

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated January 15, 2015 in which the Ministry denied the Appellant's request for an air walker boot as a health supplement under the following sections of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C.

- Section 3(1)(b)(i): The Ministry found the Appellant is not eligible for the air walker boot as he had not obtained the required pre-authorization.
- Sections 3.10(1) and 3.10(11): The Ministry determined that the Appellant is not eligible for the boot as orthosis and that a walker boot is specifically excluded as a health supplement for the purpose of Schedule C.
- Sections 2(1)(a), 2(1)(a.1), 2(1)(a.2) and 2(1.1): The Ministry found that the boot is not eligible as a medical supply.
- Sections 3.1 to 3.12: The Ministry found that the boot is not set out in these sections and the legislative requirements for the items listed have not been met.
- Sections 2(1)(c), 2(2), and 2(2.1): The Ministry found that the boot does not meet the eligibility criteria as a therapy.
- Sections 2.1, 2.2, 4, 4.1, and 5-9: The Ministry found that an air walker boot does not meet the criteria as one of the remaining health supplements under these sections.

In addition, the Ministry found that the Appellant is not eligible for an air walker boot under life-threatening health need, section 69 of the EAPWDR.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation sections 62 and 69 and Schedule C, Health Supplements.

## 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 reconsideration consisted of the following:

1. A Request for Reconsideration signed by the Appellant on January 21, 2014 (*sic*).
2. An invoice from a health authority dated January 28, 2014 for services provided January 8, 2014 through February 13, 2014 and with *Patient Balance* of \$97.00.
3. An invoice from a health authority dated March 31, 2014 with *Patient Balance* of \$97.00 and notice that the account is overdue. A notation from the Appellant indicated that the invoice was for a leg (heel) cast.
4. A letter from the Appellant's physician dated January 9, 2015, addressed "To Whom it May Concern". The physician confirmed that the Appellant required an air cast for three months following a severe fracture to his ankle bone. He had surgery and part of his treatment was an air cast. Due to his other injuries it was felt that a regular cast would severely hinder his mobility. His mobility would not be greatly affected with the lighter air cast.
5. A letter from the Ministry to the Appellant dated October 21, 2014 denying the requested cast with the explanation that all regulatory criteria have not been met and the Ministry does not fund casts.
6. A prescription from a physician dated November 5, 2014 confirming that the Appellant required an air cast for a fractured heel bone in November 2014.

### *Appellant's additional submissions*

Subsequent to the reconsideration decision the Appellant submitted the following documents:

1. A Notice of Appeal dated February 5, 2015 in which he stated he was in the hospital for two months for a fracture of his sacrum (pelvis) and ankle bone, and got two metal screws in his sacrum and did not know about the pre-approval requirement

The panel finds that the statements in the Notice of Appeal corroborate the information in the reconsideration record that indicated the Appellant was in the hospital for surgery for his fractures. The panel therefore admits the Appellant's statements under section 22(4)(b) of the *Employment and Assistance Act* (EAA) as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made.

2. A hand written submission from the Appellant dated March 4, 2015 in which he stated that an air cast was ordered by a doctor, and his injury was so severe that he was hospitalized for two months. Attached to the submission was a copy of the Appellant's Notice of Appeal; and a copy of the doctor's note dated January 9, 2015 which were already part of the reconsideration record.

This submission was received by the tribunal on March 5, 2015, after the due date for submissions of February 25, 2015. The panel chair accepted the late submission in accordance with the Employment and Assistance Appeal Tribunal guidelines regarding late submissions for written hearings. The Ministry expressed no objection to the late submission.

The panel finds that the submission corroborates the Appellant's physician's prescription for an air cast for which the Ministry already had a copy. It also corroborates the information in the Ministry's reconsideration record that indicated the Appellant was in the hospital for his injury (he had surgery). The panel therefore admits the Appellant's submission under section 22(4)(b) of the EAA as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made.

*Ministry's submission*

The Ministry relied on its reconsideration decision and did not provide any additional submissions for the hearing.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision of January 15, 2015 denying the Appellant's request for an air walker boot on the basis that the boot is not an eligible item under Schedule C and section 69 of the EAPWDR, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant.

