

PART C – Decision under Appeal

The Appellant appeals the June 16, 2014 reconsideration decision of the Ministry of Social Development and Social Innovation ("Ministry"), in which the Ministry denied the Appellant's request for a long walker boot on the basis that the Appellant did not receive pre-authorization for the long walker boot from the Ministry, as required by subsection 3(1)(b)(i) of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR). The Ministry also denied the Appellant's request on the basis that a walking boot is not an eligible health supplement under the legislation as it is neither a medical supply as set out in subsection 2(1)(a) of Schedule C of the EAPWDR nor medical equipment for the purposes of section 3 of Schedule C of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"), s. 62 and Schedule C, Health Supplements, sections 2 and 3.

PART E – Summary of Facts

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

- A prescription note from the Appellant's surgeon dated February 21, 2014 for "long fracture boot for R [right] foot."
- An invoice from a provincial health care provider/hospital dated February 20, 2014 for a long walker boot in the amount of \$116.00.
- 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 February 20, 2014 and signed by the appellant.
- The Appellant's request for reconsideration dated June 4, 2014, on which she has written, "My long fracture boot was prescribed by my surgeon [name] (see enclosed prescription). Calcium build-up behind my foot has damaged the tendon, and I am waiting for a surgery date. I have to wear this boot until I receive the surgery and I will need to wear it after the surgery as well. If you want more information feel free to contact [the surgeon]. With the income I receive, I am unable to pay this."

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.

At the hearing, the Appellant and the Ministry's representative agreed that a "long walker boot" and a "long fracture boot" are the same thing. The Appellant told the panel that she has a calcium build up behind her right foot which is very painful for her and which requires surgery. She said that she needs the long walker boot to help stretch the tendon and ease her pain before the surgery and she will also need the boot after the surgery. The Appellant told the panel that when she was at the hospital for an appointment with her surgeon, the hospital provided her with the long walker boot and told her to take the invoice to the Ministry when she received it. The Appellant did not speak with a Ministry worker before she received the long walker boot at the hospital. In her testimony at the hearing and in her notice of appeal, the Appellant said that she is not able to pay \$116 for the boot from the money she receives in monthly disability assistance and that she has received a notice from the hospital that if she doesn't pay in 30 days, they will send the bill to a collection agency.

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the Ministry's reconsideration decision of June 16, 2014, denying the Appellant's request for a long walker boot because the Ministry determined the Appellant did not receive pre-authorization from the Ministry for the long walker boot as required by subsection 3(1)(b)(i) of Schedule C of the EAPWDR. The Ministry also denied the Appellant's request on the basis that a walking boot is not an eligible health supplement under the legislation as it is neither a medical supply under subsection 2(1)(a) of Schedule C of the EAPWDR, nor medical equipment for the purposes of section 3 of Schedule C of the EAPWDR

Applicable Legislation

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

62 General health supplements

(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,

....

Schedule C of the EAPWDR sets out the requirements for health supplements for persons with disabilities. The eligibility requirements for health supplements that are medical supplies are set out in section 2 as follows:

2. General health supplements

(1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation:

(a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:

- (i) the supplies are required for one of the following purposes:
[subsections A – F set out the list of wound care, ongoing bowel care required due to loss of muscle function, catheterization, incontinence; skin parasite care or limb circulation care];
- (ii) the supplies are
 - A. prescribed by a medical practitioner or nurse practitioner,
 - B. the least expensive supplies appropriate for the purpose, and
 - C. necessary to avoid an imminent and substantial danger to health;
- (iii) there are no resources available to the family unit to pay the cost of or obtain the supplies.

The panel notes that none of subsections 2(1)(a.1) or (a.2) or (1)(c) or (2) or (2.1) are applicable to the Appellant's request for the long walker boot and that the Appellant does not assert that the sections apply to her request.

The eligibility requirements for medical equipment and devices are set out in section 3 of Schedule C of the EAPWDR which provides as follows:

3. Medical equipment and devices

(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

- (a) the supplements are provided to a family unit that is eligible under section 62 [*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.

...

