

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated August 26, 2019, which determined that the appellant was not eligible for funding for custom-made foot orthotics as the eligibility requirements set out in the Employment and Assistance Regulation (EAR), sections 67 and 76, Schedule C sections 3 and 3.10, and section 62 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) were not met.

Specifically, the ministry determined that the appellant did not meet the basic eligibility requirements to receive funding for custom-made orthotics pursuant to section 67 of the EAR, and section 62 of the EAPWDR. As well, the ministry determined that the appellant did not establish that she is facing a direct and imminent life-threatening health need or that the custom-made foot orthotics requested are necessary to meet a direct and imminent life-threatening health need, as required under section 76 of the EAR.

In addition, the ministry determined that the appellant did not meet the legislative requirements under sections 3.10(2)(b) and (c) and 3(d) of the EAR, Schedule C as the ministry was not satisfied that the orthosis is medically essential to achieve or maintain basic functionality, that the orthosis is required to prevent surgery, for post-surgical care, to assist in physical healing from surgery, injury or disease, or to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition, and that the custom-made orthotic is made from a hand-cast mold.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance Regulation (EAR), sections 67 and 76, Schedule C sections 3, 3.10

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 62

**PART E – SUMMARY OF FACTS****Relevant Evidence Before the Minister at Reconsideration**August 12, 2019 - Request for Reconsideration

The appellant is asking for reconsideration, as per her doctors' information. She medically needs orthotics to walk and to be able to look for work and support her family.

Without orthotics her left ankle hurts. It's injured from having a television dropped on it, which forced her right heel to have plantar fasciitis.

The appellant is a recipient of income assistance with two dependent children.

June 12, 2019 - Letter from appellant's Podiatrist

The appellant needs custom foot orthotics to deal with chronic plantar fasciitis and ankle injuries due to a crush injury.

July 16, 2019 – Orthoses Request and Justification form (signed by appellant's Podiatrist)

The Podiatrist states that the appellant has chronic right plantar fasciitis and a left mid-foot crush injury. Orthotics will correct pronation, support inflammation and ligaments, stabilize the ankle position and allow normalization of gait function. In addition, the Podiatrist confirms that the item is required to assist in physical healing from surgery, injury or disease and to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition. In addition, he states that the orthosis will be made from a hand cast mold.

July 16, 2019 – Letter from the ministry to the appellant denying request for custom-made foot orthotic.  
Reason for denial:

The appellant is an employable client and is therefore not eligible for health supplements under section 67 of the EAR or section 62 of the EAPWDR.

August 2, 2019 – Letter from appellant's Medical Doctor

The appellant "requires custom orthotic inserts to address ongoing orthopaedic concerns. She has plantar fasciitis and this is medically needed."

September 5, 2019 – Letter from appellant's Podiatrist

The appellant requires custom foot orthotics, without which basic mobility is impossible. "She is planning to look for work, but presently can't because of her chronic foot pain. She prefers not to seek a disability status. She wants to work."

**Additional Information**Appellant**Notice of Appeal – Reasons for Appeal**

The appellant states she needs orthotics to walk and to do everyday activities. Since she needs to look for work, she needs to be able to walk and get around. She has chronic pain without orthotics.

At the hearing, the appellant stated that she submitted the Orthoses Request and Justification form (dated July 16, 2019) to the ministry mid-July, but the ministry misplaced it.

### Ministry

At the hearing, the ministry provided a timeline as to when the appellant's file was opened, what information was received, and the ministry process. The ministry stated that it had received the Orthoses Request and Justification form (dated July 16, 2019) before the reconsideration decision was made. However, due to the ministry's processes, this information was not included in the reconsideration decision.

### **Admissibility of Additional Evidence**

The panel determined that the information in the Notice of Appeal was considered argument.

The panel determined that the letter from the appellant's Pedorthist, dated September 5, 2019 was in support of the information that was before the minister 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 August 26, 2019, which determined that the appellant was not eligible for custom-made foot orthotics as the eligibility requirements set out in the EAR, sections 66.1, 67 and 76, Schedule C sections 3 and 3.10, and section (s.) 62 of the EAPWDR 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 meet the basic eligibility requirements to receive funding for custom-made orthotics pursuant to sections 66.1 and 67 of the EAR, and section 62 of the EAPWDR?

