full sessions."
 - In response to the question whether the pre-approved 12 extended medical therapies are available to the Appellant, the Ministry notes "the pre-approved 12 extended medical therapies are available, at \$23.00 per treatment, but have not been approved."
- A Request for Reconsideration submitted by the Appellant on December 4, 2023. As her reason for the request the Appellant writes:

- She has had two skin cancer surgeries. Basal cell carcinoma on May 23, 2019, and Squamous cell carcinoma on November 3, 2020.
- Photodynamic therapy has prevented skin cancer from recurring.
- She paid for the therapy by credit card and now owes this bill on her line of credit, which she does not have the funds to pay the bill.
- Cancer surgeries are covered by medical services but the prevention procedures, including creams and serums are not.
- She wears sunscreen and a hat at all times, but still needs treatment once a year for damaged skin.
- “Not paid by Ministry”, but the photodynamic therapy will prevent skin cancer which could lead to death. Treatment once a year is recommended by her skin doctor for her skin condition. It is not once in a lifetime; it is acute skin care treatment, and the doctor says it’s acute.
- Included with the reconsideration is an amended letter from the same clinic, also dated September 22, 2023, changing the word “chronic” to “acute” sun damage.
- Included with the reconsideration is a four-page handout which explains photodynamic therapy. The handout explains that this therapy is a treatment that is used to treat precancerous spots and to improve the appearance of damaged skin.
- A credit card statement dated November 22, 2023, which shows charges made to the clinic and that the amount owing on the card is \$2,184.49.

In its Reconsideration Decision, the Ministry notes that this decision relates only to the photodynamic therapy request. They note that the Appellant’s request for the Metvix cream was denied separately on November 16, 2023, and if the Appellant would like to request a reconsideration of that denial, she should contact the Ministry.

Information Received After Reconsideration

On December 27, 2023, the Appellant submitted a Notice of Appeal form writing “Treatment is for acute health condition. I have had to cover cost with credit card.”

On January 12, 2024, the Appellant submitted two photos. The Appellant describes that the photos show her face before treatment and three months after photodynamic therapy. She writes, in part, that living with facial texture is stressful psychologically for emotional and physical reasons. The photodynamic therapy treatment is not easy, but it is far better than cancer surgery.

Also submitted on January 12, 2024, is a 7-page submission which outlines the Appellant’s, and her spouse’s, total monthly income and expenses. In summary, their total income is \$2,668.74 per month with monthly costs being \$2,600.41. In addition, they had a total of \$2,167.84 unexpected

costs arise in late 2023 and 2024. The Appellant also lists all her additional medical conditions, with their associated costs and expenses.

The Appellant writes that she found out after the December 13, 2023 reconsideration decision that the cost of the Metavix cream was denied. The Appellant explains, in summary, that she cares for her mother as well as her spouse, and she needs the photodynamic therapy treatment because she does not want to be totally hampered from going outside and it will protect her skin from skin cancer. The treatment will allow her to live a less stressed life.

On January 17, 2024, the Appellant submitted a receipt for eyeglasses, dated December 12, 2023.

At the hearing, the Appellant reviewed the 7-page submission that was submitted with her Notice of Appeal form. She reviewed her cancer surgeries, other medical conditions and all their related extensive expenses. The Appellant accesses food banks for weekly groceries as they cannot afford to buy food. The Appellant emphasized that her skin type is prone to cancer, and she must avoid the sun as much as possible. The Appellant argues that receiving ongoing photodynamic therapy is preventative treatment which will help avoid cancer surgeries.

The Appellant was asked about how often she has received the treatment and she responded that she has paid for the treatment once a year since 2020. She paid for it by using her credit card, and her family assisted. She added that this therapy is recommended by her doctor, that it is necessary to be done annually, and that it treats an acute condition, as the Ministry requires. She mentioned that this therapy is not common because the last time she went in for this treatment she was the only person there.

