

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated June 27, 2019, which determined that the appellant was not eligible for reimbursement of monies paid for custom-made foot orthotics on October 16, 2018 as the eligibility requirements set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C sections 3 and 3.10 were not met.

Specifically, the ministry determined that the appellant did not receive pre-authorization from the ministry before purchasing the custom-made foot orthotics as per section 3(1)(b)(1) of the EAPWDR. As well, the ministry determined that there is no evidence to show that the custom-made orthotics were fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist, as per section 3.10(3)(b) of the EAPWDR.

PART D – RELEVANT LEGISLATION

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

PART E – SUMMARY OF FACTS**Relevant Evidence Before the Minister at Reconsideration**

On June 25, 2008, the ministry approved the appellant's request for custom bilateral foot orthotics based on an assessment by the appellant's doctor at the time. The doctor provided the following information:

- The appellant needed a new pair of custom foot orthotics (old one's worn out – made in 2003). Severely pronated feet. Causes painful knees (Patellofemoral Syndrome secondary to pronation).
- The custom foot orthotics "are medically essential for basic mobility. Without them, knees are painful with walking."
- The custom foot orthotics "are required for the prevention of surgery, to assist in physical healing from surgery, injury or disease and to improve physical functioning that has been impaired by a neuromusculo-skeletal condition."

The appellant is in receipt of disability assistance.

September 24, 2018 – Prescription from Appellant's Current Doctor

Prescription Items- foot orthotics, 2 units

September 26, 2018- Invoice for custom-made orthotics

- Total Amount - \$449.00

October 5, 2018 (date of evaluation/casting) – Orthotic Lab Report and Proof of Manufacturing

The report states that custom prescription orthotics had been prescribed by a healthcare professional (the appellant's chiropractor) on October 16, 2018.

October 16, 2018 – Letter from Appellant's Chiropractor

To: Whom It May Concern

The appellant "came to my office on Sept. 26/18 to assess her feet. Physical and biomechanical exam indicated that she is suffering from bilateral heel eversion, moderate pronation, collapsed medial and transverse arches in her feet. This causes added pressure to back up in to her heels, lower limbs and low back. Custom orthotics are indicated to correct the collapsed arches and relieve this added pressure on her feet and back for future injury prevention. The orthotics would ideally be worn in her shoes throughout the entire day, every day, in order to prevent arch collapses. A second pair would also be a huge benefit to her, as she will need her orthotics in each pair of her shoes."

November 29, 2018 – Letter from the Ministry to the Appellant

- Advising that the ministry has received a request for custom-made foot orthotics, and requires additional information before the request can proceed

"SECTION 2 - Medical or Nurse Practitioner Recommendation – is to be completed by your doctor...."

"If Custom Made or over \$2 orthotic/s then SECTION 3 – ASSESSMENT required to be completed by one of the following specialists; Podiatrist (feet/foot only); Orthotist, Prosthetist; Occupational or Physical therapist."

December 12, 2018 – Orthoses Request and Justification Form

Sections 2 and 3 - completed by the appellant's chiropractor

December 19, 2018 – Letter from the Ministry to the Appellant

- Advising that the ministry has received a request for foot orthotics, and requires additional information before the request can proceed

"SECTION 2- Medical or Nurse Practitioner Recommendation – is to be completed by your doctor or a nurse practitioner with the prescription, diagnosis, signature, date, type of orthoses recommended and if custom made or not"

"NOTE: You previously submitted a form with this section completed by a chiropractor, which does not meet legislated program requirements. You also submitted a prescription from a physician, however in this prescription it is not specified whether the orthotics required are custom made, or not. Please have your physician complete section 2..."

If Custom Made or Custom Fit:

"SECTION 3 – Assessment – must be completed by one of the following health professionals; Orthotist, Podiatrist, Pedorthist, Occupational or Physical therapist."

"NOTE: You previously submitted a section 3 completed by your chiropractor. This does not meet legislated program requirements."

