



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated January 3, 2017, which denied the appellant's request for a supplement to cover the cost of repairs to her knee-ankle-foot orthosis because the appellant did not receive pre-authorization from the ministry, as required in Section 3(1) 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, Section 3

PART E – Summary of Facts

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

- 1) Estimate from a medical supply company dated July 20, 2016 for repairs to a left “KAFO” [knee-ankle-foot orthosis] to remove and replace an aluminum bar with stainless steel bar and weld, for labour only for 3 hours at \$120 per hour, for a total of \$360;
- 2) Decision summary by the ministry dated November 3, 2016, which states that the request is for \$360 in repairs to a knee-ankle-foot orthosis, to remove and replace an aluminum bar with stainless steel bar and weld. Previous orthoses include a left KAFO at a cost of \$3,350 on April 2013, and a left KAFO repair for an unidentified amount in April 2016. The worker at the group home advised the joint was bent and the repair had already been completed without prior pre-authorization. Supplier advised the repairs in April were to replace padding, etc. Supplier did not know if repairs had been done already;
- 3) Letter dated November 3, 2016 to the appellant in which the ministry denied repairs to her knee-ankle-foot orthosis because the appellant did not receive pre-authorization from the ministry, as set out in Section 3(1)(b)(i) of Schedule C of the EAPWDR; and,
- 4) Request for Reconsideration dated December 15, 2016, with attached letter from the appellant’s sister.

In the Request for Reconsideration, the appellant’s sister wrote that:

- The repair done in April 2016 was completely different from the replacement repair done in July 2016.
- The appellant has been in continuous care since 2001 and her mobility issues have been addressed by the ministry for the last 10 or more years.
- Several orthotics and other medical devices have been prescribed for the appellant and, as her mobility issues have become more difficult, many of the devices have to be adjusted, repaired or replaced.
- For the [knee-ankle-foot orthosis], the aluminum bar was replaced with a stainless steel bar, producing a substantially higher quality to reduce further bending and less maintenance.
- The device was sent in for repair right away as any delay confines the appellant to a wheelchair, unable to walk or participate in physical therapy.
- The decision to proceed prior to pre-authorization was based on the excessive timeline required to get the approval.
- In previous instances, the turnaround time has been as long as four or more months, and this has caused a severe setback to the appellant’s mobility.

Additional information

In the Notice of Appeal dated January 17, 2017, the appellant’s representative expressed disagreement with the ministry’s reconsideration decision and wrote that the appellant did not submit the request without pre-authorization as this was done by the orthotics professional.

At the hearing, the appellant’s representative, her sister, stated that:

- It was not the appellant who submitted the request for repairs. It was the medical supply company that went ahead with the repairs without pre-authorization from the ministry. The medical supply company should be stuck with the bill, not the appellant.
- She believes it is not fair that the appellant is getting stuck with the bill for \$360 when it was the medical professionals who did not follow the ministry protocol. She understands that it is

the appellant's brace and that it is the appellant who needs the repairs done.

- The appellant is not capable of making decisions about her care on her own and needs an advocate to speak for her. The appellant has a mental capacity of a 10 to 12 year old and would not know about pre-authorization and she, therefore, relied on the medical supply company to make the application for repairs.
- The appellant is immobilized and she is not allowed to walk without braces. When she walks, her knees hyper-extend so that they bend backwards. Without her braces, the appellant is confined to a wheelchair.
- They have experienced delays with the ministry processes in the past and it has taken up to 6 months to get approval. In the past, the appellant's therapist has sent in the requests. Recently, a bolt fell out of the brace and it took 3 weeks to get a simple bolt replaced.
- The appellant has very limited resources of a little over \$500 per month to cover rent and transportation, leaving her with \$117 for the rest of the month for her personal items.
- She has no information about the cost of previous repairs to the appellant's brace.
- The repair requested was to change the aluminum bar to stainless steel to make the brace stronger, since a lot of pressure is put on the appellant's knees.

The ministry relied on the reconsideration decision, as summarized at the hearing. The ministry clarified that:

- The ministry relied particularly on sub-section 3(1)(b)(i) of Schedule C of the EAPWDR and has no ability to go outside the requirement in the legislation for the family unit to obtain the pre-authorization of the ministry.
- Looking at the history of previous orthoses provided to the appellant, as set out in the original decision summary, the appellant's left knee-ankle-foot orthosis was provided in April 2013 and it appears the cost is recorded as \$3,350. The left knee-ankle-foot orthosis has been repaired previously a couple of times, but there is no indication whether the ministry's pre-authorization was obtained for these previous requests.
- It is surprising that in this instance the medical profession or the medical supply company did not send in a request for pre-authorization, as they would be familiar with the ministry requirements.
- If the appellant will be immobilized until the ministry decision is provided, the request might be marked as "urgent" and processed within 3 business days if the appellant's particular situation is brought to the ministry's attention.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of repairs to her knee-ankle-foot orthosis because the appellant did not receive pre-authorization from the ministry, as set out in Section 3(1) of Schedule C of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

Pursuant to Section 62 of the EAPWDR, the applicant must be a recipient of disability assistance or be a person in receipt of disability assistance (or a dependant) in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has not disputed that the requirement of Section 62 has been met in that the appellant is a recipient of disability assistance.

The ministry considered the appellant's request for the cost of repairs to her knee-ankle-foot orthosis under Section 3 of Schedule C of the EAPWDR, which provides:

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.