### *Legislation - EAPWDR*

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

(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

The Ministry acknowledged that the Appellant is eligible for health supplements pursuant to EAPWDR section 62 but found that the Appellant was not eligible for the requested items under the following sections of the EAPWDR:

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

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).

#### **Schedule C - 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:

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- (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.

**(a.1)** the following medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies:

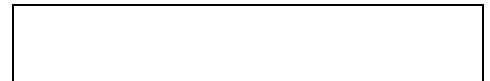
- (i) lancets;
- (ii) needles and syringes;
- (iii) ventilator supplies required for the essential operation or sterilization of a ventilator;
- (iv) tracheostomy supplies;

**(a.2)** consumable medical supplies, if the minister is satisfied that all of the following requirements are met:

- (i) the supplies are required to thicken food;
- (ii) all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies;

**(c)** subject to subsection (2), a service provided by a person described opposite that service in the following table, delivered in not more than 12 visits per calendar year,

- (i) for which a prescribed by a medical practitioner or nurse practitioner has confirmed an acute need,
- (ii) if the visits available under the Medical and Health Care Services Regulation, B.C. Reg. 426/97, for that calendar year have been provided and for which payment is not available under the *Medicare Protection Act*, and
- (iii) for which there are no resources available to the family unit to cover the cost:



Item	Service	Provided by	Registered with
1	acupuncture	acupuncturist	College of Traditional Chinese Medicine under the <i>Health Professions Act</i>
2	chiropractic	chiropractor	College of Chiropractors of British Columbia under the <i>Health Professions Act</i> (B.C. Reg. 420/2008)
3	massage therapy	massage therapist	College of Massage Therapists of British Columbia under the <i>Health Professions Act</i>
4	naturopathy	naturopath	College of Naturopathic Physicians of British Columbia under the <i>Health Professions Act</i>
5	non-surgical podiatry	podiatrist	College of Podiatric Surgeons of British Columbia under the <i>Health Professions Act</i> (B.C. Reg. 169/2010)
6	physical therapy	physical therapist	College of Physical Therapists of British Columbia under the <i>Health Professions Act</i>

**(2)** No more than 12 visits per calendar year are payable by the minister under this section for any combination of physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services.

**(2.1)** If eligible under subsection (1) (c) and subject to subsection (2), the amount of a general health supplement under section 62 of this regulation for physical therapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services is \$23 for each visit.

### 2.1 Optical supplements

### 2.2 Eye examination supplements

### 3 Medical equipment and devices

**(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

**(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;

**3.1 Medical equipment and devices – canes, crutches and walkers**

**3.2 Medical equipment and devices – wheelchairs**

**3.3 Medical equipment and devices – wheelchair seating systems**

**3.4 Medical equipment and devices - scooters**

**3.5 Medical equipment and devices – bathing and toileting aids**

**3.6 Medical equipment and devices – hospital bed**

**3.7 Medical equipment and devices – pressure relief mattresses**

**3.8 Medical equipment and devices – floor or ceiling lift devices**

**3.9 Medical equipment and devices – positive airway pressure devices**

**3.10 Medical equipment and devices – orthoses**

**(1)** In this section,

“**orthosis**” means;

- (a) a custom-made or off-the-shelf foot orthotic;
- (b) custom-made footwear;
- (c) a permanent modification to footwear;
- (d) off-the-shelf footwear required for the purpose set out in subsection (4.1) (a);
- (e) off-the-shelf orthopaedic footwear;
- (f) an ankle brace;
- (g) an ankle-foot orthosis;
- (h) a knee-ankle-foot orthosis;
- (i) a knee brace;
- (j) a hip brace;
- (k) an upper extremity brace;
- (l) a cranial helmet used for the purposes set out in subsection (7);
- (m) a torso or spine brace;
- (n) a foot abduction orthosis;
- (o) a toe orthosis.

