

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision dated March 4, 2013, finding the Appellant ineligible for a medical equipment supplement for off-the-shelf footwear as all of the requirements of section 3.10 of Schedule C of the Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

The relevant legislation is section 67 and section 3.10 of Schedule C of the EAR.

PART E – Summary of Facts

The Appellant did not qualify as a person with persistent multiple barriers to employment (PPMB). His medical report supporting his qualification as PPMB dated January 15, 2013 is difficult to decipher but appears to indicate that the Appellant has medical issues associated with his left clavicle and "post traumatic arthritis". Treatment is indicated as a left arm sling, and analgesics due to previous surgery on the left clavicle. Restrictions are described as "pain with major joints".

On August 27, 2012 the Appellant received a prescription for: "1. Second Step prosthesis" and "2. High support (min 8 inch boot) footwear." A letter from his physician dated September 17, 2012 states: "The attached prescription, written by myself, outlines [the Appellant's] leg length discrepancy (7cm). He requires a second step prosthesis and high support (minimum of 20cm) footwear which both are essential for medical reasons."

The Appellant obtained a quote from a clothes store for 4 pairs of work boots ranging from \$189.99 to \$239.99 and submitted this to the ministry with the prescription and a request for a supplement to help cover the costs of the boots.

On January 29, 2013 the ministry denied the Appellant's request. The Appellant requested a reconsideration.

On March 4, 2013 the ministry confirmed the original decision on the basis that the Appellant's request did not meet five of the applicable legislative criteria.

At the hearing neither the Appellant nor the ministry representative were present. The panel waited 15 minutes, satisfied itself that both parties had been notified, and determined to continue with the hearing in their absence in accordance with section 86(b) of the EAR.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's reconsideration decision dated March 4, 2013, finding the Appellant ineligible for a medical equipment supplement under section 67 and Schedule C section 3 of the EAR was reasonably supported by the evidence or a reasonable application of the applicable legislation.

The relevant legislation is section 67 and section 3.10 of Schedule C of the EAR:

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 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.

...

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.
- (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. [B.C. Reg. 144/2011, Sch. 1.]
 - (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.
- (4) For an orthosis that is custom-made footwear, in addition to the requirements in subsection (2) of this section, the cost of the custom-made footwear, including the assessment fee, must not exceed \$1 650.
- (4.1) For an orthosis that is off-the-shelf footwear, in addition to the requirements in subsection (2) of this section,
 - (a) the footwear is required to accommodate a custom-made orthosis, and
 - (b) the cost of the footwear must not exceed \$125.
- (4.2) For an orthosis that is off-the-shelf orthopaedic footwear, in addition to the requirements in subsection (2) of this section, the cost of the footwear must not exceed \$250.
- (5) For an orthosis that is a knee brace, in addition to the requirements in subsection (2) of this section, the medical practitioner or nurse practitioner who prescribed the knee brace must have recommended that the knee brace be worn at least 6 hours per day.
- (6) For an orthosis that is an upper extremity brace, in addition to the requirements in subsection (2) of this section, the upper extremity brace must be intended to provide hand, finger, wrist, elbow or shoulder support.
- (7) For an orthosis that is a cranial helmet, in addition to the requirements in subsection (2) of this section, the cranial helmet must be a helmet prescribed by a medical practitioner or nurse practitioner and recommended for daily use in cases of self abusive behavior, seizure disorder, or to protect or facilitate healing of chronic wounds or cranial defects.
- (8) For an orthosis that is a torso or spine brace, in addition to the requirements in subsection (2) of this section, the brace must be intended to provide pelvic, lumbar, lumbar-sacral, thoracic-lumbar-sacral, cervical-thoracic-lumbar-sacral, or cervical spine support.
- (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	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.

Item	Column 1 Orthosis	Column 2 Time period
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

(11) The following items are not health supplements for the purposes of section 3 of this Schedule:

- (a) a prosthetic and related supplies;
- (b) a plaster or fiberglass cast;
- (c) a hernia support;
- (d) an abdominal support;
- (e) a walking boot for a fracture;

The Appellant's written submissions indicate that he is appealing this decision because he has received from the ministry \$100 for this type of footwear in each of the past 4 years. He is unclear as to why this year would be different.

The Ministry's position is set out in its reconsideration decision. That decision is based on the finding that the Appellant's request does not meet five of the applicable legislated criteria.

- (1) Schedule C section 3.10(11)(a): the application is for a prosthesis and prostheses do not qualify as a health supplement. The panel finds that the Appellant's application was for an orthosis (off-the-shelf boots) rather than for a prosthesis (the second step prosthesis).

However, it recognizes that the ministry is ensuring that it addresses the fact that the prescription includes a prosthesis. The panel finds that this determination by the ministry is not relevant to this appeal as the Appellant did not appeal in regards to the prosthesis but in regards to the orthosis only.

- (2) Schedule C section 3.10(4.1)(a): an off-the-shelf orthosis must be to accommodate a custom-made orthotic, which is not indicated in the information before the ministry. The panel agrees with the ministry that there is no indication in the Appellant's application that the footwear was to accommodate a custom-made orthotic and finds that it was reasonable for the ministry to conclude that this criterion was not met.
- (3) Schedule C section 3.10(4.1)(b): the cost of an off-the-shelf orthosis must be less than \$125. The ministry indicates in its reconsideration decision that, had the Appellant otherwise been eligible for this supplement, the ministry would have provided him with \$125 towards the cost of the footwear. As the ministry is therefore not relying on this criterion the panel makes no finding.
- (4) Schedule C section 3.10(2)(b): the orthosis must be necessary to achieve or maintain basic functionality. Again, the panel agrees with the ministry that there is no indication in the Appellant's application that the footwear was necessary to achieve or maintain basic functionality. The physician's letter states that both the prosthesis and the footwear are necessary "for medical reasons", but this is not the same as being necessary to basic functionality. The panel finds that it was reasonable for the ministry to conclude that this criterion was not met.
- (5) Schedule C section 3.10(2)(c): the orthosis must be required for the purpose of: preventing surgery, post surgical care, assist in physical healing from surgery, injury or disease, improve physical functioning that has been impaired by a neuro-musculo-skeletal condition. The Appellant's leg-length difference and joint pain appear to be permanent conditions rather than the result of surgery or injury or disease. Neither is there any evidence that the footwear was necessary to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition. The panel therefore finds that the ministry was reasonable to conclude that this legislative criterion is not met.

The ministry's finding that the Appellant does not meet the applicable legislated criteria in order to qualify for a medical supplement was reasonable.

Accordingly, the Panel finds that the Ministry's determination that the Appellant is not eligible to receive a medical supplement was a reasonable application of the applicable legislation.

The Panel confirms the Ministry's decision.