

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 which denied the appellant's request for a supplement to cover the cost of a Cast Air Walker Boot. The ministry found that the item requested is not listed as an eligible item in Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) and the appellant did not obtain pre-approval from the ministry, pursuant to Section 3(1)(b)(i) of Schedule C, prior to obtaining the Cast Air Walker Boot.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 62 and Schedule C, Sections 2, 3, and 3.1 to 3.12

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Medical Imaging Report dated November 20, 2012 which concludes, in part, that the appellant demonstrates osteopenia and the values place her at a moderate risk in the 10-20% range for fractures in these regions over the next 10 years;
- 2) Medical Imaging Report dated June 9, 2014 which concludes, in part, that there is an essentially undisplaced transverse fracture cross the 5th metatarsal base. Deformity of the shaft of the first tarsal with a wire structure is consistent with old surgery;
- 3) Invoice with a service date of June 9, 2014 for a “Cast Air Walker Boot Gen II” for the total cost of \$97, with a statement signed by the appellant that she “request and accept responsibility for and guarantee payment of charges indicated. These charges have been explained to me and are payable at the time of service;”
- 4) Blood test report dated June 10, 2014 with a handwritten note “has started Vitamin D” as per her doctor; and,
- 5) Request for Reconsideration- Reasons dated August 5, 2014.

In her Request for Reconsideration, the appellant wrote:

- Her current income is with disability assistance (PWD) and she has no other sources of income.
- On June 9, 2014, she broke the 5th metatarsal of her right foot.
- The doctor treated her at the hospital cast clinic and determined the injury required a “Cast air walker boot Gen II” for her broken right foot.
- The OT then fitted her right foot with the ‘cast air walker boot Gen II’, which stayed in place for the 9-week healing process.

Prior to the hearing, the appellant provided her Notice of Appeal dated August 19, 2014 and copies of the documents submitted at reconsideration. In her Notice of Appeal, the appellant wrote:

- As a Person With Disabilities (PWD) she cannot afford the extra burden of the cost of the Air Walker Cast Boot (\$97).
- This has caused extreme anxiety and added extra stress in her life, endangering her personal mental health.
- She volunteers at the hospital and broke her right foot while leaving for the day on June 9, 2014.
- She saw a doctor in the Emergency Department at the hospital cast clinic that same day, had an x-ray, and was informed that she had broken the 5th metatarsal of her right foot. This injury required casting to put the broken bone back in its proper place and promote the correct healing process.
- The occupational therapist (OT) placed her foot in the Air Walker Cast Boot to put the bone back into place and keep the fracture from moving. This is standard procedure for a broken foot.
- She spent 2 weeks not allowed to exert any pressure and no walking on her right foot.
- Slowly, she could walk with the cast in place for the rest of the 9 weeks of healing. The OT signed off on the air walker cast.

Prior to the hearing, the ministry provided an email advising that the ministry's submission will be the reconsideration summary provided.

Admissibility of New Information

The ministry did not raise an objection to the admissibility of the additional information provided by the appellant in her Notice of Appeal, which included a description of the circumstances surrounding her need for a Cast Air Walker Boot and her ability to pay for it. The panel admitted this additional information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*. The panel considered the ministry's submission as part of the ministry's argument and not evidence.

The ministry relied on its reconsideration decision which included information that on July 3, 2014 the hospital submitted a request on the appellant's behalf for payment for a Cast Air Walker Boot.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of a Cast Air Walker Boot because the item requested is not listed as an eligible item in Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) and the appellant did not obtain pre-approval from the ministry, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Pursuant to Section 62 of the EAPWDR, the applicant must be a recipient of disability assistance, or be a dependant of a person in receipt of disability assistance in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has found that the requirement of Section 62 has been met in that the appellant has been approved as a recipient of disability assistance.

At issue is whether the requested Cast Air Walker Boot is an eligible item under Schedule C of the EAPWDR, including:

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. ...

Further, Section 2(1.1) of Schedule C, provides that "medical or surgical supplies" do not include nutritional supplements, food, vitamins, minerals or prescription medications.

Section 2(1)(c) provides that the following items are health supplements if the other criteria of the section are met: a service for acupuncture, chiropractic, massage therapy, naturopathy, non-surgical podiatry, physical therapy.

Section 2(1)(f) of Schedule C provides that the following items are health supplements if the other criteria of the section are met: the least expensive appropriate mode of transportation.

