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 June 3, 2016 which denied the appellant's request for custom made footwear. The ministry determined that the appellant's request did not meet the legislated period for replacement of custom made footwear of 1 year set out in sections 3(3) and 3.10(10) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The ministry also denied the appellant's request under its policy which provides an exemption to the legislated replacement period when an item is required due to changes in a person's medical condition or growth.

PART D – Relevant Legislation

EAPWDR - sections 3 and 3.10 of Schedule C

PART E – Summary of Facts

Information before the ministry at reconsideration

The appellant is eligible for Medical Services Only (MSO) and as such may receive health supplements under Schedule C. By letter dated June 18, 2015, the ministry advised the appellant that her request for custom made footwear was approved and a Purchase Authorization dated June 19, 2015, in the amount of $1,484.00 was issued. Ministry records indicate that it was invoiced for the footwear on August 25, 2015.

On November 16, 2015, the ministry received a letter dated November 10, 2015 from the appellant with a quote of the same date for 1 pair of custom made orthopaedic footwear. On November 26, 2015, the ministry received a second quote for 1 pair of custom made orthopaedic shoes dated November 9, 2015 and a letter dated November 21, 2015 from the appellant, in which she wrote that she had previously been approved for custom shoes but that [name of shoe maker] failed to provide custom shoes that fit.

On February 11, 2016, the ministry received a 3-page typewritten undated letter from the appellant, with 2 pages of general information about footwear from an unidentified source, and page 1 of a 2-page ministry Orthoses Request and Justification (MERJ) form. Page 1 of the MERJ, dated December 2, 2015, was completed, as required, by a medical practitioner.

In the MERJ, the medical practitioner writes "Custom shoes required for severe foot pain due to gait dysfunction, hyperpronation, plantar fasciitis, she also has back arthritis, lumbar retrolisthesis. Custom orthotics alone not successful."

In the undated 3-page letter, the appellant writes that 4-5 years ago the ministry provided 1 pair of orthopaedic boots. In the following years, her weight fluctuated, her feet arthritis worsened, she developed a metatarsal problem, worsening arthritis in her ankles and talus bones, as well as a swelling valve problem in the varicose veins. As a result, she applied for and was approved for replacement custom shoes in 2015. She states that the shoes were too small and that the shoemaker refused to correct the problem. The shoemaker kept the shoes and stated that he would return the money to the ministry. She writes that the shoemaker was abusive and dishonest. Her feet and ankles have gotten worse, as have her other health problems, and her feet hips, spine, and muscles are being damaged by not getting the custom shoes.

On February 23, 2016, the ministry received a 1-page undated letter from the appellant and both pages of the 2-page MERJ. Page 1 is unchanged and Page 2 was completed by a certified orthopaedic footwear specialist. Instructions at the top of Page 2 of the MERJ direct that it be completed by an orthotist, pedorthist, podiatrist, occupational therapist or physical therapist.

In her 1-page letter, the appellant writes that she has been dealing with an eye problem for the last 2-3 months as well as her usual health problems with high blood pressure, osteoarthritis which is getting worse in her left hip, atrial fibrillation, feet problems, and very bad migraines etc.

The appellant's request was denied April 25, 2016.

At reconsideration, the appellant submitted a letter dated May 9, 2016 from a physiotherapist (PT). The PT writes that the appellant suffers from many health issues, one being persistently painful feet with weakness of the ankles. She requires custom shoes and orthotics as she is unable to fit normal off the shelf footwear. She has flattened arches, hypermobility, weakness and instability and needs special shoes to achieve improved day to day function. She also has back, hip and knee issues and requires proper footwear to compensate for these issues.

In its reconsideration decision, the ministry references a ministry note dated May 11, 2016 which states that the ministry spoke with the shoemaker who stated that the appellant refused the footwear, which she claimed were too tight. The supplier stated that the custom footwear was properly fitted and fabricated according to the client's specific foot measurements but he also made the effort to address the client's concerns and to modify the footwear if required. The client refused to accept any modifications, would not take the shoes, and requested the ministry be refunded. The supplier stated that he could not consider a refund for a customized product and the full extent of the services already provided (fitting, custom mold, materials etc.). He stated he made every effort to accommodate the client but she refused to accept any more services from him.

Information provided on appeal and admissibility

On appeal, the appellant provided a written submission in which she states that she has had changes to her medical condition. She currently has sprained ankles that will take 4-6 weeks to heal. The sprains were caused by wearing the custom boots provided 4-5 years ago that no longer fit due to changes, including development of a metatarsal problem, weight loss and gain, development of extra health problems, atrial fibrillation, worsening of high blood pressure, damage to hips (osteoarthritis), and fluid build-up. She can't safely wear compression stockings without spraining and damaging her ankles and ligaments. The appellant attached 2 pages of internet information respecting ankle sprains.

