

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated August 10, 2017, which denied the appellant's request for a supplement to cover the cost of a walking boot (air cast). The ministry found that the appellant had not received the pre-authorization of the ministry for the medical device requested, and the item requested is not an eligible item as a health supplement in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 62 and Schedule C, Sections 3 and 3.10

## PART E – Summary of Facts

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Receipt dated May 4, 2017 for an “air cast boot” for \$195.99;
- 2) Prescription dated May 5, 2017 for a “cast boot, with a hospital stamp dated May 4, 2017;”
- 3) Orthoses Request and Justification dated May 30, 2017 in which the appellant explains her request as “PWD. I broke my big toe and had tore the ligaments in my ankle so bad that I couldn’t walk on it at all. I had to purchase a walking boot cast immediately. After payment, which used up most of my cheque, leaves no room for food, medicine and clothes (illegible).” The medical practitioner (MP) indicated that the appellant’s medical condition is “fracture right great toe” and the orthosis recommended is “walking aircast.” The specifications of the orthoses required to meet the appellant’s needs is “to allow weight bearing while completely offloading the great toe” and “allows mobility while fracture is healing.” The MP indicated that the item is required to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition, and wrote “fracture.” Asked for any other information relevant to the application, the MP wrote: “morbid obesity, severe OA [osteoarthritis] knees;”
- 4) Undated letter, stamped as received by the ministry on June 12, 2017, in which a representative from a resource group for women wrote that the appellant recently experienced a serious injury to her ankle/foot region and has had to spend \$200 on a specialized cast. Due to her disability and limited mobility issues, she was not able to use a regular cast and was left with no choice but to pay out of her own pocket for a specialized one. She is marginalized and on a fixed income and paying \$200 for medical equipment is a hardship. The representative requested reimbursement of the cost of the cast to alleviate some of the stress and financial burden that the appellant has experienced;
- 5) Letter dated July 26, 2017, prepared by an advocate, in which the MP described the appellant’s medical condition other than her fracture as: “OA right ankle and recurrent ankle sprain. Morbid obesity. Impaired mobility.” The MP agreed that the air cast is required to improve physical functioning that has been impaired by a Neuro-Musculo-Skeletal condition and added: “sometimes unable to mobilize without the boot air cast;”and,
- 6) Request for Reconsideration dated July 26, 2017.

In her Request for Reconsideration, the appellant wrote:

- This was an emergency situation and she did not have time to make the request before taking her bill money to purchase it.
- She needs an air cast boot on an ongoing basis and the old one wore out as the big toe was fractured.

In her Notice of Appeal dated November 6, 2014, the appellant expressed her disagreement with the ministry’s reconsideration decision and wrote that she feels she does meet the criteria for the requested item.

At the hearing, the appellant stated that:

- She only had a couple of points to make and she felt that she did not need the advocate to attend the hearing.
- Although the ministry wrote in the reconsideration decision that she had paid for the air cast in full on May 4, 2017 and the doctor prescribed the air cast on May 5, 2017, the doctor made an error in the date on the prescription, as shown in the hospital stamp on the prescription page, which shows the date as “May 4, 2017.”
- The ministry suggested she could have applied for the air cast sooner since she has ongoing

issues with both ankles. She applied before Christmas and she was denied. She had been hospitalized and did not take further action on that denial. She does not remember why it was denied.

- Approximately 8 years ago she got a boot cast because of a fracture and she wore it for years. She does not remember for sure, but she believes that the ministry paid for that boot cast.
- The ministry thinks this is a “one-time thing,” but she has central sensitization syndrome and her central nervous system is over-stimulated and this affects how her skeleton and muscles work on an on-going basis. Her left leg has ended up 2/3rds of an inch shorter than her right.
- Her doctor gave a whole list of diagnoses and problems. He does not like to fill out paperwork and is very brief in his descriptions.
- Her knees have been “gone” for 30 years and this has affected her whole musculo-skeletal system. She just had her right knee replaced and she can now walk a few steps.
- Both ankles have OA. Her ankles are very weak and can be painful and if she wears the cast, it helps.
- She needs the walking cast to protect her from being hurt further. She recently lost 200 lbs. and she is feeling better.
- The ministry said she did not get a pre-authorization but she was so weak at the time that she could not even use crutches. Her life was not in impending danger but her whole foot was twisted and her ankle was “black and blue” and even to the bottom of her feet.
- She could not have mobilized without the boot. She could not have gotten to the washroom or to eat without a cast. She lives alone and takes care of herself.
- She provided a letter from the resource center about how paying for the air cast was a hardship for her.
- She has been provided other orthoses, but they do not provide sufficient support, like the air cast.

The ministry did not attend the hearing, and relied on its reconsideration decision.

***Additional Information***

The panel considered that there was no additional information for which a determination of admissibility was required under Section 22(4)(b) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of a walking boot (air cast), is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Pursuant to Section 62 of the EAPWDR, the applicant must be a recipient of disability assistance, or be a dependent of a person in receipt of disability assistance in a variety of scenarios. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that must be met in order to qualify for a health supplement for various items. In this case, the ministry has found that the requirement of Section 62 has been met in that the appellant is a recipient of disability assistance.

At issue are the following sections of Schedule C of the EAPWDR:

### **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. . . .

Section 3.10 provides that the following items are an orthosis which is a health supplement for the purposes of section 3 of the Schedule, if the other criteria of the section are met: a custom-made or off-the-shelf foot orthotic, custom-made footwear, a permanent modification to footwear, off-the-shelf footwear required for the purpose set out in subsection (4.1)(a), off-the-shelf orthopaedic footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, a hip brace, an upper extremity brace, a cranial helmet used for the purposes set out in subsection (7), a torso or spine brace, a foot abduction orthosis, or a toe orthosis.

