

APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision dated March 27, 2019, wherein the ministry denied the appellant’s request for reimbursement of braces (bilateral thumb splints and bilateral wrist splints) because she does not meet the eligibility requirement that pre-authorization of the ministry is required for the medical equipment or device as set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C section 3(1)(b)(i).

**PART D – RELEVANT LEGISLATION**

EAPWAR sections 62, 69 and 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 November 22, 2018 the appellant's application for reimbursement of bilateral thumb splints and bilateral wrist splints was received by the ministry.

On January 10, 2019 the ministry received the following documents:

- In the Orthoses Request and Justification Form dated November 22, 2018 the appellant's general practitioner (GP) states that
  - the appellant's medical condition is described as "Bilat Carpal Tunnel".
  - The recommended type of orthosis is "Thumb push splint - Left & Right Custom made."
- In a letter dated December 6, 2018 the appellant's GP writes:
  - "The patient needs right and left Slimfit Wrist Support for her carpal tunnel syndrome."
- In a prescription note dated December 3, 2018 the appellant's specialist writes:
  - "[1] PUSH splints for bilateral 1<sup>st</sup> CMC joint OA"/[2] Splints for bilateral CTS (Life brand women's slim fit)."
- Receipts prepared by "Vancouver Health Authority"
  - Receipt #1 dated December 2018 states that "Bil. Hybrid CMC splints - Custom hard plastic" and indicates that \$50 was paid.
  - Receipt #2 dated December 11, 2018 indicates a \$50 payment was made by Visa.
- Receipt prepared by Shoppers Drug Mart dated December 16, 2016
  - lists 2 splints ("LB SLMFT WRST") for \$42.99 each - total with tax \$96.30; and
  - indicates a payment of \$96.30 was made by Visa.

On February 5, 2019 the appellant's request was denied.

On March 18, 2019 the ministry received the appellant's request for reconsideration. She provided the following:

- In a letter dated February 25, 2019 the GP that writes:
  - "This patient has severe bilateral Osteoarthritis at the base of her thumbs.
  - The patient needs custom-made bilateral [hybrid] cmc splints for severe degenerative osteoarthritis in both of her thumbs."
- Receipts prepared by Shoppers Drug Mart dated March 8, 2019
  - Receipt #1 is handwritten and states "LB Slimfit Wrist Support [\$42.99x2]." Total with tax: \$96.30.
  - Receipt #2 lists 2 splints: "LB SLMFT WRST" for \$42.99 each. Total with tax: \$96.30. Indicates payment of this amount by Visa.

At the hearing the appellant reported that she returned these braces after she had recovered her original braces which she had misplaced.

In her self-report dated March 16, 2019 the appellant writes that she was not aware that the ministry pre-authorization is required for funding of the requested splints and was encouraged by others to ask for ministry funding after she had purchased them. The carpal tunnel wrist splints provided immediate relief. She is no longer woken through the night by "pins / needles" sensations. She has severe degenerative osteoarthritis of the thumbs and left index finger and experiences chronic pain in both hands. Her doctor and specialist recommended CMC splints to reduce pain. She cannot use anti-inflammatory medication due to chronic kidney disease - she uses ice and Tylenol with codeine for pain relief but still continues to experience chronic pain. She has hyper-mobility of the

joints. Her thumbs bend more than average. The bilateral splints hold her thumbs in place, preventing hyperextension. This reduces pain in her thumbs and wrists. Without splints everyday tasks are tiring and painful. Both wrist splints and CMC splints reduce chronic pain and both wrist splints provide non-medical treatment. Reimbursement would ease her financial burden.

In her Notice of Appeal dated April 4, 2019 the appellant wrote that she needed both types of braces as recommended by her GP and her specialist, and she could not wait 45 days to get ministry approval. Her pain and discomfort were too severe and she was losing too much sleep - she already has a severe sleeping disorder.

At the hearing the appellant re-told her story and stated that when she filled in her Notice of Appeal she was rushed and the ministry told her what to write; she does not agree with her written statement that due to the level of her discomfort she could not wait 45 days to get ministry approval. She added that she understands she is not eligible for braces because she did not ask the ministry for authorization, and she respects that. It did not occur to her that her braces could be covered. Because thumb push splints were too expensive and did not work very well she and her specialist decided she should get custom made CNC splints instead which are modified versions of push splints. The appellant stated she does not know what CNC stands for. She does not have a lot of resources and had to borrow money from her father to buy the braces. She saves where she can. Now she has to help her son with his tuition. She over-exerted herself helping at a move and she is in pain now all day and her hands are pounding at night.

