

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated November 3, 2014 which denied the appellant's request for a supplement to cover the cost of a walking boot for a fracture. 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).

**PART D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), Sections 62 and 69, and Schedule C, Sections 2, 2.1, 2.2, 3, 3.1 to 3.12, 4, 4.1, 5, 6, 7, 8, 9

## PART E – Summary of Facts

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

- 1) Letter dated October 14, 2014 in which the appellant's doctor wrote that the appellant requires a walking boot for 1<sup>st</sup> distal phalanx fracture right.
- 2) Letter dated October 15, 2014 from the ministry to the appellant denying his request for a walking boot;
- 3) Letter dated October 16, 2014 in which the appellant's doctor wrote that the appellant requires a walking boot for 1<sup>st</sup> distal phalanx fracture right. The appellant has severe arthritis and chronic pain. It is imperative that he gets the walking boot, otherwise his condition will severely deteriorate. This would increase in disability and loss of ability to walk and mobilize, disabling pain, improper healing of the fracture, and chronic pain disorder; and,
- 4) Request for Reconsideration- Reasons dated October 30, 2014.

In his Request for Reconsideration, the appellant wrote:

- As his doctor said, it is imperative that he gets the walking boot for his right foot toe or he will no longer be able to walk and will have to apply for a scooter through his Occupational Therapist.
- It is amazing that he can still walk at all.
- His right foot was put back together with nuts and bolts and it also has a broken toe.
- His left foot has neuropathy and has also had a fracture a few years ago.
- He still wants to be able to walk.
- He is getting most of his disability money from CPP disability and saving the ministry \$699.08 per month.

Prior to the hearing, the appellant provided his Notice of Appeal dated November 6, 2014 in which he expressed his disagreement with the ministry's reconsideration decision. In his Notice of Appeal, the appellant wrote:

- His doctor disagrees with the ministry's decision. The walking boot is necessary for his broken toe. Without it, his health will decline and he will not be able to continue walking.
- Both of his feet and ankles are already damaged from two separate events.
- His right foot was damaged permanently and needs an operation. It is full of metal and causes him severe pain all the time. This is the foot that needs a walking boot because of further damage by a broken toe.
- The second event was dropped foot on his left foot where he already has a prosthesis (orthotic) from a prescription by his doctor.
- Before he broke his toe, he already had severe walking problems.
- Without preventative measures that are needed very promptly, he will soon not be able to walk at all.

At the hearing, the appellant stated that:

- He already has a walking boot for his left foot because of neuropathy. He uses a walking boot because the prosthesis which was given to him in the hospital is made out of hard plastic that hurts to wear. The neuropathy started with "dropped foot" which, if it lasts for more than 2 years, full functioning will not come back.
- He would not be able to walk without the walking boot for the left foot.
- Since this problem occurred a few years ago, he paid for the walking boot for this left foot by himself. He can no longer afford to pay for a walking boot himself.

- Both of his feet are compromised with different conditions.
- His right foot is full of nuts and bolts and screws because of an accident that occurred in 2009. The doctors wanted to amputate his foot but he cried and they reconsidered. They took muscle from his upper leg and put it on his ankle.
- His right foot and ankle may also have neuropathy, but he was lucky to have kept it since he would definitely be in a wheelchair if they had amputated.
- The doctor's note also talks about arthritis in his right foot which is likely the cause of some of the pain.
- He wants to point out that both feet have significant problems which need to be considered regarding his need for the walking boot.
- He prefers to walk and he does not want to use a wheelchair. If he goes into a wheelchair, he will not get better.
- For the past 6 years, he has been taking a powerful pain killer every 4 hours to deal with the pain in his feet.
- The doctor wrote a note, dated October 16, 2014 stating that it is imperative that he gets the walking boot because his ability to walk will be compromised.
- His life will be a lot better if he can get the walking boot.
- His friend is often with him when he goes to doctor appointments and she helps to explain things to him.

At the hearing, the appellant's friend stated that:

- The appellant has a broken toe on his right foot. His doctor has examined and x-rayed the foot and prescribed an air boot for walking because it is very painful for the appellant and it is not healing properly.
- The appellant had so many broken bones in his right foot. He was in a coma for 10 days and almost died. The doctors wanted to amputate his leg below the knee but she cried and they reconsidered. The wound on his ankle was so deep that doctors took muscle out of the appellant's thigh and put it on his ankle. The surgery took 8 hours. The appellant could not move for 3 weeks after the surgery and they had to check that all the nerves were alright.
- He needs a walking boot like the one he is wearing on his left foot for his right foot.
- He has neuropathy in his left foot which causes burning and shooting pains. When the doctor did an "EMG" on the muscles, it showed no electrical activity in the nerves at all.
- The appellant is on a special diet and is supposed to lose weight. He was able to lose 80 lbs. by walking. Now, with his broken toe he can no longer walk like he used to. When they go shopping, he has to sit down right away.
- He will not be able to lose weight if he cannot walk and this is not good for his health.

The ministry relied on its reconsideration decision, as summarized at the hearing.

### ***Admissibility of New Information***

The ministry did not raise an objection to the admissibility of the additional information provided by the appellant in his Notice of Appeal, or the oral evidence given on the appellant's behalf, which included a description of the circumstances surrounding the appellant's need for a walking boot for a fracture. 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*.

## 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 walking boot for a fracture 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), 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 dependent 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 is a recipient of disability assistance.

