

### PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”) dated March 20, 2015 that denied the appellant’s request that the ministry approve a 6 month authorization for repairs to his custom made boots at a cost of \$2,885.00 because the request did not satisfy the criteria in section 3(4) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). Specifically, the ministry found that cost of repairs exceeded the legislated maximum of \$1650 for new custom made footwear. The ministry also noted that the sustainability for the minister to approve authorization for repairs biweekly is not economical when assessing whether medical equipment should be repaired or replaced.

### PART D – Relevant Legislation

EAPWDR section 62  
EAPWDR Schedule C sections 3 and 3.10

## PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was properly notified, the hearing proceeded pursuant to Section 86(b) of the Employment and Assistance Regulation. The appellant had submitted a *Release of Information* form prior to the hearing in which he authorized his pedorthist to represent him at the hearing and to make decisions on his behalf. Accordingly, he attended in place of the appellant.

The documentary evidence before the ministry at reconsideration included the following:

1. a prescription for the appellant from a physician that specifies “requires bi-monthly repairs to custom made extra depth orthotic work boots”.
2. an *Orthoses Request and Justification* form dated November 25, 2014 which includes the following comment: “*To discontinue repairs will result in destruction of boots and require reapplying for new custom footwear*”.
3. an estimate dated November 27, 2014 of the cost of bi-monthly repairs to the appellant’s custom boots for a 6 month interval at an approximate cost of \$2885.
4. a *Medical equipment and devices decision summary* dated December 18, 2014 which notes that not all criteria have been met. The decision rationale notes that the appellant’s custom made boots were supplied in May 2014 at a cost of \$1650. It states that repairs need to be invoiced as needed and repairs require pre-approval. Further, it states that the ministry considers repairs as they are needed and not based on estimates. The appellant is not eligible for a new pair of orthotic custom made boots until March/May 2015 but reasonable repairs could be considered until then.
5. The appellant’s request for Reconsideration signed and dated March 15, 2015 that provides the following reason for requesting reconsideration: “The ministry is failing to consider all facts of time, wear, tear, use that I am putting the shoe towards in my use of the shoes in arriving at their decision of denial of my claim”.

The appellant’s *Notice of Appeal* was undated and lists the reasons for his appeal as follows:

Inaccuracy: “*Oct 10, 2014 I never submitted a request. (name of another person) of (an orthopaedic clinic) submitted the request. Appendix A Decision: incomplete facts. (name of person associated with the orthopaedic clinic) can & will give a more complete explanation to the reconsideration officer or anyone else who must know the facts of the case in subsequent phone calls following the one & only call made to (another person) at (the orthopaedic clinic)*”.

At the hearing, the orthotist explained that the appellant has special needs requiring custom made work boots. He has a 6.5 cm. discrepancy in leg length as a result of previous fractures to his pelvis and leg, and his foot points downward so that his foot scuffs the floor when he walks. The orthotist noted that the appellant has two sets of custom made boots – one for winter and one for summer. Every two weeks the appellant requires repairs to his boots. To protect the boots from damage the orthotist installs steel heel plates and boot heels with polyurethane heel plates installed over the metal ones. Every two weeks the polyurethane heel plates must be replaced and the steel heel plates must be replaced monthly. The monthly repairs must be done in another city and it takes two weeks to have them repaired and returned. During that time, the appellant wears his second pair of custom made boots. The orthotist explained that most of the repairs he has been making have been done pro bono but he can no longer afford to do this. Accordingly, he is requesting payment for the repairs needed to maintain the appellant’s footwear. The orthotist indicated that without these regular repairs the custom made boots would be unwearable within 4 months, but with the repairs the life of the

boots has been extended to over a year. He explained that it normally takes 6 weeks for the ministry to process a request for repairs and since the repairs are needed every two weeks this creates a problem for him. In addition, the ministry requires that repairs be authorized in advance and this means that the orthotist must apply in advance of the repairs being made. The estimated repair cost of \$2885 covers the repairs to both sets of custom made boots. According to the orthotist, the cost of new boots is \$1800 - \$2000 but the ministry will not pay more than \$1650. In response to a question from the ministry, the orthotist explained that repairs must be done every two weeks to prevent premature damage to the appellant's boots. It is not practical to try to delay repairs for longer than two weeks.

The ministry did not provide additional evidence at the hearing and relied on its reconsideration decision.

Additional evidence

The panel noted that the orthotist presented new evidence in explaining that the appellant has two pairs of custom made work boots. The panel admitted this evidence, in accordance with section 22(4) of the Employment Assistance Act (EAA), as it confirms the appellant's continuing need for the custom made work boots.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant's request for a 6 month authorization for repairs to his custom made boots was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant was not eligible for the cost of repairs because they exceeded the legislated maximum of \$1650 for new custom made footwear, and that the sustainability for the minister to approve authorization for repairs biweekly was not economical when assessing whether medical equipment should be repaired or replaced.

