PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 8, 2017 in which the ministry held that the appellant was not eligible for replacement custom foot orthotics. The ministry determined that the appellant was provided custom-made foot orthotics in June 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 passed.

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

Information before the ministry at reconsideration:

- An Orthoses Request and Justification form in the appellant's name, signed by a physician on July 27, 2016 and a Registered physiotherapist (no date indicated), with the appellant's medical condition described as neurofibromatosis with significant feet deformity and chronic and consistent pain. In the section asking for an explanation of how the prescribed item will assist with joint motion and/or support, the physiotherapist wrote "Foot orthotics will provide increased support and cushion to maintain mobility and help prevent surgery."
- A quote dated July 11, 2016 from a Home Health Care supplier for an Elvarex custom knee high - closed toe, totaling $250.
- A prescription from the appellant's physician dated June 10, 2016 for 2 pairs of knee compression stockings required every 6 months.
- A prescription from the appellant's physician dated June 10, 2016 for 2 pairs of runners and orthotics for work and general activities.
- The appellant's Request For Reconsideration dated February 27, 2017 in which the appellant writes that she is requesting a replacement early because it can take up to 8 months to receive the replacement orthotics. The appellant requests that she be allowed to be prepared by submitting the required paperwork in advance and approved ahead of time so that her much needed orthotics can be payed for and picked up in June 2017.

In the appellant's Notice of Appeal dated March 17, 2017, she states that she was denied twice for foot orthotics which she needs in order to get new runners.

On appeal, the appellant submitted a letter dated March 31, 2017 from another physician(GP) who writes that the appellant "suffers from neurofibromatosis and progressing deformity of her feet that would require orthotics. The progression of the deformity has accelerated and she would need to have new and fitted orthotics made".

At the hearing, the appellant submitted the following documents:

L. Two (2) pictures of the appellant's large tumor on her right foot.
2. Copy of the March 31, 2017 letter from the appellant's GP as noted above.
3. Literature regarding Neurofibromatosis (NF)
4. Literature from National Human Genome Research Institute regarding NF.
5. Information on a NF tumor of the foot similar to the appellant's.
6. Page 1 of 2, of an X-Ray to evaluate the appellant's scoliosis, hx of neurofibromatosis updated on March 22, 2017.
7. The following written summary was also provided regarding the appellant's NF disease and foot tumor:
- has had Neurofibromatosis since a toddler,
- is on numerous pain meds to help alleviate some of the nerve pain caused by the tumor in her right foot as well as a muscle relaxant for Scoliosis, which is a symptom of NF,
- her physiotherapist also agrees proper fitting orthotics will help her painful scoliosis,
- she finds it difficult to walk because of her large tumor and the nerve pain that comes with it,
- proper fitted orthotics help to alleviate some of that pain,,
-new orthotics are needed to support the accelerated growing tumor to help alleviate the nerve pain,
-the tumor is at the bottom and side of her right foot and has completely taken over the structure of the foot,
-two surgeries were done to de-bulk the large tumor of the right foot, doctors state it is not safe to

debulk tumor again with a second surgery,
- she contracted Cellulitis and was very ill,
-NF tumors if de-bulked or removed will potentially grow back at an expedited rate,
- her tumor grows and changes shape and size which change how the previous orthotics fit her foot,
- she has no control of the time frame in which the tumor changes its shape which in turn causes the previous custom fitted orthotics to not fit properly,
-without custom fitted orthotics, she may need to use a wheelchair in order to help with the severe nerve pain while walking, and
- she takes the following pain medication; Gabapentin, Lamotrigine, Nortriptyline, Cyclobenzaprine and Celecoxib.

At the hearing, the appellant testified that her orthotics are not functioning and are no longer adequate as her tumor has doubled in size. She suffers from nerve pain and views the next step as a wheelchair or scooter. The appellant indicated that the letter of March 31 is from her new GP as her previous GP who completed the Orthotics request and provided the prescriptions as noted in the record has retired.

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. 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 significantly changed; however, that information was not provided by the appellant. The ministry representative indicated that the waiting time for approvals has been recently reduced to between 4-6 weeks and that the appellant could reapply after April 20, 2017. The ministry representative also confirmed that the appellant's information such as that contained in the Orthoses Request and Justification form is nearly a year old and must be updated.

Admissibility of Additional Evidence

On review of the evidence, the panel notes that the additional information given with the NOA dated March 31, 2017 as well as the information provided by the appellant at the hearing corroborates the medical information and records that were before the ministry at the time of reconsideration as well as helps explain the complexities regarding the appellant's circumstances. The panel therefore finds that the appellant's reference to this information is admissible as it is 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 in this appeal is the reasonableness of the reconsideration decision in which the ministry held that the appellant was not eligible for replacement custom foot orthotics. The ministry determined that the appellant was provided custom-made foot orthotics in June 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 passed.

Relevant 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-musculoskeletal 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

(**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's position is that her orthotics are not functioning and are no longer adequate as her tumor has doubled in size. The appellant argues that she is requesting a replacement early because it can take up to 8 months to receive the replacement orthotics. She requests that she be allowed to prepare and submit the required paperwork in advance and be approved ahead of time so that her much needed orthotics can be paid for and picked up in June 2017.

Ministry's Position

The ministry position is that the appellant was provided orthoses in June 2014 and that she is not eligible to have a request for replacements considered until June 2017. The ministry also finds that there is no information to establish that the appellant's current custom-made orthotics are damaged, worn out or not functioning or that it is more economical to replace than repair the custom-made foot orthotics previously provided by the minister. The ministry notes that until the time period is up and the appellant's previously funded orthotics are confirmed as damaged, worn out or not functioning, she does not meet the ministry legislation for replacement custom foot orthotics.

Panel Decision

The panel notes that the appellant was provided custom- made foot orthotics in June, 2014, and the period for replacement under Section 3(3) of Schedule C, EAPWDR, which is 3 years, has not yet elapsed. The panel finds that the ministry reasonably determined that the appellant is not eligible for replacement custom- made foot orthotics under the legislative criteria. The panel acknowledges that the ministry testified that if there is updated information that the medical condition of the person has changed, that its policy may allow for replacement prior to the legislated time period. As this policy is inconsistent with the legislation, and as the legislation is paramount, the panel has based its decision solely on the legislation.

The panel therefore confirms the ministry decision. The appellant is not successful on appeal.