

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision dated February 19, 2018, which denied the appellant's request for custom foot orthotics. Specifically, the ministry determined the appellant did not meet the eligibility requirements as set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C, section 3.10(2)(b), which specifies that the minister must be satisfied that the orthosis is medically essential to achieve or maintain basic functionality.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 62

EAPWDR 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.

**June 27, 2017-** the ministry received an Orthoses Request and Justification form (SD2894)

- Section 2, completed by a Nurse Practitioner (NP) June 16, 2017 states/indicates:
  - Appellant’s medical condition is described as “query compartment syndrome lower legs secondary to accelerated fitness. Both lower legs/calves/shins painful. Leg tension increased with exercising.”
  - Recommended type of orthosis: “Modified foot type polypropylene options/neoprene.”
  - A custom-made orthosis is required.
- Section 3 completed by doctor June 6, 2017 states/indicates:
  - Specifications of orthoses required to meet appellant’s needs are: “Modified foot type polypropylene options/neoprene covers.”
  - The prescribed item will assist with joint motion and/or support as follows: “Unilateral pes planus- [left] longitudinal arch to be supported/reduction of foot, tibialis over use.”
  - The prescribed item is required to assist in physical healing from surgery, injury or disease. The doctor wrote “chronic compartment syndrome.”
  - Custom-made foot orthotic will be made from a hand cast mold.

**September 1, 2017-** the ministry received another Orthoses Request and Justification Form

- Section 2, completed by unidentified NP on August 25, 2017 states/indicates:
  - Appellant’s medical condition is described as “Chronic compartment syndrome, lower legs [secondary to] accelerated fitness. Persistent, chronic ache/pain both lower legs/calves/shins that is increased [with] exercise.”
  - Recommended type of orthosis is: “Modified foot type polypropylene options/neoprene.”
  - A custom-made orthosis is required.
- Section 3 is identical to the June 27, 2017 Orthoses Request and Justification Form dated June 6, 2018.

**September 1, 2017-** the ministry received a price quote indicating the cost for a pair of custom foot orthotics as \$450.00.

**October 5, 2017-** the appellant was sent a letter denying her request.

**February 6, 2018-** A request for reconsideration was received by the ministry. the ministry maintained the denial February 19, 2018.

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

- Letter written by the appellant’s mother, not dated which states:
  - Original request was complicated due to miscommunication
- Health Supplement Information Sheet quoting SR# 1-47367042567
  - Noting requirements of the appellant

- Two Ministry letters dated October 5 and 25 2017, both with incorrect addresses for the appellant.
- A Statement titled Section 3- Reason for request for reconsideration (undated) which states:
  - The history of what led to delays in receiving and submitting documents.
  - In the conclusion; the appellant has tried several other options before attempting to get custom orthotics including over the counter orthotics, home remedies like icing, heat, massage, physiotherapy including needling, cupping and laser. That the physiotherapist advised custom orthotics to prevent the injury the appellant was sustaining. And requested the ministry consider the appellant's activity has been greatly impacted due to the falling arches and that they will continue to deteriorate without intervention.
- Fax dated September 1, 2017 from the doctor quoting orthotics cost as \$450.00
- Page 1 of an Orthoses Request and Justification form
  - Section 2 completed by unknown author which lists the medical conditions of the appellant has "chronic compartment syndrome and shin splints. The section further states the appellant requires custom foot orthotics.
- Letter written by a NP dated November 22, 2017 which states the appellant has tried the following treatments for her symptoms:
  - Store bought general orthotics, physiotherapy, dry needling, laser therapy, and cupping therapy.
  - The letter also states: "None of these treatments have been affective for symptom management that enables her to return to sports participation.
- Letter written by second NP dated May 17. 2017 stating:
  - A referral was made for Physiotherapy
- Physiotherapy Receipts

In the appellant's Notice of Appeal dated February 27, 2018, the appellant wrote:

- Reason for Appeal- "Lack of clarity for further information. Confusing forms and case numbers (missing SR#). More information could have been provided.

At the hearing, the appellant and her mother stated the following:

- The appellant has been denied twice.
- The appellant has been suffering from leg pain for a number of years.
- The appellant has tried a variety of possible remedies to address her leg pain including Costco orthotics, physiotherapy, dry needling, cupping, laser treatment, muscle rubs, bed rest, and pain medication but has not been able to address her issues.
- The appellant felt the doctor only stated the pain may be due to chronic compartment syndrome as she had mentioned that diagnoses to him.
- The appellant felt the letter completed by the Nurse Practitioner November 22, 2017 lacked the required information and that the statement made "to return to sports participation" was the reason for the denial of her request.
- The appellant gave examples of walking to school, climbing stairs and inclines as "basic functionality" issues she was experiencing and explained that sports and exercise were not the cause of the pain but rather increased the pain.

## **PART F – REASONS FOR PANEL DECISION**

The issue on appeal is whether the ministry's reconsideration decision, dated February 19, 2018, which denied the appellant's request for custom foot orthotics was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the appellant.

The relevant legislation is as follows:

### **Employment and Assistance for Persons with Disabilities Regulation section 62**

#### **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 under 19 years of age, 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.

### **Employment and Assistance for Persons with Disabilities Regulation Schedule C, sections 3 and 3.10**

#### **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** (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 orthoptist, pedorthist, occupational therapist, physical therapist or podiatrist.

## **Positions**

### **The Appellant's Position**

The appellant argued that due to the confusion of form completion, the information supplied to the ministry, did not communicate affectively that she has had basic functionality issues and that exercise and sports participation were not the cause of her pain but rather these activities merely increased her loss of basic functionality.

### **The Ministry's Position**

The ministry acknowledges the appellant may benefit from custom foot orthotics. However, the ministry argued the appellant does not meet the requirements set out in the EAPWDR, Schedule C, subsection 3.10(2)(b) which requires that the minister is satisfied that the orthosis is medically essential to achieve or maintain basic functionality. Although the appellant in her application has support for the acquisition of custom made foot wear, the assessments supplied by the two NPs and doctor do not address the need of custom foot orthotics in order to achieve or maintain basic functionality. Instead, the statements by the NPs and doctor refer to athletic exertion, exercise and sports participation.

### **Panel Decision**

The requirements set out in the EAPWDR, Schedule C, subsection 3.10(2)(b) state:

**3.10 (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

(b) the minister is satisfied that the orthosis is medically essential to achieve or maintain basic functionality.

The panel finds that the documentation supplied to the ministry which was completed by two NPs and a doctor do not address the issue of basic functionality but rather focus on exercise and sports activity. Even though the appellant reported the presence of pain is a daily issue and did impact her basic functionality, there was insufficient evidence presented to the ministry to support this conclusion at the time of reconsideration therefore the panel finds it would be reasonable that the minister would not be satisfied that the orthosis is medically essential to achieve or maintain basic functionality.

### **Conclusion**

The panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for custom foot orthotics was a reasonable application of the applicable legislation in the circumstances of the appellant and therefore confirms the decision. The appellant is not successful on appeal.