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 August 15, 2019 where the ministry determined that the appellant was ineligible for funding of:

1. thermoplastic wrist braces (water use) which does not meet the requirements of Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, Section 3.10(9) and 3.10(10);
2. off-the-shelf orthopedic footwear which does not meet the requirements of Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, Section 3.1(b)(iii)

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 62
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, Section 3.10(9) and 3.10(10)
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, Section 3.1(b)(iii)

APPEAL NUMBER

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration:

The appellant has persons with disabilities (PWD) designation and on May 27, 2019 requested funding from the ministry for health supplements consisting of off the shelf wrist supports, thermoplastic wrist braces (water use) and off-the-shelf orthopedic footwear. These requests were accompanied by Orthoses Request and Justification Forms (ministry forms) completed by the Appellant's physician and Orthotist, together with price quotes, as follows:

- Off the shelf wrist support:
  - Medical condition described as: "bilateral carpal tunnel syndrome/poor posture/back/neck pain".
  - Recommended orthoses:" night splints, aquatic splints, day splints (bilateral wrists/trainer splints also bilaterally)".
  - Custom made orthosis:" not required".
  - Price quote from a drug store dated April 25, 2019 for a total cost of $91.96 for: "trainers carpal lock wrist supports (2)" and "trainers wrist brace (2) plus $171.96 for life wrist support daily use (2) and life wrist support sleep (2)".
  - Section 3 (assessment) was not completed.
- Plastic wrist braces (water use):
  - Medical condition described as:" bilateral carpal tunnel syndrome".
  - Recommended orthoses:" a custom thermoplastic wrist brace for water use and non plastic for night/day use".
  - A custom made orthosis is required.
  - Section 3 was completed by an Orthotist on May 14, 2019 containing:
    - Specifications include: "high temp thermoplastic molded to patient model Velcro closure".
    - Prescribed item will assist with joint motion and/or support as follows: "Optimize wrist position to treat CTS".
    - The prescribed item is required for prevention of surgery, 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.
    - Orthotist writes: "treatment of carpal tunnel syndrome", and, "Appellant requires basic bracing treatment for all ADL and night'.
  - Price quote from an orthotics supplier for a total of $1,070.00 for: "wrist/hand orthosis-thermoplastic-custom (2)" and "polypropylene /suede wrist lacer-medispec (2)".

- Orthopedic footwear:
  - Medical condition described as: "Pes cavus".
  - Recommended type of orthosis: "orthopedic footwear".
  - Custom made orthosis: "not required'.
  - Section 3 was completed by an Orthotist on May 14, 2019 containing:
    - Specifications include: "Extra depth/width with rocker forefoot".
    - Prescribed item will assist with joint motion and/or support as follows: "Prevent deformity and inversion tendency".
    - The prescribed item is required to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition.
    - Orthotist writes: "increase ambulation, decrease pain", and, "Appellant requires basic foot treatment'.
  - Price quote from an orthotics supplier for a total of $250.00 for: "orthopedic footwear".

On June 27, 2019, the ministry denied these requests noting the following in their decision:

- The Health Assistance Physiotherapist has noted that the thermoplastic bilateral brace is not the basic option and has recommended denial. Ministry does not fund any orthoses for recreational purposes.
- Polypropylene/suede wrist lacer medispec: the number of orthosis exceeds the limits allowed. Denied as per the Health Assistance physiotherapist consultant due to time lines.

- Off the shelf orthopedic footwear. As per Health Assistance Physiotherapist consultant: Recommend approval of $125 only, program max. for accommodative foot-wear. Custom made foot orthoses were approved April 17, 2018 and eligibility for the foot orthosis will only exist two years from the existing custom made foot orthosis supply date.
- Purchase authorizations were issued for $92.98 for a wrist brace bilateral (August 7, 2019) and $125 for off-the-shelf accommodative footwear (July 10, 2019).
- The decision noted that the appellant had previously been provided with orthoses including bilateral wrist braces (April 17/2018), compression gloves (moderate compression - April 16/2018) and bilateral custom made foot orthotics (September 24/18).

