

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated June 27, 2013 which denied the appellant's request for custom-made foot orthotics as he did not meet the legislated requirements of *Employment and Assistance Regulation* (EAR) sections 67 or 76.

In particular, the ministry found that as the appellant is not a person with persistent multiple barriers (PPMB) he does not meet the requirements for general health supplements set out in EAR section 67. In addition, the ministry determined that there was no evidence to establish that the custom-made foot orthotics are necessary to meet a direct and imminent life-threatening health need as required by EAR section 76.

### PART D – Relevant Legislation

*Employment and Assistance Regulation* (EAR) sections 67 & 76  
Schedule C, sections 3 and 3.10

## PART E – Summary of Facts

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

- 1) The appellant's Request for Reconsideration (RFR) dated June 18, 2013 in which the appellant states that he needs the orthopedic arch supports as he is in continuous pain, walking or other activities are a challenge, and his old orthotics are broken and he does not have them anymore. The appellant also states that he cannot afford orthotics on his monthly income assistance;
- 2) Letter from the ministry to the appellant dated May 14, 2013 advising that the appellant is not eligible for custom casted bilateral orthotics;
- 3) Orthoses Request and Justification completed by a pedorthist dated April 8, 2013 stating that the appellant has flat feet with consequent knee and hip pain. The pedorthist states that the appellant requires non weight bearing custom orthotics to help reduce excessive motion of the feet and help with skeletal alignment and unload high pressure areas as they will reduce stress on soft tissue and joints that may be contributing to his knee and hip pain;
- 4) Quote from a medical equipment provider dated May 9, 2013 for custom casted bilateral orthotics at a cost of \$450;
- 5) Undated letter from a chiropractor stating that the appellant has plantar fasciitis with co-morbidities of metatarsal collapse and metatarsalgia resulting in pain in the bottom of his feet and lower leg with walking. The chiropractor states that he first prescribed the appellant orthotics in 2001 and that the appellant has worn orthotics ever since until the pair he had been using broke in half and became useless. The chiropractor reports that the appellant will always need the support of orthotics so that he can walk without pain; and
- 6) Letter from the ministry to the appellant dated April 10, 2013 advising the appellant that the ministry received a request for custom made orthosis but requires a quote from the orthosis supplier before the request can proceed.

In his Notice of Appeal the appellant states that he needs custom orthopedic footwear to alleviate pain and discomfort.

With the consent of both parties, the appeal proceeded by way of a written hearing.

**PART F – Reasons for Panel Decision**

The issue under appeal is whether the ministry's reconsideration decision which found the appellant ineligible for custom-made foot orthotics as he did not meet the legislated requirements of *Employment and Assistance Regulation* (EAR) sections 67 or 76 was reasonable.

The relevant sections of the legislation are as follows:

**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 Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who (B.C. Reg. 89/2005) (B.C. Reg. 67/2010)

(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)

(b) is a recipient of income assistance under section 8 [*people receiving special care*] of Schedule A, (B.C. Reg. 89/2005)

Paragraphs 67(1)(c) through (h) set out categories including persons who are dependants, people over 65 years old, or families that have ceased to be eligible for income assistance.

**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 3.12, other than paragraph (a) of section 3 (1).

### **EAR, Schedule C, sections 3 and 3.10**

#### 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 3.12 of this Schedule are the health supplements that may be provided by the minister if (B.C. Reg. 197/2012)

(a) the supplements are provided to a family unit that is eligible under section 67 [*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.

#### 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;
  - (n) a foot abduction orthosis; (B.C. Reg. 197/2012)
  - (o) a toe orthosis. (B.C. Reg. 197/2012)
- (B.C. Reg. 144/2011)
- (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 (B.C. Reg. 144/2011)
    - (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)
  - (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. (B.C. Reg. 144/2011)

Eligibility for General Health Supplements – EAR section 67

The appellant's position is that he needs orthotics because he is in continuous pain and that walking or other activity is a challenge. The appellant states that he had orthotics but they are broken and he cannot afford new orthotics with his monthly income assistance.

The ministry states that the legislation sets out that the minister may provide custom made orthotics as identified in EAR Schedule C section 3.10 if the appellant meets the criteria of EAR section 67. The ministry's position is that as the appellant does not have PPMB designation and does not receive income assistance under section 8 of Schedule A (people receiving special care) and is not a person otherwise described in EAR section 67(1)(c-h), (2) or (3), he does not fall into one of the categories of persons eligible to receive general health supplements as set out in EAR section 67.

The ministry also states that as the appellant does not have persons with disabilities designation (PWD) he is not eligible for health supplements under the *Employment and Assistance for Persons with Disabilities Regulation* section 62(1) and Schedule C, sections 2 or 3.

*Panel Decision*

EAR section 67 provides that the minister may provide any health supplement set out in section 2 or 3 of Schedule C if the health supplement is provided to a person who is a person referred to in section 67(1)(a-h). As the appellant does not have PPMB designation he does not meet the criteria of section 67(1)(a). The appellant does not meet the remaining criteria of EAR section 67(1)(b)-(h) as he is not a person receiving special care, a dependent child, over age 65 and a recipient of income assistance under section 2, 4, 6, 8 or 9, or a person who has ceased to be eligible for income assistance for the other listed reasons.

The panel finds that although the appellant has worn orthotics for many years and that both a pedorthist and chiropractor recommend that he obtain orthotics, as the appellant does not meet the criteria of EAR section 67(1), the ministry was reasonable in determining that the appellant was not eligible for custom made orthotics pursuant to EAR section 67.

Eligibility for orthotics - EAR section 76 – persons facing direct and imminent life threatening health need

The appellant's position is that he needs orthotics because he is in continuous pain and that walking or other activity is a challenge. The appellant states that he had orthotics but they are broken and he cannot afford new ones with his income assistance.

The ministry's position is that the information provided does not establish that the appellant faces a direct and imminent life-threatening health need or that the custom made foot orthotics are necessary to meet a direct and imminent life-threatening health need.

*Panel Decision*

EAR section 76 provides that the minister may provide health supplements set out in EAR Schedule C, section 3 if the health supplement is provided to a person who is not otherwise eligible for the health supplement under the EAR, if the minister is satisfied that the person faces a direct and

imminent life threatening need and there are no resources available to meet that need and the health supplement is necessary to meet that need.

The information provided by the pedorthist indicates that the appellant requires orthotics to reduce excessive motion of the feet, help with skeletal alignment and unload high pressure areas. The pedorthist reports that orthotics will reduce stress on soft tissue and joints that may be contributing to the knee and hip pain. The chiropractor reports that as the appellant has plantar fasciitis with co-morbidities of metatarsal collapse and metatarsalgia he has pain in his feet, across the forefoot and lower leg when he walks and that orthotics will help relieve the pain.

The panel finds that while the appellant would clearly benefit from the custom orthotics, the ministry reasonably determined that the information provided did not establish that the appellant faces a direct and imminent life threatening health need or that the orthotics are necessary to meet that need as required by EAR section 76.

### *Conclusion*

In conclusion, the panel therefore confirms the ministry's reconsideration decision.