

APPEAL NUMBER

2020-00207

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated August 24, 2020. The decision determined that the appellant was not eligible for funding for custom-made foot orthotics because they did not meet the eligibility requirements set out in the Employment and Assistance Regulation (EAR) sections 67 and 76, or section 62 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

Specifically, the ministry determined that the appellant was not a “qualifying” person. As well, the ministry determined that the custom-made foot orthotics requested are not required to meet a direct and imminent life-threatening health need, as required under section 76 of the EAR.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation (EAR) sections 26, 67, 76 and Schedule C Sections 3(1) and 3.10
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 62

PART E – SUMMARY OF FACTS

The appellant is a recipient of Income Assistance.

The information before the ministry at the time of reconsideration included:

- Request for Reconsideration signed by the appellant on August 10, 2020 indicating:
 - that they were diagnosed with plantar fasciitis and a bone spur;
 - the pain is excruciating when walking or standing too long;
 - they were initially told to purchase shoes and over the counter orthopaedics which did not work and now custom-made foot orthotics have now been prescribed, but they cannot afford the expense
- Letter from the ministry Health Assistance Branch dated July 22, 2020 denying the appellant's request for a health supplement as the eligibility criteria had not been met;
- Orthoses Request and Justification form dated July 15, 2020 completed by the appellant's M.D. describing heel spur and plantar fasciitis, and that custom foot orthotics are recommended. In the signature box there is a notation to see the prescription attached;
- Unreadable form dated May 27, 2020;
- Biomechanical Assessment Report dated June 10, 2020, describing the results of the assessment and the tests completed at the Orthotics clinic. The report recommended that the orthotics be worn everyday for athletics and for work and that certain shoes be replaced; and
- Estimate from Orthotics clinic dated July 15, 2020 in the amount of \$450 for custom cased orthotics.

Additional Information

On the Notice of Appeal form dated September 2, 2020 the appellant wrote that they are unable to stay employed due to the impairment. They also stated that they are currently in the process of applying for Person With Persistent Multiple Barriers (PPMB) designation.

At the hearing, the appellant explained the bone spur in their foot has gotten significantly worse since May 2020 and that they are currently not working at all because they are unable to stand for any length of time. The appellant approached their physician to request surgery as they could not afford the cost of the orthotics. However, there is a wait list for up to one year to get in to see the specialist. The appellant informed the panel they recently received notice from the ministry that their PPMB application had been approved and that medical benefits, including medical supplies, are effective October 1, 2020.

The ministry did not attend the hearing. The appeal record confirms that notification of the hearing was delivered successfully to the ministry. Therefore the panel proceeded with the hearing.

Admissibility of Additional Evidence

The verbal information that the appellant provided in regards to them receiving a letter from the ministry informing that they were eligible for PPMB effective October 1, 2020 will be admitted for review pursuant to section 22(4) of the EAA as the panel considers it is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

PART F – REASONS FOR PANEL DECISION

The issue is whether the ministry's reconsideration decision dated August 24, 2020 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 section 67 of the EAR, and section 62 of the EAPWDR? As well, did the ministry reasonably determine that there is no direct and imminent life-threatening health need as required under section 76 of the EAR?

Relevant Legislation**EAR**

26(1) Except as provided in subsection (2), (2.01), (2.1), (3.01) or (3.1), a family unit is not eligible for income assistance or supplements in respect of a period that occurred before the date the minister determines the family unit is eligible for the income assistance or supplements, as applicable.

Definitions**66.1 in this Division:**

"qualifying person" means a person who

- (a) has persistent multiple barriers to employment, or
- (b) is a recipient of income assistance who is described in section 8 (1) [*people receiving special care*] of Schedule A.

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).

(3) Subsection (2) applies only until the earlier of the following dates:

- (a) the date the recipient ceases to receive income assistance;
- (b) the first day of the calendar month after the minister makes a determination that the recipient, or any dependant

of the recipient other than a dependent child, is capable of accepting employment.

Life Threatening Health Need

76 (1) 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) the adjusted net income of any person in the family unit, other than a dependent child, does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation, 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.

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.

EAPWDR**General health supplements****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.

Appellant's Position

The appellant's position is they are no longer able to continue working due to being unable to stand and they cannot afford \$500 for orthotics.

Ministry's Position

The ministry's position is the appellant was not eligible for custom-made foot orthotics as the eligibility requirements set out in sections 67 and 76 of the EAR, and section 62 of the EAPWDR were not met. They argue that the appellant is not a recipient of PPMB or PWD as is required by legislation, nor has the appellant demonstrated a life-threatening health need.

Panel Decision

The legislation allows the ministry to issue orthotics pursuant to section 3 of Schedule C of the EAR provided the family unit is eligible under either section 67 of the EAR or section 62 of the EAPWDR. EAR Section 67 outlines that health supplements, including orthotics, may be issued to a qualifying person and the definition confirms that a qualifying person is someone with PPMB designation. EAPWDR Section 62 allows for a health supplement, including orthotics, to a person with PWD designation.

At the time of the original request, and at the time of the reconsideration decision, the appellant did not have either PPMB or PWD designation. The appellant provided verbal information to the panel that they have been approved for PPMB effective October 1, 2020, however there is no supporting documentation for the panel to review, nor was the ministry on the call to confirm or deny this. Section 26(1) of the EAR does not permit the ministry to issue a supplement prior to the date the minister has determined the family is eligible for the supplement. The panel finds if the appellant has been determined eligible for PPMB effective October 1, 2020, the ministry was reasonable in their decision and the appellant is not eligible for foot orthotics prior to October 1, 2020.

Section 76 of the EAR allows for the ministry to assist with a health supplement to someone who is not otherwise eligible for it providing the person faces an immediate life-threatening health need. At the hearing, and in the appeal record, the appellant indicated they were no longer able to stand to work. However there is no indication that the foot issue is life threatening. The panel finds the ministry was reasonable in their decision that the appellant did not meet the legislated criteria of EAR section 76.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision was a reasonable application of the legislation in the appellant's circumstance and therefore confirms the decision.

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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

Janet Ward

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020 Sept 24

PRINT NAME

Linda Smerychynski

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 Sept 24

PRINT NAME

Wesley Nelson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 Sept 24