

PART C – Decision under Appeal

On May 8, 2012 the Ministry decided that the Appellant was ineligible for the provision of orthotics as the Appellant was not eligible in any of the following ways:

- Under section 67 of the Employment and Assistance Regulation as a person who is receiving regular benefits and is a person designated as having persistent multiple barriers to employment (PPMB);
- Under section 62 of the Employment and Assistance for Persons with Disabilities Regulation as a person who is in receipt of disability benefits who has been designated as a person with disabilities (PWD); or
- Under section 76 of the Employment and Assistance Regulation as a person who is receiving regular benefits and for whom the health supplement addresses a direct and imminent life-threatening need.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) sections 2, 67 and 76 and Schedule C, section 3.10(3).

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) sections 2 and 62 and Schedule C, section 3.10(3).

PART E – Summary of Facts

The evidence before the Ministry on Reconsideration included the following:

- Note from Specialist re cost of orthotic appliance \$450.00 dated April 19, 2012
- Orthoses Request and Justification date stamped April 5, 2012
- Orthoses Request and Justification date stamped April 24, 2012
- Appellant's submission on Reconsideration date stamped May 4, 2012

The Appellant receives regular benefits under the EAR. She submitted an Orthoses Request and Justification date stamped April 5, 2012. In that form the Specialist states "Pt requires neutral position orthotics to control severe pronation of both feet. Pt has severe (illegible) and pain with increase in pain with standing or walking... Functional orthotics will control severe pronation and allow pt to ambulate without pain. She is trying to return to workforce and is unable to stand or walk for long periods of time." The Specialist reports that the orthotics are required for three of four possible purposes: prevention of surgery; to assist in physical healing from surgery, injury or disease; and, to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition. He further reports "Severe pronation and splaying of forefoot is causing foot deformity that could result in foot surgery. In answer to the question "Is the Orthosis is a custom made foot orthotic will it be made from a hand cast mold?" The Specialist has checked the nearest box which is the "No" yet goes on to state "Neutral position casts to be taken for Fabricating Functional orthotics."

The Appellant submitted a second Orthoses Request and Justification date stamped April 24, 2012. This is the same form as the one date stamped April 5, 2012 except that the answer to the question about whether the custom made foot orthotic will be made from a hand cast mold is now answered "Yes"; the date of April 19, 2012 is added beside the Specialist's signature; and, the Appellant has signed and dated the form, April 9, 2012.

At the hearing the Appellant could not remember asking her Specialist to correct his answer about the hand cast mold. It was clear that both versions of the form were before the Ministry on Reconsideration.

The facts are not in dispute. The panel finds that both Orthoses Request and Justification forms were before the Ministry on Reconsideration. The panel finds that the requirement in EAR Schedule C, section 3(3)(d) that the orthotic will be made from a hand-cast mold is met as a result of the corrected information in the form date stamped April 24, 2012.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the Ministry's decision to deny the Appellant's eligibility for custom-made orthotics.

The Appellant argued that the orthotics would allow her to work and possibly get off income assistance. She argued that that should be a goal of the Ministry. She stated that in her opinion she does have persistent multiple barriers to employment as she has many health problems which affect her ability to work such as chronic abdominal pain; fatigue and exhaustion; extreme foot pain; arthritis in her hands; and, a history of four umbilical hernias and soon possibly a fifth. The Appellant's submission is that the fact that orthotics would allow her to work should be sufficient reason for the Ministry to fund them.

The Ministry's position was that the reconsideration decision was correct. The Appellant, as the recipient of regular income assistance, could only qualify for orthotics if they were required for a direct and imminent life-threatening health need. Otherwise she would have to have the designation of a Person with Persistent Multiple Barriers to Employment under section 2 of the EAR or the designation of a Person With Disabilities under section 2 of the EAPWDR.

The relevant sections of the EAR state as follows:

General health supplements

67 (1) Subject to subsection (1.1), 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 family unit if the health supplement is provided to or for a person in the family unit who

(a) **is a recipient of income assistance under section 2** [*monthly support allowance*], 4 [*monthly shelter allowance*], 6 [*people receiving room and board*] or 9 [*people in emergency shelters and transition houses*] **of Schedule A if**

(i) **any person in the family unit is a person who has persistent multiple barriers to employment, and**

(ii) the recipient does not receive a federal spouse's allowance or guaranteed income supplement benefits.

(iii) Repealed. [B.C. Reg. 57/2007, s. 1.]

