



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "Ministry") January 14, 2014 reconsideration decision denying a request from the Appellant, a Person With Disabilities ("PWD"), for off-the-shelf orthosis for her son, because the information in the request did not meet the requirements in Schedule C section 3.10(2)(a) of the EAPWDR, which requires that the orthosis be prescribed by a medical practitioner or nurse practitioner.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") Section 62 and Schedule C, Section 3.10.



**PART E – Summary of Facts**

For its reconsideration decision the Ministry had the following evidence:

1. Information in its records that the Appellant receives disability assistance and she has a dependent child, her son, who received custom-made foot orthotics in about October 2012.
2. An Orthoses Request and Justification for off-the shelf shoes completed on July 23, 2013 by a certified orthotist/certified pedorthist, providing the following information about the son:
  - He has severe per planus feet, limiting his walking ability.
  - Orthotics have already been supplied and he needs proper footwear/motion control shoes for them to work.
  - Motion control shoes with the orthotics reduce the excess pronation forces on the lower limbs.
  - Off-the-shelf shoes are required to assist in physical healing from surgery, injury or disease and to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition –“really this is the issue”.
  - With his condition, he will need new motion control shoes every 6 months.
3. Consultation Note dated July 2, 2013 from the same certified orthotist/certified pedorthist stating that the Appellant's son has severe pes planus feet, has orthotics from a specialty orthotics supplier, but is unable to benefit from them until he has adequate footwear. This orthotist recommended New Balance 927s which cost \$160 at local shoe stores. The orthotist also wrote that he cannot see any lesser shoe working in the long run.
4. Quote for \$168 for New Balance 927 shoes from a shoe supplier dated August 7, 2013 and a letter from the supplier stating that the Appellant's son was recommended to them by the orthotist because he needs shoes large enough to provide structure and support to help with his severe pes planus feet. The letter also states that the New Balance 927 was recommended because it offers larger sizes, width options, fits the orthotic and provides proper support. The cost is \$160, but the supplier will do them for \$150. They tried shoes at a lower price but were unable to find ones that fit the son's needs.
5. Letter dated September 3, 2013 from a doctor stating that the Appellant's son requires bilateral orthotics for foot problems.
6. Appellant's request for reconsideration dated December 30, 2013, in which she stated that her son has been assessed by a certified pedorthist who strongly recommended the New Balance 927 shoe. No shoe retailer will custom make this very needed shoe for severe pes planus feet. She also wrote that she understands that the Ministry only pays \$125. She is willing to pay the difference for this urgent need for her son.

At the hearing, the Appellant stated that her son has very severe per planus feet. He is in lots of pain and urgently needs the shoes. The shoes he has have holes in them and limit his walking ability. The New Balance shoe was recommended by the orthotist.

The Appellant's representative submitted oral arguments supporting the Appellant's position because of her limited financial means.

Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the Appellant's oral testimony because it provided details about her son's need for the requested shoes and therefore is in support of the evidence that was before the Ministry at reconsideration.

The Ministry relied on and reaffirmed its reconsideration decision.



The Panel makes the following findings of fact:

1. The Appellant receives disability assistance.
2. A certified orthotist/certified pedorthist recommended New Balance off-the-shelf shoes for the Appellant's dependent son.
3. There is no information that the certified orthotist/certified pedorthist is licensed to practice medicine in the province or that he is a licensed nurse practitioner.
4. A medical doctor prescribed bilateral orthotics for the Appellant's son's foot problems.



## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably denied a request from the Appellant for off-the-shelf orthosis for her son because the information in the request did not meet the eligibility requirements in Schedule C section 3.10(2)(a) of the EAPWDR, which requires that the orthosis be prescribed by a medical practitioner or nurse practitioner.

The following sections of the EAPWDR apply to this appeal:

### *General health supplements*

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.

### *Schedule C Health Supplements*

#### *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:

(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.

### *The Parties' Positions*

The Appellant submitted that her son urgently needs the off-the-shelf shoes recommended by the orthotist.

The Ministry noted that the recommendation for off-the-shelf shoes was not completed by a medical practitioner as required by Schedule C section 3.10(2)(a) of the EAPWDR. The medical doctor's note referred only to bilateral orthotics for foot problems and therefore, the Ministry determined that the Appellant did not meet the eligibility requirement for the orthosis in section 3.10(2)(a).

### *The Panel's Findings and Conclusion*

The Panel finds that there is no dispute that the medical doctor did not prescribe the requested off-the-shelf shoes in his note. Also, there is no evidence that the orthotist, who recommended the requested shoes, is a medical practitioner or nurse practitioner as required by Schedule C section 3.10(2)(a) of the EAPWDR. Therefore, the Panel finds that the Ministry reasonably concluded that the Appellant had not met the requirement in Schedule C section 3.10(2)(a) for off-the-shelf orthosis.

In conclusion, having considered all of the evidence, the Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence. Therefore, the Panel confirms the reconsideration decision