The Appellant's spouse, who was on the call, expressed concern that the people who review medical requests, from within the Ministry and at appeal, do not have medical backgrounds. He questioned how Ministry personnel or panel members, without a medical background can make practical, fair or accurate decisions. The Ministry responded that they are trained to review all requests submitted by a client, or the client's doctor, and they then follow the legislation to determine whether the request is one they are authorized to approve.

At the hearing, the Ministry reviewed the reconsideration decision and noted that the original decision from the Health Assistance Branch indicates that the Appellant may have resources available to her. However, at reconsideration the decision found that she does not have resources available to her because they do not expect people to use credit to pay for items. The only reason for the denial is because the therapy she is requesting is not for one of the therapies listed in the Regulation.

The Ministry explained that the Regulation mirrors the Medical Services Plan allowable therapies, and that the requested therapy is not covered by the Medical Services Plan. If the therapy were one of the ones listed, the Medical Services Plan would pay for the first ten visits and the Ministry covers twelve visits, to a maximum of \$23 per visit.

The Appellant asked the Ministry why the therapies are limited to the ones listed in legislation. The Ministry explained that Regulation changes are done through the Legislature, and they are required to make their decisions based on current legislation.

The panel asked the Ministry what other resources may be available to the Appellant because the initial denial mentioned that other resources may be available. The Ministry explained that she does not know the particulars of what is, or is not available, however an agency such as the cancer agency may have assistance available because this is a preventative treatment. The Medical Services Plan sometimes makes exceptions to what is covered, in special circumstances.

Admissibility of Additional Information

The panel accepted the submissions provided with the Appellant's Notice of Appeal and the oral testimony at the hearing as evidence under section 22(4) of the Employment and Assistance Act, which allows for the admission of evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The Ministry had no objection to the admissibility of this evidence. The Ministry provided no new evidence.

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry decision to deny reimbursement of photodynamic therapy treatments is reasonably supported by the evidence or is a reasonable interpretation of the legislation.

Appellant's Position

The Appellant's position is that photodynamic therapy is a preventative measure that her doctor has recommended to avoid cancer surgeries in the future. The Appellant states that she was informed by the clinic that the Medical Services Plan does not cover this type of therapy and she cannot afford to pay for it with their limited income. The Appellant states that if she does not receive this type of treatment then she may run the risk of her skin cancer recurring.

Ministry's Position

The Ministry's position is that photodynamic therapy is not a listed therapy authorized in the Regulation, nor is it covered by the Medical Services Plan which is also a requirement.

Panel's Decision

Schedule C of the Regulation sets out what the Ministry may, or may not, authorize when any medical request is made. In the Appellant's circumstance, her doctor has recommended photodynamic therapy which treats her skin condition. The Appellant also confirms the therapy improves her skin condition. The panel finds this to be a medical request and will review the legislation relevant to the request.

In their decision, the Ministry determined the Appellant was not eligible for reimbursement of photodynamic therapy because it is not an eligible therapy listed in Schedule C "subsection 2(1)(c)(i)." This requires closer review by the panel as Schedule C section 2(1)(c)(i) is specific to the requirement that the service be prescribed by a doctor or nurse practitioner who confirms an acute need.

The panel finds the most relevant section of Schedule C that relates to the therapy services the Appellant is requesting is found in section 2(1)(c). It sets out that, (in summary), subject to subsection (2), the Ministry may pay for a service, provided by a person described in this section, and registered with the relevant College for that service. These services are limited to not more than 12 visits per calendar year. In addition, the following criteria must also be met:

- (i) they must be prescribed by a medical practitioner or nurse practitioner who has confirmed an acute need;

- (ii) 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*; and
- (iii) for which there are no resources available to the family unit to cover the cost.