Section 2.1 of Schedule C provides that the following are the optical supplements that may be provided under Section 62.1 of the EAPWDR: basic eyewear and repairs, pre-authorized eyewear and repairs.

Section 2.2 of Schedule C provides that the minister may pay a health supplement under Section 62.2 of the EAPWDR for an eye examination if the other criteria of the section are met.

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. . . .

Section 3.1 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a cane, a crutch, a walker, an accessory to a cane, a crutch or a walker.

Section 3.2 provides that the following items are health supplements for the purposes of section 3 if the other criteria of the section are met: a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair.

Section 3.3 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a wheelchair seating system, an accessory to a wheelchair seating system.

Section 3.4 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a scooter, an upgraded component of a scooter, an accessory attached to a scooter.

Section 3.5 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a grab bar in a bathroom, a bath or shower seat, a bath transfer bench with hand held shower, a tub slide, a bath lift, a bed pan or urinal, a raised toilet seat, a toilet safety frame, a floor-to-ceiling pole in a bathroom or bedroom, a portable commode chair, a standing frame or a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility, and a transfer aid for a person for whom the transfer aid is medically essential.

Section 3.6 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed, and a positioning item on a hospital bed.

Section 3.7 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a pressure relief mattress.

Section 3.8 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a floor or ceiling lift device.

Section 3.9 provides that the following items are health supplements for the purposes of section 3 of the Schedule, if the other criteria of the section are met: breathing devices.

Section 3.10 provides that the following items are an orthosis which is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a custom-made or off-the-shelf foot orthotic, custom-made footwear, a permanent modification to footwear, off-the-shelf footwear for a specific purpose, off-the-shelf orthopaedic footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, a hip brace, an upper extremity brace, a cranial helmet, a torso or spine brace, a foot abduction orthosis, or a toe orthosis.

3.10(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.]

Section 3.11 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a hearing instrument.

Section 3.12 provides that the following item is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a non-conventional glucose meter.

Section 2(1) of Schedule C of the EAPWDR

The ministry's position is that the appellant is eligible to receive health supplements under Section 62 of the EAPWDR but that the requested item, a Cast Air Walker Boot, is not an eligible item as a medical or surgical supply set out in Section 2(1)(a) of Schedule C of the EAPWDR as it does not meet all of the criteria. The ministry argued that information has not been provided to establish that the Cast Air Walker Boot is a disposable or reusable medical or surgical supply required for one of the purposes set out in the section, namely: wound care, ongoing bowel care, catheterization, incontinence, skin parasite care, or limb circulation care. The ministry also argued that there is insufficient information to establish that the item requested is necessary to avoid an imminent and substantial danger to health.

The appellant's position is that on June 9, 2014 she broke the 5th metatarsal of her right foot and the OT placed her foot in the Air Walker Cast Boot to put the bone back into place and keep the fracture from moving. The appellant argued that this is standard procedure for a broken foot. The appellant also provided evidence that she suffers from osteopenia and that, as a PWD, she cannot afford the extra burden of the cost of the Air Walker Cast Boot and this has caused extreme anxiety and added extra stress in her life, endangering her personal mental health.

Panel decision

The appellant described the Cast Air Walker Boot as casting to put the broken bone back in its proper place and promote the correct healing process. The appellant did not advance a position that the Cast Air Walker Boot was required for one of the purposes listed in Section 2(1)(a) of Schedule C, namely: wound care, ongoing bowel care, catheterization, incontinence, skin parasite care, or limb circulation care, and the panel finds that the ministry was reasonable in concluding that the Cast Air Walker Boot was not required for one of these purposes. Under Section 2(1)(a)(ii)(C) of Schedule C,

the supply must also be necessary to avoid an imminent and substantial danger to health. The appellant provided a copy of a Medical Imaging Report dated November 20, 2012 which concludes, in part, that the appellant demonstrates osteopenia and the values place her at a moderate risk in the 10-20% range for fractures in these regions over the next 10 years. As the appellant's need for the Cast Air Walker Boot arose after her foot was already broken, the panel finds that the ministry reasonably determined that there was insufficient information to show that the Cast Air Walker Boot was required in order to avoid a danger to the appellant's health by reducing her risk for fracture.

