PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "Ministry") decision to deny coverage for a wet environment partial left foot prosthetic (the "Wet Environment Prosthetic") for the appellant on the basis that the appellant did not establish that there were no other resources available to pay for the cost of the medical equipment or device pursuant to subsection 3(1)(b)(ii) of Schedule C of the Employment and Assistance for Persons with Disability Regulation ("EAPWDR"); the Wet Environment Prosthetic did not fall into the definition of an orthosis as defined in subsection 3.10(1) of Schedule C of the EAPWDR and was an exempt health supplement as defined in subsection 3.10(11) of Schedule C of the EAPWDR; and the Wet Environment Prosthetic did not meet the definition of disposable or reusable medical supply as defined in subsection 2(1)(a) of Schedule C of the EAPWDR. The Ministry also found that although the Wet Environment Prosthetic may be required for the appellant due to a life threatening health need pursuant to s.69 of the EAPWDR, the Wet Environment Prosthetic still could not be covered because it failed to meet the definitions in subsections 2 and 3 of Schedule C of the EAPWDR.

PART D – Relevant Legislation

Sections 62 and 69 Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR")

Subsections 2(1)(a)(i) and 3(1)(b)(ii), 3.10(1), 3.10(11) of Schedule C of EAPWDR

Section 86(b) of Employment and Assistance Appeal Regulation ("EAAR")

22(4)(b) of Employment and Assistance Act ("EAA")

PART E – Summary of Facts

The evidence before the Ministry at reconsideration was:

A prescription for a Wet Environment Prosthetic dated March 7, 2017 provided by the appellant's physician.

A letter from a Prosthetics & Orthopedics company dated May 30, 2017 to the Ministry of Human Resources at the Health Assistance Branch stating that the Wet Environment Prosthetic for the appellant's left partial foot amputation is required for the appellant's physical safety to prevent falls in the shower and that the total cost is $2,927.30.

A letter from the appellant dated May 31, 2017 where the appellant states that he requires the Wet Environment Prosthetic for his physical safety. He is currently having showers in fear of falling and hurting himself. He only has one half of his left foot. If he obtains the Wet Environment Prosthetic, he will be able to shower safely giving himself and his family peace of mind and the ability to maintain his personal hygiene.

A Pharma Care Prosthetic and Orthotic Program General Statement of Program Policy (the "Pharma Policy") that was provided by the Ministry to the appellant on an unknown date.

Additional evidence was provided in the appeal record:

An application for financial assistance to Pharma Care (Health Insurance BC) from the appellant dated June 18, 2017 (the "Application").

A denial of the Application from Pharma Care (Health Insurance BC) on June 22, 2017 for the reason that the Wet Environment Prosthetic was "not a Pharma Care benefit".

Notice of appeal dated June 26, 2017 where the appellant states that his reasons for appeal are "physical safety not covered by Pharma Care".

At the hearing:

The Ministry representative did not attend the hearing. The tribunal proceeded pursuant to s.86(b) of the EAAR on the basis that the Ministry was successfully faxed a Notice of Hearing on July 7, 2107.

The appellant provided oral argument and evidence at the hearing. He has been a diabetic for 20 years and currently has no feeling in both feet. He has lost a good portion of his left foot so he stands on his ankle when he does not have his prosthetic on. He is unsteady without his prosthetic. He uses a prosthetic to stand on his left foot. When he is in the shower he is even more unsteady. He asked his doctor for a prescription for a Wet Environment Prosthetic to assist him in the shower. The appellant was surprised that his application for a Wet Environment Prosthetic was denied. The Ministry did not originally tell the appellant that he was required to look for other funding for the Wet Environment Prosthetic prior to applying for coverage. When the reconsideration decision came back the appellant pursued an application with Pharma Care and Pharma Care denied the appellant funding for the Wet Environment Prosthetic. The appellant has to lean his forehead against the wall in the shower while he lathers because he feels like he is going to slip and fall.

The panel determines that the additional documentary evidence of the appellant's application to Pharma Care and Pharma Care's denial of the appellant's application is in support of the Pharma Policy that was before the Ministry at the time of reconsideration. The Notice of Appeal and the oral evidence provided by the appellant at the hearing is also evidence that is in support of information and records before the Ministry at the time of reconsideration. Therefore, the panel admits the additional evidence pursuant to s.22(4)(b) of the EAA.

PART F – Reasons for Panel Decision

The issue before the panel is whether the Ministry's decision to deny the appellant coverage for his Wet Environment Prosthetic on the basis that:

1) the appellant did not establish that there were no other resources available to pay for the cost of the medical equipment or device pursuant to subsection 3(1)(b)(ii) of Schedule C of the EAPWDR;
2) the Wet Environment Prosthetic did not fall into the definition of an orthosis as defined in subsection 3.10(1) and was an exempt health supplement as defined in subsection 3.10(11) of Schedule C of the EAPWDR;
3) the Wet Environment Prosthetic did not meet the definition of disposable or reusable medical supply as set out in subsection 2(1)(a) of Schedule C of the EAPWDR.; and
4) that although the Wet Environment Prosthetic may be required for the appellant due to a life threatening health need pursuant to s.69 of the EAPWDR, the Wet Environment Prosthetic still could not be covered because it failed to meet the definitions set out in subsections 2 and 3 of Schedule C of the EAPWDR.

was reasonably supported by the evidence or is a reasonable application of the applicable legislation in the circumstances of the appellant.

