

PART C – Decision under Appeal

The appellant appeals the reconsideration decision of the Ministry of Social Development (“Ministry”) dated December 19, 2012, in which the Ministry denied the appellant’s request for custom-made foot orthotics on the basis that the information provided did not establish that her request meets the criteria set out in the *Employment and Assistance for Persons with Disabilities Regulation*, Schedule C, section 3.10.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), s. 62 and Schedule C, Health Supplements, sections 3 and 3.10.

PART E – Summary of Facts

The evidence before the Ministry at the reconsideration included the following:

- A prescription for orthotics dated July 5, 2012 signed by the appellant's doctor;
- A Ministry "Orthoses Request and Justification Form" signed by the appellant's mother on July 16, 2012, with section 2 – medical or nurse practitioner recommendation – completed and signed by the appellant's physician on July 19, 2012, and section 3 – assessment – completed by a pedorthist on July 20, 2012 (2 pages) ("Request Form");
- An estimate sheet from an orthotics company dated July 25, 2012, estimating the cost of bilateral custom orthotics for the appellant at \$450 (1 page);
- A Ministry Health Assistance Branch "Medical equipment and devices decision summary – custom-made foot orthotics" dated November 14, 2012 (2 pages);
- A letter dated November 29, 2012 from the appellant's doctor (1 page); and
- The appellant's request for reconsideration, including the written submission of the appellant's mother, dated December 6, 2012.

The appellant is an 11-year old child whose mother receives disability assistance. The Ministry's reconsideration decision notes that the appellant is a dependent of a recipient of disability assistance and she is eligible to receive health supplements under sections 62 and Schedule C of the EAPWDR.

At the hearing, the appellant's mother told the panel that the appellant has chronic foot pain and pain in her calves and legs – she has "flat feet" and her ankles buckle. The pain regularly affects the appellant's ability to walk both long and shorter distances – the appellant's mother told the panel sometimes the appellant cannot walk the 2-3 blocks to her school because of her pain. The pain also affects the appellant's ability to participate in sports and other activities. The appellant's mother told the panel that the appellant is a child with special needs as she has a brain injury. The appellant's mother told the panel that she has purchased insoles and orthotics from the drug store, but that these do not help with the appellant's pain. In the request for reconsideration, the appellant's mother had written that "we tried numerous supportive shoes, inserts and over the counter orthotics ... all of which brought little to no relief of the chronic pain in [the appellant's] arches and legs. The pain causes her discomfort while at school and she has a hard time concentrating."

In section 2 of the Request Form, the appellant's physician described the appellant's medical condition as "flat arches, feet painful, sore calves limiting ability to walk long distances" and wrote that "custom orthotics" are recommended. In the subsequent letter of November 29, 2012, the appellant's physician wrote that the appellant "requires orthotics for her chronic foot pain. She is a special needs child and this pain affects her daily function and mobility. Please reconsider funding these orthotics. [The orthotics company] is a reputable orthotics company that will make good quality orthotics that will last."

In section 3 of the Request Form, the pedorthist indicated that the appellant requires "a semi-rigid orthotic. This will help control the foot to keep alignment of the foot and lower leg." In response to the question "please explain how the prescribed item will assist with joint motion and/or support", the pedorthist wrote, "This will help control the motion of the foot and keep the joints in better alignment allowing the soft tissue to heal and reduce stress." The pedorthist checked "yes" indicating that the orthotics are required "to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition" and explained the response as, "Yes, keeping the foot in better alignment will help

reduce soft tissue stress." The pedorthist confirms that the custom made foot orthotic will be casted by hand (using a plaster casted slipper).

The Ministry says that the information provided with the appellant's request for a custom foot orthotic does not show that the foot orthotics are "medically essential to achieve or maintain basic functionality". The Ministry says that "flat feet" don't qualify as a "neuro-musculo-skeletal condition" and that "a neuro-musculo-skeletal condition has not been identified", although the Ministry told the panel that there is no definition of "neuro-musculo-skeletal condition" in the legislation and the Ministry does not have any policy direction about its definition.