3.10(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.]

Section 3(1) of Schedule C of the EAPWDR stipulates that the medical equipment and devices described in Sections 3.1 to 3.12 of Schedule C are the health supplements that may be provided by the ministry if all of the requirements in subsection 3(1)(b)(i) to (iii) are met. Although the appellant stated at the hearing that paying for the walking boot was a financial hardship for her, the ministry did not dispute that the appellant has no resources available to pay the cost of the device. The ministry wrote in the reconsideration decision that one of the reasons for the denial is that the appellant did not obtain the pre-authorization of the ministry for the air cast boot, as required under Section 3(1)(b)(i) of Schedule C of the EAPWDR.

The ministry wrote that the appellant obtained the air cast boot on May 4, 2017 and paid for it in full, she was prescribed the air cast boot on May 5, 2017 and that she requested funding, or reimbursement, for the air cast boot on June 12, 2017. The appellant pointed out that the prescription note was incorrectly dated May 5, 2017 as it included a stamp from the hospital, and the panel finds as fact that the prescription is dated according to the hospital stamp, or on May 4, 2017. In the reconsideration decision, the ministry also considered the ministry's policy that applies to pre-authorizations- the ministry will not accept payment responsibility for orthoses purchased without prior approval, except in cases of a life-threatening emergency- and determined that the appellant was not in a life-threatening emergency.

The appellant did not dispute that she purchased the walking boot prior to making a request to the ministry for the device. In her Request for Reconsideration, the appellant wrote that she was in an emergency situation and she did not have time to make the request before purchasing the walking boot. At the hearing, the appellant acknowledged that her life "was not in impending danger" but she stated that her whole foot was twisted and her ankle was "black and blue" and even to the bottom of her foot. The appellant pointed out that she wrote in the Request and Justification form that she had torn the ligaments in her ankle so badly that she could not walk on her ankle at all. The appellant stated that she could not have mobilized without the boot, which means that she could not have gotten to the washroom or to somewhere to eat without the walking boot. The appellant pointed out that she lives alone and takes care of herself and this made it essential that she purchase the walking boot immediately.

In the Orthoses Request and Justification dated May 30, 2017, the MP indicated that the appellant's medical condition for which she required the walking air cast is "fracture right great toe" and, for other information relevant to the application, the MP wrote: "morbid obesity, severe OA knees." Given an opportunity in the July 26, 2017 letter, the GP did not elaborate on the extent of the appellant's emergency and wrote that the appellant is "sometimes" unable to mobilize without the boot air cast. The panel finds that the ministry reasonably concluded that there is insufficient information to establish that the appellant required an air cast boot due to a "life-threatening" emergency and, therefore, the policy exception to pre-authorization did not apply to the appellant's request. As the appellant acknowledged that she purchased the walking boot prior to her request to the ministry, the panel finds that the ministry reasonably concluded that the appellant did not obtain the pre-authorization of the ministry for the walking boot (air cast), as required under Section 3(1)(b)(i) of Schedule C of the EAPWDR.

Section 3.10 of Schedule C, which sets out various types of orthoses, also lists items that are not health supplements for the purposes of Section 3 of Schedule C and a "walking boot for a fracture" is listed in sub-section 3.10(11)(e). In the reconsideration decision, the ministry found that the appellant required and obtained the walking boot (air cast) specifically for the treatment of a toe fracture. The ministry considered the Orthoses Request and Justification dated May 30, 2017 in which the MP indicated that the appellant's medical condition is "fracture right great toe" and the orthosis recommended is "walking air cast." The ministry wrote that the MP indicated that the prescribed item will assist with joint motion and/or support as he wrote "allows mobility while fracture is healing" and that the item is required to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition, specifically: "fracture."

At the hearing, the appellant stated that the ministry thinks this is a "one-time thing," but she has central sensitization syndrome which makes her central nervous system over-stimulated and this affects how her skeleton and muscles work on an on-going basis. Her knees have been "gone" for 30 years and this has affected her whole musculo-skeletal system. The appellant stated that both of her ankles have OA and are very weak and can be painful but, if she wears the cast, it helps. The

appellant stated that her doctor gave a whole list of diagnoses and problems. The appellant pointed out that the MP wrote, when asked in the Request for any other relevant information, “morbid obesity, severe OA knees”, and the appellant argued that the MP thereby provided other reasons for her need for the walking boot.

The ministry also considered the letter dated July 26, 2017 in which the MP described the appellant’s medical condition, other than her fracture, as: “OA right ankle and recurrent ankle sprain”, “morbid obesity” and “impaired mobility” and found that the MP did not explicitly state that the appellant required a walking boot (air cast) due to medical conditions besides a fracture. In her Request for Reconsideration, the appellant wrote that she needs an air cast boot on an ongoing basis and the old one wore out. At the hearing, the appellant explained that she has had walking boots in the past and she needs the walking cast to protect her from being hurt further. As the appellant also argued that she required the walking boot (air cast) on an emergency basis due to both the fracture of her great toe and the torn ligaments in her ankle, the panel finds that the ministry reasonably determined that the primary reason for the appellant’s Request for the device was for the fracture of her right great toe. Therefore, the panel finds that the ministry reasonably determined that the walking boot was needed for a fracture and, as a “walking boot for a fracture”, is specifically excluded as a health supplement that may be provided by the ministry by Section 3.10(11) of Schedule C of the EAPWDR.

#### *Conclusion*

In conclusion, the panel finds that the ministry's decision to deny the request for a supplement to cover the cost of a walking boot (air cast), was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision. The appellant’s appeal, therefore, is not successful.