PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation ("ministry") reconsideration decision dated June 20, 2016 in which the ministry found the appellant was not eligible for replacement custom foot orthotics. The Ministry found that the Appellant was provided custom-made foot orthotics in 2014 and the 3 year legislative period for replacement under the Employment and Assistance for Persons with Disabilities Regulation, Schedule C, sections 3(3) and 3.10 has not elapsed.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 62; 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 notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

Information before the minister at reconsideration included:

- A Ministry Health Supplement Info Sheet 4 – Med Equipment Orthoses dated March 26, 2015 addressed to the Appellant.
- A quote for custom orthotics from a Registered Physiotherapist, dated March 21, 2016.
- A Ministry Orthoses Request and Justification form in the Appellant's name, signed by a physician February 2, 2016 and a Registered Physiotherapist January 21, 2016, stating that the Appellant has bilateral forefoot Varus deformity causing increased over pronation, which has caused multiple issues including posterior tibial tendonitis, plantar fasciitis and aggravation of a previous knee injury, making standing very painful. In the section asking for an explanation of how the prescribed item will assist with joint motion and/or support, the physiotherapist wrote "The orthotics will prevent excess pronation that causes and aggravates bilateral posterior tibial tendonitis and plantar fasciitis. As well the excessive pronation also aggravates her left knee injury. The orthotics would allow her to stand and walk"
- The Ministry's Medical Equipment and Devices Decision Summary dated April 25, 2016.
- A copy of the Ministry's letter to the Appellant advising her of their decision, dated April 25, 2016.
- The Appellant's Request for Reconsideration, signed June 2, 2016, in which the Appellant wrote that her old ones are rotten and torn. She needs them to stabilize her feet; the old ones are worn out. She wrote that she has one leg shorter than the other and her ankles are turning in and she is in pain. Her old orthotics cause her right toe to blister, her pelvis comes out without them, causing back pain when standing, and her knee is in pain. She cannot walk without them.
- A quote for bilateral custom made foot orthotics dated February 5, 2014.
- A copy of an Orthoses Request and Justification form signed by a physician on November 30, 2013 and a Certified Orthotist on February 5, 2014, stating the Appellant's condition as malunion left tibia, length discrepancy and calloused feet. The orthoptist wrote that she has excessive pronation in stance and gait with callousing.

At the hearing, the Ministry stated that they rely on the Reconsideration Decision, which states that the Appellant's request for orthotics was denied due to the replacement time limit. With respect to the Ministry policy referenced in the decision, the Ministry stated that orthoses may be replaced before the legislated 3 year period if there is information that the medical condition of the person has changed; however, that information was not provided by the Appellant. In response to questions from the Panel, the Ministry had no comment about whether the differences between the Appellant's 2013 request for orthotics and the present request may be interpreted as a change in her medical condition.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the reconsideration decision in which the ministry found the appellant was not eligible for replacement custom foot orthotics. The Ministry found that the Appellant was provided custom-made foot orthotics in 2014 and the 3 year legislative period for replacement under the Employment and Assistance for Persons with Disabilities Regulation, Schedule C, sections 3(3) and 3.10 has not elapsed.

Legislation

EAPWDR

General health supplements

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

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
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.

Table 2		
Item	**Column 1 Orthosis**	**Column 2 Time period**
1	custom-made foot orthotic	3 years

The Appellant's position as stated in her Request for Reconsideration and Notice of Appeal is that her current orthoses are torn and worn out, and she is in pain and cannot walk without them.

The Ministry position is that the Appellant was provided orthoses in 2014 and the period for replacement under the legislation has not passed. The Ministry also noted that although there is a provision in policy to replace orthotics before the 3 year period if there has been a change in the applicant's medical condition, there is no information provided to establish that the Appellant requires replacement of her custom made orthotics due to a change in her medical condition.

The Panel notes that the Appellant was provided custom made foot orthotics in May, 2014, and the period for replacement under s.3(3) of Schedule C, EAPWDR, which is 3 years, has not elapsed. The Panel finds that the Ministry reasonably determined that the Appellant is not eligible for custom made foot orthotics under the legislative criteria. With respect to the Ministry's statement that their policy may allow for replacement prior to the legislative time period if there is information that the medical condition of the person has changed, the Panel notes that there is no specific statement in the physician's or physiotherapist's comments that refer to a need for replacement orthotics due to a change in the Appellant's medical condition.

The Panel therefore confirms the Ministry decision. The Appellant is not successful on appeal.