

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development (ministry)'s reconsideration decision dated August 8, 2019, finding the appellant is not eligible for reimbursement for the purchase of an air cast boot under the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) as the appellant had not received pre-authorization of the minister as is required by, Schedule C, subsection 3(1)(b)(i) of the EAPWDR.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 62, 69

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C Sections 3 and 3.10

PART E – SUMMARY OF FACTS**Summary of key dates:**

- June 21, 2019- The appellant's application for reimbursement for an air cast boot was received by the ministry.
- July 18, 2019- The appellant's application for reimbursement for the air cast boot was denied.
- July 29, 2019- The appellant submitted a signed request for reconsideration.
- August 8, 2019- The ministry found the appellant was not eligible to receive reimbursement for the purchase of an air cast boot.

Evidence before the ministry at the time of reconsideration:

- A letter written by the appellant's doctor dated June 21, 2019 which states:
 - The appellant suffered a recent right foot fracture and a boot is recommended.
- A receipt from a pharmacy dated June 21, 2019 which indicates payment was provided for an air cast boot for \$129.99.
- A letter/self-report from the appellant dated July 26, 2019 which states:
 - The appellant visited her doctor on June 21, 2019 regarding pain and swelling of the right foot. The right foot was in a fiberglass cast as of May 2019.
 - The doctor advised the appellant the cast should be removed. The removal would be June 23, 2019.
 - The doctor advised the appellant that upon removal of the fiberglass cast the appellant would be wearing a walking cast, an air boot. The appellant obtained the air cast boot.
 - A friend had lent the appellant the funds to purchase the air boot cast.
 - The appellant does not have family to assist with the cost of the air cast boot.
 - It is not possible to obtain ministry pre-authorization for an item prescribed on a Friday and required the following Sunday.

Additional Information:

- In the Notice of Appeal dated August 20, 2019 the appellant attached a letter which states:
 - The appellant is submitting previously missed information in regard to her request for financial assistance for an air cast boot.
 - It was not made clear that the walking boot was necessary because she initially required a fiberglass cast immediately.
 - After 3 weeks, the appellant's foot and lower leg acquired complications with pain and swelling.
 - It was determined the cast needed to be removed and for the appellant's injury to

- be supported by a mobility boot. Therefore, it was not possible to submit an application for preauthorization for an air boot
- This was an unexpected medical/physical situation.
- In the Notice of Appeal dated June 21, 2019 the appellant attached a letter from her doctor which states:
 - The appellant had suffered a recent foot fracture in June 2019 which was initially treated with a cast which was complicated with pain, therefore removed and converted to a boot.
 - This was considered a medically necessary appliance without alternative.
 - At the hearing the appellant stated:
 - Her cast removal was an emergency.
 - As the removal of the cast was an emergency, there wasn't enough time for pre-approval to be given for the purchase of an air cast boot.
 - When she went to the pharmacy her friend purchased the air cast boot for her as she required it for Sunday.
 - At the hearing the appellant's advocate stated:
 - Due to their remote location, requests for approval may take as long as 3-6 weeks and that logistically the appellant would not be able to obtain approval for the purchase of an air cast on the same day.
 - In their location the appellant was dealing with a Service BC office and that a request would need to be loaded and sent off making it weeks before the appellant would know if her request would be approved.
 - It was not reasonable to expect the appellant who is homeless, living in a campsite and on crutches to be seeking quotes around their community for an item she would not be given a same day approval.
 - At the hearing the ministry rep stated:
 - The appellant went to the Service BC office twice on June 21, 2019, first with a doctor's note explaining the need for the cast removal at which time she was informed quotes were required before pre-approval could be authorized for the purchase of an air cast boot.
 - On the second visit on June 21, 2019 to the Service BC office, the appellant presented a receipt for the purchase of an air cast boot.

Admissibility of New Information

Section 22(4) of the Employment and Assistance Act states that the panel is empowered to admit as evidence only "the information and records that were before the minister when the decision being appealed was made" and "oral or written testimony in support of" the record of the ministry decision. If the additional evidence substantiates or corroborates the information and records before the minister at the reconsideration stage, the evidence should be admitted; if it does not, then it does not meet the test of admissibility under s. 22(4)(b) of the Employment and Assistance Act and should not be admitted.

Admissibility of Additional Information

The panel considered the new information provided in the letter from the appellant's doctor dated June 21, 2019 and the appellant's written statement dated August 20, 2019 as being in support of, and to corroborate the information and records that were before the minister on reconsideration. Therefore, the panel admitted this letter as evidence in accordance with Section 22(4)(b) of the Employment and Assistance Act.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's determination that the appellant did not meet the eligibility requirements for reimbursement for the purchase of an air cast boot was a reasonable application of the legislation.

Relevant Legislation**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.

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.

(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.

(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. [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.
- (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 behaviour, 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

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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	1 year
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. [B.C. Reg. 94/2018, App. 2, s. 1 (b).]
- (f) Repealed. [B.C. Reg. 144/2011, Sch. 2.]

(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.

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,
(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).

Appellant's Position

Due to her homeless situation, remote location and lack of ministry services she was not able to wait for pre-approval for the purchase of an air cast boot on Friday June 21, 2019 as it was an emergency need to have her fiberglass cast removed on June 23, 2019 and replaced with an air cast boot.

Ministry's Position

The ministry upon review determined the appellant was not eligible for reimbursement for the purchase of an air cast as the appellant did not meet the eligibility requirements set out in the EAPWDR, Schedule C, subsection 3(1)(b)(i) which sets out that preauthorization of the ministry for the medical equipment or device requested is required. The request must be pre-approved by the ministry prior to purchase. As well, the ministry will not accept payment responsibility except in cases of a life-threatening emergency. The ministry found based on the information provided, the appellant did not require an air cast boot due to a life-threatening emergency.

Panel Decision

The legislation under Schedule C, subsection 3(1)(b)(i) of 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...the family unit has received the pre-authorization of the minister for the medical equipment or device requested;". The panel is sympathetic in terms of the situation the appellant found herself in with the understandable difficulty of accessing preauthorization for a weekly medical service from a Service BC office in a small remote town. But, as the appellant did not seek quotes on June 21, 2019 for the purchase of the air cast boot, as instructed by the ministry in order to obtain pre-approval but rather purchased the air cast boot, the panel finds the ministry's determination the appellant was not eligible for reimbursement for the purchase of an air cast boot was a reasonable application of the relevant legislation.

Further, the legislation states under subsection 69 of the EAPWDR, "The minister may provide to a family unit any health supplement set out in section... 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," As the panel found there was no evidence given that the need for an air cast boot was to address a "life threatening emergency", the panel finds the ministry's determination the appellant was not eligible for reimbursement for the purchase of an air cast boot was a reasonable application of the relevant legislation..

Conclusion

The panel finds the ministry's reconsideration decision was reasonably supported by the evidence and confirms the ministry's reconsideration decision. The appellant is not successful in her 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

Charles Schellinck

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/09/17

PRINT NAME

Melissa McLean

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/09/17

PRINT NAME

Douglas J. Jones

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/09/17