The appellant argued that, as a PWD, she cannot afford the extra burden of the cost of the Cast Air Walker Boot and this has caused extreme anxiety and extra stress in her life, endangering her personal mental health. The Invoice dated June 9, 2014 included a statement signed by the appellant that she requested and accepted responsibility for and guaranteed payment of the cost of \$97 for a "Cast Air Walker Boot Gen II," with which she was fitted. The appellant stated that the extreme anxiety and extra stress arose after she was provided with the Cast Air Walker Boot and she had incurred costs that she stated she cannot afford. The panel finds that the ministry reasonably concluded that there was insufficient information to show that the Cast Air Walker Boot was required to avoid a danger to the appellant's health. Therefore, the panel finds that the ministry's decision, which concluded that the Cast Air Walker Boot does not meet all of the legislative criteria as set out in Section 2(1)(a) of Schedule C of the EAPWDR, was reasonable.

Section 3 and 3.1 through 3.12 of Schedule C of the EAPWDR

The ministry's position is that the appellant is eligible to receive health supplements under Section 62 of the EAPWDR but the Cast Air Walker Boot, is not an eligible item as medical equipment specifically set out in 3.1 through 3.12 of Schedule C of the EAPWDR and the appellant did not obtain pre-approval from the ministry, pursuant to Section 3(1)(b) of Schedule C. The ministry also argued that the Cast Air Walker Boot is specifically excluded as a health supplement, pursuant to Section 3.10(11)(e) of Schedule C, as a "walking boot for a fracture."

The appellant does not argue that the Cast Air Walker Boot is listed as an eligible item of medical equipment but, rather, that the doctor that treated her at the hospital cast clinic determined that her injury required a "Cast Air Walker Boot Gen II" for her broken right foot.

Panel decision

Section 3(1)(b)(i) of Schedule C of the EAPWDR stipulates that the medical equipment and devices described in Sections 3.1 to 3.12 of Schedule C are the health supplements that may be provided by the ministry if the family unit has received the pre-authorization of the ministry for the medical equipment or device requested. The appellant does not dispute that she received the Cast Air Walker Boot on June 9, 2014 and that an invoice for the cost of the item was issued to her on the same day. On July 3, 2014 the hospital submitted a request on the appellant's behalf for payment for a Cast Air Walker Boot that had already been provided to the appellant. The panel finds that the ministry reasonably determined that the appellant did not obtain the pre-authorization of the ministry prior to obtaining the item requested.

The panel finds that the ministry reasonably determined that the requested Cast Air Walker Boot is not specifically set out in Section 3.1 through 3.12 of Schedule C of the EAPWDR as it is not: a cane, a crutch or a walker; a wheelchair, an upgraded component of a wheelchair, an accessory attached to a wheelchair; a wheelchair seating system, an accessory to a wheelchair seating system; a scooter, an upgraded component of a scooter, an accessory attached to a scooter; a grab bar in a

bathroom, a bath or shower seat, a bath transfer bench, a tub slide, a bath lift, a bed pan or urinal, a raised toilet seat, a toilet safety frame, a floor-to-ceiling pole in a bathroom or bedroom, or a portable commode chair, a standing frame or a positioning chair, or a transfer aid; a hospital bed, an upgraded component of a hospital bed, an accessory attached to a hospital bed, or a positioning item on a hospital bed; a pressure relief mattress; a floor or ceiling lift device; a breath device, a custom-made or off-the-shelf foot orthotic, custom-made footwear, a permanent modification to footwear, off-the-shelf footwear, off-the-shelf orthopaedic footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, a hip brace, an upper extremity brace, a cranial helmet, a torso or spine brace, a foot abduction orthosis, or a toe orthosis; a hearing instrument; or a non-conventional glucose meter. Section 3 stipulates that only the items described in Section 3.1 to 3.12 are the health supplements that may be provided, and the Section does not allow for items other than those specifically listed. Section 3.10 of Schedule C, which sets out various types of orthoses, also lists items that are not health supplements for the purposes of Section 3 of Schedule C and a walking boot for a fracture is listed in sub-section 3.10(11)(e). The panel finds that the ministry reasonably determined that the Cast Air Walker Boot is not included and is specifically excluded as a health supplement that may be provided by the ministry.

Conclusion

In conclusion, the panel finds that the ministry's decision to deny the request for a supplement to cover the cost of a Cast Air Walker Boot as not meeting the legislated criteria of Schedule C, Sections 2, 3, and 3.1 to 3.12, of the EAPWDR, was a reasonable application of the applicable enactment in the circumstances of the appellant and, therefore, confirms the decision.