

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of April 4, 2016 wherein the ministry determined the appellant is not entitled to reimbursement for his expenses to modify an aircast boot under Schedule C, section 3 - Medical Equipment and Devices – of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”) because;

- The ministry was not satisfied that he had obtained pre-authorization for the expense as set out in Schedule C section 3(1)(b)(i); and
- The ministry was not satisfied that an aircast boot meets the definition of an orthosis set out in Schedule C, section 3.10(1).

PART D – Relevant Legislation

EAPWDR – section 62, Schedule C section 3 and 3.10

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Letter to appellant dated January 18, 2016 from ministry stating that the ministry has received a request for \$120 to pay for aircast boot modifications. The letter informs the appellant that before the request can proceed, the ministry needs a diagnosis and prescription from a doctor.
- Invoice dated December 15, 2015 from a health authority in amount of \$120.00 for aircast boot modifications;
- Receipt dated December 16, 2015 from health authority in amount of \$120.00 for payment of modifications to aircast boot;
- Letter to appellant dated March 9, 2016 from ministry advising his request for aircast boot modifications has been denied because there was no prior authorization.
- Letter from a physician at specialized clinic to the appellant dated February 2, 2016. The letter is addressed – To Whom It May Concern. The letter addresses the appellant's need for an aircast boot.
- Request for Reconsideration dated March 15, 2016. In the reasons area of his request the appellant stated that he didn't know he had to get prior approval for the aircast boot. He stated that he injured his foot, had surgery, the foot got infected and he was hospitalized for 3 weeks. The doctor at the hospital clinic told him he needed an aircast boot that would have to be modified to offload injury and he needed it "pronto". The appellant stated he spent money he couldn't afford but didn't want his foot amputated by surgeon.

The appellant is a sole recipient of disability assistance and eligible for health supplements under section 62 EAPWDR. On December 30, 2015 the ministry received an invoice from health authority for \$120.00 for modifications to an aircast boot belonging to the appellant. The invoice was dated December 15, 2015 and attached to the invoice was a receipt of payment of \$120.00 also dated December 15, 2015. On January 18, 2016 the ministry sent the appellant a letter requesting a diagnosis and prescription form from a medical practitioner (MP) or nurse practitioner. On February 3, 2016 the ministry received a letter from a MP, a specialist, in a clinic dealing with wounds. The MP stated the clinic is "a specialized clinic dealing with wounds. Specialized dressings and products are prescribed according to wound progress and individual patient needs. The appellant has been diagnosed with diabetic neuropathy requiring medical intervention. During the course of treatment the patient is responsible for supplying his/her dressings. Please consider this a prescription for said dressings, support stockings, offloading devices (aircast) and/or shoes and slippers which may also require orthotics. The goals of care are prevention of infection and hospitalization and healing of his wounds."

On March 8, 2016 the appellant requested Reconsideration and on March 17, 2016 the ministry received the appellant's Request for Reconsideration. No other additional information or documents were provided with his request.

The ministry's submission is the reconsideration decision.

The only further submission by the appellant is found in the Notice of Appeal under Reasons for Appeal. He noted, "Note serious injury! I have sent all the information requested. I needed medical attention right away. Less expensive to follow expert's advice with aircast adaptation."

The panel considers the appellant's statements in the Notice of Appeal as argument.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry decision that the appellant was not eligible to reimbursement for his expenses to modification to an aircast boot under Schedule C, section 3(1) EAPWDR was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances. That is, was the ministry reasonable when determining that:

- he did not obtain pre-authorization from the ministry as set out in Schedule C section 3(1)(b)(i);
- that an aircast boot does not meets the definition of an orthosis in Schedule C, section 3.10(1). EAPWDR.

The legislation considered: **EAPWDR**

General health supplements

Section 62

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) a family unit in receipt of disability assistance,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is a dependent child, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

Schedule C - Health Supplements

Medical equipment and devices

Section 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.

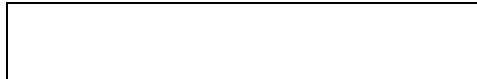
(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (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

Section 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.

...

- (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.

Eligibility for Health Supplement to Modify Aircast boot – Schedule C, section 3(1)

Ministry's Position

The ministry's position is that the appellant's request for reimbursement of \$120.00 to modify the aircast boot does not meet eligibility requirements set out in Schedule C section 3(1)(b)(i) EAPWDR which states that pre-authorization is required for medical equipment or devices. The ministry argued the aircast boot was modified and the modifications were paid for on December 15, 2015 and the appellant's request for reimbursement was not received until December 30, 2015. The ministry also stated that the documents and information received with both his initial application and Request for Reconsideration did not establish a life threatening need for the aircast boot.

Appellant's Position

The appellant's position is the doctor told him he needed an aircast boot to off-load his injury so the wound would heal properly. The appellant argued that his request for the aircast boot was denied because the ministry needed more information but he needed medical attention right away and the doctor told him to get the aircast boot "pronto". The appellant argued that he didn't want his foot amputated by a surgeon so he spent money he didn't have to obtain one. The appellant argued he purchased a used aircast boot and the needed modifications were done.

Panel Decision

The evidence is the appellant purchased an aircast boot on December 15, 2015 on the advice of his physician and the necessary modifications were done to the boot at a cost of \$120.00. On December 30, 2015 the ministry received a request from the appellant for his reimbursement costs to modify the aircast boot. Schedule C, section 3(1)(b)(i) EAPWDR requires that the ministry provide pre-authorization for medical equipment or devices requested, the appellant did not obtain this pre-authorization from the ministry. In the Reconsideration decision the ministry references its policy which allows for an exception to the requirement for pre-approval in cases of a life-threatening emergency, but the panel finds that the ministry reasonably determined that the information provided does not establish that the appellant needed the aircast boot under life-threatening circumstances.

The panel finds the ministry's decision that the appellant did not obtain pre-authorization for the modifications to the aircast boot was reasonable.

Eligibility for the Aircast boot- modifications as an orthosis, Schedule C, section 3.10(1)

Ministry's Position

The ministry is not satisfied that an aircast boot and therefore modifications to an aircast boot could be considered an orthotic or any other item set out in Schedule C section 3.10(1) EAPWDR. The ministry argued the information provided does not demonstrate that an aircast boot (and therefore modifications to an aircast boot) is an orthotic or bracing device used for musculoskeletal alignment and therefore the appellant's request does not meet the eligibility criterion set out in the legislation.

Appellant's Position

The appellant did not provide an argument that the aircast boot should be considered an orthotic.

Panel Decision

The panel finds orthoses are defined under Schedule C, section 3.10(1) EAPWDR to include custom-made or off-the-shelf orthotics and specified orthoses, footwear, and braces. In the MP's letter dated February 3, 2016, he stated that specialized dressings and products are prescribed according to wound progress and individual patient needs and the patient (appellant) was responsible for supplying his/her dressings. He requested the letter be considered as a prescription for dressings, off-loading devices (aircast) and shoes and slipper, which may require orthotics. The MP did not address the appellant's need for an aircast boot as an orthotic but as an off-loading device.

The panel finds the ministry decision that an aircast boot is not an orthosis as defined under Schedule C, section 3.10(1) and therefore the appellant is not eligible for reimbursement for the cost (\$120.00) to modify the aircast boot was reasonable.

Conclusion

The panel finds that the ministry's decision was reasonably supported by the evidence and a reasonable application of the legislation and confirms the ministry decision.