

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 October 18, 2019 which denied the appellant's request for a supplement to cover the cost of a pair of custom-made foot orthotics (CMFO) pursuant to sections 3 and 3.10 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disabilities Regulation: Section 62, and Schedule C, Sections 3 and 3.10

PART E – SUMMARY OF FACTS**Evidence at the time of Reconsideration**

1. Referral for Treatment signed and dated (Sept 30, 2016) by a physician, which recommends CMFO.
2. Quote for CMFO dated June 28, 2017 and indicated a cost of \$345.00
3. Orthoses: Request and Justification, signed and dated (June 28, 2017) by an occupational therapist.
4. Purchase Authorization for CMFO dated July 17, 2017.
5. Letter from the appellant's case manager, signed and dated September 24, 2019, which indicated that: the July 17, 2017 CMFO were not properly fitted or the right type of orthotic for the appellant; these CMFO are unusable because they have increased pain in the appellant's feet (who has arthritis in the feet); the appellant is currently using her old insoles that are worn out and torn; not having the proper orthotics is contributing to the appellant mental health challenges; and since the appellant is not wearing proper orthotics, the shape of her foot may change which will cost the ministry more in orthotics and footwear.
6. Quote for CMFO dated October 4, 2019 and indicated a cost \$450.00.
7. Orthoses: Request and Justification, signed and dated (July 25, 2019) by a certified pedorthist.
8. Information sheet dated July 25, 2019 from a footwear and orthotics retail store. The information provided includes the diagnosis from a physician of "planovalgus foot" with a prescription of "1 full length 2 UCBL type hindfoot with hindfoot varus to correct hindfoot vargus and 3 forefoot varus to correct forefoot supination". There is also the recommendation of a night splint.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated by the appellant October 30, 2019, which stated "the custom foot orthotic from July 2017 is causing more pain. The problem is not getting better and is getting worse. I am worried that the problem will become permanent or get worse".

The panel finds that the information contained in the NOA is part of the appellant's overall argument.

Evidence at the Hearing

At the hearing, the appellant's witness stated:

- There is concern for the condition of the appellant's feet.
- The appellant has flat feet and therefore needs orthotics.
- In July 2017 orthotics were given but the occupational therapist (OT) insisted on a specific type of orthotic and the appellant submitted to the OT's instructions. That pair of orthotics were not a proper fit and cause pain.
- The fear is that the 2017 orthotics will deform the feet and eventually cause more health problems which would cost more money.
- The appellant's has a problem with the right foot little toe.
- A new doctor has stated that the problem is with the 2017 orthotics.
- Flat feet have caused problems with the appellant's tibial nerve and muscular pain, and can cause muscular atrophy.
- The pain with the right little toe is radiating up the right leg.
- The appellant also need orthotic shoes so the right little toe will not hurt.
- The appellant's knees touch each other and there has been weight gain which is also impacting the knees.
- Orthotic shoes were not prescribed in 2017 and have not been thus far.

At the hearing, the appellant stated, in part, the following:

- The 2017 orthotics were no good and they were not worn do to the pain they caused.
- When the 2017 orthotics were worn they put pressure on the feet and impacted the little toes.
- When used, the 2017 orthotics cause pain that radiates up the leg.
- A new doctor has stated that the 2017 orthotics are not proper and new ones are essential.
- There is concern because the pain is getting worse and worse.
- Since 2017 the pain has been radiating up the outside of the foot.
- The pain and suffering has been since the appellant was given the 2017 orthotics and now the worry is about the future and that the feet will become deformed.
- Sandals are worn inside but they cannot be worn outside all year-round.
- There is a bone growing on the right foot little toe for which there have been Medical Imagine Reports and X-rays. The medical conclusion was that the orthotics are the problem.
- When asked, the appellant stated that the OT stated that the 2017 orthotics could not be returned.

At the hearing, the ministry relied on its reconsideration decision.

Admissibility of Additional Information

A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

In this case, the panel determined that the information regarding the issues with the appellant's knees and weight gain, and the information regarding the need for orthotic shoes are admissible because the information allows for full and fair disclose of all matters related to the issue on appeal. However the panel notes that reference to the knees and weight gain due to the inability to use her 2017 orthotics has not been confirmed by any medical practitioner and therefore the panel place little weight on this information.

PART F – REASONS FOR PANEL DECISION

The issue on the appeal is whether the ministry's reconsideration decision, which denied the appellant's request for a pair of custom-made foot orthotics, pursuant to sections 3 and 3.10 of Schedule C of the EAPWDR, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Under Section 62 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), in order to be eligible for health supplements in Section 2 or 3 of Schedule C, the person must be a recipient of disability assistance, be a person with disabilities, or be a dependent of a person with disabilities as detailed in the section. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that the person's family unit must meet in order to qualify for specified medical equipment and devices. In its reconsideration decision the ministry also found that the appellant's CMFO are medically essential for basic mobility pursuant to Section 3.10(2) of Schedule C of the EAPWDR.

EAPWDR sections 62, and Schedule C sections 3 and 3.10 are applicable to this appeal. Only those sections relevant to the issue before the panel are included below:

Schedule C

Health Supplements

Medical equipment and devices

3 (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.

Medical equipment and devices – orthoses

3.10 (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

(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	Column 2
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	Orthosis	Time period
1	custom-made foot orthotic	3 year

The Appellant's Position

The appellant argued that a new pair of CMFO are required because the CMFO that were issued on July 17, 2017 were not fitted properly, were not the right type of orthotic and are causing pain in both feet. Therefore the appellant was unable to wear the 2017 CMFO.

The Ministry's Position

The ministry's argued that the legislation sets out the number of CMFO the ministry is authorized to provide. Since the appellant was provided with a pair of CMFO on July 17, 2017, pursuant to section 3.10(10) of the EAPWDR schedule C, the appellant does not meet the eligibility requirements for replacement. The ministry noted that ministry policy allows it to consider replacement of orthosis prior to the 3 year replacement period if there is evidence indicating that there have been changes in the person's medical condition or growth. The ministry argued that, in this case, the evidence does not indicate that the appellant's medical condition has changed or that growth has been experienced.

The Panel's Decision

The panel notes that it does not have the jurisdiction to scrutinize ministry policy or make any finding regarding the ministry's use of policy.

Section 3.10 (9) of Schedule C of the EAPWDR states that the ministry can issue 1 pair of CMFO and section 3.10 (10) of same schedule states that the period of time with respect to replacement of the CMFO is every 3 years. In this case the appellant does not dispute the receipt of CMFO in July 2017 and there is no evidence to the contrary.

Section 3.10(10) of Schedule C of the EAPWDR sets out that the period of time to allow for replacement of a pair of custom-made foot orthotics is 3 years from the date on which the ministry provided the orthoses being replaced. As the appellant's request for replacement of CMFO comes within 3 years of the purchase of a pair of CMFO and there is no flexibility in the legislation, the panel finds that the ministry reasonably concluded that the appellant is not eligible for replacement of the custom-made foot orthotics.

Conclusion

The panel finds that the ministry's decision, which denied the appellant's request for a pair of custom-made foot orthotics because the requisite period of time had not passed to permit the replacement pursuant to Section 3.10(10) of Schedule C of the EAPWDR, was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant. The panel, therefore, confirms the ministry's reconsideration decision. The appellant is not successful at 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

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/11/20

PRINT NAME

Jeremy Sibley

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/11/20

PRINT NAME

Linda Smerychynski

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/11/20