

PART C – Decision under Appeal

The Appellant appeals the reconsideration decision of the Ministry of Social Development and Social Innovation ("Ministry") dated March 3, 2014, in which the Ministry denied the Appellant's request for a long walker boot on the basis that the information provided does not establish that the Appellant's request for a long walker boot meets the requirements set out in the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) Schedule C, subsections 3.10(2)(b) and (c). The Ministry also denied the Appellant's request on the basis that a walking boot for a fracture is not a health supplement for the purposes of section 3 of Schedule C of the EAPWDR, as set out in section 3.10(11) of Schedule C.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"), s. 62 and Schedule C, Health Supplements, sections 3.10(2)(b), (c) and 3.10(11).

PART E – Summary of Facts

With the consent of the parties, the appeal hearing was conducted in writing in accordance with section 22(3)(b) of the *Employment and Assistance Act*.

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

- A prescription note from the appellant's physician dated January 9, 2014 for "long leg fracture brace."
- An invoice from a provincial health care provider/hospital dated January 9, 2014 for a long walker boot in the amount of \$116.00. It was signed by the Appellant accepting responsibility for the cost.
- An invoice for take-home supplies from the provincial health care provider/hospital with the words "walker boot long" and the price of \$116.00 circled, dated January 9, 2014 and signed by the appellant.
- A note from the appellant's physician dated February 14, 2014 on which the doctor notes, "walker boot for L foot. This patient has painful left calcaneocuboid arthritis which requires immobilization with this orthosis for curative treatment."
- The Appellant's request for reconsideration dated February 14, 2014, on which she has written, "the item requested is needed as [the doctor's] note states. I must have this walker boot so as not to increase the damage that is already done. This is a must have item. Please see original bill and note from the specialist [doctor's name]."

The Appellant receives disability assistance and, as noted by the Ministry in its reconsideration decision, is eligible to receive health supplements under section 62 and Schedule C of the EAPWDR.

In her notice of appeal, the Appellant writes that if she had not had "the walking boot to help stabilize" her left foot, she would not have been able to continue to do daily tasks "for fear of injury" to her left foot. She writes that she has been waiting "2 ½ years to finally be properly diagnosed" on why her left foot is causing her "so much pain and discomfort" and notes that she is now on a wait list for surgery.

The panel finds that the Appellant's written statements in her Notice of Appeal relate to her need for the long walker boot and the panel admits the statements under section 22(4)(b) of the *Employment and Assistance Act* as written 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 January 9, 2014 prescription note from the Appellant's doctor requested a "long leg fracture brace" and that this same doctor wrote on the additional note dated February 14, 2014 that the Appellant required "walker boot for L. foot," as she suffers from "painful left calcaneocuboid arthritis" which requires immobilization "with this orthosis for curative treatment." The reconsideration decision also notes that it is clear from the billing information that the Appellant was provided a long walker boot on January 9, 2014, but it is not clear whether the Appellant suffered a fracture in January 2014.

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the Ministry's reconsideration decision of March 3, 2014, denying the Appellant's request for a long walker boot on the basis that that the information provided does not establish that the Appellant's request for a long walker boot meets the requirements set out in subsections 3.10(2)(b) and (c) of Schedule C of the EAPWDR and also on the basis that a walking boot for a fracture is not a health supplement, as provided by section 3.10(11) of Schedule C.

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 are set out in section 3 of Schedule C of the EAPWDR and section 3.10 of Schedule C specifically address orthoses as follows:

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

...

Medical equipment and devices – orthoses

3.10(1) In this section, "orthosis" means any or all of the following:

- (a) a custom-made foot orthotic;
- (b) custom-made footwear;
- (c) a permanent modification to footwear;
- (d) an ankle brace;
- (e) an ankle-foot orthosis;
- (f) a knee-ankle-foot orthosis;
- (g) a knee brace;
- (h) a hip brace;
- (i) an upper extremity brace;
- (j) a cranial helmet used for the purposes set out in subsection (7);
- (k) 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.

...

