

PART C – Decision under Appeal

The decision under appeal is the September 4, 2014 reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”) refusing the appellant’s request for a supplement in the form of replacement of custom-made foot orthotics. The reason given by the ministry for the refusal was that one legislative criterion had not been satisfied, as follows:

- that the 3 year time period specified for replacement of a custom-made foot orthotic in sections 3(3)(b) and 3.10(10) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) had not elapsed.

PART D – Relevant Legislation

EAPWDR, Schedule C, sections 3 and 3.10

PART E – Summary of Facts

The information and records that were before the ministry at the time of reconsideration included the following:

- A letter from the ministry to the appellant, dated July 25, 2012, indicating that the appellant's request for custom-made foot orthotics had been approved.
- An Orthoses Request and Justification form (the "ORJ") completed by the appellant's physician and a podiatrist in February, 2014. The physician noted that the appellant has spina bifida. In the ORJ the physician requested "walking orthotics" to provide "foot support and pressure distribution". The podiatrist noted "High pressure wear/tear to Metatarsal heads + heel. Orthotics to improve foot function, walking gait, and balance," and indicated that the appellant requires custom-made orthotics made from a plaster slipper cast.
- A February 24, 2014 quote for "Custom Functional Orthotics-Plaster Casted" in the amount of \$450.00.
- A Request for Reconsideration form, including a note from the appellant's physician dated August 20, 2014, wherein the physician wrote that the orthotics are required "for better mobility. Limping gait...custom orthotics need to be replaced sooner because of gait unsteady and wear + tear."

In her Notice of Appeal the appellant wrote that "I have Spina Bifida. Losing muscle mass in lower legs/feeling due to age. I have worn orthotics x 10 yrs 365 days a year. That means basically one pair of shoes all year. Unable to walk w/o them."

The appellant's Notice of Appeal provides additional detail that tends to corroborate information that was before the ministry with respect to the degree of wear and tear on her orthoses. The panel admitted this information as written testimony in support in accordance with section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's September 4, 2014 reconsideration decision refusing the appellant's request for a supplement in the form of replacement of custom-made foot orthotics. The reason given by the ministry for the refusal was that one legislative criterion had not been satisfied, as follows:

- that the 3 year time period specified for replacement of a custom-made foot orthotic in sections 3(3)(b) and 3.10(10) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") had not elapsed.

The relevant legislation is as follows:

EAPWDR, Schedule C

Medical equipment and devices

- 3 (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.

...

- (6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

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;...

- (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.

Table 2		
Item	Column 1 Orthosis	Column 2 Time period
1	custom-made foot orthotic	3 years
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
13	off-the-shelf orthopaedic footwear	1 year
14	toe orthosis	1 year

* * *

The appellant's position is that she requires the custom orthoses. She argued that because she cannot walk without the orthoses, she has to wear them every day, causing them to wear out. She relied on the ORJ and the note from her physician to confirm that because of the gait necessitated by her medical condition, the orthoses she received in 2012 are worn out.

The ministry's position, as set out in its reconsideration decision, is that the legislated 3 year time period since the ministry last supplied custom orthotics to the appellant in July, 2012, has not elapsed. The ministry indicated that the 3 year time limit "does not apply" in circumstances where "an item is required due to changes in a person's medical condition, or growth", but then noted that the physician has not confirmed that the custom orthotics need to be replaced due to the above mentioned circumstances.

Panel Decision

Sections 3(3) and 3.10(10) of Schedule C of the EAPWDR establish the 3 year period for replacement of custom orthotics, and do not provide the ministry with discretion to waive the time period. Based on the ministry's statements in the reconsideration decision, it appears that as a matter of policy, the ministry is prepared to waive the 3 year period in circumstances where a person's medical or physical condition changes significantly. The panel is not aware of any statutory basis for the ministry to waive the 3 year period.

The panel acknowledges the appellant's circumstances, but the ministry is bound to follow legislated requirements. Because the legislated 3 year time period has not elapsed, the panel finds that the ministry's denial of the appellant's request for replacement of her custom orthoses was a reasonable application of the legislation in her circumstances. Accordingly, the ministry's decision is confirmed.