

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Social Innovation and Poverty Reduction (the ministry) reconsideration decision dated March 14, 2018 which denied the appellant's request for a supplement to cover the cost of custom-made foot orthotics because:

- the custom made foot orthotic will not be made from a hand-cast mold, as required by Section 3.10(3)(d) of 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), Section 62 and Schedule C, Sections 3 and 3.10

PART E – SUMMARY OF FACTS

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

- 1) Orthoses Request and Justification dated February 9, 2018 in which the appellant's medical condition is described as "bilateral pes planus," and the orthosis recommended is: semi-rigid, daily wear. The assessment by the physical therapist included specifications of the orthoses required to meet the appellant's needs as "daily wear semi-rigid orthotics with rear foot and fore foot posting to subtalar neutral/calcaneal vertical." The physical therapist explained that the prescribed item will "decrease early rear foot pronation and allow for supinated foot at heel strike and push-off and absorb torque at midstance." The item is required to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition described as "severe pes planus causing excessive strain on his feet/calves/knees/hips and back." Asked if the custom-made foot orthotic will be made from a hand cast mold, the physical therapist responded "no" and explained: "we use a semi weight bearing foam box in subtalar neutral." For additional information, the physical therapist wrote: "orthotics are now almost 5 years old, with daily wear this is beyond their recommended lifespan."
- 2) Prescription dated February 9, 2018 for the appellant for bilateral semi rigid orthotics due to bilateral pes planus;
- 3) Letter dated February 26, 2018 to the appellant in which the ministry denied the custom-made foot orthotic as it will not be made from a hand-cast mold, as required by a provision in the legislation; and,
- 4) Request for Reconsideration- Reasons dated March 5, 2018.

In his Request for Reconsideration, the appellant wrote:

- He was misled by the facility where they did his foot shape, that he did not need a doctor's approval.
- With all the time to try to get that information, it was too late.
- He hopes there is an understanding for him having a mental disability.

Additional information

In his Notice of Appeal dated March 23, 2018, the appellant indicated that he disagrees with the ministry's reconsideration decision. The appellant wrote that he has and will have flat feet. He needs [the orthotic] for posture and for cramps as well as daily activity. He has had a bad back since he was born.

At the hearing, the appellant stated that:

- He realized that he sent his request through without all the information, which may have been as a result of his mental disability. He is not sure why he is not able to have the orthotics.
- He has had a mental disability and flat feet since he was born. The ministry did authorize his orthotics before, but this time something went wrong. The ministry needed the practitioner's information, but he had been told by the orthotics supplier that the ministry did not need it.

- He often gets cramps since he has to go on his feet for 3 hours per day. He works 3 times per week. He will be competing in the Special Olympics in 3 weeks and he needs his balance for his sport. He also volunteers with Special Olympics and he gets cramps when he is on his feet all the time.
- The orthotics give him better posture and help with cramps that he gets in his feet, legs, and thighs.
- He has had to go to a chiropractor since he was a young child because he has a disease in his back and the orthotics help. He was told by his chiropractor that the orthotics only last for 3 to 5 years maximum. He last got orthotics in 2011 but he got busy and forgot to request new orthotics earlier. His orthotics are 7 years old now and he uses them every day.
- He understands “hand cast mold” to be the foot print that they take of him to shape the orthotics into an arch because he has no arch in his feet. The orthotics really help with his walking because flat feet cause lots of cramping. They help with his every day movements and his posture.
- He does not have an assigned doctor right now, but he doctor he went to could see right away that he has flat feet.
- He has gone to the same company for his orthotics but he does not remember if they are the same people making his orthotics. He did not understand that the orthotics have to be made from a hand-cast mold and he wonders why they are making them differently from when they provided him with orthotics in 2011. He had not questioned them about it before because they had all his information in their file already and he assumed they would do the same thing. He will ask them if the process has been changed for making his orthotics and why they have changed it.

The ministry relied on the reconsideration decision, as summarized at the hearing. At the hearing, the ministry stated that the ministry can only provide custom-made foot orthotics that are made from a hand-cast mold and, in this case, the physical therapist has recommended a different type of custom-made foot orthotic for the appellant. The appellant had provided all the information that the ministry required and had met all the other criteria for the orthotics but the physical therapist responded in the Orthoses Request form that the custom-made foot orthotic would not be made from a hand-cast mold and, therefore, this requirement was not met.

Admissibility of New 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 reconsideration decision, which denied the appellant's request for a supplement to cover the cost of custom-made foot orthotics because the custom made foot orthotic will not be made from a hand-cast mold, as required by Section 3.10(3)(d) of Schedule C of the EAPWDR, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Under Section 62 of the EAPWDR, in order to be eligible for health supplements in Section 2 or 3 of Schedule C, the person must be a recipient of disability assistance, be a person with disabilities, or be a dependent of a person with disabilities as detailed in the section. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that the person's family unit must meet in order to qualify for specified medical equipment and devices.

Section 3 of Schedule C of the EAPWDR provides as follows:

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. . .

Section 3.10 of Schedule C of the EAPWDR provides as follows:

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. . . .

Panel decision

It is not disputed that the appellant, as a recipient of disability assistance, is eligible to receive health supplements in Section 2 or 3 of Schedule C of the EAPWDR. The ministry confirmed at the hearing that the appellant's request for custom-made orthotics had met all of the criteria set out in Section 3 and 3.10 of Schedule C of the EAPWDR except the requirement that the orthotic must be made from a hand-cast mold, as set out in Section 3.10(3)(d) of Schedule C of the EAPWDR. In the reconsideration decision, the ministry reasonably considered that, in the Orthoses Request and Justification dated February 9, 2018, the physical therapist indicated that the custom-made foot orthotic for the appellant will *not* be made from a hand-cast mold and that the physical therapist wrote "...we use a semi weight bearing foam box in subtalar neutral." There was no further information provided from the physical therapist on the appeal to indicate that the custom-made food orthotic could be made from a hand-cast mold in the appellant's circumstances, and the panel finds that the ministry reasonably determined that the requirement in Section 3,10(3)(d) of Schedule C of the EAPWDR had not been met.

At the hearing, the appellant stated that his medical condition that makes the orthotics necessary for him has not changed, he has had flat feet since he was born, and he assumed that the orthotics supplier would use the same process as when he obtained orthotics from the ministry in 2011. The appellant stated that he did not understand that the custom-made orthotics have to be made from a hand-cast mold and he wonders why they are making them differently now. The appellant stated that he had not questioned the orthotics supplier about the way that they would make the orthotics because the company had all his information in their file already and he assumed they would do the same thing, but he plans to ask them about the process and whether his orthotics could be made from a hand-cast mold.

Conclusion

The panel finds that the ministry's decision, which denied the appellant's request for a supplement to cover the cost of custom-made foot orthotics because the custom made foot orthotic will not be made from a hand-cast mold, as required by Section 3.10(3)(d) of Schedule C of the EAPWDR, was reasonably supported by the evidence and the panel, therefore, confirms the ministry's reconsideration decision. The appellant is not successful in his appeal.