

PART C – Decision under Appeal

Under appeal is the Ministry of Social Development and Social Innovation's ("the ministry") January 21, 2015 reconsideration decision denying the request for custom-made made foot orthotics, on the basis the eligibility criteria in the Employment and Assistance Regulation, sections 67 and Schedule C section 3.10 (3) medical equipment and devices, were not met because section 3 of the *Assessment of the Orthoses request and justification* form was not completed by a pedorthist, podiatrist, occupational therapist or physical therapist.

PART D – Relevant Legislation

EAR Employment and Assistance Regulation, section 67(1), Schedule C sections 3(1),3.10

PART E – Summary of Facts

The evidence before the ministry at reconsideration was

- The request for custom-made orthotics is on behalf of the two and a half year old dependent child of a recipient of income assistance.
- September 25, 2014 prescription by a pediatric physician for orthotics for bilateral flexible flat foot, bilateral foot insert, with handwritten note “arch support”.
- *Orthoses request and justification* form. Section 2 of the form, signed October 10, 2014, *Medical or nurse practitioner recommendation* described the medical condition of the patient as “intoeing with gait” and type of orthosis recommended “orthotic required for intoeing, gait analysis recommended”, and stated a custom-made orthosis was required. Section 3 *Assessment (to be completed by orthotist, pedorthist, podiatrist, occupational therapist or physical therapist)* signed October 7, 2014 by a chiropractor, explained how the prescribed item will assist with joint motion and/or support as “prevent intoeing bilaterally”, the purposes as prevention of surgery and to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition, and stated the custom-made orthotic would be made from a hand cast mold.
- October 23, 2014 quote from a chiropractor of \$400 for custom foot orthotics.
- November 6, 2014 letter from the ministry denying the request for custom-made foot orthotic.
- January 12, 2015 prescription by the pediatric physician for custom orthotics, orthotics for flexible flat feet bilaterally, flexible flat feet bilaterally requiring arch support, with handwritten note “off shelf not suitable”.
- January 14, 2015 *Employment and Assistance Request for Reconsideration* form, in which the appellant's mother states the reason for the request for reconsideration as “To try a less evasive and less stress on her. Having this issue dealt with in a way that is less emotional for her as she grows. It is easier to correct this problem properly when she is this age than when she is older. I believe Section 2 and Section 3 covers the points in my daughter's case and is relevant to what she needs. I am asking for a reconsideration in hopes that my daughter can get the proper care for her problem before she has to go to an orthopedic surgeon.”

Upon appeal the appellant's mother stated in the February 2, 2015 *Notice of Appeal* there is no cheaper option for the orthotics, that her daughter's doctor indicated without the custom orthotics her daughter would not have comfort, would be in pain, that the orthotics would prevent her from having surgery, and prevent further complications with her foot and hip.

At the hearing the appellant's mother said she felt she had met all the requirements. After she learned she needed an orthotics specialist to have part of the form completed, she went to a pedorthist who submitted another report to the ministry. She confirmed the ministry received that report, but it was not in the appeal material. She also went back to the pediatrician and obtained the January 12, 2015 prescription saying off the shelf orthotics were not suitable. She said the ministry still denied coverage for custom-made orthotics. She said her daughter was in pain daily, also has hip problems, and at the age of two and a half the problem was easier to deal with now, and the pediatrician, pedorthist and chiropractor recommended orthotics now to prevent surgery. She said there was no cheaper way to avoid invasive surgery.

The ministry representative at the hearing said she had no record of the pedorthist's report, and requested a short adjournment to try to locate it. The ministry representative was able to locate the document, and read it to the hearing participants. The December 15, 2014 *Orthoses request and justification form section 3 Assessment* was completed and signed by a pedorthist. In part one *Specifications of the orthoses required to meet the applicant's needs* it said "gait plate made from 3 mm poly plastic", in part 2 "The gait plate will assist with left leg internal rotation." In part 3, A *prevention of surgery*, C *to assist in physical healing from surgery, injury or disease*, and D *to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition*, "yes" was ticked, with a note "Client internally rotates feet resulting in tripping (illegible word) during gait." In part 4 the pedorthist ticked "yes" to the question *If the orthosis is a custom-made foot orthotic, will it be made from a hand cast mold?* with the note "plaster casting non weight bearing." A copy of the September 25, 2014 prescription from the pediatrician was attached. There was also a January 6, 2015 estimate of \$440 for custom foot orthotics.

The ministry representative apologized that these documents were misplaced and omitted from the documents before the reconsideration officer and the appeal record.

PART F – Reasons for Panel Decision

The issue is the reasonableness of the ministry's reconsideration decision denying the request for custom-made made foot orthotics, on the basis the eligibility criteria in the Employment and Assistance Regulation, section 67 and Schedule C section 3.10 (3) medical equipment and devices, were not met because section 3 of the *Assessment of the Orthoses request and justification* form was not completed by a pedorthist, podiatrist, occupational therapist or physical therapist.

Relevant Legislation

EMPLOYMENT AND ASSISTANCE REGULATION (excerpts)

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...

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

Schedule C

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 67 [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.

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

(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.

(3) For an orthosis that is a custom-made foot orthotic, in addition to the requirements in subsection (2) of this section, all of the following requirements must be met:

- (a) a medical practitioner or nurse practitioner confirms that a custom-made foot orthotic is medically required;
- (b) the custom-made foot orthotic is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist;
- (c) Repealed. [B.C. Reg. 144/2011, Sch. 1.]
- (d) the custom-made foot orthotic must be made from a hand-cast mold;
- (e) the cost of one pair of custom-made foot orthotics, including the assessment fee, must not exceed \$450.

Appellant's Position

The appellant's mother argued that without the prescribed custom-made orthotics her daughter would continue to be in pain, that the orthotics would prevent the necessity of surgery and avoid further complications with her foot and hip. She says there is no cheaper option to the custom-made orthotics, and it is easier to correct the problem properly now than when she is older. She said she had the request form resubmitted to the ministry with an assessment by an pedorthist, who confirmed the need for custom-made orthotics. She believes the ministry's requirements have been met.

Ministry's Position

The ministry argued that because section 3 of the *Assessment of the Orthoses request and justification* form was completed by a chiropractor, the appellant does not have an assessment from a pedorthist, podiatrist, occupational therapist or physical therapist, as stated on the form, confirming the medical need for the requested orthosis. The ministry said the appellant's request for custom-made foot orthotics does not meet the eligibility criteria set out in the EAR section 67 and Schedule C – Medical equipment and devices.

Panel's Decision

In the reconsideration decision the ministry found the appellant was eligible to apply for health supplements and that a medical practitioner confirmed that a custom-made foot orthotic was medically required, but denied the appellant's request for custom-made foot orthotics on the basis the eligibility criteria in the EAR section 67 and section 3.10(3) of Schedule C – medical equipment and devices, were not met. The ministry said its requirement that the assessment portion of the ministry's *Orthoses request and justification* form be completed by an orthotist, pedorthist, podiatrist, occupational therapist or physical therapist, confirming the medical need for the requested orthosis, was not met.

In the course of the hearing it became apparent the appellant had in fact provided the ministry with the form completed by a pedorthist who confirmed the medical need for a custom-made foot orthotic, but that evidence was not before the reconsideration officer because of a clerical error. The panel therefore finds the ministry's reconsideration decision was not reasonably supported by the evidence, and rescinds the decision.