Ministry's position

The ministry's position is that as a recipient of disability assistance the appellant is eligible to receive health supplements under Section 62 of the EAPWDR, but the appellant's request for a supplement to cover the cost of repairs to her knee-ankle-foot orthosis did not meet all of the applicable criteria of Section 3(1) of Schedule C of the EAPWDR because the appellant did not receive pre-authorization from the ministry. At the hearing, the ministry maintained the position that the requirements of subsection 3(1) apply to requests for all health supplements in Schedule C, which include repairs. The ministry argued that the appellant already completed the repairs to her knee-ankle-foot orthosis and the appellant does not dispute that she did not receive pre-authorization from the ministry before incurring the costs of the repair. The ministry acknowledged that the delay in the ministry's decision had an impact on the appellant's mobility but argued that the appellant did not ask the ministry to assess whether her need was urgent.

Appellant's position

The appellant's position is that she is eligible for repairs to her knee-ankle-foot orthosis because the device was sent in for repair right away as any delay in return of the brace confines her to a wheelchair, she is unable to walk or participate in physical therapy, and the decision to proceed prior to pre-authorization was made by the medical professional and not by her. The appellant argued, through her sister as advocate, that the decision to proceed with the repairs was likely based on the excessive timeline required to get the ministry's approval. The appellant pointed out, through her advocate, that several orthotics and other medical devices have been prescribed for the appellant and, as her mobility issues have become more difficult, many of the devices have to be adjusted, repaired or replaced. The appellant argued that for the knee-ankle-foot orthosis, the aluminum bar was replaced with a stainless steel bar, producing a substantially higher quality brace to reduce further bending and less maintenance.

Panel's decision

The subject of this appeal is the reasonableness of the ministry's reconsideration decision which denied the appellant's request for a supplement to cover the cost of repairs to her knee-ankle-foot orthosis, which had been previously provided to the appellant by the ministry. In the Request for Reconsideration, the advocate wrote that the appellant has been in continuous care since 2001 and her mobility issues have been addressed by the ministry for the last 10 or more years. The advocate wrote that, during that time, several orthotics and other medical devices have been prescribed for the appellant and, as her mobility issues have become more difficult, many of the devices have to be adjusted, repaired or replaced. At the hearing, the ministry stated that, considering the history of previous orthoses provided to the appellant as set out in the original decision summary, the appellant's left knee-ankle-foot orthosis was likely provided to the appellant in April 2013, and the cost is recorded as \$3,350. The appellant's request was for repairs to her current knee-ankle-foot orthosis, according to the estimate July 20, 2016, to remove and replace an aluminum bar with stainless steel bar and weld, for a total cost of \$360.

A request for repairs of medical equipment or a medical device which was previously provided by the ministry is covered by Section 3(4) of Schedule C of the EAPWDR. Section 3(4) of Schedule C of the EAPWDR specifically states that it is subject only to subsection (6), which prohibits the ministry from providing a replacement of medical equipment or a medical device under subsection (3) or repairs under subsection (4) or (5) if the ministry considers that the medical equipment or device was damaged through misuse. Section 3(4) of Schedule C does not stipulate that the requirements of Section 3 must be met in respect of the medical equipment or device being repaired, but only requires that it is more economical to repair the medical equipment or device than to replace it. In contrast, Section 3(5) of Schedule C applies to a request for repairs to medical equipment or a medical device that was *not* previously provided by the ministry and stipulates that, at the time of the repairs, the requirements of [Section 3] and Section 3.1 to 3.11 of Schedule C (as applicable) must be met in respect of the medical equipment or device being repaired and it must also be more economical to repair the medical equipment or device than to replace it.

A determination by the ministry about whether it is more economical to repair the appellant's knee-ankle-foot orthosis than to replace it would necessitate a review of the cost of repairs for the appellant's existing knee-ankle-foot orthosis over the years since the time that she was provided with the device and a comparison with the current cost to replace the knee-ankle-foot orthosis, and an evaluation by the ministry as to which option was more economical. Although there was information available to the ministry about the cumulative costs to repair the appellant's knee-ankle-foot orthosis, including the amount of the subject request made in July 2016 (\$360), as well as the cost to supply the knee-ankle-foot orthosis in 2013 (\$3,350), the ministry did not perform an assessment under Section 3(4) of Schedule C of the EAPWDR as to which was more economical.

Instead, in the reconsideration decision, the ministry denied the appellant's request based on one of the criteria that relates to the initial request for medical equipment and devices, including Section 3.10 of Schedule C which sets out the requirements for providing orthoses, namely that: "...the family unit has received the pre-authorization of the minister for the medical equipment or device requested" [Section 3(1)(b)(i)]. The majority of the panel finds that Section 3(1)(b)(i) of Schedule C does not apply to repairs, which are instead covered in Section 3(4) of Schedule C of the EAPWDR, and the ministry did not reasonably apply the enactment that was appropriate for the circumstances of the appellant.

Conclusion

In conclusion, the majority of the panel finds that the ministry's decision, which denied the appellant's request for a supplement to cover the cost of repairs to her knee-ankle-foot orthosis because the appellant did not receive pre-authorization from the ministry as set out in Section 3(1)(b)(i) of Schedule C of the EAPWDR, was not a reasonable application of the applicable enactment in the appellant's circumstances. The majority of the panel finds that Section 3(1)(b)(i) of Schedule C does not apply to repairs and the ministry did not reasonably apply the enactment that was appropriate for the circumstances of the appellant, specifically Section 3(4) of Schedule C. Therefore, the majority of the panel rescinds the ministry's reconsideration decision and it is overturned in favour of the appellant.