

## PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 19, 2012 which denied the appellant's request for a supplement to cover the cost of a permanent modification to footwear, being a left shoe lift. The ministry found that the request for a health supplement does not meet the legislated criteria under Schedule C, Sections 3 and 3.10, of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

The ministry found that the request for the left shoe lift:

- exceeds the limit on the quantity of orthoses that may be provided for the use of the appellant as a health supplement for modifications to footwear, which is 1 or 1 pair [Schedule C, Section 3.10(9)],
- exceeds the limit on the frequency for replacement as 1 year has not passed since the ministry previously provided the appellant with a left shoe lift [Schedule C, Sections 3(3)(b) and 3.10(10)].

## PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 62 and Schedule C, Sections 3 and 3.10

## PART E – Summary of Facts

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

- 1) Medical Equipment Request and Justification dated December 14, 2011 which states in part that the medical practitioner confirms the appellant's medical condition is that "one leg is shorter than the other" and orthotics are recommended and the specifications by the orthopedic clinic is for a "...2.5 cm lift to be installed on left shoe or boot for leg length discrepancy;
- 2) Fax dated January 16, 2012 from an orthopedic clinic which states in part that a modification to footwear is requested, "install 2.5 cm raise on left shoe due to leg length discrepancy, 3/4 hours labour @ \$120/hr.= \$90, material \$25, 1 @ \$115;"
- 3) Letter dated January 21, 2012 from the ministry to the appellant approving her request for modification to footwear- shoe lift with the cost not to exceed \$115;
- 4) Fax dated February 1, 2012 from an orthopedic clinic which states in part that a modification to footwear is requested, "...additional footwear, install 2.5 cm raise on left outdoor boot and indoor slipper due to leg length discrepancy; 3/4 hr. labour @ \$120/hr.= \$90 + material= \$25, 2 @ \$115" and note the appellant wears slippers in the house and boots outdoors; "...cannot walk without raise on footwear due to leg length discrepancy;"
- 5) Orthoses Request- Tracking Sheet with notes dated February 15, 2012 stating in part that a request was made for shoe modifications, that previous orthoses are a 2.5 raise to left shoe on January 21, 2012 and the diagnosis is one leg is shorter than the other;
- 6) Letter dated February 15, 2012 from the ministry to the appellant denying her request for a shoe raise and enclosing a copy of the decision summary; and,
- 7) Request for Reconsideration- Reasons.

At the hearing, the appellant stated that her left leg is quite a bit shorter than her right leg and she has had to see her doctor and an orthopedic surgeon because of the pressure this is placing on her knee. The appellant stated that she is using a store-bought knee brace but she may need a custom knee brace if the problem continues. The appellant stated that her doctor has recommended that she wears the lift in the house as well, as she should use it 24/7 when she is on her feet. The appellant stated that she has severe problems with her knee and she has a severe limp. The appellant explained that her current lift is 1.3 cm. in height and installed permanently on her running shoe from toe to heel and she wears these shoes mostly outdoors but they are difficult to take on and off. The appellant stated that she lives in an area that can get a lot of snow in the winter and she needs a pair of snow boots to get around outdoors and a pair of slippers that are easy to get on and off for indoors. The appellant stated that she understands that the lift can be affixed to any footwear with a sole as it is permanently glued to the bottom. In response to a question, the appellant stated that she has used the running shoes indoors but they are bulky and not easy to get around in, like slippers. The appellant stated that the Request in the Fax dated February 1, 2012 was submitted to the ministry because she realized that she would need lifts installed on other footwear if she was to use a lift all the time. The appellant stated that if she does not have the lift for both indoors and outdoors, she will likely have to go back to the orthopedic surgeon about having more surgery.

In her Request for Reconsideration, the appellant states that her left leg is 3 cm shorter than her right leg and that her back is getting more painful because without the raise she limps very hard. The appellant states that she needs boots to wear outside and slippers for inside to make sure her back is in alignment so it will correct itself with proper lifts on her footwear. The appellant states that it will help with her back not hurting so much. The appellant explains that she has developed scoliosis in the upper area of her back and it could get worse if she does not have corrective shoes for in and outdoors.