The appellant signed a Request for Reconsideration on Aug. 4/19 requesting reconsideration of the thermoplastic wrist orthosis and orthopedic foot-wear and provided the following information:

- The appellant requests reconsideration for custom wrist orthosis thermoplastic bilateral (2) as they are necessary for tasks in daily living activities that require use of or are in contact with water. Other braces could be a health risk
- The appellant did not utilize the funding approved for the bilateral wrist braces approved in April 2018.
- The appellant would also be able to use these for physiotherapy in the pool.
- The appellant has attached a note from the doctor (Aug 1/19) which states: "[The appellant] requires the thermoplastic wrist orthoses bilaterally due to severe carpal syndrome for the purpose of daily living activities involving contact with water such as preparing food, cleaning and personal hygiene".
- The appellant also requests reconsideration to cover the full rather than half of the cost of the therapeutic foot-wear as was approved by the ministry on June 27/19 and feels that the ministry may have been incorrect because these shoes are not made to accommodate previously made foot orthosis inserts and it is medically required that she has specific orthopedic foot-wear to prevent further injury or disease.
- The appellant has also provided a note from the doctor (August 1/19) which states: "the appellant requires orthopedic footwear at all times due to calluses, bunions and chronic pain. [The Appellant] has orthotic insoles for outdoor use and will need appropriate footwear to accommodate these but also requires corrective orthopedic foot-wear for all indoor use".

On Aug. 15/93 the ministry denied the appellant's request, determining that, while the appellant might benefit from the requested funding, the request for thermoplastic wrist braces (water use) does not meet the requirements set out in EAPWDR Section C, Section 3.10(9) and 3.10(10). As well, the request for full funding of orthopedic foot-wear does not meet the requirement set out in EAPWDR, schedule C, Section 3(1)(b)(iii).

Notice of Appeal

On Aug. 21/19 the appellant signed a Notice of Appeal noting that the medical equipment the appellant applied for is medically necessary according to documentation provided by the family physician in the request for reconsideration.

The appellant provided an additional submission dated Sept. 23/19 which included:

- Annotated copy of the Request for Reconsideration,
- Copy of the appellant's physicians letter dated Aug 1/19.
- Copy of ministry form Orthoses Request and Justification signed by the appellant's Orthotist.
- Annotated page from the EAPWDR.
- Copy of a page from the ministry's original denial of the appellant's request.
- Annotated copy of the ministry form Orthoses Request and Justification signed by the appellant's physician.
- Additional copy of the appellant's physicians letter dated Aug 1/19.

Hearing

The panel conducted a written hearing on October 15/19 as requested by the appellant pursuant to section 22(3)(b) of the Employment and Assistance Act.

In accordance with section 22(4) of the Employment Assistance Act, the panel can only admit evidence that was before the ministry at the time of reconsideration and evidence that is in support of the information and records that were before the ministry at the time of reconsideration. The panel notes that there was a submission by the appellant after signing the Notice of Appeal which requires scrutiny for inadmissible evidence. However, the panel notes that, apart form some inconsequential annotations of some of the forms, all of this information was reviewed at reconsideration. The panel has determined that there was no additional information outside of that available to the ministry at the time of reconsideration. The panel notes here that the appellant's submission stated that while the ministry had approved purchase of bilateral wrist braces in April 2018, these had not been purchased. The ministry had an opportunity to review this statement by the appellant and did not contradict it. Therefore, the panel was unsure if the ministry's description of their approval of day and night wrist splints on July 24, 2019 was accurate, making the panel's assessment more difficult. Specifically, the panel could not determine if the ministry's intention was that the appellant would have both the braces approved in April 2018 and the splints approved in 2019. If the appellant was in the position of not being able to have braces until the new eligibility period passed this would mean no braces would be provided until April 2021, despite the ministry's apparent intention that the appellant would have braces from April 2018.

The panel further notes that the Ministry's reconsideration decision states that the appellant did not request that the decision to deny the wrist lacer element of the thermoplastic brace also be reconsidered, however, the request for reconsideration form states that this is one of the decisions being requested for reconsideration.

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PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry's decision to deny the applicants request for funding funding of:

- thermoplastic wrist braces (water use) which does not meet the requirements of Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, Section 3.10(9) and 3.10(10);
- off-the-shelf orthopedic footwear which does not meet the requirements of Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, Section 3.1(b)(iii)

is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the applicant.

Legislation

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
Health Supplements
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.

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(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,
"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;
(p) a walking boot.
(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.
(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.

