PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the "Ministry") reconsideration decision dated February 9, 2018 which held that the appellant was not eligible for custom foot orthotics as the appellant did not meet the eligibility requirements set out in subsections 3(3), 3.10(3)(d), and 3.10(10) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"). Specifically the Ministry found that the appellant's orthotics were not made from a hand cast mold as set out in s.3.10(3)(d) of Schedule C EAPWDR and that the appellant did not demonstrate a change in her medical condition or growth to meet the requirements of bypassing the replacement time period as permitted in the Ministry's medical equipment orthoses policy (the "Policy")

PART D – RELEVANT LEGISLATION

Section 22(3)(b) and section 22(4) of the Employment and Assistance Act ("EAA")

Section 62 of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR

Sections 1, 3 to 3.12 of Schedule C of EAPWDR

PART E – SUMMARY OF FACTS

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the EAA.

The panel determined that the additional documentary evidence being the emailed submission from the appellant, and various documents from the podiatrist (the prescription pad note, an intake form, an information letter about 3D scan, a note, a biomechanical evaluation, and an invoice) were admissible pursuant to s.22(4) EAA as the information was in support of records before the Ministry at reconsideration.

The evidence before the Ministry at reconsideration was:

- On December 5, 2017 the Ministry received an orthoses request and justification form (the "Form") from the appellant
- Section 2 of the Form was completed by the appellant's general practitioner doctor ("GP") who found the appellant to have plantar fasciitis and found that a custom bilateral orthotic was required
- The appellant's podiatrist (the "Podiatrist") completed section 3 of the Form. The Podiatrist found that the appellant required deep heel function orthotics in a neutral position to control severe pronation, the item will assist with joint motion and support controlling foot mechanics, the prescribed item is required for prevention of surgery to assist in physical healing form surgery, injury or disease, and to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition.
- The podiatrist wrote that the custom made foot orthotic would be made from a 3D scan
- The podiatrist wrote that the appellant would benefit from a supportive shoe such as new balance 928

Documents attached to the Form

- Invoice for the cost of a pair of new balance totalling $152.99
- Shoe prescription from an unidentified author specifying that the appellant has excessive pronation, arthritis, diabetes, plantar fasciitis, and neuroma and to "please fit [appellant] for appropriate shoe" "NB928"

On January 8, 2018 the Ministry denied the appellant's request for custom foot orthotics finding that the Ministry had funded a pair of custom foot orthotics for the appellant in October, 2015 and that she would not be eligible for a replacement for three years from that date.

The appellant requested reconsideration and provided the following documents:

- Note from the GP stating that the appellant has required replacement orthotics for the past several months as her past ones are no longer doing what they need to do and that the appellant should not wait until October 2018 for new ones
- Receipt from Walmart summarizing the following items: sup. Sport ($6.97), AP Plant S/M ($13.97), and Sup. Sport ($4.38)
- A handwritten statement is added which states "weekly" which reflects that the Walmart items are required weekly for the purchase of foot wrap items.

The appellant's letter to the Ministry where the appellant states:

- Her foot condition will never "repair itself"
- More damage has been caused by her feet changing. Last year she visited the doctor for sore feet, numb toes, a large callus, and a deformed third toe (pushed upright with dead tissue build up)
- If circumstances change she will be entitled to receive new foot orthotics
- Her GP wrapped her left foot due to incorrect walking issues as she was no longer supported by her her current orthotics.
- The GP advised that her feet must remain wrapped until she receives new orthotics.
- There is a cost to wrapping her feet weekly whether done by the doctor or at home and she has been changing foot wraps every two days due to swelling of the feet which is expensive to maintain.
- Her current footwear is no longer functional (stretched out of shape, worn down on the soles, broken stitching, and no longer provide support).
- The GP has advised that her current orthotics may no longer suit her walking pattern and 3D imaging would have to be performed to verify this. There is a cost to 3D imaging.

