

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) reconsideration decision dated August 7, 2014, in which the Ministry denied the Appellant’s request for replacement of custom-made foot orthotics because the request did not meet the legislated replacement criteria, 3 years have passed set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Regulations, Schedule C, sections 3(3) and 3.10(10) item 1.

PART D – Relevant Legislation

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

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:

- 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.
- A request for insole refurbishing and orthopedic footwear was submitted on August 3, 2011. The ministry approved \$595 on October 22, 2011 for custom made orthotics and footwear.
- The appellant's podiatrist reported that orthotics were necessary to control excess pronation and support a depressed metatarsal arch, to improve the biomechanics of the feet to allow optimal functioning, improve pressure distribution, to reduce chronic pain and to promote increased activity. He recommended that each foot be plaster wrapped and molded to achieve optimal metatarsal arch orientation.
- On October 12, 2012, an invoice was submitted for repairs and footwear totaling \$185.00 which was paid on December 14, 2012, \$60 for repairs and \$125 for footwear to accommodate the orthotics.
- On May 7, 2014, the appellant's orthotist reports a diagnosis of right foot hallux limitatus that is compensated by internal rotation of the entire right limb which will eventually cause knee and hip pain leading to knee and hip disease. He recommends hand cast orthotics. The orthotist states on May 12, 2014 that "we can make him more functional with less pain", that "the problem is fully correctable" but requires orthotics to prevent surgery and improve physical functioning. He reports that the current orthotics were made incorrectly.
- On May 13, 2014, a quote for bilateral custom made foot orthotic was submitted to the ministry at a cost of \$390.
- On July 16, 2014, the ministry completed a medical equipment and devices decision summary for custom made orthotics denying the appellant's request for orthotics because he did not meet the EAPWDR 3.10(10) time frame for replacement orthotics.

In the appellant's request for reconsideration dated August 1, 2014 the appellant reported suffering from chronic pain as the current orthotics were made incorrectly. This has caused his toe nails to fall out and he must take more medication due to pain.

In his notice of appeal, the Appellant stated that the start date for his first pair of orthotics was August 2011 and approved October 22, 2011? (dates difficult to read) and is requesting approval now so that the shoes can be ready by October 22, 2014 otherwise he questions if he has to resubmit his application process all over again and wait until 2015 for the orthotics which will require more appointments and out of pocket expenses.

The panel finds that the Appellant's written statements in his Notice of Appeal is admissible because it relates to his need for custom orthotics, therefore the panel admits this information 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 of the reconsideration decision.

However, in the second part of the reasons for the appeal, the appellant's requests pre approval for the orthotics "so the shoes can be ready by October 22, 2014" and he asks if he "has to resubmit his application process all over again and wait until 2015, plus more appointments and out of pocket expenses". This request and questions are NOT evidence.

PART F – Reasons for Panel Decision

The issue is whether the reconsideration decision of the Ministry of Social Development and Social Innovation in which the Appellant's request for replacement of custom –made foot orthotics was denied because the request did not meet the legislated time frame criteria set out in the EAPWDR, Schedule C, sections 3(3) and 3.10(10) is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

APPLICABLE LEGISLATION

Medical equipment and devices

Section 3

(1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.11 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.

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a 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

Section 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)

(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. (B.C. Reg. 61/2010)

Table 2

Item	Column 1 Orthosis	Column 2 Time Period
1	custom-made foot orthotic	3 years (B.C. Reg. 144/2011)
2	custom-made footwear	1 year
3	modification to footwear	1 year
4	ankle brace	2 years
5	ankle-foot orthosis	2 years
6	knee-ankle-foot orthosis	2 years
7	knee brace	4 years
8	hip brace	2 years
9	upper extremity brace	2 years
10	cranial helmet	2 years
11	torso or spine brace	2 years
12	off-the-shelf footwear	1 year (B.C. Reg. 144/2011)

13 off-the-shelf orthopaedic footwear 1 year (B.C. Reg. 144/2011)

14 toe orthosis 1 year (B.C. Reg.197/2012)

(

The EAPWDR Schedule C, section 3.10(10) sets out that the period of time with respect to the replacement of a custom made foot orthotic is 3 years from the date on which the minister provided the orthosis being replaced.

The ministry's relied on the facts as stated in the reconsideration decision. The ministry's position is that the appellant is received a health supplement under EAPWDR, Schedule C sections 3(3) and 3.10(10) for custom made foot orthotics and off the shelf footwear on October 22, 2011. Further, on December 14, 2012, \$185 was approved, \$60 for repairs and \$125 for new off the shelf shoes. He is not eligible for a new orthotic until 3 years have passed. As no information was provided on the condition of his current orthotic the ministry questions whether it is more economical to replace the orthotics rather than to repair them.

The Appellant did not make any written submission for the appeal. In this reconsideration request, he writes that he is suffering chronic pain wearing his current shoes and that he has a history of ongoing shoes problems since day one and that the information he provided will show that the shoes were built incorrectly. He cannot wait any longer as his toe nails have fallen out resulting in other ongoing foot problems to date and that he has had to increase pain medication. He claims that he is due a new pair of orthotics on October 22, 2014 and questions if he will have to resubmit the request and do the application process all over again, involving more appointments, expenses and wait until 2015 to have the orthotics approved.

Panel Decision

The ministry found that the Appellant met the requirements of basic eligibility for health supplements as he receives disability assistance. While the appellant states that his current orthotics cause him pain, and were made incorrectly there is no provision in the regulations to replace the orthotics until 3 years have passed as specified in the EAPWDR.

Therefore the panel finds that the ministry time frame of 3 years for replacement orthotics must be adhered to, the ministry had no option but to apply the time period in the EAPWDR Schedule C sections 3(3) and 3.10(10).

The documents in the reconsideration request clearly show that the date the previous orthotics approved by the ministry was October 22, 2011. In the reconsideration decision, the ministry stated that the appellant will be not be eligible for replacement orthotics until October 22, 2014. The ministry also considered the appellant's request under its policy which allows for the provision of replacement orthotics before the legislated time period has expired if the replacement orthotics are required because of growth or a change in medical condition. The panel finds that the ministry reasonably determined that information had not been provided to establish that either of these circumstances exist.

The panel finds that the ministry reconsideration decision of August 7, 2014 was reasonably supported by the evidence and finds the ministry's conclusion that the 3 year provision has not been met is reasonable. The panel therefore confirms the ministry's decision.