The panel notes that subsections 3(2), (2.1), (3), (4) and (5) do not apply to the Appellant's request for the long walker boot and the Appellant does not assert that they do. Specific medical equipment and medical devices are listed in Schedule C of the EAPWDR as follows: canes, crutches and walkers (s. 3.1); wheelchairs (s. 3.2); wheelchair seating systems (s. 3.3); scooters (s. 3.4); wheelchairs; bathing and toileting aids (s. 3.5); hospital bed (s. 3.6); pressure relief mattresses (s. 3.7); floor or ceiling lift devices (s. 3.8); breathing devices (s. 3.9); hearing instruments (s. 3.11); and non-conventional glucose meters (s. 3.12). The Appellant's request for the long walker boot does not meet the requirements of any of these sections of Schedule C.

Section 3.10 of Schedule C of the EAPWDR sets out the requirements for orthoses as follows:

3.10 Medical equipment and devices – orthoses

(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;
 - (b) a plaster or fiberglass cast;
 - (c) a hernia support;
 - (d) an abdominal support;
 - (e) a walking boot for a fracture;
- ...

Submissions of the Parties

The Appellant argues that the requested long walking boot is medically necessary to stretch her tendon and reduce her pain and discomfort while she waits for surgery to remove the calcium deposit behind her foot (and that she will require the walking boot after surgery). The invoices from the provincial health care provider/hospital are for a "walker boot long" provided to the Appellant on February 20, 2014 for \$116. The Appellant argues that she did not contact the Ministry to seek pre-authorization for the long walker boot because the hospital provided her with the boot after her appointment with her surgeon and told her to take the invoice to the Ministry for payment. The Appellant says that she is unable to afford the \$116 to pay for the walking boot.

In its reconsideration decision, the Ministry determined that the Appellant had not received the prior authorization of the Ministry for the long walker boot, as required by section 3(1)(b)(i) of Schedule C of the EAPWDR. The Ministry noted in the reconsideration decision that the Appellant's requested long walker boot is not a medical supply that can be provided under the EAPWDR as defined in section 2(1)(a) of Schedule C. The Ministry found that the Appellant did not submit information from a medical or nurse practitioner with her request to establish that the long fracture boot is required for one of the purposes set out in subs. 2(1)(a) or that it is necessary to avoid an imminent and substantial danger to health (as required by subs. 2(a)(ii)(C)). The Ministry noted in the reconsideration decision that the Appellant's requested long fracture boot is not eligible as medical equipment because it is not among the items set out in sections 3.1 through 3.12, and the information provided by the Appellant with her request does not establish the criteria set out in subsection 3(1)(b). The Ministry also noted that a long fracture boot is an ineligible item under section 3.10(11), which expressly states that "a walking boot for a fracture" is not a health supplement for the purposes of section 3 of Schedule C of the EAPWDR.

Panel's Decision

The panel notes the Appellant does not dispute that she did not receive pre-authorization from the Ministry for the long walker boot – her evidence is that the hospital provided her with the long walker boot and told her to take the invoice to the Ministry when she received it. Accordingly, the panel finds reasonable the Ministry's denial of the Appellant's request on the basis that she did not receive pre-authorization from the Ministry for the long walker boot as required by subs. 3(1)(b)(i) of Schedule C of the EAPWDR.

The Ministry also denied the Appellant's request on the basis that a "long fracture boot" is not an eligible medical supply under section 2(1)(a) of Schedule C of the EAPWDR and, further, is specifically

excluded as a health supplement by subsection 3.10(11) of Schedule C of the EAPWDR. The panel notes that there was no evidence that the Appellant provided information from a medical or nurse practitioner with her request to establish that the long fracture boot is required for one of the purposes set out in subs. 2(1)(a) or that it is necessary to avoid an imminent and substantial danger to health (as required by subs. 2(a)(ii)(C)). Accordingly, the panel finds reasonable the Ministry's denial of the Appellant's request for a long fracture boot as it did not meet the requirements of section 2(1)(a) of Schedule C of the EAPWDR. Further, the panel notes that the invoices provided by the provincial health care provider/hospital indicate that on February 20, 2014 the Appellant received a "walker boot long" for the cost of \$116.00 and that the Appellant's surgeon indicated in the February 21, 2014 prescription that it was for a "long fracture boot for R [right] foot." The panel finds that the information provided by the Appellant and her surgeon, 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.