

PART C – Decision under Appeal

The Appellant appeals the reconsideration decision of the Ministry of Social Development and Social Innovation (“Ministry”) dated March 11, 2014, in which the Ministry denied the Appellant’s request for replacement of her custom-made foot orthotics because the Appellant’s replacement request was made before the period of time for replacement of her custom-made foot orthotics (3 years) as set out in the *Employment and Assistance for Persons with Disabilities Regulation*, Schedule C, section 3(3)(b) and section 3.10(10).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), s. 62 and Schedule C, Health Supplements, sections 3(3)(b) and 3.10(10).

PART E – Summary of Facts

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

- A Ministry “Orthoses Request and Justification Form” completed for the Appellant on October 30, 2013, with section 2 – medical or nurse practitioner recommendation – completed and signed by the Appellant’s physician on November 27, 2013, and section 3 – assessment – completed by a pedorthist on November 28, 2013 (2 pages);
- An estimate sheet from an orthotics company dated November 29, 2013, estimating the cost of custom orthotics for the Appellant at \$450 (1 page + fax cover page);
- A letter dated February 19, 2014 from the Appellant’s doctor (1 page) stating that the Appellant’s orthotics are already worn and need replacing and she would benefit from a replacement pair every two years; and
- The Appellant’s request for reconsideration dated February 11, 2014, including the written submission of the Appellant’s advocate, dated February 18, 2014 (2 pages) in which the advocate wrote that the Appellant is “severely disabled and [in] immediate need of replacement of her orthosis. Her last purchase of orthosis in December 2011 are completely worn out and broken. As she is flat footed, it is painful for her to walk. And, as she needs to walk for the benefit of her overall general health she requires new orthosis.” The advocate attached the February 19, 2014 letter from the Appellant’s physician.

The Appellant receives disability assistance and, as noted by the Ministry in its reconsideration decision, is eligible to receive health supplements (in this case, custom-made foot orthotics) under section 62 and Schedule C of the EAPWDR. The Ministry approved a pair of custom-made foot orthotics for the Appellant on December 9, 2011.

The Appellant told the panel that she has diabetes and is overweight and her doctor has told her she needs to walk to help reduce her weight and improve her condition. The Appellant says that her custom-made foot orthotics are worn out and she cannot walk without her orthotics because it causes her excruciating pain. The Appellant also told the panel that she works four hours per week at a grocery store in the bakery during which time she has to stand and it is very painful for her to stand for this length of time without her orthotics. The Appellant stated that her doctor confirmed in his letter of February 19, 2014 that her orthotics are worn out and need replacing and that she “would benefit from being able to replace her orthotics every 2 years.”

In her Notice of Appeal dated March 25, 2014, the Appellant stated that her orthotics are worn out and that her doctor’s letter “confirms that fact.” She wrote that she needs orthotics to “walk without excruciating pain” and that she wears the orthotics out “earlier than three years.” She also wrote that it is hard for her to stand for any length of time.

The panel finds that the Appellant’s written statements in her Notice of Appeal and her testimony at the hearing relate to her need for replacement of her custom foot orthotics. The panel admits these statements under section 22(4)(b) of the *Employment and Assistance Act* as testimony in support of information that was before the Ministry at the time the decision being appealed was made.

In the reconsideration decision, the Ministry noted that the Appellant meets the criteria for custom-made foot orthotics set out in subsections 3(1)(a) and (b) of Schedule C of the EAPWDR in that she is eligible under section 62 of the EAPWDR, the minister has pre-authorized the orthotics, there are

no resources available to the Appellant to pay the cost of or obtain the orthotics, and the orthotics are the least expensive appropriate medical equipment. The Ministry also noted in the reconsideration decision that the Appellant met the criteria set out in section 3.10(2) of Schedule C of the EAPWDR because a medical or nurse practitioner prescribed the orthotics, the orthotics are medically essential to achieve or maintain basic functionality, the minister is satisfied the orthotics are required to prevent surgery and to assist in physical healing from surgery, injury or disease, and a medical or nurse practitioner confirmed that custom-made orthotics are medically required. Further, the custom-made orthotics are fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist.

The Ministry stated that the Appellant received her current orthotics in December 2011 and her request for replacement of her orthotics has not been made after the period of time – 3 years – set out in section 3.10(10) of Schedule C of the EAPWDR.

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the Ministry's reconsideration decision of March 11, 2014, denying the Appellant's request for replacement of her custom foot orthotics on the basis that her request does not meet the eligibility criteria set out in section 3.10(10) of Schedule C of the EAPWDR because the request was made less than 3 years after she received her custom-made orthotics.