(b) is a recipient of income assistance under section 8 [*people receiving special care*] of Schedule A,

(c) is a dependant of a person referred to in

(i) paragraph (b),

(ii) paragraph (f), if the dependant was a dependant of the person on the day the person reached 65 years of age and remains a dependant of that person,

(iii) paragraph (g), if the dependant was a dependant of the person on the day the person's family unit ceased to be eligible for income assistance as a result of a payment made to the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry, or

(iv) paragraph (h), if the dependant was a dependant of the person on the day the person's family unit ceased to be eligible for income assistance as a result of an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or another member of the person's family unit, and

(A) if the dependant is under age 65, the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(B) if the dependant is aged 65 or more, any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,

(d) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]

(e) is a dependent child of a recipient of income assistance or hardship assistance,

(f) was on the day the person reached 65 years of age

(i) a recipient of income assistance under section 2 [monthly support allowance], 4 [monthly shelter allowance], 6 [people receiving room and board], 8 [people receiving special care] or 9 [people in emergency shelters and transition houses] of Schedule A, and

(ii) eligible for health supplements under section 2 [general health supplements] or 3 [medical equipment and devices] of Schedule C,

(g) meets the following requirements:

(i) has not reached 65 years of age;

(ii) is a part of a family unit that ceased to be eligible for income assistance as a result of a payment made to the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry;

(iii) was eligible for health supplements under section 2 or 3 of Schedule C on the day the person's family unit ceased to be eligible for income assistance, or

(h) meets all of the following requirements:

(i) is part of a family unit that ceased to be eligible for income assistance as a result of an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or another member of the person's family unit;

(ii) was eligible for health supplements under section 2 or 3 of Schedule C on the day the person's family unit ceased to be eligible for income assistance;

(iii) either

(A) if the person is under age 65, the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(B) if the person is aged 65 or more, any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement.

(1.1) A person eligible to receive a health supplement under subsection (1) (c) (ii) or (f) may receive the supplement

(a) while any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, and

(b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(1.2) A person who was eligible to receive a health supplement under subsection (1) (c) (iv) or (h) but ceases to be eligible for medical services only may continue to receive the supplement for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(2) Subject to subsection (3), 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 family unit if the health supplement is provided to or for a recipient in the family unit who

(a) has received income assistance under the *BC Benefits (Income Assistance) Act* or the Act continuously from March 31, 1997 and on March 30, 1997 was eligible under section 37 (1) (a) of the BC Benefits (Income Assistance) Regulations, B.C. Reg. 272/96, as it read on March 30, 1997, for the health care services and benefits referred to in that provision, or

(b) is a dependant of a recipient referred to in paragraph (a).

(3) Subsection (2) applies only until the earlier of the following dates:

(a) the date the recipient ceases to receive income assistance;

(b) the first day of the calendar month after the minister makes a determination that the recipient, or any dependant of the recipient other than a dependent child, is capable of accepting employment.

(4) A person referred to in subsection (1) (c) (ii), (iii) or (iv), (f), (g) or (h) ceases to be eligible for any supplement under this Division if the person's family unit takes up residence outside British Columbia.

The appellant cannot be eligible under section 67 unless she, or a member of her household, is a person with persistent multiple barriers to employment. That term "persistent multiple barriers to employment" is actually a defined term in the EAR. Section 2 of the EAR states as follows"

Persons who have persistent multiple barriers to employment

2 (1) To qualify as a person who has persistent multiple barriers to employment, a person must meet the requirements set out in

- (a) subsection (2), and
- (b) subsection (3) or (4).

(2) The person has been a recipient for at least 12 of the immediately preceding 15 calendar months of one or more of the following:

- (a) income assistance or hardship assistance under the Act;
- (b) income assistance, hardship assistance or a youth allowance under a former Act;
- (c) a disability allowance under the *Disability Benefits Program Act*;
- (d) disability assistance or hardship assistance under the *Employment and Assistance for Persons with Disabilities Act*.

(3) The following requirements apply

- (a) the minister
 - (i) has determined that the person scores at least 15 on the employability screen set out in Schedule E, and
 - (ii) based on the result of that employability screen, considers that the person has barriers that seriously impede the person's ability to search for, accept or continue in employment,
- (b) the person has a medical condition, other than an addiction, that is confirmed by a medical practitioner and that,
 - (i) in the opinion of the medical practitioner,
 - (A) has continued for at least one year and is likely to continue for at least 2 more years, or
 - (B) has occurred frequently in the past year and is likely

to continue for at least 2 more years, and

(ii) in the opinion of the minister, is a barrier that seriously impedes the person's ability to search for, accept or continue in employment, and

(c) the person has taken all steps that the minister considers reasonable for the person to overcome the barriers referred to in paragraph (a).