- The GP advised that new orthotics would cost upwards of $625
- It isn't fair that she has to wait for the three-year replacement period for custom foot orthotics to elapse before obtaining new orthotics. She is in pain, unable to walk, and unable to climb stairs
- She has struggled with a new foot problem since the Spring of 2017 at which time her situation changed beyond her control and now causes more permanent damage which could later result in the need for a wheelchair and the loss of toes.

PART F – REASONS FOR PANEL DECISION

The issue is whether the Ministry's decision to deny the appellant custom foot orthotics as the appellant did not meet the eligibility requirements set out in subsections 3(3), 3.10(3)(d), and 3.10(10) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"), specifically because the appellant's orthotics were not made from a hand cast mold as set out in s.3.10(3)(d) of Schedule C EAPWDR and because the appellant did not demonstrate a change in her medical condition or growth to meet the requirements of bypassing the replacement time period as permitted in the Ministry's medical equipment orthoses policy (the "Policy")

The legislation provides:

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.

Schedule C

Definitions

1 In this Schedule

"orthotist" means a person who is certified by and in good standing with the Canadian Board for Certification of Prosthetists and Orthotists;

"pedorthist" means a person who is certified by and in good standing with the College of Pedorthics of Canada;

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.

Medical equipment and devices — canes, crutches and walkers

3.1 (1) Subject to subsection (2) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:

(a) a cane;

(b) a crutch;

(c) a walker;

(d) an accessory to a cane, a crutch or a walker.

(2) A walking pole is not a health supplement for the purposes of section 3 of this Schedule.

Medical equipment and devices — wheelchairs

3.2 (1) In this section, "wheelchair" does not include a stroller.

(2) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:

(a) a wheelchair;

(b) an upgraded component of a wheelchair;

(c) an accessory attached to a wheelchair.

(3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years after the minister provided the item being replaced.

(4) A high-performance wheelchair for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

Medical equipment and devices — wheelchair seating systems
3.3 (1) The following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain a person's positioning in a wheelchair:

(a) a wheelchair seating system;

(b) an accessory to a wheelchair seating system.

(2) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is 2 years from the date on which the minister provided the item being replaced.

Medical equipment and devices — scooters
3.4 (1) In this section, "scooter" does not include a scooter with 2 wheels.

(2) Subject to subsection (5) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (3) of this section are met:

(a) a scooter;

(b) an upgraded component of a scooter;

(c) an accessory attached to a scooter.

(3) The following are the requirements in relation to an item referred to in subsection (2) of this section:

(a) an assessment by an occupational therapist or a physical therapist has confirmed that it is unlikely that the person for whom the scooter has been prescribed will have a medical need for a wheelchair during the 5 years following the assessment;

(b) the total cost of the scooter and any accessories attached to the scooter does not exceed $3 500 or, if subsection (3.1) applies, $4 500;

(c) the minister is satisfied that the item is medically essential to achieve or maintain basic mobility.

(3.1) The maximum amount of $4 500 under subsection (3) (b) applies if an assessment by an occupational therapist or a physical therapist has confirmed that the person for whom the scooter has been prescribed has a body weight that exceeds the weight capacity of a conventional scooter but can be accommodated by a bariatric scooter.

(4) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years after the minister provided the item being replaced.

(5) A scooter intended primarily for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

Medical equipment and devices — toileting, transfers and positioning aids
3.5 (0.1) In this section:

"positioning chair" does not include a lift chair;

"transfer aid" means a transfer board, transfer belt or slider sheet.

(1) The following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to facilitate toileting or transfers of a person or to achieve or maintain a person's positioning:

(a) a grab bar in a bathroom;

(b) a bath or shower seat;

(c) a bath transfer bench with hand held shower;

(d) a tub slide;

(e) a bath lift;

(f) a bed pan or urinal;

(g) a raised toilet seat;

(h) a toilet safety frame;

(i) a floor-to-ceiling pole in a bathroom or bedroom;

(j) a portable commode chair;

(k) a standing frame for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;

(l) a positioning chair for a person for whom a wheelchair is medically essential to achieve or maintain basic mobility;

(m) a transfer aid for a person for whom the transfer aid is medically essential to transfer from one position to another.

