



PART C – Decision under Appeal

The Appellant appeals the reconsideration decision of the Ministry of Social Development and Social Innovation (“Ministry”) dated December 15, 2015, in which the Ministry denied the Appellant’s request for custom-made foot orthotics because the Appellant did not obtain the prior approval of the Ministry before obtaining the orthotics, as required by section 3(1)(b)(i) of Schedule C of the *Employment and Assistance for Persons with Disabilities Regulation*.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) Schedule C, Health Supplements, sections 3(1) and 3.10(1)-(3).

PART E – Summary of Facts

The evidence before the Ministry at the reconsideration included the following:

- A Ministry “Orthoses Request and Justification Form” signed by the Appellant on September 4, 2015, with section 2 – medical or nurse practitioner recommendation – completed and signed by the Appellant’s physician on September 6, 2015, and section 3 – assessment – completed by a podiatrist on September 17, 2015 (2 pages) (“Request Form”);
- An invoice from the podiatrist dated September 17, 2015 sent to Worksafe BC, indicating that the cost of custom orthotics for the Appellant at \$450 (1 page);
- A letter dated December 9, 2015 from the podiatrist (1 page); and
- The Appellant’s request for reconsideration dated February 11, 2014.

As noted by the Ministry in its reconsideration decision, and explained by the Ministry representative at the hearing, the Appellant is designated “Medical Services Only” and is eligible to receive health supplements (in this case, custom-made foot orthotics) under Schedule C of the EAPWDR.

At the hearing, the Appellant said that he was suffering from severe pain in his heel in August 2015 and went to the hospital on August 6, 2015, where the emergency room doctor told him he needed orthotics. The Appellant said that he obtained the Request Form from the Ministry on September 4, 2015 and that his doctor signed it when the Appellant saw his doctor on September 6, 2015. In the Request Form, the Appellant’s physician indicated that the Appellant has plantar fasciitis and recommended foot orthotics.

The Appellant said at the hearing that he took the Request Form to the podiatrist when he had his first appointment on September 17, 2015. The podiatrist indicated on the Request Form that the Appellant “has severe plantar fasciitis – heel pain” and has “a cavus foot type that needs proper support for the plantar fasciitis to heal.” The podiatrist indicated by checking the “yes” boxes that the custom fit orthotics were required to assist in physical healing from surgery, injury or disease, and to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition, writing that the orthosis was “required to support the feet to allow healing.” The podiatrist indicated on the Request Form that the orthosis will be custom fabricated and will be made from a 3-D slipper cast plaster mold.

The Appellant said at the hearing that when he was at the podiatrist’s office on September 17, 2015, the podiatrist took casts of his feet for the orthotics. The Appellant explained that he had suffered a work-related injury and that there may have been some confusion about whether Worksafe BC would cover the cost of the orthosis, which could explain the invoice for \$450 for custom-fit orthotics from the podiatrist that was sent to Worksafe BC and dated September 17, 2015. The Appellant told the panel that he received his orthotics on October 7, 2015 and has been wearing them since, and that they are helping relieve his pain from his plantar fasciitis.

At the hearing, the Ministry representative referred to a phone call that the Ministry made to the podiatrist on October 19, 2015, in which the podiatrist indicated that the custom-foot orthotics were disbursed to the Appellant on October 7, 2015. The Ministry denied the Appellant’s request for custom-fit orthosis on October 19, 2015, but the Appellant told the panel he did not receive this information until late November (he indicated November 27, 2015).

In the December 9, 2015 letter, the podiatrist wrote that the Appellant presented at his office with severe left heel pain and that the Appellant's foot was padded to determine if a custom foot orthosis would help to reduce his plantar fasciitis. The podiatrist wrote that it was determined that to speed the Appellant's recovery that custom-made foot orthosis was the treatment of choice. The podiatrist indicates that the Appellant's foot orthosis were dispensed on October 7, 2015 and that the podiatrist is seeing slow but steady improvement in what has proven to be a significantly debilitating plantar fasciitis injury.

In his request for reconsideration, the Appellant wrote that he submitted his Request Form to the Ministry on September 18, 2015, but did not receive a response from the Ministry about whether the Ministry authorized the orthotics. He repeated this submission at the hearing. In his submissions and at the hearing, the Appellant stated that his podiatrist saw the urgency of his plantar fasciitis injury and proceeded with the casting of his feet and the ordering of the orthotics (which he received October 7, 2015). The Appellant told the panel that all of the information sent to him by the Ministry was sent to the wrong address, so he did not receive the denial and the reconsideration information.

The panel finds that the Appellant's testimony at the hearing relates to his need for custom foot orthotics and the timeline regarding his request for the orthotics. The panel admits these statements under section 22(4)(b) of the *Employment and Assistance Act* as testimony in support of information that was before the Ministry at the time the decision being appealed was made.

