

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated April 5, 2013 which denied the appellant's request for a supplement to cover the full cost of off-the-shelf orthopedic footwear as the footwear was not prescribed by either a medical or nurse practitioner pursuant to Section 3.10(2)(a) of Schedule C of the of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

**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

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

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

- 1) Orthoses Request and Justification signed by a medical practitioner August 12, 2012 for custom-made orthotics;
- 2) Purchase Authorization dated November 29, 2012 from the ministry to an orthotics supplier for a custom foot orthotic in the total amount of \$440.00 with a note that no prescription or quote was provided for shoes;
- 3) Letter dated December 17, 2013 from a pedorthist to the ministry stating in part that a quotation is enclosed for a pair of orthopedic shoes with a forefoot rocker to assist in ambulation due to the appellant's hemiplegia affecting her left side, together with quotation dated December 17, 2012 for a total of \$212.78;
- 4) Fax dated December 28, 2012 from an orthotics supplier to the ministry, with a note that it had been re-faxed as requested on January 2, 2013, stating in part that the appellant also requires orthopedic footwear, with a quote of \$250.00;
- 5) Letter of Estimate dated January 10, 2013 from an orthotics supplier to the ministry setting out orthopedic shoes at a cost of \$270 and foot orthoses for \$150, for a total of \$420.00;
- 6) Ministry Orthoses Request- Tracking Sheet for February 14, 2013 indicating that off-the-shelf orthopedic shoes at a cost of \$250 had been requested but there was no prescription from physician for orthopedic shoes;
- 7) Orthoses Request and Justification signed by a medical practitioner March 11, 2013 for off-the-shelf orthopedic footwear;
- 8) Orthoses Request and Justification signed by a medical practitioner March 12, 2013 for orthopedic shoes;
- 9) Orthoses Request and Justification signed by a medical practitioner March 12, 2013 for foot orthoses;
- 10) Letter dated March 27, 2013 from the ministry to the appellant stating that her Request for foot orthotics was received but further information is required before the request can be processed; and,
- 11) Request for Reconsideration- Reasons dated March 9, 2013.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Prescription dated April 19, 2013 for orthopedic shoes, 1 pair use daily for a diagnosis of left hemiplegia secondary to cerebral hemorrhage;
- 2) Letter dated May 4, 2013 from a podiatrist 'To Whom It May Concern' which provides argument in support of the appellant;

The ministry did not raise an objection to the admission of either document. The panel reviewed the prescription and letter and admitted them as information relating to the appellant's application for orthopedic shoes and being in support of the information before the ministry on reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

In her written submission on the appeal, the appellant wrote that she is submitting a letter from the podiatrist who examined her on May 4, 2013. The podiatrist wrote in her letter that the appellant was seen on May 4, 2013 and presented complaining of difficulty walking secondary to a history of cerebrovascular accident. The podiatrist wrote that the Orthoses Request and Justification form dated March 11, 2013 was completed by the appellant's primary care physician and recommended off-the-shelf orthopedic footwear. The second page was filled out by a certified pedorthist on March 18, 2013 with a detailed assessment, and a quote was provided. The podiatrist wrote that, given all of this information was previously provided, it is unclear why the request was denied.

The podiatrist wrote that she performed a full podiatric and lower extremity exam and she agrees with the

physician's diagnosis of flat feet (pes plano valgus) with history of cerebrovascular accident with hemiparesis. The podiatrist finds the physician's recommendation of orthopedic shoes to be appropriate, and the price of the shoes is an appropriate selection. The appellant has a prescription from the physician which again documents her diagnosis and the recommendation of orthopedic shoes for daily use.

In the Notice of Appeal the appellant wrote that she does not disagree with the ministry's reconsideration decision because it was her fault. The appellant wrote that she misunderstood the word 'prescription' for Request and Justification. She thought these were one and the same because the physician signed his name in the document. The appellant wrote that she has attached the doctor's prescription for off-the-shelf footwear to help with her walking and balance due to stroke. The shoes will accommodate the custom-made foot orthotics granted to her. Also attached is the quotation for the shoes, for a total of \$212.98. The appellant referred to a Request for an ankle-foot orthosis and prescription, which were not included.

In her Request for Reconsideration, the appellant wrote that the ministry's decision is correct because she realized that she failed to submit a new Request and Justification form for her off-the-shelf orthopedic footwear, and that it was an honest mistake. Her first request was for custom-made foot orthotics, her request was granted and she did not know that she needed to submit a new prescribed Request and Justification form. The appellant submitted the Request and Justification form for the off-the-shelf orthopedic footwear, and a quote for the price of the shoes.

The ministry relied on the reconsideration decision.

## 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 full cost of off-the-shelf orthopedic footwear as the footwear was not prescribed by either a medical or nurse practitioner pursuant to Section 3.10(2)(a) of Schedule C of the 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 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 – 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.

The appellant's position is that she misunderstood the word 'prescription' for Request and Justification, that she thought these were one and the same because the physician signed his name in the document. The appellant argued that she has attached the doctor's prescription for off-the-shelf footwear to help with her walking and balance due to stroke and she has also attached the quotation for the cost of the shoes.

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 full cost of off-the-shelf orthopedic footwear does not meet all of the legislative criteria set out in Schedule C. The ministry points out that, pursuant to Section 3.10(2)(a) of Schedule C of the EAPWDR, the off-the-shelf orthopedic footwear must be prescribed by either a medical or nurse practitioner. The ministry argued that while the appellant provided an Orthoses Request and Justification for off-the shelf orthopedic footwear, this form does not meet the requirement of a prescription by either a medical or nurse practitioner.

The panel finds that it is not disputed that the appellant, as a recipient of disability assistance, is eligible to receive health supplements under Section 62 of the EAPWDR, and that the appellant's request has satisfied all but one of the additional criteria to qualify for off-the-shelf orthopedic footwear under Section 3.10 of Schedule C of the EAPWDR. In particular, Section 3.10(2)(a) of Schedule C stipulates that an orthosis is a health supplement for the purposes of Section 3 of the Schedule if the orthosis is prescribed by a medical practitioner or a nurse practitioner. The appellant provided a Prescription dated April 19, 2013, from the same physician who completed the Orthoses Request and Justification, for orthopedic shoes, "1 pair use daily" for a diagnosis of left hemiplegia secondary to cerebral hemorrhage, and the panel finds that, with this additional evidence, the ministry's determination that the orthosis was not prescribed by a medical or nurse practitioner was not reasonable.

The panel finds that the ministry's decision that denied the appellant's request for a supplement to cover the cost of off-the-shelf orthopedic footwear as the orthosis was not prescribed by a medical or nurse practitioner, as set out in Schedule C, Section 3.10(2)(a) of the EAPWDR, was not reasonably supported by the evidence and, therefore, rescinds the ministry's decision. Therefore, the ministry's decision is overturned in favour of the appellant.