

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) reconsideration decision, dated March 5, 2018 (the “Reconsideration Decision”), in which the Ministry found that the Appellant was not eligible for a medical supplement for an ankle brace because no medical or nurse practitioner had prescribed the ankle brace, as required by section 3.10(2)(a) of Schedule C to the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”).

**PART D – RELEVANT LEGISLATION**

EAPWDR, section 62

EAPWDR, Schedule C, section 3(1), 3.10

## **PART E – SUMMARY OF FACTS**

The evidence before the Ministry at the time of the Reconsideration Decision consisted of the following:

- a Purchase Authorization, dated January 9, 2018, in the amount of \$450.00 for a custom-made foot orthotic;
- a Medical Equipment Request and Justification, dated November 14, 2017 (the “Request”), signed by the Appellant’s pedorthist, recommending an “OTS (off the shelf) ankle brace to stabilize the joint”
- two Orthoses Request and Justification forms, dated November 14, 2017 (the “Orthoses Requests”), signed by the Appellant’s pedorthist, which recommend “supportive orthopaedic footwear with stiff shank, forefoot rocker, and extended heel counter; and “semi-rigid polypropylene, EVA posting...”
- a prescription from the Appellant’s doctor, erroneously dated September 14, 2012 (the “Misdated Prescription”), which checked off “Plantar Fasciitis” and “Ankle Sprain/Fracture” under “Common Diagnoses” and “Foot Orthotics ‘As Required’” under “Common Treatments”;
- an estimate sheet, dated December 18, 2017 for custom orthotics, an ankle brace, and supportive footwear;
- a letter from the Ministry, dated December 7, 2017, advising the Appellant of the denial of his application for a medical supplement in respect of an ankle brace;
- a prescription from the Appellant’s doctor, dated September 14, 2017 (the “Revised Prescription”, which appears to be identical to the Misdated Prescription, aside from the date and the absence of a check mark next to “Ankle Sprain/Fracture” under “common Diagnoses”;
- a Purchase Authorization, dated March 5, 2018, in the amount of \$125.00 for off the shelf footwear; and
- the Appellant’s RFR which states “please see attached prescription” from the Appellant’s doctor and attaches the Revised Prescription.

In his Notice of Appeal, the Appellant stated that the “decision was made on the basis of not receiving the dr.’s note which they received like 3 times. Also the brace is much needed do (sic) to a bad ankle.”

The Ministry relied on the Reconsideration Decision in its submissions.

### **Admissibility of New Information**

The panel finds that the information provided in the appellant’s Notice of Appeal consists of argument and will be considered on that basis.

## PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the Reconsideration Decision, in which the Ministry found that the Appellant was not eligible for a medical supplement for an ankle brace because no medical practitioner or nurse practitioner had prescribed the ankle brace, as required by section 3.10(2)(a) of Schedule C to the EA, was a reasonable application of the relevant legislation or reasonably supported by the evidence.

### ***Relevant Legislation***

Section 62 of the EAPWDR permits the Ministry to provide health supplements set out in section 3 of Schedule C of the EAPWDR to eligible recipients of disability assistance or persons in their family units, including, as in the case of the Appellant, a dependent child:

### **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.

Section 3 of Schedule C to the EAPWDR sets out the general requirements for eligibility for supplements in respect of the medical equipment enumerated in sections 3.1 to 3.12 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.

Section 3.10 of Schedule C to the EAPWDR sets out the requirements for approval of orthoses generally:

### **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.

### ***Panel's Decision***

An ankle brace is one of the items which meets the definition of “orthosis” under section 3.10(1) of Schedule C to the EAPWDR. Section 3.10(2) of Schedule C to the EAPWDR sets out that an orthosis is eligible for coverage as a health supplement if it meets all of the following criteria:

- (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.

As set out above, in order for an ankle brace or any other item meeting the definition of “orthosis” to qualify as a medical supplement, it must be prescribed by a medical practitioner or nurse practitioner.

In this case, the recommendation for an ankle brace appears in the Request, which was completed by the Appellant’s pedorthist. The pedorthist is neither a medical practitioner nor a nurse practitioner. The Appellant’s doctor, who is a medical practitioner, did not fill out either the Request or either of the Orthoses Requests and, instead, completed only the Misdated Prescription and the Revised Prescription. Neither of the Misdated Prescription or the Revised Prescription, completed by the Appellant’s doctor, include a recommendation for an ankle brace, although the Misdated Prescription does reference an ankle sprain.

Section 3.10(2)(a) makes clear that, in the absence of a prescription from the Appellant’s doctor, another medical practitioner, or a nurse practitioner, an ankle brace is not an eligible medical supplement.

In the result, the panel finds that the Reconsideration Decision was a reasonable application of section 3.10(2)(a) of the EAPWDR and was reasonably supported by the evidence before the Ministry at the time of the Reconsideration. The Appellant is not successful in this appeal.