

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated April 4, 2017, which denied the appellant's request for a supplement to cover the cost of modifications to footwear. The Ministry found that as the Appellant is a person with disabilities (PWD) in receipt of disability assistance, she is eligible to apply for Health supplements under section 62 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). However, the ministry determined that the appellant did meet all of the legislated criteria set out in Schedule C, section 3.10 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

Specifically, the ministry determined that the orthosis requested was not “off-the-shelf” according to the definition set out in section 3.10(1) and that the appellant had not established that the custom-made orthosis requested is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist as required by section 3.10(2)(d)(ii).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation – Section 62 and Schedule C, Section 3

PART E – Summary of Facts

The appellant is in receipt of disability assistance.

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

Medical Equipment Request and Justification form including:

- Section 2 dated November 22, 2016 completed by the appellant's medical doctor and recommending lifts for right shoes due to *severe leg injuries with ensuing leg length discrepancy*.
- Section 3 dated November 7, 2016, completed by an orthotist and indicating that shoe modification to right shoes (12mm lift on full soles) was required to meet the appellant's needs as it *will help with the alignment of legs, hips and spine, which will improve mobility*. The item is required to assist in healing from surgery, injury or disease, the assessor states: *due to a car accident and several knee injuries her right leg is shortened. The lift is needed to compensate for leg length discrepancy*.

Quote from the orthotist dated November 7, 2016, totalling \$450.00 for shoe modification (right shoe) at \$90.00 per pair for 5 pairs of shoes.

Request for Reconsideration dated March 23, 2017, in which the appellant states:

- she feels that the application and request for 'medically required' shoes lifts has been met;
- she has provided a note from her medical doctor who has measured and confirmed that she has marked leg length discrepancy and requires approximately $\frac{3}{4}$ inch lift to right shoes to compensate for the leg length difference;
- an orthotic insole would not work inside of her shoes given the length discrepancy, so external attached lifts are required;
- the shoe maker in question is a qualified orthotist and orthopaedic shoe technician (rejected by the worker because he is not Canadian certified);
- the orthotist is the only orthotist and skilled shoemaker in the appellant's community;
- travelling from her community would represent added expense and hardship for the appellant and she feels this doesn't make sense when there is a technician in her community who is licenced in another country and more than qualified;
- the orthotist has done work for other clients who have been covered by the ministry for his work (a vendor number has been included);
- the orthotist does an excellent job and the appellant has been very pleased with his skilled workmanship; and
- the added expense is unaffordable to the appellant relative to her income.

Additional Information

The appellant did not submit an Appeal Submission.

The ministry's Appeal Submission is the reconsideration summary in the Record of Ministry Decision.

With her Notice of Appeal dated June 11, 2017, the Appellant has attached a one-page handwritten letter dated June 22, 2017 in which she outlines timing concerns in relation to her receipt of the ministry decision and her submission of the Notice of Appeal. The panel finds that the information contained in the Appellant's Notice of Appeal regarding the timing of her receipt of the ministry decision and submission of her appeal is not relevant to the issues on appeal and is not in support of information and records that were before the Ministry at the time of reconsideration, this information is therefore not admissible in accordance with section 22(4) of the Employment and Assistance Act (EAA).

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's decision to deny the Appellant funding for the footwear modifications was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. In particular, the panel must determine whether the Ministry was reasonable in determining that the orthosis requested was not "off-the-shelf" according to the definition set out in section 3.10(1) and that the appellant had not established that the custom-made orthosis is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist as required by section 3.10(2)(d)(ii).

The applicable legislation is as follows:

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.

EAPWDR, Schedule C

Definitions

1 In this Schedule:

...

"orthotist" means a person who is certified by and in good standing with the Canadian Board for Certification of Prosthetists and Orthotists;

...

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.

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.

The ministry determined that the appellant is eligible to receive health supplements set out in Schedule C, section 3 of the EAPWDR. However, the ministry determined that the appellant has not met the eligibility requirements set out in section 3.10(1) and 3.10(2)(d)(ii).

In relation to section 3.10(1), the ministry determined that modification to lift the height of the appellant's footwear to accommodate leg length discrepancy is not an "off-the-shelf" orthosis. The appellant has not submitted an argument disputing this determination. The panel considers, as noted by the ministry, that the regulation specifies that off-the-shelf means pre-fabricated, mass produced and not unique to a particular person. As such, the panel finds that the ministry reasonably determined that the orthosis requested by the appellant is not off-the-shelf.

In relation to section 3.10(2)(d)(ii), the ministry noted that the legislation at section 3.10(2)(d) sets out that an orthosis is off-the-shelf unless a medical practitioner or nurse practitioner confirms that it is medically required and the custom-made orthosis is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist. The ministry noted that the regulation defines "orthotist" as a person who is certified by and in good standing with the Canadian Board for Certification of Prosthetists and Orthotists. The ministry determined that the information provided does not establish that the orthotist is an Orthotist in good standing with the Canadian Board for Certification of Prosthetists and Orthotists and noted that he is not listed as a Canadian certified Orthotist when searching for Orthotics professionals on the "Orthotics Prosthetic Canada" website. The ministry found that as it cannot be established that the orthotist is an Orthotist in good standing with Canadian Board for Certification of Prosthetists and Orthotists, it could not be established that the custom-made orthosis is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist. The ministry determined that this criterion had not been met.

The appellant argues that the orthotist is a qualified orthotist and orthopedic shoe technician who is registered in another country and more than qualified. She further argues that it doesn't make sense for her to travel from her community, as this would represent added expense and hardship. The appellant also submits that the orthotist has done other work for clients and the ministry has covered this work; she argues that he does an excellent job.

The panel notes that there is not sufficient evidence to establish that the orthotist in question is registered in another country or that the ministry has covered the costs of comparable work that he has done for other clients. The panel further notes that the applicable legislative definition for “orthotist” is very explicit; in order for a person to be considered an orthotist in accordance with section 3.10(2)(d)(ii), they must be certified by and in good standing with the Canadian Board for Certification of Prosthetists and Orthotists. There is no provision in the legislation authorizing the ministry to exercise discretion to allow a custom-made orthosis to be fitted by orthotists who are in possession of certification or registration from another country. As such, the panel finds that the ministry reasonably determined that the requirements of section 3.10(2)(d)(ii) had not been met.

CONCLUSION

The panel finds that the ministry’s reconsideration decision, which denied the appellant’s request for a supplement to cover the cost of modifications to footwear, was a reasonable application of the legislation in the appellant’s circumstances and was reasonably supported by the evidence. The panel therefore confirms the ministry’s decision. The appellant is not successful on appeal.