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

- (a) a prosthetic and related supplies;

...

- (e) a walking boot for a fracture;

...

The Appellant submits that the requested walking boot is medically necessary to stabilize her left foot and to prevent further injury. She argues that she needs the item to reduce the pain and discomfort in her left foot so she can perform her daily tasks. The Appellant also indicates that she is on a wait list for surgery. The Appellant's physician indicates that the Appellant needs a "walker boot" or a "long leg fracture brace" for her left foot as she has painful arthritis that requires immobilization "with this orthosis for curative treatment." The invoices from the provincial health care provider/ hospital are for a "walker boot long" provided to the Appellant on January 9, 2014.

In its reconsideration decision, the Ministry determined that the information provided does not establish that the Appellant's request for a long walker boot meets the requirements set out in section 3.10(2)(b) and (c) of Schedule C of the EAPWDR. The Ministry noted that "no information is provided [by the Appellant's physician] as to whether the brace is medically essential to achieve or maintain basic functionality, or that an orthosis is required to prevent surgery, for post-surgical care, to assist in physical healing from surgery, injury or disease, or to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition." The Ministry also noted in the reconsideration decision that section 3.10(11) of Schedule C of the EAPWDR does not allow for provision of a walking boot for fracture as a health supplement. Although the Ministry acknowledged that it is unclear whether the Appellant sustained a fracture in January 2014, the Ministry found that a walking boot is not an eligible item under section 3.10(11) of Schedule C and "it is clear from the billing information" that the Appellant was provided with a "long walker boot" on January 9, 2014.

The Ministry denied the Appellant's request for a walker boot for her left foot on the basis that her request did not meet the criteria set out in section 3.10(2)(b) and (c) of Schedule C of the EAPWDR. Under section 3.10(2)(b) of Schedule C, the minister may provide an orthosis if the minister is satisfied that the orthosis is "medically essential to achieve or maintain basic functionality." Under section 3.10(2)(c) of Schedule C, the minister may provide an orthosis if the minister is satisfied that the orthosis is required for one or more of the following purposes: to prevent surgery, for post-surgical care, to assist in physical healing from surgery, injury or disease, or to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition.

The panel notes the information provided by the Appellant and her physician regarding the requested walker boot does not indicate if the walker boot is essential to achieve or maintain the Appellant's basic functionality, only that the walker boot is for "curative treatment." Further, the information provided by the Appellant and her physician does not indicate if the walker boot is required to prevent surgery, for post-surgical care or to assist in physical healing from surgery, injury or disease. The panel notes that the Appellant writes in her submission she is on a wait list for surgery. As well, the

information provided by the Appellant and her physician, while it refers to the Appellant's arthritis, does not confirm that the walker boot is required to improve her physical functioning that has been impaired by a neuro-musculo-skeletal condition. Accordingly, the panel finds reasonable the Ministry's denial of the Appellant's request on the basis that the information provided fails to establish that the requirements set out in subsection 3.10(2)(b) and (c) of Schedule C of the EAPWDR has been met.

The Ministry also denied the Appellant's request on the basis that a "walking boot for a fracture" is specifically excluded as a health supplement by subsection 3.10(11) of Schedule C of the EAPWDR. The panel notes that the invoices provided by the provincial health care provider/hospital indicate that on January 9, 2014 the Appellant received a "walker boot long" for the cost of \$116.00. While the Appellant's physician indicated in the January 9, 2014 prescription that it was for a "long leg fracture brace," the Appellant's physician in the February 14, 2014 note referred to a "walker boot for L foot." The panel finds that the information provided by the Appellant and her physician, as well as set out in the invoices, indicate that she requires a walker boot. Accordingly, the panel finds reasonable the Ministry's denial of the Appellant's request on the basis that the requested "walking boot" is excluded as a health supplement under subsection 3.10(11) of Schedule C of the EAPWDR.

The panel confirms the Ministry's denial of the Appellant's request for a walking boot as reasonable based on the evidence and a reasonable application of the legislation in the circumstances of the Appellant.