(2) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is 5 years from the date on which the minister provided the item being replaced.

Medical equipment and devices — hospital bed
3.6 (1) Subject to subsection (3) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to facilitate transfers of a person to and from bed or to adjust or maintain a person's positioning in bed:

(a) a hospital bed;

(b) an upgraded component of a hospital bed;

(c) an accessory attached to a hospital bed;

(d) a positioning item on a hospital bed.

(2) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is 5 years from the date on which the minister provided the item being replaced.

(3) The following items are not health supplements for the purposes of section 3 of this Schedule:

(a) an automatic turning bed;

(b) a containment type bed.

Medical equipment and devices — pressure relief mattresses
3.7 (1) A pressure relief mattress is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that the pressure relief mattress is medically essential to prevent skin breakdown and maintain skin integrity.

(2) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is 5 years from the date on which the minister provided the item being replaced.

Medical equipment and devices — floor or ceiling lift devices
3.8 (1) In this section, "floor or ceiling lift device" means a device that stands on the floor or is attached to the ceiling and that uses a sling system to transfer a person.

(2) A floor or ceiling lift device is a health supplement for the purposes of section 3 of this Schedule if the following requirements are met:

(a) the minister is satisfied that the floor or ceiling lift device is medically essential to facilitate transfers of a person in a bedroom or a bathroom;

(b) the cost of the floor or ceiling lift device does not exceed $4 200 or, if the cost of the floor or ceiling lift device does exceed $4 200, the minister is satisfied that the excess cost is a result of unusual installation expenses.

(3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years from the date on which the minister provided the item being replaced.

Medical equipment and devices — breathing devices
3.9 (1) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule:

(a) if all of the requirements set out in subsection (2) of this section are met,

(i) a positive airway pressure device,

(ii) an accessory that is required to operate a positive airway pressure device, or

(iii) a supply that is required to operate a positive airway pressure device;

(b) if the minister is satisfied that the item is medically essential to monitor breathing,

(i) an apnea monitor,

(ii) an accessory that is required to operate an apnea monitor, or

(iii) a supply that is required to operate an apnea monitor;

(c) if the minister is satisfied that the item is medically essential for clearing respiratory airways,

(i) a suction unit,

(ii) an accessory that is required to operate a suction unit, or

(iii) a supply that is required to operate a suction unit;

(d) if the minister is satisfied that the item is medically essential for clearing respiratory airways,

(i) a percussor,

(ii) an accessory that is required to operate a percussor, or

(iii) a supply that is required to operate a percussor;

(e) if the minister is satisfied that the item is medically essential to avoid an imminent and substantial danger to health,

(i) a nebulizer,

(ii) an accessory that is required to operate a nebulizer, or

(iii) a supply that is required to operate a nebulizer;

(f) if the minister is satisfied that the item is medically essential to moisturize air in order to allow a tracheostomy patient to breathe,

(i) a medical humidifier,

(ii) an accessory that is required to operate a medical humidifier, or

(iii) a supply that is required to operate a medical humidifier;

(g) if the minister is satisfied that the item is medically essential to deliver medication,

(i) an inhaler accessory device,

(ii) an accessory that is required to operate an inhaler accessory device, or

(iii) a supply that is required to operate an inhaler accessory device.

(2) The following are the requirements in relation to an item referred to in subsection (1) (a) of this section:

(a) the item is prescribed by a medical practitioner or nurse practitioner;

(b) a respiratory therapist has performed an assessment that confirms the medical need for the item;

(c) the minister is satisfied that the item is medically essential for the treatment of moderate to severe sleep apnea.