The ministry relied on the reconsideration decision and stated that the ministry received a Medical Equipment Request and Justification on January 16, 2012 indicating that the appellant has one leg shorter than the other and she required a 2.5 cm lift to be installed on her left shoe or boot for leg length discrepancy. A quote for one lift at a cost of \$115.00 was attached. On January 21, 2012, the ministry approved the appellant's

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request. On February 2, 2012, the ministry received the Medical Equipment Request and Justification form previously forwarded with a quote attached for two lifts at a cost of \$230.00, one for a left outdoor boot and the other for a left indoor slipper. It was noted that the appellant wears slippers in the house and boots outdoors and that she cannot walk without a raise on her footwear due to leg length discrepancy.

## 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 a permanent modification to footwear as the ministry found that the request does not meet the legislated criteria under Schedule C, Sections 3 and 3.10, of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Under Section 62 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), in order to be eligible for health supplements in Section 2 or 3 of Schedule C, the person must be a recipient of disability assistance, be a person with disabilities, or be a dependent of a person with disabilities as detailed in the section. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that the person's family unit must meet in order to qualify for specified medical equipment and devices.

### Medical equipment and devices

- 3 (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.11 of this Schedule are the health supplements that may be provided by the minister if
- (a) the supplements are provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation, and
  - (b) all of the following requirements are met:
    - (i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;
    - (ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
    - (iii) the medical equipment or device is the least expensive appropriate medical equipment or device.
- (2) For medical equipment or devices referred to in sections 3.1 to 3.8, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:
- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
  - (b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.
- (3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if
- (a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and
  - (b) the period of time, if any, set out in sections 3.1 to 3.11 of this Schedule, as applicable, for the purposes of this paragraph, has passed. ...

### Medical equipment and devices – orthoses

3.10 (1) In this section:

"off-the-shelf", in relation to an orthosis, means a prefabricated, mass-produced orthosis that is not unique to a particular person;

**"orthosis" means**

- (a) a custom-made or off-the-shelf foot orthotic;
- (b) custom-made footwear;
- (c) a permanent modification to footwear;
- (d) off-the-shelf footwear required for the purpose set out in subsection (4.1) (a);
- (e) off-the-shelf orthopaedic footwear;
- (f) an ankle brace;
- (g) an ankle-foot orthosis;
- (h) a knee-ankle-foot orthosis;
- (i) a knee brace;
- (j) a hip brace;
- (k) an upper extremity brace;
- (l) a cranial helmet used for the purposes set out in subsection (7);
- (m) a torso or spine brace.

(2) Subject to subsections (3) to (11) of this section, an orthosis is a health supplement for the purposes of section 3 of this Schedule if

- (a) the orthosis is prescribed by a medical practitioner or a nurse practitioner,
- (b) the minister is satisfied that the orthosis is medically essential to achieve or maintain basic functionality,
- (c) the minister is satisfied that the orthosis is required for one or more of the following purposes:
  - (i) to prevent surgery;
  - (ii) for post-surgical care;
  - (iii) to assist in physical healing from surgery, injury or disease;
  - (iv) to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition,and
- (d) the orthosis is off-the-shelf unless
  - (i) a medical practitioner or nurse practitioner confirms that a custom-made orthosis is medically required, and
  - (ii) the custom-made orthosis is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist. ...

(9) Subject to section 3 of this Schedule, the limit on the number of orthoses that may be provided for the use of a person as a health supplement for the purposes of section 3 of this Schedule is the number set out in Column 2 of Table 1 opposite the description of the applicable orthosis in Column 1.

**Table 1**

<b>Item</b>	<b>Column 1 Orthosis</b>	<b>Column 2 Limit</b>
1	custom-made foot orthotic	1 or 1 pair
2	custom-made footwear	1 or 1 pair
3	modification to footwear	1 or 1 pair
4	ankle brace	1 per ankle
5	ankle-foot orthosis	1 per ankle
6	knee-ankle-foot orthosis	1 per leg
7	knee brace	1 per knee
8	hip brace	1
9	upper extremity brace	1 per hand, finger, wrist, elbow or shoulder
10	cranial helmet	1
11	torso or spine brace	1
12	off-the-shelf footwear	1 or 1 pair
13	off-the-shelf orthopaedic footwear	1 or 1 pair

(10) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an orthosis is the number of years from the date on which the minister provided the orthosis being replaced that is set out in Column 2 of Table 2 opposite the description of the applicable orthosis in Column 1.

