

APPEAL NUMBER
2020-00159

PART C – DECISION UNDER APPEAL

The decision under appeal is the ministry's reconsideration decision dated June 2, 2020 which denied the appellant's request for reimbursement of the cost of a right knee brace. The ministry held that the requested reimbursement did not meet the requirements set out in the EAPWDR.

PART D – RELEVANT LEGISLATION

EAPWDR – Employment and Assistance for Persons with Disability Regulation Schedule C, subsections 3(1)(b)(i), 3(3), 3.10(9) and 3.10(10).

PART E – SUMMARY OF FACTS

The appellant has been designated as a Person with Disabilities (“PWD”). The appellant is in receipt of disability assistance.

The appellant broke both legs in an accident on October 24, 2019. The appellant was initially treated at hospital, where the appellant was fitted with a straight leg brace on the appellant’s right leg. The appellant was not able to see an orthopedic specialist until November 18, 2019. At that appointment it was determined that the straight leg brace was incorrect. The specialist ordered a hinged knee brace, so that the appellant could begin to bend the right knee.

The appellant tried to source the hinged knee brace on November 18, 2019. The orthotics company advised the appellant that they did not have the prescribed hinged knee brace in stock, and that it would have to be ordered. The prescribed knee brace cost was submitted to the ministry for approval on November 19, 2019. The ministry approved payment of the prescribed knee brace on December 11, 2019. The prescribed knee brace was ordered, and subsequently paid for by the ministry.

As a temporary measure, the appellant borrowed money from a family member to pay for a temporary knee brace. The temporary knee brace cost \$120, and it was delivered to the appellant and paid for by the family member on November 18, 2019. On March 4, 2020, the appellant submitted the request for reimbursement of the temporary knee brace to the ministry. The ministry’s denial of the request to reimburse the cost of the temporary knee brace is the subject of this appeal.

In submissions on this appeal, the appellant indicates that the appellant had no choice but to obtain the temporary knee brace immediately, on November 18, 2019. The appellant submits that the appellant could not leave the office of the orthotics company without “some sort of knee brace as the (appellant’s) knee was broken in two places.” The appellant indicates the appellant used the temporary knee brace from November 18, 2019, until December 24, 2019, which is the day that the (ministry funded) prescribed knee brace arrived for the appellant’s use. The appellant also submitted evidence that, on November 4, 2019, her home town support worker (who was not a ministry representative) suggested to the appellant that the appellant could submit bills to the ministry when the appellant was “back home”.

The ministry did not make submissions on this appeal except to rely on the reconsideration summary.

In the reconsideration summary, the ministry held:

1. That the request for reimbursement of the temporary knee brace did not meet the requirement for ministry pre-approval as stipulated in 3(1)(b)(i) of the EAPWDR.
2. That the request for reimbursement of the temporary knee brace did not meet the requirements or time lines that would apply to replacement equipment under 3(3) and 3.10(10) of the EAPWDR. Specifically the ministry indicates that the equipment was not worn out, and in any event the ministry is permitted to provide funding for a replacement knee brace only once in a four year period. As ministry funding for the prescribed knee brace was made in December of 2019, the ministry says the equipment replacement funding provisions of the EAPWDR do not permit reimbursement of the cost of the appellant’s temporary knee brace in the Spring of 2020.

PART F – REASONS FOR PANEL DECISION

The issue on this appeal is whether the ministry’s decision to deny funding for the replacement knee brace is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

Subsections 3(1)(b)(i), 3(3), 3.10(9) and 3.10(10) of the EAPWDR are set out below:

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;

...
(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.

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
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
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3.10 (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

There is no evidence that the appellant sought or received pre-authorization approval from the ministry prior to the purchase of the temporary knee brace. Such pre-authorization is a clear requirement under 3(1)(b)(i) of the EAPWDR. The appellant says that the appellant understood from a non-ministry support worker that bills could be submitted to the ministry when the appellant returned home. This understanding is not correct, and the panel finds that the appellant did not meet the requirement for pre-authorization as set out in 3(1)(b)(i) of the EAPWDR.

In addition, pursuant to 3(3), 3.10(9) and 3.10(10) of the EAPWDR, the ministry is permitted to fund a replacement knee brace only once in a four year period. As the ministry funded a knee brace for the appellant in December of 2019, the panel finds that the ministry was reasonable in denying funding for a second knee brace when the appellant applied for such funding in March of 2020.

For these reasons the panel finds that the reconsideration decision of the ministry was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the reconsideration decision. The appellant is not successful on this appeal.

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PART G – ORDER

THE PANEL DECISION IS: 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
Chris McEwan

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)
2020/07/21

PRINT NAME
Bill Haire

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2020/07/21

PRINT NAME
Jean Lorenz

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2020/07/21