February 11, 2019 – Orthoses Request and Justification Form

Section 2 - completed by the appellant's current doctor

April 5, 2019 – Orthoses Request and Justification Form

Section 3 completed by the appellant's physiotherapist

May 16, 2019 - Letter from the Ministry to the Appellant

- Denying request for health supplements – custom-made orthotic (custom-made foot orthoses)

Reason for denial – "The item requested was prepaid for and pre-authorization was not obtained as required."

June 7, 2019 - Letter from the Appellant to the Ministry

Additional Information

Appellant

July 10, 2019 (date received) - Notice of Appeal

Reasons for Appeal

The appellant disagrees with the ministry's decision for the following reasons:

- The orthosis is prescribed by a medical practitioner.
- The orthosis is medically essential to achieve and maintain the appellant's basic functionality.
- The appellant had previously received pre-authorization and was unaware she needed to re-apply for pre-authorization every few years.
- The appellant is unable to pay the cost of the orthosis.

Ministry

The ministry did not provide a written submission.

Admissibility of Additional Evidence

With the Notice of Appeal, the appellant submitted copies of the letter to the ministry dated June 7, 2019, Orthoses Request and Justification Form (dated February 11, 2019) with Section 2 - completed by the appellant's current doctor and the Orthoses Request and Justification Form (dated April 5, 2019) with

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Section 3 completed by the appellant's physiotherapist.

The panel determined that the information in the Notice of Appeal, as well as the letter to the ministry, dated June 7, 2019 was considered argument.

The panel determined that the Orthoses Request and Justification Forms, dated February 11 and April 5, 2019 were before the ministry at reconsideration and therefore admissible under section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue is whether the ministry's reconsideration decision dated June 27, 2019, which determined that the appellant was not eligible for reimbursement of monies paid for custom-made foot orthotics on October 16, 2018 as the eligibility requirements set out in the EAPWDR, Schedule C sections 3 and 3.10 were not met, was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances.

Specifically, did the ministry reasonably determine that the appellant did not receive pre-authorization from the ministry before purchasing the custom-made foot orthotics as per section 3(1)(b)(1) of the EAPWDR?

As well, did the ministry reasonably determine that there is no evidence to show that the custom-made orthotics were fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist, as per section 3.10(3)(b) of the EAPWDR?

The legislation provides:

Employment and Assistance for Persons with Disabilities Regulation

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...

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;

...

Medical equipment and devices — orthoses

3.10

...

(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;

Ministry Argument

The ministry argues that the appellant did not receive pre-authorization from the ministry before purchasing the custom-made foot orthotics. As well, the ministry argues that the custom-made orthotics were dispensed to the appellant by her chiropractor on October 16, 2018 and there is no evidence that the orthotics were fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist at that time.

Appellant Argument

The appellant provides the following argument.

The appellant [REDACTED] and as such has flaccid muscles and neurological issues. She is non-verbal and unable to speak or write. The appellant requires 24-hour supervision and assistance with all activities of daily living. She has suffered pain when walking for her entire life, however it is becoming more pronounced as she ages. Without the orthotics she cries from the pain of walking and even more so climbing stairs. She wears her orthotics all day every day, both in and outside of her home. "They have made it possible for her to be more mobile than she otherwise would be, and have greatly reduced the pain. Without them she would quite likely require a wheel chair."

Many years ago, the appellant was approved for her first pair of orthotics, funded by the ministry. At the time she was informed that she qualified for new orthotics every few years. Also, at the time, her community had a resident podiatrist who completed all the paperwork. Several years later, the same podiatrist applied for and provided the appellant with a second pair of orthotics.

The appellant's community has now been without a podiatrist for many years. A replacement pair of orthotics was needed and the appellant's physician informed the appellant that a chiropractor could make the arrangements. The appellant attended the chiropractor's office and a new pair of orthotics was ordered. The appellant was required to pay for them in advance. As the appellant's condition will always be with her, and she had been told she qualified for new orthotics every few years, she believed that the original authorization covered any subsequent orthotics.