As well, did the ministry reasonably determine that the appellant did not establish that she is facing a direct and imminent life-threatening health need or that the custom-made foot orthotics requested are necessary to meet a direct and imminent life-threatening health need, as required under section 76 of the EAR?

In addition, did the ministry reasonably determine that the appellant did not meet the legislative requirements under sections 3.10(2)(b) and (c) and 3(d) of the EAR, Schedule C, that the orthosis is medically essential to achieve or maintain basic functionality, that the orthosis is required to prevent surgery, for post-surgical care, to assist in physical healing from surgery, injury or disease, or to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition, and that the custom-made orthotic is made from a hand-cast mold?

The legislation provides:

Employment and Assistance Regulation**General health supplements**

- 67** (1) 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 income assistance, if
    - (i) the family unit includes a qualifying person, or
    - (ii) the health supplement is provided to or for a person in the family unit who is under 19 years of age,
  - (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
    - (i) is a continued person under section 66.3 (1) or (2) [*access to medical services only*], or
    - (ii) is a continued person under section 66.4 (1) [*access to transitional health services*] and was, on the person's continuation date, a qualifying person or part of

a family unit that then included a qualifying person, or  
 (iii) is a continued person under section 66.4 (2).

...

(2) Subject to subsection (3), 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 family unit if the health supplement is provided to or for a recipient in the family unit who

(a) has received income assistance under the *BC Benefits (Income Assistance) Act* or the Act continuously from March 31, 1997 and on March 30, 1997 was eligible under section 37 (1) (a) of the *BC Benefits (Income Assistance) Regulations*, B.C. Reg. 272/96, as it read on March 30, 1997, for the health care services and benefits referred to in that provision, or  
 (b) is a dependant of a recipient referred to in paragraph (a).

...

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

**76** 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,
- (c) a person in the family unit is eligible to receive premium assistance under the *Medicare Protection Act*, and
- (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
  - (i) paragraph (a) or (f) of section (2) (1);
  - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

## **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 67 [*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 or section 7.1 of this Schedule, 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 — orthoses**

**3.10** (1) In this section:

...

**"orthosis"** means

(a) a custom-made or off-the-shelf foot orthotic;

...

(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

...

(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

...

(3) For an orthosis that is a custom-made foot orthotic, in addition to the requirements in

...

(d) the custom-made foot orthotic must be made from a hand-cast mold;

...

## 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,
- (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.

### **Ministry Argument**

The ministry argues that the appellant does not meet the basic eligibility requirements under the legislation, section 67 (EAR) and section 62 (EAPWDR), to receive health supplements (medical equipment and devices) and therefore is not eligible to receive support for the custom-made orthotics. The ministry argues that the appellant is an employable client and is therefore not eligible for health supplements under the above regulations.

The ministry also argues that the information provided does not establish that the appellant is facing a direct and imminent life-threatening health need or that the custom-made foot orthotics requested are necessary to meet a direct and imminent life-threatening health need, as required by section 76 of the EAR.

In its reconsideration decision, the ministry argues that the appellant did not meet the legislative requirements under 3.10(2)(b) and (c) and 3(d) of Schedule C in the EAR.

### **Appellant Argument**

At the hearing, the appellant argued that she understands the legislation but in order to get a job, she has to walk around, and without orthotics, she has chronic pain. If the ministry helps her get back to work, she can provide for her family. She doesn't see why the ministry can't help her as she has submitted several doctor's notes. Her medical situation is temporary so she can't apply for more permanent disability.

As well, the appellant assumed the ministry included the information in the Orthoses Request and Justification form (dated July 16, 2019) when it made the reconsideration decision.

### **Panel Decision**

The legislation sets out basic eligibility requirements for general health supplements and medical equipment and devices under sections 67 of the EAR, and section 62 of the EAPWDR. As well, the legislation provides for health supplements for persons facing direct and imminent life-threatening health needs under section 76 of the EAR.