At issue is whether the requested walking boot for a fracture 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 69 of the EAPWDR provides as follows:

**Health supplement for persons facing direct and imminent life threatening health need**

69 The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
- (b) the health supplement is necessary to meet that need,
- (c) the person's family unit is receiving premium assistance under the *Medicare Protection Act*, and
- (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
  - (i) paragraph (a) or (f) of section (2) (1);
  - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

*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 walking boot for a fracture, 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 walking boot for a fracture 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 appellant did not directly maintain a position that the walking boot is covered by Section 2(1)(a) of Schedule C of the EAPWDR. Rather, the appellant's position is that in the letter dated October 16, 2014 his doctor wrote that he requires a walking boot for a fracture in his right toe as well as for severe arthritis and chronic pain. The appellant argued that it is imperative that he gets the walking boot, otherwise his condition will severely deteriorate, including an increase in disability, loss of ability to walk and mobilize, disabling pain, improper healing of the fracture, and chronic pain disorder. The appellant argued that because both of his feet are compromised, he will soon not be able to walk without the walking boot for the fracture in his right foot/toe.

*Panel decision*

The appellant showed the panel the walking boot that he wears on his left foot due to neuropathy and demonstrated the function of the walking boot as supporting the foot in a stable position to promote healing and avoid further injury. The appellant did not advance a position that the walking boot for a fracture 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 walking boot for a fracture was not required for one of these purposes. 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 walking boot for a fracture, is not an eligible item as medical equipment specifically set out in 3.1 through 3.12 of Schedule C of the EAPWDR. The ministry also argued that the walking boot for a fracture 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 walking boot for a fracture is listed as an eligible item of medical equipment but, rather, the appellant's position is that in the letter dated October 16, 2014 his doctor wrote that he requires a walking boot for a fracture in his right toe as well as for severe arthritis and chronic pain. The appellant argued that it is imperative that he gets the walking boot, otherwise his condition will severely deteriorate, including an increase in disability, loss of ability to walk and mobilize, disabling pain, improper healing of the fracture, and chronic pain disorder. The appellant argued that because both of his feet are compromised, he will soon not be able to walk without the walking boot for the fracture in his right foot/toe.

*Panel decision*

Section 3(1) 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. The panel finds that the ministry reasonably determined that the requested walking boot for a fracture 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 walking boot for a fracture is not included in Sections 3.1 to 3.12 of Schedule C of the EAPWDR, and is specifically excluded as a health supplement that may be provided by the ministry by Section 3.10(11) of Schedule C of the EAPWDR.

#### *Life-threatening Health Need*

With respect to Section 69 of the EAPWDR, the ministry's position is that this section is intended to provide a remedy for those persons who are facing a direct and imminent life-threatening need for these supplements and who are not otherwise eligible to receive them. The ministry argued that the information submitted does not establish that the appellant will face a direct and imminent danger to his health if the walking boot is not made available to him. The ministry further argued that even if this was established, information has not been provided to demonstrate that the requirements of Section 69(d) are met as a walking boot for a fracture is not set out under Schedule C, Section 2(1)(a) [*medical supplies*] or Section 2(1)(f) [*medical transportation*] or in Sections 3 to 3.12.

The appellant's position is that he faces a direct and imminent life threatening need for the walking boot for a fracture and his request should be given special consideration because of his health condition. The appellant argued that his doctor wrote in his letter dated October 16, 2014 that the appellant requires a walking boot for a fracture in his right toe as well as for severe arthritis and chronic pain. The appellant argued that it is imperative that he gets the walking boot, otherwise his condition will severely deteriorate, including an increase in disability, loss of ability to walk and mobilize, disabling pain, improper healing of the fracture, and chronic pain disorder. The appellant argued that because both of his feet are compromised, he will soon not be able to walk without the walking boot for the fracture in his right foot/toe.

#### *Panel decision*

The panel finds that since it is not disputed that the appellant is eligible for health supplements under Section 62 of the EAPWDR, Section 69 does not apply as it is intended to provide a health supplement to a person in the family unit who is otherwise not eligible for the health supplement under the EAPWDR. As well, while the appellant's doctor wrote that the appellant will experience reduced mobility and increased pain without the walking boot for a fracture, the doctor did not provide an opinion that the appellant faces a direct and imminent life-threatening need for the walking boot. The panel finds that the ministry's conclusion that the information submitted does not establish that the appellant faces a direct and imminent life-threatening health need for the walking boot for a fracture, pursuant to Section 69(a), was reasonable. The panel also finds that the ministry



reasonably determined that the requirements of Section 69(d) are not met as a walking boot for a fracture is not set out under Schedule C, Section 2(1)(a) as medical or surgical supplies or under Section 2(1)(f) as a mode of medical transportation, or under Sections 3 to 3.12, as detailed above, and has been specifically excluded as an item pursuant to Section 3.10(11) of Schedule C. Therefore, the panel finds that the ministry's decision, which concluded that all of the criteria in Section 69 of the EAPWDR are not met, was reasonable.

*Conclusion*

In conclusion, the panel finds that the ministry's decision to deny the request for a supplement to cover the cost of a walking boot for a fracture as not meeting the legislated criteria of Schedule C, Section 2, 2.1, 2.2, Sections 3, 3.1 to 3.12, 4, 4.1, 5, 6, 7, 8, and 9 or Section 69 of the EAPWDR, was a reasonable application of the applicable enactment in the circumstances of the appellant and, therefore, confirms the decision.