

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated April 16, 2016 which denied the appellant's request for a supplement to cover the cost of a second right shoe lift and off-the-shelf orthopaedic footwear because:

- the requisite period of time (1 year) had not passed to permit the replacement of a second right shoe lift and off-the-shelf orthopaedic footwear, pursuant to Sections 3(3)(b) and 3.10(10) of Schedule C of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR): Section 62 and Schedule C, Sections 3 and 3.10

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

1. Quote, dated January 23, 2016, for orthopaedic footwear with a rigid forefoot rocker and lift for a total of \$281.80;
2. Orthoses request and justification form. The first page was completed by the appellant's physician and signed and dated January 19, 2019 and the second page was completed by the appellant's pedorthist and signed and dated January 23, 2016;
3. Written submission from the appellant's: physician signed and dated April 5, 2016; pedorthist signed and dated April 06, 2016 and clinical social worker signed and dated April 6, 2016, all of whom support the appellant's request for a supplement to cover the cost of replacement of a right shoe lift and off-the-shelf orthopaedic footwear every 6 months for medical purposes;
4. Quote, dated April 6, 2016, for orthopaedic footwear with a rigid forefoot rocker and lift for a total of \$281.80;
5. Request for reconsideration signed and dated April 7, 2016.

Evidence On Appeal

A Notice of Appeal signed and dated May 19, 2016.

Prior to the hearing the appellant submitted a 2-page submission consisting of an X-ray report dated May 19, 2016 and a hand written letter describing his discomforts with walking and need for second right shoe lift and off-the-shelf orthopaedic footwear.

Appellant's Evidence At Hearing

The appellant stated that:

- he uses his only pair of shoes daily for therapeutic reasons (which is walking 1-2 hours per day, 4-6 times per week) plus running his errands and daily living activities;
- the on-going wear and tear for the shoes causes an imbalance in his hip and aggravates an old injury thus causing pain and this prevents him from participating in life and rehabilitation;
- he used to receive new shoes from the ministry once per year, however, since his second brain injury he is not able to drive and therefore walks much more and the shoes wear out faster; and
- he has attempted to access other resources to meet his need but so far they have failed.

The ministry relied on the reconsideration decision.

Admissibility of Additional Evidence

Oral Evidence

The appellant gave oral evidence at the hearing and submitted a 2-page document. In the letter he described his physical condition, the associated pain and the need for the requested items and the X-ray confirms his medical condition. Both submissions corroborate the appellant's evidence at the time of reconsideration. The panel therefore finds that the appellant's oral evidence and 2-page submission are admissible as they are in support of the information and records that were before the minister when the decision being appealed was made, pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which denied the appellant's request for a supplement to cover the cost of a second right shoe lift and off-the-shelf orthopaedic footwear because the requisite period of time (1 year) had not passed to permit the replacement of the items, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Under Section 62 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), in order to be eligible for health supplements in Section 2 or 3 of Schedule C, the person must be a recipient of disability assistance, be a person with disabilities, or be a dependent of a person with disabilities as detailed in the section. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that the person's family unit must meet in order to qualify for specified medical equipment and devices.

Section 3 of Schedule C of the EAPWDR provides as follows:

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. . .
- (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.

Section 3.10 of Schedule C of the EAPWDR provides as follows:

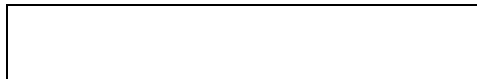
Medical equipment and devices – orthoses

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. . . .
- (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
3	modification to footwear	1 or 1 pair
12	off-the-shelf footwear	1 or 1 pair
13	off-the-shelf orthopaedic footwear	1 or 1 pair

- (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.

Table 2

Item	Column 1 Orthosis	Column 2 Time period
3	modification to footwear	1 year
12	off-the-shelf footwear	1 year
13	off-the-shelf orthopaedic footwear	1 year

Positions of the Parties

The appellant’s position is that he experiences discomfort and severe lower back pain due to the wear down of his orthotics which aggravates an old hip injury. This interferes with his recovery process. He also argues that he relies on his orthotics to get around and replacement is needed every 6 months.

The ministry’s position is the legislation sets out the number of modification to footwear and off-the-shelf orthopaedic footwear the ministry is authorized to provide. Since the appellant was provided with a right shoe lift and off-the-shelf orthopedic footwear on August 4, 2015, pursuant to section 3(3)(b), 310(10) of the EAPWDR schedule C, he does not meet the eligibility requirements for

replacement.

Panel decision

The panel finds that it is not disputed that the appellant, as a recipient of disability assistance, is eligible to receive health supplements under Section 62 of the EAPWDR. With respect to the additional criteria for the health supplements in Schedule C, Section 3(3)(b) stipulates that the ministry may provide replacement of a second right shoe lift and off-the-shelf orthopaedic footwear previously provided by the ministry if the period of time set out in section 3.10 of this Schedule has passed. The panel notes that the ministry does not dispute the current condition of the appellant's right shoe lift and off-the-shelf orthopedic footwear or his need for replacements. The panel notes that the appellant does not dispute that he was provided with a right shoe lift and off-the-counter orthopaedic footwear on August 4, 2015.

Section 3.10(10) of Schedule C of the EAPWDR sets out that the period of time referred to in section 3 (3)(b) to allow for replacement of a second right shoe lift and off-the-shelf orthopaedic footwear is 1 year from the date on which the ministry provided the orthoses being replaced. As the appellant's request for replacement of his a second right shoe lift and off-the-shelf orthopedic footwear is dated January 27, 2016 and there is no flexibility in the legislation, the panel finds that the ministry reasonably concluded that this request has been made prior to the 1-year period of time having passed from August 4, 2015, as required by Sections 3(3)(b) and 3.10(10) of Schedule C.

Conclusion

The panel finds that the ministry's decision, which denied the appellant's request for a supplement to cover the cost of a second right shore lift and off-the-shelf orthopaedic footwear because the requisite period of time had not passed to permit the replacement, was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant, and the panel, therefore, confirms the ministry's reconsideration decision.