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(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 behavior, 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	1year
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) Repealed.
(f) Repealed.
(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.

Ministry Position

The ministry position is that that the appellant is in receipt of disability assistance and thus is eligible to receive health supplements as set out in EAPWDR, Schedule C 3 but was ineligible for funding of:

- thermoplastic wrist braces (water use) which does not meet the requirements of EAPWDR, Schedule C, Section 3.10(9) and 3.10(10);
- off-the-shelf orthopedic footwear which does not meet the requirements of EAPWDR, Schedule C, Section 3.1(b)(iii).

With respect to thermoplastic wrist braces (water use), the ministry notes that EAPWDR, Schedule C, Section 3.10(9) and 3.10(10) sets out that orthoses are subject to time limits and limits on the number of orthoses that may be provided and points out that the regulation allows the funding of only one upper extremity brace per hand, finger, wrist, elbow or shoulder in a two year period. The ministry also notes that there is no provision for funding of a second upper extremity brace for the same hand/wrist if needed for an alternative purpose such as daily living activities involving water.

The ministry notes that funding for a pair of bilateral wrist braces was provided in April of 2018 and suggests that their approval for day and night hand/wrist splints on July 24/19 was done as an exception. As the two year period has not expired, the request for thermoplastic wrist braces is denied. The panel notes here that the appellant's submission leads the panel to believe that this was inaccurate in that the appellant did not draw down the funding for bilateral wrist braces approved in April of 2018. However, the panel acknowledges that the decision is still valid in that the approval of July 24, 2019 starts the waiting period which now expires in 2021.

The ministry suggests that it cannot be established that the appellant requires thermoplastic wrist braces due to a change in medical condition or growth. This addresses a ministry policy that suggests that replacement time periods do not apply in cases if an item is required due to changes in a person's medical condition or growth.

With respect to off-the-shelf orthopedic footwear, the ministry points to EAPWDR, Schedule C, Section 3(1)(b)(iii) which specifies that the medical equipment or device is the least expensive appropriate medical device.

Noting that the appellant's request of May 24/19 was for orthopedic foot-wear for $250 and the ministry on July 10/19 approved funding of $125.00 for "accommodative foot-wear" in place of the appellant's request for use by the appellant with the appellant's current bilateral custom foot orthotics (provided Sept.2018). Based on the information provided the ministry is unable to establish that the appellant requires orthopedic footwear specifically for indoor use as opposed to using custom orthotics with accommodative footwear. As accommodative foot-wear is less costly than orthopedic foot-wear the ministry could not establish that orthopedic foot-wear is the least expensive appropriate medical equipment or device. Therefore, as per EAPWDR Schedule C, Section 3.10(4.1) the maximum for accommodative foot-wear is $125.00.

Appellant Position

The appellant's position is:

- The appellant requests reconsideration for custom wrist orthosis thermoplastic bilateral (2) as they are necessary for tasks in daily living activities that require use of or are in contact with water. Other braces could be a health risk.
- The appellant would also be able to use these for physiotherapy in the pool.
- The appellant has attached a note from the doctor (Aug 1/19) which states: "[The appellant] requires the thermoplastic wrist orthoses bilaterally due to severe carpal syndrome for the purpose of daily living activities involving contact with water such as preparing food, cleaning and personal hygiene".
- The appellant also requests reconsideration to cover the full rather than half of the cost of the therapeutic foot-wear as was approved by the ministry on June 27/19 and believes the ministry may have been incorrect because these shoes are not made to accommodate previously made foot orthosis inserts. It is medically required that I have specific orthopedic foot-wear to prevent further injury or disease.
- The appellant has also provided a note from the doctor (August 1/19) which states: "the appellant requires orthopedic footwear at all times due to calluses, bunions and chronic pain. [The appellant] has orthotic insoles for outdoor use and will need appropriate footwear to accommodate these but also requires corrective orthopedic foot-wear for all indoor use".

Panel Decision

The panel notes that the appellant's request for medical devices can be separated into two distinct requests.