When determining whether new evidence is admissible, the panel is bound by section 22(4) of the *Employment and Assistance Act* (EAA), which states:

22 (4) In a hearing referred to in subsection (3), a panel may admit as evidence only

(a) the information and records that were before the minister when the decision being appealed was made, and

(b) oral or written testimony in support of the information and records referred to in paragraph (a).

The panel finds that information respecting the appellant's sprained ankles was not information before the ministry at reconsideration. The appellant refers to having the sprains "presently" in her NOA, indicating that they occurred subsequent to the reconsideration decision and ankle sprains are not mentioned in the information before the ministry from the appellant, the medical practitioner or the

PT. Therefore, the panel has not admitted the information respecting sprained ankles as it was not in support of the information at reconsideration. The balance of information in the appellant's NOA substantially reiterates information in the appellant's previous written submissions and is therefore admissible under section 22(4) of the EAA as being in support of the information and records before the ministry at reconsideration.

The ministry did not provide additional evidence on appeal, relying on its reconsideration decision.

PART F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry decision, which held that the appellant's request for custom made footwear did not meet the legislated replacement period of 1 year set out under sections 3(3) and 3.10(10) of Schedule C of the EAPWDR or the policy requirements for exemption from the legislated replacement period, is reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

Relevant Legislation – sections 3 and 3.10 of Schedule C

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.

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………

(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**
2	custom-made 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**
2	custom-made footwear	1 year

Eligibility requirements of section 3(3) and 3.10(10) of Schedule C

The appellant argues that she was last provided with custom made footwear by the ministry 4-5 years ago because the shoes made for her in 2015 did not fit. Therefore, she never received custom made footwear in 2015.

The ministry argues that the information establishes that the appellant's 2015 request for custom footwear was approved and funded and that she was provided with custom footwear on August 25, 2015. In accordance with the time limits for replacement of custom made footwear under sections 3(3) and 3.10(10) of Schedule C, the ministry may not provide replacement custom made footwear until 1 year has elapsed. Therefore the appellant is not eligible for replacement custom made footwear until the 1 year replacement period from August 25, 2015 has elapsed.

Panel Decision

Sections 3(3) and 3.10(10) of Schedule impose a 1 year replacement period for custom made footwear. The documentation indicates that the ministry approved the appellant's request for custom made footwear on June 18, 2015 and authorized payment the following day. Ministry records indicate that it was invoiced for the custom made footwear on August 25, 2015, and the appellant's information confirms that the shoemaker was paid for his services. There is no information indicating that the appellant advised the ministry of any problems with the custom made footwear or of her refusal to accept the footwear until November 2015, when she requested another pair of custom made footwear. Based on the above information, the panel finds that the ministry provided the appellant with 1 pair of custom made footwear on August 25, 2015 and that it has not been 1 year since she was provided with that custom made footwear. Therefore, the panel finds that the ministry reasonably determined that the appellant was not eligible for custom made footwear because the 1 year replacement period set out under sections 3(3) and 3.10(10) of Schedule C of the EAPWDR had not elapsed.

Policy Exemption

The appellant argues that she also meets the policy exemption requirements because her medical condition has changed resulting in the need for new custom made footwear.

The ministry states that it can make an exception to the replacement time period for custom made footwear in accordance with its policy (excerpt below).

> **Repairing or Replacing Orthoses: October 1, 2013**
>
> **Note: The replacement time period does not apply when an item is required due to changes in a person's medical condition or growth.**

The ministry argues that the information from a medical practitioner has not established that the appellant has changes to her medical condition or growth since last provided with custom footwear in August 2015, and therefore she has not met the time limit exemption requirements set out in ministry

policy.

Panel Decision

Ministry policy allows for the replacement of medical equipment and devices provided by the ministry, including custom made footwear, prior to the expiration of the legislated replacement period set out in the Schedule C, if the need for replacement is due to changes in the requestor's medical condition or growth. The panel finds that the information provided by the medical practitioner and the PT identifies a number of medical conditions the appellant has, but does not indicate changes to the appellant's medical condition (or growth) that have occurred since August 2015. Therefore, the panel finds that the ministry reasonably determined that the requirement under its policy for an exemption from the 1 year replacement period for custom made footwear was not met.

Conclusion

The panel finds that the ministry's reconsideration decision that determined that the appellant was not eligible for replacement custom made footwear, because the 1 year replacement period set out under sections 3(3) and 3.10(10) of Schedule C of the EAPWDR and the policy requirements for exemption from that replacement period were not met, is reasonably supported by the evidence. Accordingly, the panel confirms the ministry decision and the appellant is not successful on appeal.