The Ministry also says that, although the appellant's mother says that the appellant's pain affects her ability to concentrate at school, that there were "no supporting documents provided to substantiate this information." The Ministry also says that chronic foot pain does not justify that custom-made orthotics are medically required.

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the Ministry's reconsideration decision of December 19, 2012, denying the appellant's request for custom foot orthotics on the basis that the information provided by the appellant did not meet the eligibility criteria set out in section 3.10 of Schedule C of the EAPWDR.

Custom-made foot orthotics fall under "general health supplements" in the EAPWDR and orthotics are specifically addressed in s. 3.10 of Schedule C of the EAPWDR.

General health supplements

s. 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,
-
- (d) a dependant of a person referred to in paragraph (a) or (b)(iii),
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Schedule C – Health Supplements

Medical equipment and devices

3(1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in section 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.
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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) ...

(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.
- (3) For an orthosis that is a custom-made foot orthotic, in addition to the requirements in subsection (2) of this section, all of the following requirements must be met:
 - (a) a medical practitioner or nurse practitioner confirms that a custom-made foot orthotic is medically required;
 - (b) the custom-made foot orthotic is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist;
 - (c) Repealed
 - (d) the custom-made foot orthotic must be made from a hand-cast mold;
 - (e) the cost of one pair of custom-made foot orthotics, including the assessment fee, must not exceed \$450.

...
 (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

Item	Column 1 Orthosis	Column 2 Limit
1	Custom-made foot orthotic	1 or 1 pair
2

(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

Item	Column 1 Orthosis	Column 2 Time period
1	Custom-made foot orthotic	3 years
2

The appellant says that the Ministry's determination that the information provided with her request for custom-made foot orthotics did not meet the criteria set out in section 3.10 of Schedule C of the EAPWDR is unreasonable. The appellant says that the orthotics she is requesting are medically essential to achieve or maintain basic functionality (as required by subs. 3.10(2)(b)) and points to the note of November 29, 2012, in which the appellant's physician wrote that the appellant requires orthotics for her chronic foot pain "and this pain affects her daily function and mobility." The appellant points to the Request Form on which the pedorthist indicated that the requested orthotics are required "to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition" (as required by subs. 3.10(2)(c)(iv)), and which the pedorthist explained would keep the appellant's foot in better alignment which "will help reduce soft tissue stress." The appellant also says that her physician has confirmed that the custom-made foot orthotic is medically required (as required by subs. 3.10(3)(a)) and points to the Request Form on which her physician indicated that "custom orthotics" are required to treat her medical condition.

In its reconsideration decision, the Ministry noted that the appellant is a dependent of a recipient of disability assistance; accordingly, she is eligible to receive health supplements under sections 62 and Schedule C of the EAPWDR.

The Ministry says that the information provided by the appellant does not establish that the custom-made orthotics are "medically essential to achieve or maintain basic functionality" as required by subs. 3.10(2)(b) of Schedule C of the EAPWDR. The Ministry says that while the appellant's ability to walk may be impacted by chronic pain, "restriction to mobility is described as 'limited ability to walk long distances'" [referring to the comment by the appellant's physician in section 2 of the Request Form completed in July 2012] and that "this information does not describe a significant restriction or justifies the need for custom-made orthotics." In the Ministry's opinion, the condition of flat feet alone does not qualify as a "neuro-muscular-skeletal" condition. The Ministry says that it has no information that the appellant's "status as special needs is in reference to a physical disability that effects mobility" and says that "as a neuro-musculo-skeletal condition has not been identified", it cannot conclude that the orthotics are required to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition, as required by s. 3.10(2)(c)(iv) of Schedule C of the EAPWDR. The Ministry also says that it is not satisfied that the appellant's chronic foot pain "justifies that custom-made orthotics are medically required" and says that for this reason, the appellant does not meet the criteria in subs. 3.10(3)(a) of Schedule C of the EAPWDR.