- Wrist Hand Orthosis: The appellant suffers from carpel tunnel syndrome and requests a custom thermoplastic wrist brace for water use and polypropylene/sued wrist lacer-medispec at a total cost of $1070.00. In initially denying these requests the physiotherapist consultant concluded the custom made thermoplastic bilateral brace and the polypropylene/sued wrist lacer-medispec is not the most basic option and the funding time lines are within the two year wait period. The reconsideration decision cites EAPWDR, Schedule C, Section 3.10(9) and 3.10(10) and notes that these provisions allow for the ministry to fund one upper extremity brace per hand, finger, wrist, elbow or shoulder in a two year period and notes that the legislation does not provide for funding of a second upper extremity brace for the same hand/wrist for an alternative purpose, such as daily living activities involving water. The ministry notes that bilateral wrist braces were funded in April 2018 and subsequently funded both day and night wrist splints on July 24, 2019 which they (incorrectly the panel believes) characterize as an exception as they were funded inside the two year time limit. Notwithstanding this apparent error, the ministry asserts that the two year wait period has not expired and so denies the request. The ministry also refers to a policy of the ministry where the replacement time period does not apply where an item is required due to changes in a person's medical condition or personal growth and notes that the request for thermoplastic wrist braces for water use does not meet this. The panel notes that this may align with EAPWDR, Schedule C, Section 3.3 which allows the replacement of a device previously provide by the ministry that is damaged, worn out or not functioning. The panel agrees that this provision does not match the situation of the appellant who argues

for an additional device that matches a need for hygienic and recreational uses. The panel concurs with the ministry assertion that an additional orthoses is not allowed under the legislation. Therefore, the reconsideration decision is a reasonable application of the legislation.

- Orthopedic Footwear: The appellant suffers from Pes Cavus (Panel notes that pes cavus refers to a multiplanar foot deformity characterised by an abnormally high medial longitudinal arch) and was prescribed "orthopedic footwear" with a quoted cost of $250.00. In initially denying this request the ministry acted on the recommendation of a consultant who recommended approval of $125.00 for "accommodative footwear". The reconsideration decision cites EAPWDR Schedule C, sub-section 3.1(iii) which requires that the medical equipment or device be the least expensive appropriate medical equipment or device and then EAPWDR Schedule C, Section 3.10(4.1) which stipulates the cost of the footwear must not exceed $125.00. The appellant points out that Section 3.10(4.1) refers to foot-wear that accommodates custom made orthoses. The appellant already has such foot-wear which accommodates the custom made orthotic for outdoor use and has been prescribed an orthoses which is off the shelf footwear for indoor use at a cost of $250.00. The panel notes here that EAPWDR Schedule C, sub-section 3.10(4.2) provides for orthopedic foot-wear at a cost not to exceed $250.00. The ministry has ruled that the request for an off the shelf orthopedic foot-wear (for indoor use) fails to satisfy the requirements of EAPWDR Schedule C, Section 3.10(4.1) and that satisfying this provision means using her existing custom made orthotics in accommodative foot-wear. The panel notes that the ministry considers the information from the appellant's medical support which speaks of the need for orthopedic foot-wear does not provide convincing medical reasons for excluding the least cost option, that being accommodative foot-wear for indoor use. The ministry concludes that it has not been established that orthopedic foot-wear is the least cost appropriate medical equipment or device. The panel, after some deliberation tends to support the ministry view that the medical prescription is not fully convincing and there exists an element of doubt whether orthopedic footwear is medically essential and not just preferable. Whereas in the appellant submission the appellant makes clear the medical issues that require orthopedic foot-wear and not accommodative foot-wear to use with existing orthotics, the ministry reading of the medical opinion leaves them unconvinced. This element of doubt weighs heavily in the panels conclusion that the ministry ruling is a reasonable application of the legislation.

In each of the two requests discussed above the panel finds that the ministry has been reasonable in applying the legislated provisions in denying each of the requests although the panel was somewhat confused by some of the ministry information contained in the reconsideration decision. In particular, the ministry pointed to their providing in 2019 of a wrist brace as an apparent exception while the appellant states that this funding was not used. Nonetheless the panel has determined this should have no bearing on the reconsideration decision itself as the appellant is still within the two year waiting period.

Conclusion

The panel confirms the ministry reconsideration decision as it was a reasonable application of the legislation. The appellant is not successful upon 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 Keith Lacroix	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/10/15

PRINT NAME Anne Richmond	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/10/16
PRINT NAME Marlene Russo	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/10/16