In addition, the appellant argues that the orthosis was prescribed by a medical practitioner and is medically essential to achieve and maintain the appellant's basic functionality. The appellant had previously received pre-authorization and was unaware she needed to re-apply for pre-authorization every few years. She is unable to pay the cost of the orthosis.

Panel Decision

The panel noted that in its reconsideration decision, the ministry referred to the "exception that is available in policy." However, the panel is bound by legislation, not policy.

Section 3(1) of Schedule C in the EAPWDR states, "...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...

(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..."

Section 3.10(3) of Schedule C in the EAPWDR states, "For an orthosis that is a custom-made foot orthotic...all of the following requirements must be met:

...
(b) the custom-made foot orthotic is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist..."

Section 3(1)(b)(i) – Pre-Authorization

The ministry argues that the appellant did not receive pre-authorization from the ministry before purchasing the custom-made foot orthotics.

The appellant argues that as her condition will always be with her, and she had been told she qualified for new orthotics every few years, she believed that the original authorization covered any subsequent orthotics. She had previously received pre-authorization and was unaware she needed to re-apply for pre-authorization every few years.

The panel finds there is insufficient evidence to show that the appellant obtained pre-authorization from the ministry to purchase the custom-made orthotics (dispensed on October 16, 2018), as is required by section 3(1)(b)(1) in Schedule C of the EAPWDR. Although the appellant believed that the original authorization covered any subsequent orthotics, there is insufficient evidence to show that this was in fact the agreement. The panel acknowledges that this belief was likely strengthened by the podiatrist previously completing all the paperwork. However, the panel is bound by legislation. Therefore, with the evidence, the panel finds the ministry reasonably concluded that the appellant did not obtain pre-authorization from the ministry to purchase the custom-made orthotics, as is required by legislation.

Section 3.10(3)(b) - Orthotics Fitted by an Orthotist, Pedorthist, Occupational Therapist, Physical Therapist or Podiatrist

The ministry argues that the custom-made orthotics were dispensed to the appellant by her chiropractor on October 16, 2018 and there is no evidence that the orthotics were fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist at that time.

The appellant argues that a replacement pair of orthotics was needed and the appellant's physician informed her that a chiropractor could make the arrangements. She attended the chiropractor's office and a new pair of orthotics was ordered. As well, the orthosis was prescribed by a medical practitioner. The appellant submitted, as evidence, an invoice from an orthotics supplier, dated September 26, 2018, for custom-made orthotics. As well, the appellant submitted an "Orthotic Lab Report and Proof of Manufacturing" form dated, October 20, 2018, stating that custom prescription orthotics have been prescribed by a healthcare professional at the chiropractor's clinic. In addition, she submitted an Orthoses Request and Justification Form, dated April 5, 2019, completed by her physiotherapist.

The panel notes that as the appellant was advised, by her physician, that a chiropractor could make the arrangements for the custom-made orthotics, it is understandable that she believed that this would satisfy the requirement of a healthcare professional fitting the orthotics.

The panel finds that the evidence shows that the appellant's physiotherapist provided information supporting

the need for the custom-made orthotics. However, this information was provided on April 5, 2019 and the custom-made orthotics were dispensed on October 16, 2018.

The panel also finds that the custom-made orthotics dispensed on October 16, 2018, were prescribed by the appellant's chiropractor. Section 3.10(3)(b) of Schedule C in the EAPWDR requires that the custom-made foot orthotics are fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist. A chiropractor is not listed under this section. For these reasons, the panel finds the ministry's decision was reasonably supported by the evidence.

Conclusion

In conclusion, the panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.

The appellant is not successful on appeal.

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PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION 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? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Connie Simonsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/09/22

PRINT NAME

Carlos Garcia

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/09/22

PRINT NAME

Barbara

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/09/22