The Ministry denied the appellant's request for custom-made foot orthotics on the basis that the request did not meet the criterion set out in subs. 3.10(2)(b) of Schedule C of the EAPWDR. Under subs. 3.10(2)(b), the minister must be satisfied that the orthosis is medically essential to achieve or maintain basic functionality. The appellant's mother wrote in her request for reconsideration that the appellant's pain causes her discomfort and she also described to the panel that, on occasion, the appellant could not walk the 2-3 blocks to her school because of her pain, and could not participate in sports and other activities. In the letter of November 29, 2012, which was before the Ministry at reconsideration, the appellant's physician indicated that the appellant's pain "affects her daily function and mobility". In the Request Form, the pedorthist indicated that the orthosis would help control the appellant's foot and improve the alignment of her joints, reducing the stress and allowing the soft tissue to heal. The panel finds that the information before the Ministry, in particular, the letter of the appellant's physician and the notes of the pedorthist in the Request Form, confirms that the requested foot orthotics are essential to achieve or maintain the appellant's basic functionality. The

panel finds that the Ministry's determination that the appellant's request for custom-made foot orthotics did not meet the criterion in subs. 3.10(2)(b) is not reasonable based on the evidence.

The Ministry also denied the appellant's request for custom-made foot orthotics on the basis that the request did not meet the criterion set out in subs. 3.10(2)(c)(iv), which is that the orthotics is required to "improve physical functioning that has been impaired by a neuro-musculo-skeletal condition". The Ministry agreed that there is no definition of "neuro-musculo-skeletal condition" set out in the EAPWDR and that the Ministry does not have a policy definition for it. In the information provided with the Request Form and in the letter of November 29, 2012, the appellant's physician does not indicate the cause of the appellant's flat feet and chronic foot pain. The pedorthist in completing section 3 of the Request Form indicated that the orthotic was required "to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition", but did not link the explanation of "keeping the foot in better alignment will help reduce soft tissue stress" to an identifiable neuro-musculo-skeletal condition from which the appellant suffers. Although there is reference to the fact that the appellant is a special needs child, and her mother told the panel she had a brain injury, there is no information directly linking the appellant's chronic foot pain to a "neuro-musculo-skeletal condition" as required by subs. 3.10(2)(c)(iv). Accordingly, the panel finds that the Ministry's determination that the information provided did not satisfy the criterion set out in subs. 3.10(2)(c)(iv) is reasonable.

The Ministry further denied the appellant's request on the basis that she did not meet the criterion set out in subs. 3.10(3)(a) which requires that "a medical practitioner or nurse practitioner confirms that a custom-made foot orthotic is medically required." The panel notes that the appellant's physician indicated on the Request Form of July 2012 that custom orthotics are required to treat the appellant's medical condition of "flat arches, feet painful, sore calves". The panel finds that the appellant's physician, a medical practitioner, has confirmed that the appellant requires custom-made foot orthotics to treat her medical condition. Accordingly, the panel finds that the Ministry's denial of the appellant's request for custom foot orthotics on the basis that the information provided did not meet the criterion set out in s. 3.10(3)(a) is not reasonable based on the evidence.

The appellant must meet all of the criteria set out in subs. 3.10(2) and 3.10(3) in order to obtain pre-authorization from the Ministry to purchase the requested medical equipment, as set out in s. 3(1) of Schedule C of the EAPWDR. Although the panel has found that the Ministry's denial of the appellant's request for custom foot orthotics on the basis that the request did not meet the criteria set out in subs. 3.10(2)(b) and 3.10(3)(a) of Schedule C of the EAPWDR was not reasonable based on the evidence, the panel has found that the Ministry's denial of the appellant's request on the basis it did not meet the criterion in subs. 3.10(2)(c)(iv) of Schedule C of the EAPWDR was reasonable based on the evidence. Accordingly, the panel confirms the Ministry's denial of the appellant's request for custom foot orthotics.