

## **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision dated December 15, 2017, wherein the ministry denied the appellant’s request for replacement bilateral custom-made night wrist splints and bilateral custom-made daytime wrist splints because the appellant did not meet the following eligibility requirements;

- The appellant did not receive pre-authorization in accordance with Schedule C section 3.(1)(b)(i) of the Employment and Assistance for Persons with Disabilities Regulation.
- Information is not provided to establish that the option of repairing the appellant’s splints was explored pursuant to Schedule C section 3(3) (a device previously provided is damaged, worn out or not functioning and (a) it is more economical to replace than to repair, and (b) the period of time set out in section 3.10 has passed). The appellant is not eligible for replacement splints until April 2019.
- There is no prescription on file from a medical or nurse practitioner as required in Schedule C section 3.10(2)(a).
- The appellant made her request within the replacement period of 2 years and is therefore not eligible according to section 3.10(10) of Schedule C.

The ministry noted that the appellant did meet the eligibility requirements set out in the EAPWDR Schedule C sections 3(1)(a) and (b)(ii) and (iii) (no resources available; the requested medical device is the least expensive one), and section 3.10(2)(c) (the ministry is satisfied that the orthosis is required for one of the following purposes: to prevent surgery; for post-surgical care; to assist in physical healing from surgery, injury or disease; to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition) and (d) (the orthosis is off-the – shelf unless a medical practitioner or nurse practitioner confirms that a custom-made orthosis is medically required and the custom-made orthosis is fitted by an orthoptist, pedorthist, occupational therapist, physical therapist or podiatrist.)

## **PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Regulation (EAPWAR), section 62;  
EAPWDR Schedule C sections 3 and 3.10

## **PART E – SUMMARY OF FACTS**

Information before the ministry at reconsideration included the following evidence:

The appellant is in receipt of disability assistance.

On July 29, 2011 the ministry approved the appellant's request for bilateral hybrid wrist splints.

Section 2 of an Orthoses Request and Justification dated November 28, 2016 was completed and signed by a medical practitioner. The doctor recommended custom made night splints for both wrists for night use, and bilateral custom made hybrid wrist cuff splints for symptomatic ease.

In an undated letter from the Hospital they write that "we have received a referral from your physician to treat your arm condition. The Hand Clinic resources at the [hospital] are very limited. The majority of the conditions being treated are traumas (fractures, lacerations, etc.) and post-surgical conditions. The wait for other conditions is very lengthy. We would like to highlight other treatment options in the greater area. These clinics have certified hand therapists on staff: 1) central region 2) south region (3 locations). Your name will remain on the [hospital's] Hand Clinic wait list."

The ministry issued a Purchase Authorization dated March 20, 2017 to a service provider to supply and deliver one pair of bilateral custom working wrist splints and one pair of bilateral custom night wrist splints for the total amount of \$507.50 to the appellant. The splints were delivered on April 6, 2017.

An Orthoses Request and Justification dated September 1, 2017 Section 2 is filled in and signed by an occupational therapist. The ministry noted that although the form explicitly states that section 2 is to be completed by a medical or nurse practitioner it has been completed by a physiotherapist. Section 3 of the request is completed and signed by the same OT who writes: "Had splints made Jan 2017, unfortunately they were made from a thin thermoplastic and not rigid enough to support client. The wrist splint is not comfortable and ill fitting."

On October 2, 2017 this request was denied, and on November 21, 2017 the ministry received the appellant's request for reconsideration.

On December 4, 2017 additional information was received by the ministry including a Self-Report.

In her self-report the appellant writes that her night orthoses started to break up and she lost her day orthoses. She attempted to get them replaced but she did not have a doctor and no doctors took on new patients in her area. No clinic would give the required prescription or referred her to a specialist. In 2016 the appellant took her prescription to a hospital in order to get a quote where she was told that they could not give her an appointment because they have a long wait list and cannot spare the time to accommodate a quote, and 2 appointments were required. She put herself on the wait list. The hospital suggested she go to a private clinic. She went to every private clinic within an area of approximately 150 km and only one clinic gave her a quote. She decided to have the cast made by them to end her suffering caused by being without a cast for 1 year. This clinic did not have the necessary materials and the day casts were too big for her hands. But she got a bit of relief from what they gave her. In mid-summer 2017 the Hospital called her and she received a quote from them. They also stated that the casts she had from the clinic were not satisfactory. The appellant wrote she "went ahead and got the Day & Night Orthotic Custom Casts."

In her Notice of Appeal dated January 3, 2018 the appellant writes that "cause your policies and request could not be met by the ...Hospital, the only place that can build my cast to be the correct ones. So I had to get faulty ones till the correct ones could be made. In order to do that I had to pay in cash at the time of seeing the specialist, which meant I had to raise the money".

At the hearing the appellant stated that after the Hospital put her on a waiting list she approached every clinic in the phone book to have new splints made. Only 1 clinic was willing to accommodate her. While she was waiting for new splints she lost the use of her thumbs. Without casts she is disabled and needs in-home care. The appellant presented 9 devices and stated that these were her current and previous wrist casts for day and night use. She pointed out 4 devices made by the Clinic in 2017 and described them as 2 ill-fitting day splints and 2 dysfunctional night casts. She stated that the Clinic had hired a new girl who did not have any experience making casts. The appellant added that she talked to the Clinic but they were not able to provide her with functional replacement splints. In October 2017 she received new splints from the Hospital.