The services set out in the table in Section 2(1)(c) are for: acupuncture; chiropractic; massage therapy; naturopathy; non-surgical podiatry; and physical therapy. The service the Appellant is requesting is for photodynamic therapy, which is not a listed therapy. The Appellant does not dispute that the therapy is not a listed therapy but argues that it is a necessary therapy which will avoid future cancer surgeries. The panel appreciates the Appellant's argument and the difficulties she faces both medically and financially. However, our role is to determine whether the Ministry's decision was reasonably determined, based on evidence and legislation. Because the legislation clearly identifies which services may be considered, and the Appellant's request for photodynamic therapy is not a listed service, the panel finds the Ministry was reasonable to determine this requirement of section 2(1)(c) has not been met.

Further, the requirements for section 2(1)(c)(i)(ii) and (iii) must also be met.

Section 2(1)(c)(i) sets out that the service must be prescribed by a doctor, or nurse practitioner, who confirms an acute need. The evidence in the Appeal Record confirms that the Appellant's doctor has prescribed the therapy and confirms an acute need. The panel finds the criteria for section 2(1)(c)(i) has been met.

The Appellant argues that this type of therapy is preventative treatment which will help avoid cancer surgeries in the future, which are more costly than the therapy. The panel acknowledges that the therapy is described as preventative and could avoid cancer surgery in the future. However, the service being requested must be for a service provided under the Medical and Health Care Services Regulation, and for which payment is not available under the *Medicare Protection Act*, as per the requirements of Section 2(1)(c)(ii). The evidence shows that the clinic providing the photodynamic therapy confirms that this type of therapy is not covered by the Medical Services Plan. As well, the Appellant accepts that it is a therapy not covered by Medical Services Plan. The panel finds that this confirms the Appellant did not receive a service provided under the Medical and Health Care Services Act and that no payment is available under the *Medicare Protection Act*. Accordingly, the panel finds the requirements of section 2(1)(c)(ii) have not been met.

Section 2(1)(c)(iii) requires that there be no resources available to pay for the service. Initially, the ministry found that the Appellant did have resources available to her because there was no evidence that the service was not covered by Medical Services Plan and the Appellant had paid for the service, so determined she had resources available. At reconsideration, the Appellant

explained that the therapy was not available through Medical Services Plan and that she had paid for past therapy using a credit card or had help from family. The reconsideration decision did not determine whether the Appellant had resources available to her, which the panel finds to be indicative that the Appellant's argument had been noted and accepted. Further, at the hearing, the Ministry acknowledged that they do not expect clients to use credit as a resource. Therefore, the panel finds the requirements of section 2(1)(c)(iii) have been met.

The requirements of section 2(1)(c) of the Schedule must be met in its entirety. As noted above, the panel has found the Appellant does not meet all the requirements. Therefore, the panel finds the Ministry was reasonable to determine the appellant was not eligible for photodynamic therapy pursuant to Schedule C section 2(1)(c) of the Regulation.

Conclusion

The Panel finds that the Ministry's reconsideration decision, which determined that the Appellant is not eligible for reimbursement of photodynamic therapy, was a reasonable application of the legislation in the Appellant's circumstances and therefore confirms the decision. The appellant is not successful on appeal.

**APPENDIX A
RELEVANT LEGISLATION**

The 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.

Schedule C Health Supplements

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
2	chiropractic	Chiropractor	College of Chiropractors of BC
3	massage therapy	Massage therapist	College of Massage Therapist of BC
4	naturopathy	Naturopath	College of Naturopathic Physicians of BC
5	non-surgical podiatry	Podiatrist	College of Physicians and Surgeons of BC
6	physical therapy	Physical Therapist	College of Physical Therapists of BC

2(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(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.

APPEAL NUMBER 2023-0401

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
Janet Ward

Signature of Chair

Date (Year/Month/Day)
2024 January 18

Print Name
Linda Pierre

Signature of Member

Date (Year/Month/Day)
2024 January 19

Print Name
Bill Haire

Signature of Member

Date (Year/Month/Day)
2024/01/18