

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 27, 2014 which denied the appellant's request for a supplement to cover the cost of custom-made foot orthotics because she does not meet the legislative criteria set out in section 67 (1) or 76 of the Employment and Assistance Regulation (EAR) or section 62 (1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). In particular, the ministry determined that the appellant is not:

- a person with persistent multiple barriers to employment (s. 67(1) of the EAR);
- the recipient of disability assistance (s. 62 (1) of the EAPWDR); or
- in direct and imminent life threatening need and the orthotic is necessary to meet this need (s. 76 of the EAR).

## PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) – sections 67 and 76

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – section 62(1)

## PART E – Summary of Facts

The appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded pursuant to Section 86(b) of the *Employment and Assistance Regulation*.

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

1. A letter from the appellant's physician signed and dated September 8, 2014, which states that the appellant "has flat feet resulting in severe plantar fasciitis with severe feet pain. She needs custom made orthotics (which she can't afford) to help her pain.";
2. An Orthoses Request and Justification form, signed and dated by the appellant physician on August 11, 2014, and signed and dated by her orthotist on August 15, 2014. Both professionals support the appellant's need for the orthotics. In section 2 of the form, the physician describes the appellant condition as, Pes Plannus and Plantar Fasciitis, recommends custom made orthotics and indicates 'yes' to the question "Is a custom-made orthosis required?". In section 3, the orthotist explains that the orthotics will be required to be made of plaster of paris casts, they will assist in joint motion and/or support by increasing support to the arches of the feet to stabilize the pain of the feet, and that they will improve neuro-musculo-skeletal functioning and assist in physical healing from either surgery, injury or disease.
3. A letter from the orthotist dated August 18, 2014 which states the appellant has bilateral pes plannus and plantar fasciitis, a pair of custom orthotics have been prescribed and the cost will be \$430.00;
4. A prescription for orthotics signed by the appellant's physician and dated July 11, 2014;
5. A Request for Reconsideration signed and dated October 10, 2014, which states:
  - custom made foot orthotics have been prescribed to her;
  - orthotics are essential to increase support for her feet, relieve pain and prevent further damage to her health;
  - her pain feels disabling and prevents her from leading a healthy life and finding employment as it is causing multiple barriers in her mobility.

In the Notice of Appeal, signed and dated November 5, 2014, the appellant states that without proper mobility and assistance she will not be successful in finding work. She also included a letter from her physician signed and dated November 4, 2014, which states that the appellant "...has ongoing severe pain in both feet. She was diagnosed with pes plannus with plantar fasciitis. [The appellant] will benefit from custom made orthotics which [have] been denied. Kindly reconsider her application as she needs [the orthotics] to regain her normal healthy life style and activities."

At the hearing the ministry relied on its reconsideration decision and added that in order to be eligible for a supplement to cover the costs of custom made orthotics:

- the appellant must be a recipient of income assistance with the qualification of either a Person with Persistent Multiple Barriers (PPMB) or a Person with Disabilities (PWD), and in this case, the appellant meets neither qualification; or
- the appellant must be in direct and imminent life threatening need and the orthotics meet that

need. In this case, the ministry determined that though the orthotics would be beneficial to the appellant's medical condition, she is not in a direct and imminent life threatening need.

***Admissibility of New Information***

The ministry did not raise an objection to the additional letter. The physician's letter dated November 4, 2014 provided information regarding the appellant's need for orthotics and 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 reconsideration decision, which denied the appellant's request for a supplement to cover the cost of custom-made foot orthotics because she did not meet the legislative criteria set out in section 67 (a) or 76 of the Employment and Assistance Regulation (EAR) or section 62 (1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), is reasonably supported by the evidence or is a reasonable application of the legislation in the appellant's circumstances. In particular, was the ministry reasonable in finding that the appellant does not have the qualification as a person with persistent multiple barriers to employment pursuant to section 67 of the EAR, is not the recipient of disability assistance pursuant to section 62 (1) of the EAPWDR or is not in direct and imminent life threatening need and the orthotics are necessary to meet that need pursuant to section 76 of the EAR?

The relevant legislation is as follows:

### EAR:

#### General health supplements

67 (1) Subject to subsection (1.1), the minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who

(a) is a recipient of income assistance under section 2 [*monthly support allowance*], 4 [*monthly shelter allowance*], 6 [*people receiving room and board*] or 9 [*people in emergency shelters and transition houses*] of Schedule A if

- (i) any person in the family unit is a person who has persistent multiple barriers to employment, and
- (ii) the recipient does not receive a federal spouse's allowance or guaranteed income supplement benefits.
- (iii) Repealed. [B.C. Reg. 57/2007, s. 1.]