The panel admitted the appellant's Notice of Appeal and oral testimony pursuant section 22(4) of the Employment and Assistance Act as in support of the information before the ministry at reconsideration as they add substantiating details to her medical condition and the history of her splints.

## PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry's decision to deny the appellant's request for replacement bilateral custom-made night wrist splints and bilateral custom-made daytime wrist splints because the appellant did not meet the following eligibility requirements was a reasonable application of the legislation or reasonably supported by the evidence; did the ministry reasonably determine that

- the appellant did not receive pre-authorization according to Schedule C section 3.(1)(b)(i) of the EAPWDR?
- information is not provided to establish that the option of repairing the appellant's splints was explored pursuant to schedule C section 3(3) (a device previously provided is damaged, worn out or not functioning and (a) it is more economical to replace than to repair, and (b) the period of time set out in section 3.10 has passed) and the appellant is not eligible for replacement splints until April 2019?
- there is no prescription on file from a medical or nurse practitioner as required in Schedule C section 3.10(2)(a)?
- the appellant made her request within the replacement period of 2 years in is therefore not eligible according to section 3.10(10) of Schedule C?

### 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.

...

(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.

### **Medical equipment and devices – orthoses**

**3.10** (1) In this section:

...

**"orthosis"** means

...

(k) an upper extremity brace;

...

(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.

...

(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 <b>Orthosis</b>	Column 2 <b>Time period</b>
9	upper extremity brace	2 years

Pre-authorization - section 3(1)(b)

The appellant argues that when she was put on the waiting list at the Hospital she had no other choice but to have splints made by the Clinic to ease her discomfort. When these splints proved inadequate and the hospital was finally able to provide her with splints she felt she should be eligible for coverage for these as well. The system is not working for people with disabilities. She would need a lawyer to make a solid argument but she does not have one.

The ministry's position is that as she did not receive the pre-authorization of the ministry according to Schedule C section 3.1(b)(i) of the EAPWDR she is not eligible under this section.

While the appellant's replacement splints provided by the Clinic were inadequate and she subsequently had the hospital provide her with new ones the panel finds that the ministry reasonably denied her request for these new splints under section 3.1(b)(i) as there is no evidence that she received pre-authorization from the ministry.

Repair option and applicable time period – section 3(3)

The ministry found that while the appellant's physiotherapist reports that the splints she received are not made of the appropriate material, are uncomfortable and are ill fitting, the appellant did not provide information to establish that the option of repairing these splints was explored pursuant to section 3(3)(a); furthermore, the appellant is not eligible for replacement splints until April 2019 as set out in section 3(3)(b). As a result the appellant is not eligible under section 3(3).

While there is evidence that the splints the appellant received from the Clinic were inadequate the panel finds that the ministry reasonably determined that the appellant was not eligible for coverage for custom splints as set out in section 3(3) as there is no evidence the appellant had considered the option of repairing her splints; furthermore, the ministry determined correctly and that the appellant is not eligible for replacement splints until April 2019 due to the legislated time limit of 2 years set out in section 3(3)(b).

Prescription from medical or nurse practitioner – section 3.10(2)(a)

The ministry determined that although it is likely that the appellant's medical practitioner would support replacement for those obtained in April 2017 the ministry cannot draw inferences. Section 2 [the ministry wrote "1" by mistake] of the Orthosis Request and Justification form submitted with her current request is to have been completed by a medical or nurse practitioner but has been completed by an OT instead. There is no prescription for replacement splints available on file from a medical or nurse practitioner as required in Schedule C section 1(10)(2)(a) confirming that the appellant requires replacement wrist splints for those supplied to her in April 2017.

The panel finds that the ministry reasonably determined that the appellant was not eligible for replacement wrist splints in accordance with section 3.10(2)(a) because section 2 of the Orthosis Request and Justification Form dated September 1, 2017 was signed by an Occupational Therapist, not a medical or nurse practitioner, and there is no further evidence that the replacement orthoses are prescribed by a medical practitioner or nurse practitioner.

#### Replacement period of 2 years

The appellant argues that she had no choice but to get faulty splints until the correct ones could be made by the hospital where she was on a waiting list. There should be an exception made in her case because her splints were not well-made in the first place and she needed replacements to ease her pain and prevent worsening of her condition. The 2 year time limit is unacceptable.

It is the ministry's position that the appellant is not eligible for the items because she made her request within the replacement period of 2 years as set out in section 3.10(10). While the ministry noted that there is an exception in policy to provide a replacement before the legislated period has passed the panel finds there is no evidence of such a policy.

While there is evidence that the appellant's braces are inadequate the panel finds that the ministry reasonably determined that the appellant was not eligible for replacement splints according to section 3.10(10) as the appellant made her request prior to the end of the legislated 2 year replacement period.

#### Conclusion

The panel finds that the ministry's determination that the appellant is not eligible for replacement bilateral custom-made night wrist splints and bilateral custom-made daytime wrist splints is a reasonable application of the legislation in the appellant's circumstances. The ministry's reconsideration decision is confirmed and the appellant is not successful on appeal.