

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated June 16, 2022 that denied the appellant's request for reimbursement of the costs of her custom foot orthotics because her request does not meet the requirements set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 62 and 69, and Schedule C section 3(1)(b)(i) and (ii).

Part D – Relevant Legislation

Employment and Assistance Act (EAA) section 22
Employment and Assistance Regulation (EAR) sections 67 and 76 and Schedule C
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 62 and 69 and Schedule C

Part E – Summary of Facts

From the ministry file:

- The appellant's application for PWD designation was adjudicated on January 17, 2022, and the appellant was eligible for PWD designation as of February 1, 2022.
- The appellant was not a recipient of income assistance.

An invoice from the appellant's podiatrist for "Adult Orthotic" (\$540) and "new patient fee" (\$62) in the total amount of \$602.00 shows that the total amount was paid on April 22, 2021, by debit.

An Orthoses Request and Justification form dated March 8, 2022, was filled in by the appellant's physician and the appellant's podiatrist.

The appellant's podiatrist provided a quote dated March 30, 2022, for \$540.00 for custom made orthotics.

In her Request for Reconsideration dated May 10, 2022, the appellant wrote:

"When I went to have my orthotics made, I wasn't receiving disability. I was on the CRB [Canada Recovery Benefit] and I wasn't working very much. My disability was actually approved in October of 2020 I believe, however at that time, I was advised by a worker to collect the CERB [Canada Emergency Response Benefit] as I would receive more. Now in retrospect, it would have been better for me to go on disability as I was taxed on the CERB and I still owe CRA. Being that it is my first time on disability, I didn't know any better, otherwise I would have waited to get my orthotics. I am a single person who is trying to stay afloat and was hoping to have some refund so as to pay bills. Gas has gone up, food, and it is hard for me to keep up. Please reconsider and if more information is needed let me know. Also I was never made aware of my denial until I called in. I received some cut off brochure in the mail which was illegible and so I called in. I didn't receive my package until a week ago as I went to visit and help my family. I may need an extension."

In her Notice of Appeal dated June 29, 2022, the appellant wrote "I am by myself. I am struggling just to stay afloat. I suffer from anxiety & depression and am ltd [sic] to work so many hours. After paying for my strata fees, food, gas, I don't have much left. I am separated and my husband took me off his insurance. When he left me, I had to pay rent in Vancouver, moving fees, etc. I have a cat and I had a dog. And they came with me as I love them and it's all I had left for support."

At the hearing the appellant repeated information she had previously given and confirmed that this appeal was about receiving a reimbursement for orthotics she had purchased in April 2021. She confirmed that she had not been on assistance at the time she purchased the orthotics and had not requested or received prior approval from the ministry. She had to use her savings because of family issues and because her car broke down. She had acted on the advice of a girlfriend and did not know she could have submitted the receipt earlier. She did not expect the orthotics to be so expensive. The appellant also provided argument that is reflected in part F of the decision.

The ministry reviewed its reconsideration decision and added the following. The appellant submitted an initial application in 2020, and her file was opened on October 20, 2020 and received a verbal decision that she was not eligible for income assistance. Her file was left open until she applied for PWD designation. On May 10, 2022, she submitted the receipt for orthotics. As the appellant is now on PWD assistance she is generally eligible for health supplements. When the ministry authorizes a health supplement, they will forward the funds directly to the provider.

Admissibility of New Evidence

The panel finds that the information provided by the appellant and the ministry at the hearing is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as it contributes to the panel's understanding of the circumstances surrounding the appellant's request for custom foot orthotics. The panel therefore admits this information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's determination that denied the appellant's request for reimbursement of the costs of her custom foot orthotics is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

Section 62 of the EAPWDR and section 67 of the EAR set out who may be eligible for health supplements. The ministry may provide medical equipment and devices set out in Schedule C to a person who is in receipt of disability assistance or income assistance. (For income assistance, the person must also satisfy some other requirements that do not apply in this appeal.)

Schedule C, section 3(1)(b) of the EAPWD and the EAR sets out that the ministry may provide a medical device under section 62 of the EAPWDR and under section 67 of the EAR if (i) the person has received the pre-authorization of the ministry, (ii) there are no resources available to person to pay for it, and (iii) the medical device is the least expensive appropriate one.

Section 69 of the EAPWDR and section 76 of the EAR set out that the ministry may provide medical equipment and devices listed in Schedule C to a person who is otherwise not eligible, if, among other requirements, the ministry is satisfied that the person faces a direct and imminent life-threatening need and there are no resources available to the person to meet this need.