(b) is a recipient of income assistance under section 8 [*people receiving special care*] of Schedule A,

(c) is a dependant of a person referred to in

- (i) paragraph (b),
- (ii) paragraph (f), if the dependant was a dependant of the person on the day the person reached 65 years of age and remains a dependant of that person,
- (iii) paragraph (g), if the dependant was a dependant of the person on

the day the person's family unit ceased to be eligible for income assistance as a result of a payment made to the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry, or

(iv) paragraph (h), if the dependant was a dependant of the person on the day the person's family unit ceased to be eligible for income assistance as a result of an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or another member of the person's family unit, and

(A) if the dependant is under age 65, the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(B) if the dependant is aged 65 or more, any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,

(d) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]

(e) is a dependent child of a recipient of income assistance or hardship assistance,

(f) was on the day the person reached 65 years of age

(i) a recipient of income assistance under section 2 [*monthly support allowance*], 4 [*monthly shelter allowance*], 6 [*people receiving room and board*], 8 [*people receiving special care*] or 9 [*people in emergency shelters and transition houses*] of Schedule A, and

(ii) eligible for health supplements under section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C,

(g) meets the following requirements:

(i) has not reached 65 years of age;

(ii) is a part of a family unit that ceased to be eligible for income assistance as a result of a payment made to the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry;

(iii) was eligible for health supplements under section 2 or 3 of

Schedule C on the day the person's family unit ceased to be eligible for income assistance, or

(h) meets all of the following requirements:

- (i) is part of a family unit that ceased to be eligible for income assistance as a result of an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or another member of the person's family unit;
- (ii) was eligible for health supplements under section 2 or 3 of Schedule C on the day the person's family unit ceased to be eligible for income assistance;
- (iii) either
  - (A) if the person is under age 65, the family unit is receiving premium assistance under the *Medicare Protection Act*, or
  - (B) if the person is aged 65 or more, any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement.

(1.1) A person eligible to receive a health supplement under subsection (1) (c) (ii) or (f) may receive the supplement

- (a) while any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, and
- (b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(1.2) A person who was eligible to receive a health supplement under subsection (1) (c) (iv) or (h) but ceases to be eligible for medical services only may continue to receive the supplement for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(2) Subject to subsection (3), the minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for a family unit if the health supplement is provided to or for a recipient in the family unit who

- (a) has received income assistance under the *BC Benefits (Income Assistance) Act* or the Act continuously from March 31, 1997 and on March 30, 1997 was

eligible under section 37 (1) (a) of the BC Benefits (Income Assistance) Regulations, B.C. Reg. 272/96, as it read on March 30, 1997, for the health care services and benefits referred to in that provision, or

(b) is a dependant of a recipient referred to in paragraph (a).

(3) Subsection (2) applies only until the earlier of the following dates:

(a) the date the recipient ceases to receive income assistance;

(b) the first day of the calendar month after the minister makes a determination that the recipient, or any dependant of the recipient other than a dependent child, is capable of accepting employment.

(4) A person referred to in subsection (1) (c) (ii), (iii) or (iv), (f), (g) or (h) ceases to be eligible for any supplement under this Division if the person's family unit takes up residence outside British Columbia.

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

76 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).

#### **EAPWDR:**

##### **General health supplements**

62 (1) Subject to subsections (1.1) and (1.2), the minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of

Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who is

- (a) a recipient of disability assistance
- (b) a person with disabilities who has not reached 65 years of age and who has ceased to be eligible for disability assistance because of
  - (i) employment income earned by the person or the person's spouse, if either the person or the person's spouse
    - (A) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
    - (B) is aged 65 or more and a person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
  - (ii) a pension or other payment under the *Canada Pension Plan* (Canada),
  - (iii) money received by the person or the person's spouse under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry, or
  - (iv) money or value received by the person or the person's spouse that is maintenance under a maintenance order, maintenance agreement or other agreement, if either the person or the person's spouse
    - (A) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
    - (B) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,
- (c) a person who was a recipient of disability assistance on the day he or she became 65 years of age and a dependant of that person, if the dependant was a dependant of the person on that day and remains a dependant of that person,
- (d) a dependant of a person referred to in paragraph (a) or (b) (iii),
  - (d.1) a dependant of a person referred to in paragraph (b) (i) or (iv), if any person in the family unit (i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or
  - (ii) is aged 65 or more and any person in the family unit is receiving



the federal spouse's allowance or the federal guaranteed income supplement,

(d.2) a dependant of a person referred to in paragraph (b) (ii),

(d.3) a dependant of a person referred to in paragraph (f), if any person in the family unit