**(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

**3.11 Medical equipment and devices - hearing instrument**

**3.12 Medical Equipment and devices – non-conventional glucose meters**

**4 Dental supplements**

**4.1 Crown and bridgework supplement**

**5 Emergency dental supplements**

**6 Diet supplements**

**7 Monthly nutritional supplement**

**8 Natal supplement**

**9 Infant Formula**

The panel assesses each of the Ministry's findings as follows:

EAPWDR Schedule C

***Section 3(1)(b)(i): pre-authorization required***

This section authorizes the minister to provide the medical equipment and devices described in sections 3.1 to 3.12 of Schedule C if certain requirements are met. These requirements include "(i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested".

*Appellant's position*

In his Notice of Appeal, the Appellant submitted that he didn't know about "pre-approval."

*Ministry's position*

The Ministry argued that the Appellant did not obtain pre-approval from the Ministry for the air walker boot and there is no provision in the legislation that allows the Ministry to approve his request.

*Panel's decision*

The panel finds that the Ministry reasonably determined that the pre-authorization criterion in section 3(1)(b)(i) of EAPWDR Schedule C was not met. The section clearly states that pre-authorization is required for medical equipment and devices described in the legislation and there is no evidence that the Appellant received pre-authorization. The Appellant's evidence was that he did not seek pre-authorization because he did not know of the requirement. The panel notes that the Appellant



referred to the boot in the past tense as an item he required after his surgery. His physician confirmed that an air cast was required for three months as part of the Appellant's treatment in November 2014 for a fractured heel bone. The panel finds no exceptions in the legislation to cover the circumstances of a client requesting reimbursement after the fact. The panel therefore finds that the Ministry was reasonable in determining it could not approve the Appellant's request for the air walker boot under section 3(1)(b)(i) of EAPWDR Schedule C.

***Sections 3.10(1) and 3.10(11): not an orthosis, and not a health supplement for the purpose of Schedule C***

*Appellant's position*

The Appellant argued in his Notice of Appeal and additional submission that he required an air cast in order to walk and recover from severe fractures. His physician, in his prescription of November 5, 2014 and in the letter of January 9, 2015, confirmed that the Appellant required an air cast for mobility following surgery for a fracture.

*Ministry's position*

The Ministry argued that it was not "legislatively authorized" to provide the air cast because the cast is not included in the list of items that are considered "orthosis" for the purpose of section 3.10(1). Further, section 3.10(11) specifies that a "walking boot for a fracture" is not a health supplement for the purpose of section 3 of Schedule C.

*Panel's decision*

The panel finds that the Ministry reasonably determined that an air walker boot was not an eligible item under sections 3.10(1) and 3.10(11) of EAPWDR Schedule C. Although the Appellant's physician confirmed a medical requirement for an air cast in the prescription dated November 5, 2014, the Appellant's medical need for the item is not a criterion for eligibility under section 3.10(1), and section 3.10(11) specifically excludes a "walking boot for a fracture". The panel's analysis follows:

Section 3.10(1) defines "orthosis" to mean a custom-made or off-the-shelf foot orthotic; custom-made footwear; a permanent modification to footwear; off-the-shelf footwear for a defined purpose; an ankle brace; ankle-foot and knee-ankle-foot orthoses; a knee/hip/upper extremity brace; a cranial helmet for a defined purpose; a torso or spine brace; and foot abduction and toe orthoses. An air walker boot is not on this list, and therefore does not meet the definition of "orthosis". The panel therefore finds that the Ministry reasonably determined that an air walker boot or air cast does not fall under the definition of orthosis or meet the requirements for the types of orthoses listed in EAPWDR section 3.10(1).

Further, section 3.10(11) states in clause (e) that a "walking boot for a fracture" is not a health supplement. In his January 9, 2015 letter, the Appellant's physician wrote that due to the Appellant's other injuries, a regular cast would severely hinder his mobility but his mobility would not be greatly affected with the lighter air cast. The panel finds that the Ministry reasonably determined that the air cast falls within the definition of a "walking boot for a fracture," as it functions to promote healing while

allowing walking. The legislation, therefore, specifically excludes an air cast or an air walker boot. The panel finds that the Ministry reasonably determined that the air walker boot is not included as a health supplement as it is specifically excluded by Section 3.10(11) of Schedule C from the health supplements that may be provided by the Ministry. Therefore, the panel finds that the Ministry's decision to deny the boot under this section was reasonable.