### Section 67, EAR – General Criteria for Health Supplements or Medical Equipment and Devices

Section 67(1) EAR provides that the minister may provide a supplement set out in sections 2 or 3 of Schedule C, EAR, for a family unit in receipt of income assistance if:

- (a) The family unit includes a “qualifying person” or the supplement is for someone under 19 years old;
- (b) The family unit is in receipt of hardship assistance and the supplement is for someone under 19 years old; or
- (c) The supplement is for a person who is: (i) a “continued person” under s. 66.3(1) or (2); (ii) a “continued person” under s. 66.4(1) if the person was a “qualifying person”; or (iii) a “continued person” under s. 66.4(2).

Section 67(2) EAR provides that the minister may provide a supplement set out in sections 2 or 3 of Schedule C, EAR, to persons who have received income assistance continuously from 1997, or a dependant of such a recipient.

A “qualifying person” is defined in s. 66.1 EAR as: (a) a person with persistent multiple barriers to employment; or (b) a recipient of income assistance described in s. 8 (1) [*people receiving special care*] of Schedule A. Section 8(1) of Schedule A, EAR, describes persons receiving accommodation and care in a special care facility or a private hospital who is admitted because of the need for extended care.

Section 66.3 defines a “continued person”, in relevant part, as a member of a family unit that ceased to be eligible for income assistance who was a qualifying person, and a dependant of such a person.

Section 66.4(1) defines a “continued person” as a member of a family unit that ceased to be eligible for income assistance on or after Sept. 1, 2015 provided the family unit ceased to be eligible for income assistance because of employment income and had a dependant child or provided care to a supported child.

The ministry argues that the appellant is not:

- A person with persistent multiple barriers to employment.
- A recipient of income assistance who is described in section 8(1) [*people receiving special care*] of Schedule A, and therefore not a “qualifying person”.
- A person in a family unit in receipt of income assistance under 19 years of age.
- A person in a family unit in receipt of hardship assistance under 19 years of age and therefore, not eligible under s. 67(1) (a) & (b), EAR (in conjunction with not being a “qualifying person”).
- A person in a family unit who is a continued person as set out in section 66.3(1) or (2) [*medical services only*] or 66.4(1) or (2) [*transitional health services*] and therefore not eligible under s. 67(1)(c).
- A person who has (a) received income assistance under the *BC Benefits (Income Assistance) Act* or the Act continuously from March 31, 1997 and on March 30, 1997, was eligible under section 37 (1) (a) of the BC Benefits (Income Assistance) Regulations, B.C. Reg. 272/96, as it read on March 30, 1997, for the health care services and benefits referred to in that provision, or is (b) is a dependant of a recipient referred to in paragraph (a) and therefore, not eligible under s. 67(2).

The appellant argues that she understands the legislation but needs to be able to walk and get around in order to get a job. She has chronic pain without orthotics. If the ministry helps her get back to work, she can provide for her family. The appellant has submitted several doctor’s notes verifying her need for

orthotics.

### Section 62, EAPWDR – General Criteria for Health Supplements or Medical Equipment and Devices

Section 62 EAPWDR provides that the minister may provide a supplement set out in sections 2 or 3 of Schedule C, EAPWDR if:

- (a) The family unit is in receipt of disability assistance;
- (b) The family unit is in receipt of hardship assistance and the supplement is for someone under 19 years old; or
- (c) The supplement is for a “continued person”.

Section 61.1 defines a “continued person” as a person who was part of a family unit that ceased being eligible for disability assistance, among other requirements.

In the EAPWDR a “continued person” refers to medical services only.

The ministry argues that the appellant is not a recipient of disability assistance, not a person under 19 years of age whose family unit is receiving hardship assistance, nor a continued person.

The panel finds that the appellant is a recipient of income assistance and there is insufficient evidence, in the medical information provided from the appellant’s Podiatrist and Medical Doctor, to demonstrate that the appellant meets any of the criteria for basic eligibility under section 67 of the EAR or section 62 of the EAPWDR.

