

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated December 23, 2016, in which the ministry denied the appellant's request for a replacement of custom-made foot orthotics as she had not met all criteria stated in Schedule C, Sections 3 and 3.10 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). Specifically, the appellant had not established that her current custom-made orthotics are damaged, worn out or not functioning; that it is more economical to replace than repair the custom-made foot orthotics previously provided by the minister; and that the period of time set out in section 3.10 of Schedule C had passed.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 62

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, Sections 3 and 3.10

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- Orthoses Request and Justification dated February 3, 2016
- Insurance Letter (Custom-Made Foot Orthotics) dated February 3, 2016
- Doctors note dated February 4, 2016 noting need for a wrist brace
- Physiotherapist statement of account custom-made foot orthotics cost of \$400.00
- Doctors note dated January 2016 noting custom-made orthotics for severe pes planus
- Physiotherapist statement of account (Estimate) custom-made orthotics- \$400.00 plus dispensing fee \$50.00
- Gait Analysis Report
- Purchase Authorization for wrist bracing dated September 28, 2016
- Ministry Worker (Ministry of Social Development and Social Innovation) written response to appellant regarding her application for Health Supplements

The appellant is currently designated as a Persons with Disabilities

On August 15, 2016 the appellant submitted a request for replacement custom-made foot orthotics and a wrist brace.

On September 28, 2016 the ministry denied the requested orthotics and approved the request for a wrist brace.

On December 14, 2016 the appellant submitted a Request for Reconsideration

On December 23, 2016 the ministry completed its review of the appellant's Request for Reconsideration.

In the appellant's Request for Reconsideration her doctor stated the reason for the request was "Right sided carpal tunnel syndrome....." No mention was made of the custom-made foot orthotics.

In the appellant's appeal dated January 3, 2017, she stated she disagreed with the Ministry's reconsideration decision as "They need to be replaced because they are broken from the middle part and I cannot use them anyway therefore, my condition is worsening gradually".

In the reconsideration review:

- The ministry is not satisfied the appellant's request meets the legislated criteria set out in the EAPWDR, Schedule C, subsection 3(3) and 3.10(10).
- The Reconsideration Officer contacted the appellant;
 - In regards to the wrist brace noting the appellant had been approved for the wrist brace on September 28, 2016.
 - The appellant indicated her foot orthotics was broken but could not provide any additional information and outlined that her doctor did not know they were broken.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision dated December 23, 2016 which denied the appellant replacement custom-made foot orthotics in accordance with subsections 3(3) and 3.10(10) of the EAPWDR as the appellant had not provided required information that the current custom-made orthotics are damaged, worn out or not functioning; that it is more economical to replace than to repair the custom-made foot orthotics; and that the period of time set out in section 3.10 of Schedule C had passed.

The relevant legislation is (EAPWDR) Section 62 and (EAPWDR) Schedule C, Sections 3 and 3.10

Employment and Assistance for Persons with Disabilities Regulation Section 62

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.

Employment and Assistance for Persons with Disabilities Regulation 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;

(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

- (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

Appellant's Position

The appellant position is that as the custom-made foot orthotics is broken and her condition is worsening, they should be replaced.

Ministry's Position

The ministry determined the information supplied by the appellant did not establish that her request met the criteria set out in the EAPWDR, subsections 3(3) and 3.10(10) that being the current custom-made orthotics are damaged, worn out or not functioning; that it is more economical to replace than to repair the custom-made foot orthotics previously provided by the minister; and that the period of time set out in section 3.10 of Schedule C has passed.

Panel Decision

The legislation, Schedule C subsections 3(3) and 3.10(10) requires the appellant supplies information that the current orthotics are damaged, worn out or not functioning; that it is more economical to replace than to repair the orthotics; and that the period of time set out in the schedule (3 years) have been passed.

As the appellant did not supply the required information and the orthoses was funded by the ministry in May 2014 (less than the required 3 years) the panel finds the appellant does not meet the criteria found in Schedule C subsections 3(3) and 3.10(10) of the EAPWDR. The panel finds the ministry's reconsideration decision dated December 23, 2016 which denied the appellant of a replacement custom-made foot orthotics was reasonable supported by the evidence and therefore confirms the ministry's decision. The appellant is therefore not successful in her appeal.