***Sections 2(1)(a), 2(1)(a.1), 2(1)(a.2) and 2(1.1): medical supplies***

*Appellant's position*

The Appellant argued in his Notice of Appeal and additional submission that he required an air cast in order to walk and recover from severe fractures. His physician, in the prescription of November 5, 2014 and in the letter of January 9, 2015, confirmed that the Appellant required an air cast for mobility following surgery for a fracture.

*Ministry's position*

The Ministry submitted that it may provide either disposable or reusable medical supplies if they are required for one of the specific purposes listed in the legislation; and if all other requirements for the specific medical supplies listed are met

*Panel's decision*

The panel finds that the Ministry reasonably determined that the air walker boot was not required for one of the purposes specified in section 2(1)(a); and was not among the items listed in sections 2(1)(a.1), 2(1)(a.2), and 2(1.1) of EAPWDR Schedule C. The Appellant's medical need for an air cast, as prescribed by his physician, is not covered by these sections.

The purposes listed in section 2(1)(a) include wound care, bowel care, catheterization, incontinence, skin parasite care, and limb circulation care. This section clearly requires the medical supply to be for one of these purposes. The panel notes that of the listed purposes, the only one that particularly relates to the leg or foot is item (F) "limb circulation care". However, the evidence of the Appellant and his physician was that the air cast was required for mobility and recovery from surgery. There is no information that the cast was specifically required for limb circulation. The panel therefore finds that the Ministry reasonably concluded that the air walker boot was not required for one of the purposes listed in EAPWDR section 2(1)(a).

The items listed in sections 2(1)(a.1) include lancets, needles and syringes, ventilator supplies, and tracheostomy supplies. Section 2(1)(a.2) states that "the supplies are required to thicken food"; and section 2(1.1) states that medical and surgical supplies do not include nutritional items or prescription medications. As none of these sections mention an air walker boot or relate in any way to such an item, the panel finds that the Ministry was reasonable in finding that the requirements of these sections were not met.

***Sections 3.1 to 3.12: not an eligible item under these sections***

*Appellant's position*

The Appellant argued in his Notice of Appeal and additional submission that he required an air cast in order to walk and recover from severe fractures. His physician, in the prescription of November 5, 2014 and in the letter of January 9, 2015, confirmed that the Appellant required an air cast for mobility following surgery for a fracture.

*Ministry's position*

The Ministry determined that the requested air walker boot is not an item set out in sections 3.1 to 3.12 of EAPWDR Schedule C and that all other legislative requirements related to each type of equipment in these sections have not been met. As indicated earlier, the Ministry also found that the pre-authorization requirement in section 3(1)(b)(i) wasn't met.

*Panel's decision*

The panel finds that the Ministry reasonably determined that an air walker boot was not set out in sections 3.1 to 3.12 of EAPWDR Schedule C, and therefore the legislative requirements for the items listed under these sections have not been met. As stated earlier, the Appellant's argument that an air cast was medically necessary per the prescription from his physician is not a consideration under these sections.

These sections set out eligibility criteria for canes, crutches, walkers, wheelchairs, scooters and accessories; bathroom items including grab bars, a hospital bed, pressure relief mattress, floor or ceiling lift device, positive airway pressure device and accessories; orthoses and braces; and hearing instruments and glucose meters. The Appellant did not request any of those items and the panel finds that the ministry reasonably determined that the air walker boot does not fall within the definition of any of the items in these sections. As stated earlier, the panel finds that the Ministry reasonably determined that the boot also does not fall within the definition of "orthosis" in section 3.10 and is specifically excluded by Section 3.10(11) of Schedule C from the health supplements that may be provided by the Ministry.

***Sections 2(1)(c), 2(2), and 2(2.1): does not meet the eligibility criteria as a therapy***

*Appellant's position*

The Appellant argued in his Notice of Appeal and additional submission that he required an air cast in order to walk and recover from severe fractures. His physician, in the prescription of November 5, 2014 and in the letter of January 9, 2015, concurred that the Appellant required an air cast for mobility following surgery for a fracture.

*Ministry's position*

The Ministry argued that an air walker boot does not meet the criteria as a therapy under these sections which set out that the Ministry may provide no more than 12 visits per calendar year at a rate of \$23 per visit for acupuncture, chiropractic, massage, naturopathy, podiatry, and physical therapy.

