

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated April 10, 2017, which held that the appellant is not eligible for funding for the replacement of previously provided knee braces because her request failed to meet the required legislative criteria set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The ministry found that the appellant is eligible to receive health supplements under section 62 and schedule C, section 3 (medical equipment) of the EAPWDR as she is in receipt of disability assistance. However, the ministry found that the appellant's request does not meet the eligibility requirement as set out in schedule C, section 3(3)(b) which states that the time period indicated in section 3.10 (10) must pass before another pair of knee braces is provided.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – Schedule C, sections 3(3)(b) and 3.10(10).

PART E – Summary of Facts

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

1. Orthoses request and justification form, signed and dated December 29, 2017, which requests right and left knee 'Donjoy' knee support (knee braces) – old one is damaged.
2. Quote for 2 hinged knee braces and 1 wrist/thumb stabilizer for \$235.20 in total (\$180 + tax for the knee braces) and is dated April 1, 2017.
3. Quote for a wrist splint and one knee brace, dated February 24, 2016, and totaled \$193.74. The knee brace alone was quoted for \$107.99 before tax.
4. Letter from the appellant, signed and dated February 23, 2016, which states in part that the appellant's physician has provided a letter which confirms that the appellant is in need of both right and left knee braces as the old ones have ripped and are no longer helpful with her medical condition.
5. Purchase authorization for 1 pair bilateral carpal tunnel splint and 1 pair bilateral knee braces. The total of the purchase is \$345.96 and the authorization has an effective start date of December 9, 2014 and effective end date of December 9, 2015.
6. Letter from the appellant, signed and dated October 29, 2014, which states in part that the appellant's physician submitted the information the ministry requested in its October 20, 2014 letter on September 3, 2014. The appellant adds that her condition is worsening and is desperate to have aids to help her with everyday normal life.
7. Fax from the appellant's physician, signed and dated September 3, 2014, which confirms that knee braces be worn by the appellant for a minimum of 6 hours per day.
8. Prescription for bilateral knee supports dated August 26, 2014.
9. Letter from the appellant's physician, signed and dated February 18, 2016, which states in part that the appellant "needs new (right) Donjoy knee support ... due to medical reasons. Her old equipment is damaged."
10. Letter from the appellant's physician, signed and dated March 21, 2017, which states in part that the appellant "needs new Donjoy knee supports for both of her knees due to medical reasons. She has OA (osteoarthritis). Her old knee supports are worn out, damaged and no longer functional."
11. 2 pictures of the appellant's knee braces.
12. A copy of section 3.10 (10) which shows the replacement time period for knee braces as 2 years.
13. Request for Reconsideration (RFR), signed and dated March 24, which the appellant describes her medical conditions, the condition of her current knee braces and how that impacts her mobility, how knee braces help her mobility with everyday living, and stated that following:
 - "I have been wearing my knee braces since December 2014. Seven days a week, 24 hours a day as instructed by my specialist for the rest of my life".
 - The decision to deny the request for knee braces based it on a waiting period of 4 years but the legislation states that the waiting period is 2 years. "Therefore I believe that I am entitled to new braces at this time".

Evidence of Appeal

Notice of Appeal (NOA), signed and dated April 20, 2017, which states in part that:

- The braces are worn 24 hours a day, 7 days a week all year round.
- The braces are damaged and need to be replaced.

Evidence at the Hearing

At the hearing the appellant's testimony in part was as follows:

- Her L5 disc is 'gone'.
- The current knee braces are damaged and therefore dig into the back of her knees thereby causing muscle spasms and paralysis that lasts anywhere from 30 minutes to 8 hours.
- Bones are growing on top of bones in 3 different areas in each of her knees.
- The knee braces are worn 24 hours per day, 7 days per week and she only removes them to shower.
- She stated that when she does not wear her knee braces her knees lock.
- For the last 2 years she has received documentation from the ministry stating that she will be eligible for new knee braces 2 years from the time she received her current ones. Then suddenly in March 2017 she was told she has to wait 4 years.
- She is not a candidate for surgery because her multiple medical conditions put her at risk for death.
- The appellant provided a list of all of her medical conditions and a 3-page list of the medications she takes.
- She described her medical conditions. Some of her medical conditions she has had from birth and have worsen with age.
- She described the challenges her medical conditions present in her daily living.
- She tried to obtain knee braces within the community but was unable.
- A history of her experiences with the ministry was also provided; most of which have been positive over her 24 years of being on disability assistance.
- She described her volunteer efforts to help others.
- On June 22, 2017 she will have a procedure to alleviate some of her pain in the hope that she will be able to walk longer than 6 minutes at a time.
- She also needs custom shoes but has not requested them because they are too expensive and thinks the ministry will not pay for them.