(3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is as follows:

(a) in the case of an item referred to in subsection (1) (a) (i), 5 years from the date on which the minister provided the item being replaced;

(b) in the case of an item referred to in subsection (1) (a) (ii) or (iii), one year from the date on which the minister provided the item being replaced;

(c) in the case of an apnea monitor, suction unit, percussor, nebulizer or medical humidifier, 5 years from the date on which the minister provided the item being replaced;

(d) in the case of an inhaler accessory device, one year from the date on which the minister provided the device being replaced;

(e) in the case of an accessory or supply for an item referred to in paragraph (c) or (d), one year from the date on which the minister provided the device being replaced.

(4) A ventilator is not a health supplement for the purposes of section 3 of this Schedule.

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.

(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.

Medical equipment and devices — hearing instruments
3.11 (1) A hearing instrument is a health supplement for the purposes of section 3 of this Schedule if

(a) the hearing instrument is prescribed by an audiologist or hearing instrument practitioner, and

(b) an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument.

(2) The minister may provide a hearing instrument under this section only if the person is not receiving a hearing assistance supplement under section 70.02 of this regulation.

Medical equipment and devices — non-conventional glucose meters
3.12 (1) In this section, "non-conventional glucose meter" includes

(a) a continuous glucose monitoring meter, and

(b) a talking glucose meter.

(2) A non-conventional glucose meter is a health supplement for the purposes of section 3 of this Schedule if the minister is satisfied that

(a) the glucose meter is medically essential to test blood glucose levels, and

(b) the person for whom the non-conventional glucose meter has been prescribed is unable to use a conventional glucose meter.

(3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of a non-conventional glucose meter is 5 years from the date on which the minister provided the glucose meter being replaced.

The panel finds:

The Ministry argues that pursuant to s. 3.10(3)(d), of schedule C EAPWDR the appellant's requested custom-made foot orthotic is not made from a hand-cast mold and that is a requirement of the legislation. The panel accepts the

additional evidence about the 3d scan that that the Podiatrist provides. The panel finds that although the 3d scan may be a new way of fitting for custom foot orthotics, at this point is it not a permitted method set out in the legislation. The legislation clearly states that the custom-made foot orthotic must be made from a hand-cast mold. The panel finds the Ministry to be reasonable in their interpretation of the legislation in this circumstance and finds the Ministry's decision to deny the appellant a custom-made foot orthotic on the basis that it was not made from a hand-cast mold to be reasonable.

The Ministry argues that since the appellant had a custom-made foot orthotic made in October 2015, she would not be eligible for a new custom-made foot orthotic until October 2018 and this is set out in time limits at section 3.10(10) of Schedule C EAPWDR. The Ministry introduced their policy in their reconsideration decision. submission. The Ministry policy states that the replacement time period does not apply when an item is required due to changes in a person's medical condition or growth.

The Ministry argues that neither the GP nor the Podiatrist have noted changes in the appellant's condition. Both the GP and the Podiatrist have found that the appellant suffers from Plantar Fasciitis. The Ministry argues that although the appellant describes a change to the condition of her feet, neither the GP nor the Podiatrist have described the degree a change in her feet.

The panel finds that the Policy that the Ministry relies on does not specify the degree or type of changes in a person's medical condition or what type of growth is required. Further, the policy does not specify that the changes in the medical condition must be confirmed or determined by a doctor. The panel finds that the appellant provided evidence outlining the changes in her medical condition and specifically that more damage has been caused by her feet changing. Last year she visited the doctor for sore feet, numb toes, a large callus, and a deformed third toe (pushed upright with dead tissue build up) and that she has struggled with a new foot problem since the Spring of 2017 at which time her situation changed beyond her control and now causes more permanent damage which could later result in the need for a wheelchair and the loss of toes.

The panel finds that it was not reasonable for the Ministry to determine that there had been no changes in the appellant's medical condition and deny her the replacement exception outlined in the Medical Equipment – Orthoses Policy. The panel finds the it was reasonable, however, for the Ministry to deny the appellant a custom-made foot orthotic on the basis that the appellant's custom-made foot orthotic was not made from a hand cast mold. The panel therefore confirms the Ministry's decision.