

PART C – Decision under Appeal

Under appeal is the Ministry of Social Development and Social Innovation's ("the ministry") September 12, 2014 reconsideration decision that the appellant is not eligible for funding of a walking boot for a fracture as a health supplement under the Employment and Assistance for Persons with Disabilities Regulation, Schedule C, section 2(1)(a) as a medical supply or as medical equipment under section 3.

PART D – Relevant Legislation

EAPWDR Employment and Assistance for Persons with Disabilities Regulation, Schedule C section 2(1)(a) and 3.

PART E – Summary of Facts

The evidence before the ministry at reconsideration was

- the appellant is a recipient of disability assistance eligible to receive health supplements set out under the EAPWDR Schedule C section 2 or 3.
- the appellant tripped and fell, breaking three toes.
- at hospital the appellant was fitted for an air cast and advised to wear it for 6-8 weeks and use crutches to avoid putting pressure on her foot.
- invoices from health authority totalling \$134, \$24 for crutches, \$110 for Cast Foam Walker Air.
- unsigned copies of forms stating the patient accepts responsibility and guarantees payment of charges for cast and crutches.
- overdue notices from the health authority.

In her notice of appeal the appellant said she has no way of paying the cost of the air cast, and if she had known an air cast was not covered she would have asked for a treatment that was covered.

At the hearing the appellant said she was walking to catch the bus when she tripped in a pothole on the side of the road and fell, crushing her foot and fracturing her toes. She was not able to get up without assistance. She had a long and painful wait at the hospital emergency department. Her foot was x-rayed, she was fitted with the air cast walking boot and crutches and released. She said she was not offered any options, told the cost, or asked to pay at that time. She did not ask about cost or options and assumed the cost was covered.

The ministry relied on the reconsideration decision, and noted the hospital's (unsigned) document saying the patient accepts responsibility for and guarantees payment of the equipment charges, and that the appellant did not request payment by the ministry until three months after treatment.

The panel finds the terms “air cast walking boot”, “air cast”, and “cast foam walker air” and “walking boot” have the same meaning.

PART F – Reasons for Panel Decision

The issue is the reasonableness of the ministry's reconsideration decision that the appellant is not eligible for funding of a walking boot for a fracture as a health supplement under the EAPWDR Schedule C, section 2(1)(a) or section 3.

Relevant Legislation

SCHEDULE C Health Supplements (excerpts)

General health supplements

2 (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:*

- (A) *wound care;*
- (B) *ongoing bowel care required due to loss of muscle function;*
- (C) *catheterization;*
- (D) *incontinence;*
- (E) *skin parasite care;*
- (F) *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;*

Medical equipment and devices

3 (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.*

(2) *For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:*

- (a) *a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;*
- (b) *an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.*

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) 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;
- (o) a toe orthosis.

(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, and
- (d) the orthosis is off-the-shelf unless
 - (i) a medical practitioner or nurse practitioner confirms that a custom-made orthosis is medically required, and
 - (ii) the custom-made orthosis is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist.

(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.
- (f) Repealed. [B.C. Reg. 144/2011, Sch. 2.]

Appellant's Position

The appellant argues her injury can be defined as a wound and therefore the air cast walking boot qualifies as a medical supply prescribed by a medical practitioner under EAPWDR Schedule C section 2(1)(a). She says the term "wound" is not defined in the legislation, and although the ministry's position is the appellant's injury is not a wound, in the 17th edition of Taber's Cyclopedia Medical Dictionary, the definition of "wound" includes a crushing injury, by which a bone can be fractured. The appellant says the boot given to the appellant was for wound care, consistent with the legislation.

The appellant argues the ministry used its discretion to put aside the requirement for preauthorization for crutches, because the appellant was at the hospital in the evening when their offices were closed, and should apply similar discretion to pay for the walking boot as a covered supplement because at the hospital she was given no information about cost or optional less expensive treatments, and the ministry was not available to contact.

Ministry's Position

The ministry argues an air cast walking boot is not a funded medical supply, as it was not required for any of the purposes set out under EAPWDR Schedule C section 2(1)(a), and specifically the appellant's injury was a fracture, not a wound. When there is no definition in the legislation, the ministry relies on the standard dictionary meaning, which is that a "wound" involves broken or damaged skin. A fracture is not a wound. The ministry also says a walking boot was not the least expensive appropriate device for the purpose, nor was there any evidence a walking boot was necessary to avoid an imminent and substantial danger to health.

The ministry states the medical equipment and devices it is authorized to provide are set out under EAPWDR Schedule C section 3. The ministry is not satisfied an air cast walking boot is an eligible item under subsection 3.10, relating to orthoses, and that subsection 3.10 (11) specifies a walking boot for a fracture is not a health supplement for the purposes of Schedule C section 3.

Panel's Decision

As a recipient of disability assistance the appellant is eligible to receive health supplements for the treatment of her fractured toes, under the provisions of EAPWDR Schedule C section 2 - general health supplements, or section 3 - medical equipment and devices.

Section 2(1)(a) states all five of the listed requirements must be met for the ministry to pay for general health supplements.

The first is one of six listed purposes, the only purpose of which that could apply to the appellant is wound care. Wound is not defined. The ministry says the standard dictionary definition of wound requires the skin be broken, and as the appellant's injury is fractured toes section 2(1)(a)(i) does not apply. The appellant referred to a medical dictionary that indicated a crushing injury with a fracture is a wound. In the absence of a medical report describing the appellant's injury as a wound according to the definition submitted by the appellant, the panel finds the ministry's determination the walking boot was not required for wound care to be reasonable.

Section 2(1)(a)(ii) requires the supplies to be

(A) prescribed by a medical practitioner or nurse practitioner. The ministry found this requirement was met.

(B) the least expensive appropriate for the purpose. The ministry found this requirement was not met. The appellant did not dispute the ministry's statement in the reconsideration decision that a

plaster or fibreglass cast would have been covered by MSP, and there is no medical evidence that a walking boot was the least expensive for the purpose.

(C) necessary to avoid an imminent and substantial danger to health. The ministry found this requirement was not met. There was no medical evidence provided that the walking boot was necessary to avoid an imminent and substantial danger to health.

Section 2(1)(a)(iii) requires that there are no resources available to the family unit to pay the cost of or obtain the supplies. The ministry did not dispute the appellant's statement that she did not have the money to pay for the walking boot.

The panel finds as reasonable the ministry's determination that three of the five requirements of section 2(1)(a) were not met and therefore the appellant is not eligible for an air cast walking boot as a medical supply under Schedule C section 2.

Section 3 lists medical equipment and devices that may be paid for by the ministry. However, subsection 3.10(11) states a walking boot for a fracture is not a health supplement for the purposes of section 3. The panel therefore finds the ministry's decision that it is not authorized to provide funding for a walking boot for a fracture under section 3 to be reasonable.

The panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant, and confirms the decision.