Appellant's Position

The appellant argues she should be eligible for reimbursement for custom foot orthotics she purchased in 2021 because she can barely manage to pay for her daily living expenses and the refund would help to pay her bills. Had she known the legal requirements she would have waited to get her orthotics. She does not think the ministry was unreasonable in its decision, but the timing was to her disadvantage. Had she been on disability assistance in 2021 she would have received funding from the ministry.

Ministry's Position

The appellant was not in receipt of disability assistance at the time of the purchase of her custom foot orthotics (April 22, 2021). As such the appellant was not eligible to receive health supplements set out in the EAPWDR. On April 22, 2021, eligibility for health supplements would have been considered under sections 67 and 76 of the EAR. This legislation would have required the appellant to be a recipient of income assistance and have a life-threatening health need in order to receive a health supplement for orthoses. The ministry determined the appellant was not a recipient of income assistance and was not facing a direct and imminent life-threatening health need. The appellant indicated had she known she required the ministry's prior approval she would have waited.

The ministry also determined that the appellant's request did not meet the eligibility requirements set out in the EAPWDR, Schedule C sections 3(1)(b)(i) and 3(1)(b)(ii). The appellant purchased the custom foot orthotics on April 22, 2021 and did not request the ministry's approval to purchase custom foot orthotics until March 8, 2022. She purchased them on April 22, 2021, by debit. Therefore, the ministry is not satisfied the appellant did not have resources available to meet her need to purchase custom foot orthotics.

Panel Decision

After considering all the evidence the panel finds the ministry was reasonable when it denied the appellant's request for reimbursement of the costs of her custom foot orthotics.

The panel finds the ministry reasonably determined that the appellant was not eligible to receive health supplements under section 62 of the EAPWDR as she was not in receipt of disability assistance on April 22, 2021, when she purchased her foot orthoses. As the appellant was also not in receipt of income assistance the panel finds the ministry reasonably determined that she was not eligible for health supplements under section 67 of the EAR. The panel finds further that the ministry reasonably established that the appellant was not facing a direct and imminent life-threatening health need as set out in section 76 of the EAR or section 69 of the EAPWDR; her medical practitioner did not indicate that the appellant was facing a life-threatening health need, and the appellant herself stated she could have waited for the ministry's prior approval before purchasing the orthoses.

The panel finds further that the ministry reasonably determined that the appellant's request for custom foot orthotics does not meet the eligibility requirements set out in Schedule C sections 3(1)(b)(i) and 3(1)(b)(ii) of the EAPWDR and EAR: The appellant did not request the ministry's approval until March 8, 2022 and was able to pay for her custom orthotics in full on April 22, 2021.

Conclusion

The panel acknowledges the appellant would benefit from a reimbursement of her foot orthoses. However, the panel finds the ministry's determination that the appellant was not eligible for custom foot orthotics under section 62 and Schedule C of the EAPWDR or under section 67 and Schedule C of the EAR is a reasonable application of the legislation in the circumstances of the appellant. The ministry's reconsideration decision is confirmed and the appellant is not successful on appeal.

EMPLOYMENT AND ASSISTANCE ACT

Panels of the tribunal to conduct appeals

22 (4) 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.

EMPLOYMENT AND ASSISTANCE REGULATION

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).

(1.1) and (1.2) Repealed. [B.C. Reg. 145/2015, Sch. 1, s. 8 (b).]

(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.

Health supplement for persons facing direct and imminent 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).

(2) For the purposes of subsection (1) (c),

(a) "adjusted net income" has the same meaning as in section 7.6 of the Medical and Health Care Services Regulation, and

(b) a reference in section 7.6 of the Medical and Health Care Services Regulation to an "eligible person" is to be read as a reference to a person in the family unit, other than a dependent child.

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

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.

Health supplement for persons facing direct and imminent life threatening health need

69 (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).

(2) For the purposes of subsection (1) (c),

- (a) "adjusted net income" has the same meaning as in section 7.6 of the Medical and Health Care Services Regulation, and
- (b) a reference in section 7.6 of the Medical and Health Care Services Regulation to an "eligible person" is to be read as a reference to a person in the family unit, other than a dependent child.

SCHEDULE C [Schedule C of the EAPWDR is identical to Schedule C of the EAR]

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.

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)
 Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name
Inge Morrissey

Signature of Chair

Date (Year/Month/Day)
2022/09/13

Print Name
Melissa McLean

Signature of Member

Date (Year/Month/Day)
2022/09/13

Print Name
Edward Wong

Signature of Member

Date (Year/Month/Day)
2022/09/13