(4) The person has a medical condition, other than an addiction, that is confirmed by a medical practitioner and that,

(a) in the opinion of the medical practitioner,

(i) has continued for at least 1 year and is likely to continue for at least 2 more years, or

(ii) has occurred frequently in the past year and is likely to continue for at least 2 more years, and

(b) in the opinion of the minister, is a barrier that precludes the person from searching for, accepting or continuing in employment.

Therefore, "persons with persistent multiple barriers to employment" (PPMB) is a specific designation which must be applied for and obtained. Since the Appellant has not been designated a PPMB then it was reasonable for the Ministry to deny the Appellant's eligibility for orthotics under this section.

Similarly, the Ministry argues that the Appellant is not eligible as a person with disabilities (PWD) under section 62 of the EAPWDR which states:

General health supplements

62 (1) Subject to subsections (1.1) and (1.2), 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 family unit if the health supplement is provided to or for a person in the family unit who is

(a) a recipient of disability assistance,

(b) a person with disabilities who has not reached 65 years of age and who has ceased to be eligible for a disability assistance because of

(i) employment income earned by the person or the person's spouse, if either the person or the person's spouse

(A) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(B) is aged 65 or more and a person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,

(ii) a pension or other payment under the *Canada Pension Plan (Canada)*, or

(iii) money received by the person or the person's spouse under the

settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,

- (c) a person who was a recipient of disability assistance on the day he or she became 65 years of age and a dependant of that person, if the dependant was a dependant of the person on that day and remains a dependant of that person,
- (d) a dependant of a person referred to in paragraph (a) or (b) (iii),
- (d.1) a dependant of a person referred to in paragraph (b) (i), if any person in the family unit
 - (i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
- (d.2) a dependant of a person referred to in paragraph (b) (ii),
- (d.3) a dependant of a person referred to in paragraph (b) (i), if any person in the family unit
 - (i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
- (e) a dependent child of a recipient of hardship assistance,
- (f) a person with disabilities who has ceased to be eligible for disability assistance because of an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or the person's spouse, if
 - (i) the person is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (ii) the person is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, or
- (g) a person whose family unit ceases to be eligible for disability assistance because of financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*, during the term of the agreement.

Schedule C, section 3.10 includes a custom-made foot orthotic as a health supplement that can be provided to a person designated as a PWD.

However, persons with disabilities is a defined term under section 2 of the EAPWDR:

- (2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

- (a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and
 - (b) in the opinion of a prescribed professional
 - (i) directly and significantly restricts the person's ability to perform daily living activities either
 - (A) continuously, or
 - (B) periodically for extended periods, and
 - (ii) as a result of those restrictions, the person requires help to perform those activities.
- (3) For the purposes of subsection (2),
- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
 - (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
 - (i) an assistive device,
 - (ii) the significant help or supervision of another person, or
 - (iii) the services of an assistance animal.

The Appellant has not been designated as a Person With Disabilities and therefore it was reasonable for the Ministry to deny her eligibility for orthotics under this section.

The Ministry further argued that the Appellant does not qualify under section 76 of the EAR because she is not facing a life threatening health need. Section 76 of the EAR states:

Health supplement for persons facing direct and imminent life threatening health need

76 The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
- (b) the health supplement is necessary to meet that need,
- (c) the person's family unit is receiving premium assistance under the *Medicare Protection Act*, and
- (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:

- (i) paragraph (a) or (f) of section (2) (1);
- (ii) sections 3 to 3.11, other than paragraph (a) of section 3 (1).

There is no evidence that the Appellant is facing a life threatening need for orthotics. Her specialist describes severe pronation and splaying of both feet with pain while standing or walking. He states that the orthotics are required to prevent surgery, assist in physical healing from surgery, injury or disease and to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition. However, this information does not describe a direct and imminent life threatening need and therefore it was reasonable for the Ministry to decide that the Appellant was ineligible under this section.

The panel finds that the Ministry's decision to deny the Appellant's eligibility for orthotics was a reasonable application of the relevant applicable enactments in the circumstances of the Appellant and therefore the Ministry's decision is confirmed.