The ministry summarized the reconsideration decision and added the following information: The "resources" criterion could have been included in the decision because the appellant had resources available to purchase the braces and thus did not meet the criterion set out in Schedule C section 3(1)(b)(ii) "there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device". It is not clear how the 45 days mentioned in the appellant's Notice of Appeal are relevant - it seems to be an unusually long period of time. The Received stamp of November 21, 2018 is incorrect - probably because the stamp was not adjusted. The date the appellant's application was received is November 22, 2018.

The panel admitted the appellant's Notice of Appeal and her oral testimony pursuant section 22(4) of the Employment and Assistance Act because the new information is in support of the information before the ministry at reconsideration as it provides more detail of the appellant's medical condition and financial situation.

**PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the ministry's decision to deny the appellant's request for reimbursement of braces (bilateral thumb splints and bilateral wrist splints) because she did not receive pre-authorization of the ministry as set out in section 3(1)(b)(i) of Schedule C of the EAPWDR was a reasonable application of the legislation or reasonably supported by the evidence.

**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 (1) In this section:

...

"orthosis" means

...

(k) an upper extremity brace;

...

**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 ...

**Health supplement for persons facing direct and imminent life threatening health need**

**69** The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

(a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,

(b) the health supplement is necessary to meet that need,

...

The appellant argues that she needs the ministry to reimburse her for her braces because she needs the money to get by.

The ministry's position is that as the appellant has paid for both the bilateral thumb splints and bilateral wrist splints in full without receiving pre-authorization from the ministry according to Schedule C section 3.1(b)(i) of the EAPWDR she is not eligible under this section. The ministry noted that in the policy that applies to general requirements for all orthoses it states: "The request must be pre-approved by the ministry prior to purchase" / "The ministry will not accept payment responsibility, except in cases of a life-threatening emergency, for orthoses purchased without prior approval." Based on the information provided it cannot be established that the appellant required either bilateral thumb splints or bilateral wrist splints due to a life-threatening emergency. Therefore the above noted policy cannot be applied.

Panel decision

While the appellant argues that due to her difficult financial circumstances she needs the ministry to reimburse her for her thumb and wrist braces the panel finds that section 3.1(b)(i) clearly sets out that pre-authorization of the ministry is required to determine eligibility for a health supplement such as upper extremity braces. Consequently the panel finds the ministry was reasonable in its determination that the appellant is not eligible under this section. While the appellant had argued that there was no time to wait for ministry approval because she was in too much discomfort and pain the panel finds there is insufficient evidence that the appellant was facing a direct and imminent and life-threatening health need as set out in section 69 of the EAPWDR and, consequently, the ministry was reasonable when it found that ministry policy respecting life-threatening emergency does not apply in the appellant's circumstances. The panel notes that ministry policy on life-threatening emergency mirrors section 69 of the EAPWDR.

Conclusion

The panel finds that the ministry's determination that the appellant is not eligible for re-imburement of upper extremity braces is reasonably supported by the evidence and 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.

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| <b>PART G – ORDER</b>  |  |
| THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY  |  |
| THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> RESCINDS THE MINISTRY DECISION   |  |
| If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> No |  |
| <b>LEGISLATIVE AUTHORITY FOR THE DECISION:</b>   |  |
| <i>Employment and Assistance Act</i>   |  |
| Section 24(1)(a) <input checked="" type="checkbox"/> and Section 24(1)(b) <input checked="" type="checkbox"/>  |  |
| and  |  |
| Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>  |  |

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|-----------------------------|-------------------------------------|
| <b>PART H – SIGNATURES</b>  |                                     |
| PRINTNAME<br>Inge Morrissey |                                     |
| SIGNATURE OF CHAIR          | DATE (YEAR/MONTH/DAY)<br>2019/04/26 |

|                            |                                     |
|----------------------------|-------------------------------------|
| PRINTNAME<br>Bob Fenske    |                                     |
| SIGNATURE OF MEMBER        | DATE (YEAR/MONTH/DAY)<br>2019/04/26 |
| PRINTNAME<br>Don Stedeford |                                     |
| SIGNATURE OF MEMBER        | DATE (YEAR/MONTH/DAY)<br>2019/04/26 |