The legislation provides:

EAA

22 (4) In a hearing referred to in subsection (3), a panel may admit as evidence only

(a) the information and records that were before the minister when the decision being appealed was made, and

(b) oral or written testimony in support of the information and records referred to in paragraph (a).

EAAR

86 The practices and procedures of a panel include the following:

(a) a party to an appeal may be represented by an agent;

(b) the panel may hear an appeal in the absence of a party if the party was notified of the hearing;

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.

Health supplement for persons facing direct and imminent life threatening health need

69 The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) *[general health supplements]* and 3 *[medical equipment and devices]* of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

(a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,

(b) the health supplement is necessary to meet that need,

(c) a person in the family unit is eligible to receive premium assistance under the *Medicare Protection Act*, and

(d) the requirements specified in the following provisions of Schedule C, as applicable, are met:

(i) paragraph (a) or (f) of section (2) (1);

(ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

Schedule C

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

"pedorthist" means a person who is certified by and in good standing with the College of Pedorthics of Canada;

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-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.

(11) The following items are not health supplements for the purposes of section 3 of this Schedule:

(a) a prosthetic and related supplies;

(b) a plaster or fiberglass cast;

(c) a hernia support;

(d) an abdominal support;

(e) a walking boot for a fracture.

(f) Repealed. [B.C. Reg. 144/2011, Sch. 2.]

(12) An accessory or supply that is medically essential to use an orthosis that is a health supplement under subsection (2) is a health supplement for the purposes of section 3 of this Schedule.

General health supplements

2 (1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 *[general health supplements]* of this regulation:

(a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:

(i) the supplies are required for one of the following purposes:

(A) wound care;

(B) ongoing bowel care required due to loss of muscle function;

(C) catheterization;

(D) incontinence;

(E) skin parasite care;

(F) limb circulation care;

(ii) the supplies are

(A) prescribed by a medical practitioner or nurse practitioner,

(B) the least expensive supplies appropriate for the purpose, and

(C) necessary to avoid an imminent and substantial danger to health;

(iii) there are no resources available to the family unit to pay the cost of or obtain the supplies;

(a.1) the following medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies:

(i) lancets;

(ii) needles and syringes;

(iii) ventilator supplies required for the essential operation or sterilization of a ventilator;

(iv) tracheostomy supplies;

(a.2) consumable medical supplies, if the minister is satisfied that all of the following requirements are met:

(i) the supplies are required to thicken food;

(ii) all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies;

(b) Repealed. [B.C. Reg. 236/2003, Sch. 2, s. 2 (b).]

Medical equipment and devices — toileting, transfers and positioning aids

3.5 (0.1) In this section:

"positioning chair" does not include a lift chair;

"transfer aid" means a transfer board, transfer belt or slider sheet.

(1) The following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to facilitate toileting or transfers of a person or to achieve or maintain a person's positioning:

(a) a grab bar in a bathroom;

(b) a bath or shower seat;

(c) a bath transfer bench with hand held shower;

(d) a tub slide;

(e) a bath lift;

(f) a bed pan or urinal;

(g) a raised toilet seat;

(h) a toilet safety frame;

(i) a floor-to-ceiling pole in a bathroom or bedroom;

(j) a portable commode chair;

(k) a standing frame for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;

(l) a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;

(m) a transfer aid for a person for whom the transfer aid is medically essential to transfer from one position to another.

(2) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is 5 years from the date on which the minister provided the item being replaced.

Panel decision

The panel accepts the appellant's that after receiving the Pharma Policy from the Ministry, he applied for coverage through Pharma Care and was denied. The panel therefore finds that the appellant has provided evidence and established that there were not other resources available to him to pay for the cost of the Wet Environment Prosthetic.

The panel finds, however, that the Ministry was reasonable in determining that the Wet Environment Prosthetic does not meet the definition of orthosis in s.3.10(1) of the EAPWDR, particularly because it is specifically excluded in subsection 3.10(11) of schedule C of the EAPWDR which provides that a prosthetic and related supply is not a health supplement for the purposes of subsection 3 of Schedule C."

The panel finds that the Ministry was reasonable in determining that Wet Environment Prosthetic was not a general health supplement medical supply provided for in subsection 2 of schedule C of the EAPWDR. There was not sufficient evidence that the Wet Environment Prosthetic was disposable or reusable or that it carried out one of the listed purposes in subsection 2(1)(a)(i).

Given that the Wet Environment Prosthetic does not meet the definitions of subsection 3 or subsection 2 of schedule C of the EAPWDR, and this is a requirement for the appellant to meet the test for coverage pursuant to s.69 of the EAPWDR, the panel finds it to be a reasonable interpretation of the legislation that the Ministry determined that coverage could not be offered to the appellant pursuant to s.69 of the EAPWDR.

The panel finds the Ministry's decision was reasonably supported by the evidence and reasonable application of the applicable enactment in the circumstances of the appellant and confirms the Ministry's decision.