

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 September 13, 2022, which denied the appellant’s request for replacement custom-made foot orthotics. While the appellant meets the legislated criteria of sections 3.10(1), (2) and (3) of Schedule C, the appellant is currently not eligible for another pair of custom-made foot orthotics because

- the ministry can only provide one or one pair of custom-made foot orthotics as set out in section 3.10(9); and
- the 3-year replacement period set out in section 3.10(10) has not passed yet.

Part D – Relevant Legislation

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

Part E – Summary of Facts

From the ministry file:

- The appellant has been designated as a Person With Disabilities (PWD) and is in receipt of disability assistance.
- Previously, on December 4, 2020, the ministry provided funding for custom-made foot orthotics due to bilateral foot pain caused by plantar fasciitis. At this time, the appellant required custom-made semi-rigid foot orthotics to provide increased arch support and rear foot control and increased stability and to increase longitudinal arch support to alleviate stress on plantar fascia.

An Orthoses Request and Justification form submitted by the appellant to the ministry includes the following information:

- In section 2, dated May 18, 2022, the appellant's family physician prescribes foot orthotics due to

- osteoarthritis in the appellant's feet.

- Section 3, dated February 7, 2022, is completed by the appellant's pedorthist:

- The specifications of the orthoses required to meet the appellant's needs are: "A custom made orthotics will be made to support the longitudinal and metatarsal arches of the foot. Cushioning will be added to the forefoot to help stabilize and cushion the foot."
- The prescribed item will assist with joint motion and/or support as follows: A semi-rigid orthotic will help to stabilize the foot and re-establish the longitudinal and metatarsal arches of the foot. Cushioning help to reduce pressure on the forefoot and toes."
- The prescribed item is required to assist in physical healing from surgery, injury or disease and to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition.
- The custom-made foot orthotic will be made from a hand cast mold.
- In describing any other information that may be relevant to the application, the pedorthist writes: "Current device provides minimal support and offloading of the structures involved."

A quote dated May 24, 2022, for custom foot orthotics from a medical equipment supplier is for \$500.

An x-ray report dated January 25, 2022, states: "There may be very minimal narrowing of the bilateral 1st MTP joint spaces but otherwise no features of significant arthropathy throughout the bilateral feet. Specifically, no erosions identified. Small bilateral posterior and plantar calcaneal spurs."

In a letter dated August 26, 2022, the appellant wrote that

- when they got their previous foot orthotics in December 2020, they found they were not a proper fit and were uncomfortable.
- The soles of the orthotics were very thin and caused the discomfort.
- The appellant had been using them for a year and later on consulted the doctor about the discomfort. The doctor prescribed pain relievers for the discomfort.
- An x-ray was completed on January 25, which found very minimal narrowing of the bilateral 1st MTP joint spaces and small bilateral posterior plantar calcaneal spurs.
- The soles wore down, are now damaged and the appellant is not able to use them.
- The appellant would prefer not to wait until December 2023 to get new orthotics as they have hardship with mobility, use a cane, and experience a lot of pain without the orthotics when standing or walking around. The orthotics do help.

No additional evidence was provided for the appeal as the appellant did not provide a written submission and the ministry's submission stated that it would rely on its reconsideration decision.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's denial of the appellant's request for replacement custom-made foot orthotics is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

Appellant's Position

The appellant argues they should be eligible for new foot orthotics because the previous ones, which were provided in December 2020, were not a proper fit and were uncomfortable. The soles are worn down and are now damaged and can't be used. The appellant cannot wait until December 2023 to get new orthotics because they need them now. The appellant has difficulty with mobility, uses a cane, and experiences a lot of pain without the orthotics when standing or walking around.

Ministry's Position

The ministry determined that the appellant has met the eligibility criteria of Schedule C sections 3(1), 3.10(2) and 3.10(3). However, the appellant's request does not meet the requirements of sections 3(3), 3.10(9) and 3.10(10):

- Under section 3(3)(a) the ministry may provide a replacement of medical equipment, previously provided by the ministry, that is damaged, worn out or not functioning if it is more economical to replace than to repair the medical equipment. However, section 3(3)(b) dictates that the timelines in section 3.10 must pass prior to the replacement of the medical equipment.
- Section 3.10(9) sets a limit to the number of orthoses which may be provided; the ministry is able to provide no more than one or one pair of custom-made foot orthotics.
- Section 3.10(10) dictates three years must pass prior to the ministry providing funding replacement custom-made foot orthotics. The appellant last received custom foot orthotics in December 2020 and therefore is not eligible for replacement of these items until December 2023.

Ministry policy indicates that the replacement period does not apply in situations where a replacement is required due to changes in a medical condition or growth. However, it has been indicated that the appellant requires replacements as their foot orthotics are worn out, not because of a change in their medical condition or growth. Approval for custom-made foot orthotics in 2020 was based on similarly described foot pain and a diagnosis of

plantar fasciitis. While the appellant has now been diagnosed with osteoarthritis, it is not clear that this is a change in the appellant's medical condition. The type and form of orthotic continues to be the same despite this varied diagnosis. And, again, the basis of the request is due to the current orthotics being worn out. While the appellant reports the orthotics were initially not a good fit, this has not been confirmed by the medical practitioner or pedorthist. Therefore, the ministry cannot conclude the appellant's request meets this policy exemption.

Panel Decision

After considering all the evidence the panel finds the ministry was reasonable when it denied the appellant's request for replacement custom-made foot orthotics.

The panel finds the ministry reasonably determined that the appellant is currently not eligible for custom-made foot orthotics because the legislated time limit for replacement has not yet passed. Section 3.10(10) of Schedule C sets out that the time period that has to pass is 3 years; the appellant received custom foot orthotics in December 2020 which is only 2 years ago.

The panel finds further that the ministry reasonably determined that the appellant does not meet the requirement of section 3.10(9) of Schedule C. This section sets out that the limit of the number of custom-made foot orthotics the ministry can provide is no more than one or one pair. The requested orthotics would exceed the legislated limit of section 3.10(9).

The panel notes that while the ministry policy is a generous extension of the applicable legislation, the panel's jurisdiction is limited to determining whether the ministry reasonably applied the applicable legislation.

Conclusion

The panel acknowledges that the appellant may benefit from a replacement of their custom-made foot orthotics. However, the panel finds the ministry's determination that the appellant was not eligible under sections 3.10(9) and (10) of Schedule C of the EAPWDR 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 FOR PERSONS WITH DISABILITIES REGULATION

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.

(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 (1) In this section:

"orthosis" means

- (a) a custom-made or off-the-shelf foot orthotic

(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.

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

APPEAL NUMBER 2022-0223

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)

2022/12/02

Print Name

Jane Nielsen

Signature of Member

Date (Year/Month/Day)

2022/12/04

Print Name

Effie Simpson

Signature of Member

Date (Year/Month/Day)

2022/12/04