PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision dated October 11, 2017, made by the Ministry of Social Development and Social Innovation (the ministry), which determined that the appellant was not eligible to receive funding for a knee brace because the legislation establishes that the ministry may only supply this supplement once every 4 years and the appellant received funding for her current knee brace less than 4 years ago.

PART D – RELEVANT LEGISLATION

The relevant legislation is section 62 and sections 3 and 3.10 of Schedule C the *Employment and Assistance for Persons with Disabilities Regulation* (EAPDWR).

PART E – SUMMARY OF FACTS

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

1. An Orthoses Request and Justification Form dated August 8, 2017, in which a medical practitioner indicates that the appellant suffers from “Left knee degenerative meniscal changes, pes [anserinus] tendonitis” and that she requires an OTS knee brace with metal uprights and extra-depth shoes in order to “stabilize patella, provide medial-lateral stability”. The medical practitioner also notes that the appellant, “Wore previous brace a lot; now worn out, straps do not hold [and] neoprene is stretched”.

2. A price quote for an OTS knee brace with metal uprights of $160.00.

In her request for reconsideration the appellant describes the pain and difficulties her knee condition causes her and states that due to this she wears her knee brace every day so that the straps are worn out which is why she requires a new knee brace.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's determination that the appellant is not eligible to receive funding for a new knee brace was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is section 62 and sections 3 and 3.10 of Schedule C to the 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.

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.

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.

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
4	ankle brace	1 per ankle
5	ankle-foot orthosis	1 per ankle
6	knee-ankle-foot orthosis	1 per leg
7	knee brace	1 per knee
8	hip brace	1
9	upper extremity brace	1 per hand, finger, wrist, elbow or shoulder
10	cranial helmet	1
11	torso or spine brace	1
12	off-the-shelf footwear	1 or 1 pair
13	off-the-shelf orthopaedic footwear	1 or 1 pair
14	foot abduction orthosis	1 or 1 pair
15	toe orthosis	1

(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
14	toe orthosis	1 year

(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.

This appeal was held by written hearing by consent of the parties in accordance with section 22(3)(b) of the *Employment and Assistance Act*.

THE APPELLANT'S POSITION

In her Request for Appeal the appellant writes: "I disagree with the ministry decision because I cannot afford to buy a brand new knee brace. It should be replaced every two years. It gets worn out and the straps do not hold that great. Waiting 4 years too long, I need it every day. Wear and tear. Wear it every day for pain in the knee."

THE MINISTRY'S POSITION

The ministry relied on its reconsideration decision at the appeal hearing. That decision found that:

1. The legislation establishes that the ministry can only pay for a knee brace once every 4 years. As the ministry paid for a knee brace for the appellant in August 2015, four years has not elapsed meaning that the ministry cannot pay for a new knee brace for the appellant.

2. The ministry's appeal policy states that the ministry can pay for a new knee brace for an applicant within four years if the applicant's medical condition has changed. In this case, there is no evidence that there has been any change in the applicant's condition as the medical practitioner's description of the appellant's condition in the 2017 application and that in the 2015 application are the same.

THE PANEL'S DECISION

1. Four-Year Time Limit: As section 3.10(10) of Schedule "C" to the EAPWDR clearly states that an applicant is eligible to receive funding for a knee brace no more than once every four years and the appellant received funding for a knee brace in August 2015, it was reasonable for the ministry to conclude that the appellant was not eligible to receive such funding at this time.

2. Change in medical condition: As there was no evidence before the ministry at the time of the reconsideration that the appellant's medical condition had changed since 2015, it was reasonable for the ministry to conclude that the appellant did not meet the policy exception.

Accordingly, the panel finds that the ministry's reconsideration decision finding that the appellant was not eligible for funding for a new knee brace was a reasonable application of the relevant legislation and confirms the ministry's decision.