Applicable Legislation

The Appellant meets the criteria set out in section 62 of the EAPWDR which provides as follows:

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 ... 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,

....

The eligibility requirements for medical equipment and devices, which include custom-made foot orthotics, are set out in section 3 of Schedule C of the EAPWDR. Custom-made foot orthotics are specifically addressed in s. 3.10 of Schedule C of the EAPWDR. Subsections 3(3) and 3.10(10) of Schedule C of the EAPWDR address the replacement of custom-made foot orthotics.

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

...

...

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if

(a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and

(b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

...

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) ...

...

(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 panel notes that section 3(6) of Schedule C of the EAPWDR does not apply to the Appellant – the ministry does not consider that the Appellant damaged her orthotics through misuse.

The Appellant does not disagree that her request for replacement of her custom-made foot orthotics was made less than 3 years since the Ministry approved her request for the orthotics on December 9, 2011. The Appellant argued that her custom-made orthotics have worn out and need to be replaced and she says that her doctor has confirmed she needs to replace her orthotics every two years. The Appellant argued that the Ministry should consider her request for replacement of her custom-made foot orthotics on compassionate grounds.

In its reconsideration decision, the Ministry determined that as it had provided the Appellant with custom foot orthotics on December 9, 2011, she would not be eligible for replacement orthotics until December 9, 2014. In its reconsideration decision, the Ministry also stated that “the replacement time period does not apply when an item is required due to changes in a person’s medical condition or growth” but found that the Appellant’s doctor “has not confirmed” that the Appellant’s custom orthotics “need to be replaced due to these above mentioned circumstances.” The Ministry determined that the Appellant did not meet the eligibility requirements for replacement of her custom orthotics under section 3(3)(b) of Schedule C of the EAPWDR. In the reconsideration decision, the Ministry referred to section 3(6)(b) of Schedule C; however, the panel notes this is a typographical error as there is no section 3(6)(b) of Schedule C of the EAPWDR.

The Ministry denied the Appellant’s request for replacement of her custom-made foot orthotics on the basis that her replacement request did not meet the criteria set out in section 3(3)(b) of Schedule C of the EAPWDR. Under section 3(3) of Schedule C, the minister may provide a replacement of worn out medical equipment (such as the Appellant’s custom-made orthotics) if it is more economical to replace than to repair the medical equipment **and** the period of time set out in section 3.10 of Schedule C has passed. Both conditions must be met in order to meet the requirement of section 3(3) of Schedule C. Section 3.10(10) of Schedule C provides that the period of time referred to in section 3(3)(b) of Schedule C with respect to replacement of an orthosis is, in the case of the Appellant’s custom-made foot orthotics, 3 years.

The Appellant asked the panel (and the Ministry) to replace her custom-made orthotics before the 3 year replacement period required by sections 3(3) and 3.10(10) of Schedule C of the EAPWDR on compassionate grounds. The panel notes that it has no jurisdiction to rescind the Ministry’s decision to deny the Appellant’s request for replacement custom-made orthotics prior to the legislated 3-year replacement period on compassionate grounds.

In its reconsideration decision, the Ministry indicated that the replacement time period “does not apply when an item is required due to changes in a person’s medical condition or growth” but did not refer to a specific section of the EAPWDR in which this is set out or whether it is a Ministry policy. The Ministry found that the Appellant’s doctor has not confirmed that the Appellant’s custom-made orthotics need to be replaced due to a change in medical condition or growth. In his letter of February 19, 2014, the Appellant’s physician wrote that the Appellant’s orthotics “are already worn out and need replacing. She would benefit from being able to replace her orthotics every 2 years.” The Appellant told the panel that she has diabetes and needs to walk to help her lose weight; however, the panel notes that the Appellant’s doctor did not indicate that the Appellant requires replacement of her custom-made orthotics as a result of changes in her medical condition or growth.

Therefore, the Appellant must meet the criteria set out in section 3(3) of Schedule C of the EAPWDR in order to receive replacement custom-made foot orthotics. The Appellant agrees that the Ministry provided her custom-made foot orthotics on December 9, 2011, and that the replacement date for her orthotics is December 9, 2014. Accordingly, the panel finds that the Ministry’s determination that the Appellant does not meet the eligibility requirements for replacement of her custom-made foot orthotics under section 3(3)(b) of Schedule C of the EAPWDR was reasonable. The panel confirms the Ministry’s denial of the appellant’s request for replacement of her custom foot orthotics as reasonable based on the evidence.