*Panel's decision*

These sections govern visits to various types of therapists and there is no evidence that the Appellant requested any type of therapy. His physician recommended an air cast further to the Appellant's surgery, to promote his recovery and mobility. There is no recommendation on file for any of the therapy visits covered under these sections and the panel finds that the Ministry reasonably determined that the Appellant's request for an air walker boot (or air cast) does not meet the criteria for therapies under sections 2(1)(c), 2(2), and 2(2.1) of EAPWDR Schedule C.

***Sections 2.1, 2.2, 4, 4.1, and 5 to 9: does not meet the criteria as one of the remaining health supplements***

*Appellant's position*

The Appellant argued in his Notice of Appeal and additional submission that he required an air cast in order to walk and recover from severe fractures. His physician, in the prescription of November 5, 2014 and in the letter of January 9, 2015, confirmed that the Appellant required an air cast for mobility following surgery for a fracture.

*Ministry's position*

The Ministry argued that the requested air walker boot is not one of the health supplements listed in these sections. In addition, the Ministry submitted that the information provided does not establish that the other criteria for the health supplements specified in these sections have been met.

*Panel's decision*

These sections list health supplements that the Ministry may fund when the associated eligibility criteria for each supplement are met. The eligible supplements include optical and dental procedures; and diet, nutrition, natal, and infant formula requirements. An air walker boot (or air cast) is clearly not any of these, and it follows that the Appellant's medical need for the boot is therefore not a consideration for determining eligibility under these sections. Accordingly, the panel finds that the Ministry reasonably determined that the Appellant is not eligible for the air walker boot under sections 2.1, 2.2, 4, 4.1, and 5 to 9 of EAPWDR Schedule C.

EAPWDR section 69

***Section 69(a): not eligible as a person facing a direct and imminent health need***

*Appellant's position*

The Appellant argued in his Notice of Appeal and additional submission that he required an air cast in order to walk and recover from severe fractures. His physician, in the prescription of November 5, 2014 and in the letter of January 9, 2015, concurred that the Appellant required an air cast for mobility following surgery for a fracture.

*Ministry's position*

The Ministry submitted that the Appellant is not eligible to receive the air walker boot as a health supplement for a person facing a direct and imminent life threatening health need because information was not provided to demonstrate that he faces a direct and imminent danger to his health if an air walker boot was not made available to him. Even if this were established, the Ministry argued that the Appellant would still not be eligible for the boot under section 69 because he is otherwise eligible for health supplements under EAPWDR section 62.

The Ministry submitted that EAPWDR section 69 is intended to provide a remedy for persons facing a direct and imminent life-threatening health need who are not otherwise eligible to receive these supplements. The Ministry argued that the requested boot is not a health supplement set out in sections 2 and 3 of Schedule C and the Appellant's request has not met all the requirements specified in sections 2(1)(a) and (f) and 3 to 3.12 of Schedule C.

*Panel's Decision*

In order to be eligible for a health supplement under section 69, the person must be facing a direct and imminent life-threatening health need and not be eligible for health supplements under other sections of the EAPWDR. As noted by the Ministry, the Appellant is eligible to receive the health supplements set out under sections 2 and 3 of Schedule C because he meets the basic eligibility requirement for health supplements as a recipient of disability assistance under EAPWDR section 62(1)(a).

The panel notes that even though the Appellant is eligible for supplements under sections 2 and 3, his request must still meet the specific eligibility requirements for a particular item or supplement. If the item he requested is not listed in the legislation as an eligible item, then the Ministry has no legal authority to provide a health supplement to cover the cost of the item. The panel therefore finds that the Ministry reasonably determined that an air walker boot is not an eligible item under sections 2 and 3 of Schedule C and the Appellant is therefore not eligible for the boot under EAPWDR section 69.



*Conclusion*

The panel finds that the Ministry's denial of the Appellant's request for a health supplement for an air walker boot is reasonably supported by the evidence and is a reasonable application of the applicable enactment (EAPWDR Schedule C and section 69) in the circumstances of the Appellant. The panel confirms the Ministry's reconsideration decision.