**Table 2**

<b>Item</b>	<b>Column 1 Orthosis</b>	<b>Column 2 Time period</b>
1	custom-made foot orthotic	3 years
2	custom-made footwear	1 year
3	modification to footwear	1 year
4	ankle brace	2 years

5	ankle-foot orthosis	2 years
6	knee-ankle-foot orthosis	2 years
7	knee brace	4 years
8	hip brace	2 years
9	upper extremity brace	2 years
10	cranial helmet	2 years
11	torso or spine brace	2 years
12	off-the-shelf footwear	1 year
13	off-the-shelf orthopaedic footwear	1 year

The appellant's position is that her left leg is 3 cm shorter than her right leg and that her doctor has told her that she needs to wear a lift on her left foot all the time that she is on her feet. The appellant argues that if she does not wear the lift, her back gets more painful as a result of scoliosis and it puts pressure on her knee because she has a severe limp. The appellant argues that she needs boots to wear outside and slippers for inside and that she needs lifts installed to these additional footwear. The appellant argues that the Request date February 1, 2012 was submitted when she realized that the one lift would not be sufficient as a result of the need for additional lifts for different footwear.

The ministry's position is that the appellant, as a recipient of disability assistance, is eligible to receive health supplements under Section 62 of the EAPWDR, but that the appellant's request for a supplement to cover the cost of a permanent modification to footwear, being a left shoe lift, does not meet all the applicable requirements specified in Schedule C, Sections 3 and 3.10. The ministry argues that the appellant was provided with a left shoe lift on February 13, 2012 and that she is not eligible for more than one foot lift per foot, pursuant to Section 3.10(9). The ministry also argues that the appellant is not eligible for consideration of a request for a replacement left shoe lift until February 2013 pursuant to Sections 3(3) and 3.10(10) of Schedule C.

The panel finds that it is not disputed that the appellant was provided with a left shoe lift, as a modification to footwear, on February 13, 2012 as requested in the Medical Equipment Request and Justification dated December 14, 2011 for a "...2.5 cm lift to be installed on left shoe or boot for leg length discrepancy." Although the appellant argues that she finds her running shoes that have the lift installed are difficult to take on and off and are not as easy to get around in as slippers and that she also needs snow boots, the panel finds that Section 3.10(9) of Schedule C specifies that the limit on the number of orthoses that may be provided for the use of a person as a health supplement is, for modifications to footwear (Item 3), "...1 or 1 pair." Therefore, the panel finds that the ministry reasonably determined that the appellant's request dated February 1, 2012 for additional left shoe lifts exceeds the limit on the quantity of orthoses that may be provided for the use of the appellant as a health supplement for modifications to footwear, pursuant to Section 3.10(9) of Schedule C of the EAPWDR. Section 3(3) of Schedule C allows the ministry to provide a replacement of medical equipment or a medical device previously provided by the ministry if the period of time set out in Section 3.10(1) has passed and, for modifications to footwear (Item 3), the time period is stated to be "1 year." The panel finds that the appellant was provided with a left shoe lift as a modification to footwear in February 2012 and, therefore,

the period of time will not have passed until February 2013. Therefore, the panel finds that the ministry reasonably concluded that the appellant's request dated February 1, 2012 exceeds the limit on the frequency for replacement of modification to footwear as 1 year has not passed since the ministry previously provided the appellant with a left shoe lift, pursuant to Sections 3(3)(b) and 3.10(10) of Schedule C of the EAPWDR.

In conclusion, the panel finds that the ministry's decision, that the appellant's request did not meet all of the legislated criteria, was reasonably supported by the evidence and, therefore, confirms the ministry's decision.