The relevant legislation is as follows:

From the 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,

### **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.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
- (b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
- (b) an assessment by a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if

- (a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and
- (b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.
- (4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.**
- (5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if
- (a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and
- (b) it is more economical to repair the medical equipment or device than to replace it.
- (6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

### **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;
- (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.
- (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. 2.]
  - (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.
- (4) For an orthosis that is custom-made footwear, in addition to the requirements in subsection (2) of this section, the cost of the custom-made footwear, including the assessment fee, must not exceed \$1 650.**
  - (4.1) For an orthosis that is off-the-shelf footwear, in addition to the requirements in subsection (2) of this section,
    - (a) the footwear is required to accommodate a custom-made orthosis, and
    - (b) the cost of the footwear must not exceed \$125.
  - (4.2) For an orthosis that is off-the-shelf orthopaedic footwear, in addition to the requirements in subsection (2) of this section, the cost of the footwear must not exceed \$250.
- (5) For an orthosis that is a knee brace, in addition to the requirements in subsection (2) of this section, the medical practitioner or nurse practitioner who prescribed the knee brace must have recommended that the knee brace be worn at least 6 hours per day.
- (6) For an orthosis that is an upper extremity brace, in addition to the requirements in subsection (2) of this section, the upper extremity brace must be intended to provide hand, finger, wrist, elbow or shoulder support.
- (7) For an orthosis that is a cranial helmet, in addition to the requirements in subsection (2) of this section, the cranial helmet must be a helmet prescribed by a medical practitioner or nurse practitioner and recommended for daily use in cases of self abusive behaviour, seizure disorder, or to protect or facilitate healing of chronic wounds or cranial defects.
- (8) For an orthosis that is a torso or spine brace, in addition to the requirements in subsection (2) of this section, the brace must be intended to provide pelvic, lumbar, lumbar-sacral, thoracic-lumbar-sacral, cervical-thoracic-lumbar-sacral, or cervical spine support.
- (9) Subject to section 3 of this Schedule, the limit on the number of orthoses that may be provided for the use of a person as a health supplement for the purposes of section 3 of this Schedule is the number set out in Column 2 of Table 1 opposite the description of the applicable orthosis in Column 1.

**Table 1**

Item	Column 1 Orthosis	Column 2 Limit
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1	custom-made foot orthotic	1 or 1 pair
2	custom-made footwear	1 or 1 pair
3	modification to footwear	1 or 1 pair
4	ankle brace	1 per ankle
5	ankle-foot orthosis	1 per ankle
6	knee-ankle-foot orthosis	1 per leg
7	knee brace	1 per knee
8	hip brace	1
9	upper extremity brace	1 per hand, finger, wrist, elbow or shoulder
10	cranial helmet	1
11	torso or spine brace	1
12	off-the-shelf footwear	1 or 1 pair
13	off-the-shelf orthopaedic footwear	1 or 1 pair
14	foot abduction orthosis	1 or 1 pair
15	toe orthosis	1

(10) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an orthosis is the number of years from the date on which the minister provided the orthosis being replaced that is set out in Column 2 of Table 2 opposite the description of the applicable orthosis in Column 1.

<b>Item</b>	<b>Column 1 Orthosis</b>	<b>Column 2 Time period</b>
1	custom-made foot orthotic	3 years
2	custom-made footwear	1 year
3	modification to footwear	1 year
4	ankle brace	2 years
5	ankle-foot orthosis	2 years
6	knee-ankle-foot orthosis	2 years
7	knee brace	4 years
8	hip brace	2 years
9	upper extremity brace	2 years
10	cranial helmet	2 years
11	torso or spine brace	2 years
12	off-the-shelf footwear	1 year
13	off-the-shelf orthopaedic footwear	1 year
14	toe orthosis	1 year

(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.]

(12) An accessory or supply that is medically essential to use an orthosis that is a health supplement under subsection (2) is a health supplement for the purposes of section 3 of this Schedule.

#### Appellant's Position

The appellant argues that repairs are required to his custom made work boots every two weeks. Since it normally takes approximately 6 weeks for the ministry to process a request to authorize repairs the appellant argues that pre-authorization is required. Moreover, to avoid the additional work associated with making requests for repairs every two weeks the appellant had requested authorization for 6 months in advance.

#### Ministry's Position

The ministry explained that the estimated repair bill of \$2885 exceeds the legislated maximum of new custom made boots (\$1650). Section 3.4 of Schedule C of the EAPWDR specifies that the minister may provide repairs of medical equipment if it is more economical to do so than to replace it. But since the repair bill would exceed the cost of replacement the ministry may not authorize such repairs. As the reconsideration decision states “. . .there is no discretion under the circumstances of your case and legislation must apply”. The reconsideration decision also noted that “. . . the sustainability for the minister to approve authorization for repairs biweekly is not economical when assessing whether medical equipment should be repaired or replaced”. The ministry also noted that section 3(1) of Schedule C of the EAPWDR requires that the appellant receive pre-authorization for repairs to his work boots. The ministry explained that the appellant will be eligible to apply for a new pair of custom made boots in May 2015 and that reasonable repairs might be considered until then.

#### Panel Decision

The panel recognizes that regular bi-weekly repairs to the appellant's work boots are needed to maximize the life of the footwear. In addition, the panel appreciates that the turn-around time for processing requests for repairs is likely to take longer than two weeks, but it is beyond the mandate of the panel.

The panel finds that the ministry's decision to deny the appellant's request was reasonable since the cost of repairs clearly exceeds the maximum amount of \$1650 set out in section 3.10(4) of Schedule C for new footwear so it is not more economical to repair rather than replace the custom footwear.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for a 6 month authorization for repairs to his custom made boots was a reasonable application of the legislation in the circumstances of the appellant.

The panel therefore confirms the ministry decision.