That is, the panel finds that there is insufficient evidence to demonstrate that the appellant:

- Has persistent multiple barriers to employment, or is receiving special care.
- Is under 19 years of age.
- Is a person in a family unit in receipt of hardship assistance under 19 years of age.
- Is a continued person - requires medical or transitional health services.
- Has received income assistance under the *BC Benefits (Income Assistance) Act* or the Act continuously from March 31, 1997 and on March 30, 1997, was eligible under section 37(1)(a) of the BC Benefits (Income Assistance) Regulations, or is a dependent of a recipient.
- Is or was in receipt of disability assistance.
- Is in receipt of hardship assistance.

Therefore, the panel finds the ministry reasonably determined that the appellant was not eligible for support for custom-made orthotics under section 67 of the EAR or section 62 of the EAPWDR.

### Section 76, EAR – Health Supplement for Persons Facing Direct and Imminent Life-threatening Need

Section 76 states, the minister may provide a health supplement where a family unit is otherwise not eligible if:

- (i) The person faces a direct and imminent life threatening need;
- (ii) The person has no resources available to meet that need;
- (iii) The person is eligible to receive premium assistance under the *Medicare Protection Act*; and
- (iv) where applicable, the requirements of s. 2(1)(a) or (f), and/or section 3 to 3.12 (other than s. 3(1)(a)) are met.

The ministry argues that the information provided is insufficient to establish that the appellant

is facing a direct and imminent life-threatening health need, or that the custom-made foot orthotics are necessary to meet a direct and imminent life-threatening health need.

The panel finds there is insufficient evidence (in the medical information from the appellant's Pedorthist and Medical doctor) to demonstrate that the appellant is facing a direct and imminent life threatening need and that the custom-made orthotics are necessary to meet that need.

Therefore, the panel finds the ministry reasonably determined that the appellant was not eligible for support for custom-made orthotics under section 76 of the EAR.

### Section 3 (Schedule C), EAR – Medical Equipment and Devices

Schedule C of the EAR provides details pertaining to eligibility requirements for medical equipment and devices - orthoses.

Section 3 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...the supplements are provided to a family unit that is eligible under section 67 [*general health supplements*] of this regulation...

### Section 3.10(2)(b)(c) and (3)(d), EAR– Medical Equipment and Devices - Orthoses

Section 3.10(2) states, ... "an orthosis is a health supplement for the purposes of section 3 of this Schedule if

...

(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...

...

Section 3.10(3)(d) states, "the custom-made foot orthotic must be made from a hand-cast mold"

In its reconsideration decision, the ministry argues that it does not have information from the appellant's Pedorthist:

- about how custom-made foot orthotics will assist with joint motion and/or support and are therefore medically essential to achieve or maintain basic functionality;
- if they are required to prevent surgery, for post-surgical care, to assist in physical healing from surgery injury or disease, or to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition, or
- if they will be made from a hand-cast mold.

In the Orthoses and Justification form (July 16 2019), the Pedorthist states that the appellant has chronic right plantar fasciitis and a left mid-foot crash injury. Orthotics will correct pronation, support inflammation and ligaments, stabilize the ankle position and allow normalization of gait function. In addition the Pedorthist confirms that the item is required to assist in physical healing from surgery, injury or disease

and to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition. As well, he states that the orthosis will be made from a hand cast mold.

Due to internal ministry processes, the ministry states it did not have the information in the Orthoses and Justification form when making its reconsideration decision. As this information was provided to the ministry before the reconsideration decision was made, the panel finds the ministry's determination, that the appellant did not meet the legislative requirements under section 3.10(2)(b) and (c) and (3)(d) in Schedule C of the EAR, to be unreasonable.

However, section 3 of Schedule C in the EAR, which deals with the specifics of medical equipment and devices - orthoses, requires that the appellant is first eligible under section 67 in order to be eligible to receive support for the orthotics. The panel finds that as the appellant did not meet the basic eligibility requirement under section 67, she is therefore not eligible to receive support for orthotics under section 3 of Schedule C.

The panel acknowledges the appellant's need for custom-made orthotics, but the panel is bound by legislation.

### **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.

APPEAL NUMBER

**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)

2019/09/30

PRINT NAME

Diane O'Connor

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/09/30

PRINT NAME

Joe Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/09/30