(i) is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(ii) is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,

(e) a dependent child of a recipient of hardship assistance,

(f) a person with disabilities who has ceased to be eligible for disability assistance because of an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or the person's spouse, if

(i) the person is under age 65 and the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(ii) the person is aged 65 or more and any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, or

(g) a person whose family unit ceases to be eligible for disability assistance because of financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*, during the term of the agreement.

### *The Ministry's Position*

The ministry's position is the appellant is only eligible for a supplement for custom made orthotics if she is the recipient of income assistance with the qualification of either Person with Persistent Multiple Barriers or designation as a Persons with Disabilities. She may also be eligible for a supplement for custom made orthotics if she is not otherwise eligible and if she is in direct and imminent life threatening need and the orthotics meet that need. The ministry argues that while the appellant may benefit from the orthotics, she has not established that she is in direct and imminent life threatening need and that the pair of orthotics meets that need.

### *The Appellant's Position*

The appellant's position is that both her physician and orthotist have recommended custom made orthotics to stabilize her foot and joints in an optimal position to relief pressure and pain, and prevent further damage to her feet. She argues that without the orthotics she is in persistent pain, which disables her from leading a healthy life and carrying on in her search to find employment. She also argues that the persistent pain is causing a multiple barrier in her mobility.

### The Panel's Decision

Section 67 of the EAR states that the ministry may provide any health supplement set in legislation if any person in the recipient's family unit is a person who has persistent multiple barriers to employment. The ministry argues that the appellant does not qualify for Persons with Persistent Multiple Barriers. The appellant states that the persistent pain in her feet have generated multiple barriers to her mobility but she does not argue that she qualifies as a Person with Persistent Multiple Barriers to employment. The panel finds that the evidence does not establish that the appellant or any member of her family unit has the qualification of PPMB. As a result the panel finds that the ministry reasonably determined that the appellant is not eligible for a supplement for a pair of custom made orthotics pursuant to section 67 of the EAR.

Section 62 (1) of the EAPWDR states that the ministry may provide any health supplement set in legislation to a recipient of disability assistance. The ministry argues that the appellant is not a recipient of disability assistance and does not have the qualification of person with disability. The appellant argues that her persistent pain is disabling her from living a healthy life but she does not argue that she has been designated as a Person With Disabilities. The panel finds that the evidence does not establish that the appellant is a recipient of disability assistance or designated as a person with disabilities. As a result the panel finds that the ministry reasonably determined that the appellant is not eligible for a supplement for a pair of custom made orthotics pursuant to section 62 (1) of the EAPWDR.

Section 76 of the EAR states that the ministry may provide any health supplement set out in legislation to a person or family unit who is otherwise not eligible for the health supplement if the ministry is satisfied that the person faces a direct and imminent life threatening need, does not have the resources to pay for the health supplement and the health supplement is necessary to meet that need. The ministry argues that though the appellant may benefit from a pair of orthotics, she does not face a direct and imminent life threatening need. The appellant makes no argument regarding a direct and imminent life threatening need. The letters from the appellant's doctor indicate that the appellant requires a pair of orthotics to relieve pain. On the Orthoses Request and Justification form, the appellant's orthotist also states a need for a pair of orthotics. However, neither health professional speaks to the fact that a pair of orthotics is necessary to avoid a life threatening need. In his most recent letter dated November 4, 2014, the appellant's doctor wrote that the appellant "will benefit" from custom made orthotics, which she needs "to regain her normal healthy life style and activities." The panel finds that the evidence does not establish that the appellant faces a direct and

life threatening need and that a pair of orthotics would meet that need. As a result the panel finds that the ministry reasonably determined that the appellant is not eligible for a supplement for a pair of custom made orthotics pursuant to section 67 of the EAR

**Conclusion:**

The panel finds that the ministry's decision, which denied the appellant's request for a supplement to cover the cost of custom-made foot orthotics, because she did not meet the eligibility requirements, was reasonably supported by the evidence and the panel, therefore, confirms the ministry's reconsideration decision.