At the hearing the ministry relied on its reconsideration decision and added the following:

- The ministry does not have discretion to make exemptions to the legislation or policy.
- Crisis supplements are also governed by legislation and it states that a crisis supplement cannot be provided for an item that has been denied.
- The appellant is able to apply for other types for supports (medical equipment) and will be granted funding for those supports as long as the legislative criteria are met for each one.

Admissibility of Additional Evidence

The ministry did not object to admitting the list of the appellant's medical conditions or the list of her medication.

On review of the evidence, the panel finds that the list of the appellant's medical conditions is in support of or corroborates the information and records that were before the ministry at the time of reconsideration, pursuant to section 22(4)(b) of the *Employment and Assistance Act* and admits this

evidence. However, the panel finds that the 3-page list of the appellant's medication is not in support of or corroborates the information and records that were before the ministry at the time of reconsideration, pursuant to section 22(4)(b) of the *Employment and Assistance Act* and does not admit this evidence.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision which held that the appellant is not eligible for funding for the replacement of previously provided knee braces because her appellant's request does not meet the eligibility requirement as set out in schedule C, section 3(3)(b) which states that the time period indicated in section 3.10 (10) must pass before another pair of knee braces is provided, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Schedule C of the EAPWDR

Medical equipment and devices

3 (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(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
2	custom-made footwear	1 year
3	modification to footwear	1 year
4	ankle brace	2 years
5	ankle-foot orthosis	2 years
6	knee-ankle-foot orthosis	2 years
7	knee brace	4 years
8	hip brace	2 years
9	upper extremity brace	2 years
10	cranial helmet	2 years
11	torso or spine brace	2 years
12	off-the-shelf footwear	1 year
13	off-the-shelf orthopaedic footwear	1 year

The Reasons for Appeal

The appellant argues that she is in need of new knee braces as her old ones are damaged, not functional and that this is confirmed by her physician. She also argues that the ministry has identified the wait period for replacement of knee braces as 2 years on three separate occasions prior to making the reconsideration decision and then indicated that when it should be 4 years according to the legislation, and that this should give the Ministry the discretion to allow for replacement after 2 years.

The Panel's Decision

In its reconsideration decision the ministry held that pursuant to schedule C subsection 3(3)(b) of the EAPWDR it can only provide replacement of medical equipment or a medical device, previously provided by the minister that is damaged, worn out or not functioning if the period of time set out in sections 3.1 to 3.12 of Schedule C, has passed. Schedule C section 3.10 (10) of the EAPWDR specifically deals with orthosis and states that the period of time that must pass before replacement of a knee brace can be provided is 4 years. The orthosis that the appellant needs replacement of were authorized in December 2014 and therefore the next orthosis can be provided December 2018. The appellant does not dispute that the knee braces that she needs replaced were provided to her in December 2014. After careful review of the legislation the panel finds that the ministry reasonably determined, that pursuant to schedule C, subsections 3(3)(b) and 3.10(10), the appellant does not meet the legislative requirements for replacement of her current knee braces.

The appellant stated that her L5 disc is 'gone', she has lost weight and bone is growing on top of bone in both of her knees. The ministry stated that there is an exception in policy which allows the ministry to provide replacement medical equipment before the replacement period has passed if information is provided to establish that the item requested is needed because the applicant's medical condition has changed or due to growth. However the ministry stated that information was not submitted with the application or RFR from the physician to establish that the appellant's medical condition has changed and therefore she requires replacement knee supports before the replacement period has passed. In the orthoses request and justification form the appellant's physician indicates that new knee braces are required because the current ones are damaged, and in the March 21, 2017 letter, the physician stated that new knee braces were required because of medical conditions and because the appellant has osteoarthritis. The panel notes that in the information provided by the physician did not indicate that the appellant's medical condition had changed. The panel finds that the ministry reasonably determined that information was not submitted with the application or RFR from the physician to establish that the appellant's medical condition has changed and therefore she requires replacement knee supports before the replacement period has passed.

Conclusion

The panel finds that the ministry's decision to deny the request for replacement of a pair of knee braces for not meeting the legislated criteria as it is set out in schedule C, subsection 3(3)(b) and 3.10(10) of the EAPWDR, was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the ministry's decision. The appellant is not successful in her appeal.