In the reconsideration decision and at the hearing, the Ministry noted that the Appellant meets most of the criteria for custom-made foot orthotics set out in subsections 3(1) and 3.10(1) – (3) of Schedule C of the EAPWDR in that he is eligible for health supplements under the EAPWDR, there are no resources available to the Appellant to pay the cost of or obtain the orthotics, and the orthotics are the least expensive appropriate medical equipment. The Ministry also noted in the reconsideration decision that the Appellant met the criteria set out in section 3.10(2) of Schedule C of the EAPWDR because a medical or nurse practitioner prescribed the orthotics, the orthotics are medically essential to achieve or maintain basic functionality, the minister is satisfied the orthotics are required to prevent surgery and to assist in physical healing from surgery, injury or disease, and a medical or nurse practitioner confirmed that custom-made orthotics are medically required. Further, the custom-made orthotics are fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist.

The Ministry stated that the Appellant did not receive pre-authorization of his request for custom-foot orthotics as required by section 3(1)(b)(i) of Schedule C of the EAPWDR.

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the Ministry's reconsideration decision of December 15, 2015, denying the Appellant's request for custom foot orthotics on the basis that his request does not meet the requirement in section 3(1)(b)(i) of Schedule C of the EAPWDR because the Appellant did not obtain the pre-authorization of the Ministry for the requested medical equipment (his custom-made foot orthotics).

Applicable Legislation

There is no disagreement that the Appellant is eligible for medical equipment under Schedule C of the EAPWDR. The eligibility requirements for custom-made foot orthotics are set out in sections 3 and 3.10 of Schedule C of the EAPWDR.

Schedule C – Health Supplements

Medical equipment and devices

3(1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in section 3.1 to 3.11 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.

...

The panel notes that subsections 3(2) through (5) do not apply to the Appellant's request.

Medical equipment and devices – orthoses

3.10(1) In this section,

... "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 ... confirms that a custom-made orthosis is medically required, and
 - (ii) the custom-made orthosis is fitted by [a] ... 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:

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- (a) a medical practitioner ... confirms that a custom-made foot orthotic is medically required;
 - (b) the custom-made foot orthotic is fitted by ... [a] podiatrist;
 - (c) Repealed
 - (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.

The panel notes that the remaining subsections of section 3.10 do not apply to the Appellant's request.

There is no disagreement that the Appellant meets all of the other requirements set out in subsections 3(1)(a),(b)(ii) and (iii), and in subsections 3.10(1), (2) and (3) of Schedule C of the EAPWDR.

The Appellant argued that the Ministry should not take so long to consider a request for custom-made foot orthotics – that the Ministry should have been able to address his request faster than in 3-4 weeks and should have communicated its decision to him faster and to his correct address. The Appellant argued that his podiatrist went ahead and cast his feet and ordered and paid for the custom-made foot orthotics, which demonstrates that his podiatrist recognized that he had an urgent need for the custom-made foot orthotics to relieve his pain from his plantar fasciitis. The Appellant says that the Ministry should cover the cost of his custom-made foot orthotics. The Appellant does not disagree that he did not obtain the Ministry's pre-authorization before he received his custom-made orthotics.

The Ministry denied the Appellant's request for custom-made foot orthotics on the basis that he had not obtained pre-authorization of the Ministry, which is required by section 3(1)(b)(i) of Schedule C of the EAPWDR. The Ministry representative explained at the hearing, which was also noted in the Reconsideration decision, that Ministry Policy provides that the Ministry will not accept payment responsibility where, as in the Appellant's situation, the orthotics have been ordered prior to Ministry approval, except in cases of life-threatening emergency. In its reconsideration decision, the Ministry noted that although the podiatrist advised in both the Request Form and the December 9, 2015 letter that the Appellant requires custom-made orthotics due to pain from plantar fasciitis, the podiatrist did not confirm a life-threatening injury.

To be eligible to receive medical equipment from the Ministry, an applicant must meet **all** of the requirements set out in the legislation. As noted, there is no disagreement that the Appellant's request for custom-made foot orthotics meets all of the other requirements set out in subsections 3(1)(a), (b)(ii) and (iii), and 3.10(1), (2) and (3) of Schedule C of the EAPWDR. However, the Appellant must meet the criteria set out in section 3(1)(b)(i) of Schedule C of the EAPWDR in order to be eligible to receive custom-made foot orthotics paid for by the Ministry. The Appellant does not dispute that he did not receive the pre-authorization of the Ministry before he obtained his custom-made foot orthotics on October 7, 2015.

Accordingly, the panel finds that the Ministry's determination that the Appellant does not meet the eligibility requirements for custom-made foot orthotics because he failed to get Ministry pre-approval as required under section 3(1)(b)(i) of Schedule C of the EAPWDR was reasonable. The panel confirms the Ministry's denial of the appellant's request for custom foot orthotics as reasonable based on the evidence.