

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 December 14, 2022, which denied the appellant's request for custom-made foot orthotics and a biomechanical evaluation fee. While the appellant meets the legislated criteria of sections 3(1) and 3.10(2)(a) of Schedule C of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), the appellant does not meet the requirements of sections 3.10(2)(b) and (c) of Schedule C.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation Schedule C section 3.10

Part E – Summary of Facts

The appellant is a dependent child of a family unit eligible for disability assistance.

Information Before the Ministry at Reconsideration

- An Orthoses Request and Justification Form dated August 9, 2022, in which a physician prescribes a custom-made foot orthotic for the appellant. The doctor wrote that the prescribed item would assist with joint motion and/or support by decreasing pain in feet. The doctor answered “No” to all the questions as to whether the purpose of the item is for: prevention of surgery; for post surgical treatment; to assist in physical healing from surgery, injury, or disease; or to improve physical functioning that has been impaired by a Neuro-Musculo-Skeletal condition.
- An estimate from an Orthotics company dated July 27, 2022, indicating custom orthotics in the amount of \$500 and a Biomechanical Evaluation Fee of \$95.
- A letter from the ministry’s Health Assistance Branch (HAB) dated October 14, 2022, denying the request for custom orthotics because they were not satisfied that the orthotics are medically essential to achieve or maintain basic functioning and the biomechanical assessment fee is not a listed item that is covered in Schedule C.
- A Request for Reconsideration (RFR) signed by the appellant on November 28, 2022, included the following reasons for requesting a reconsideration:
 - He experiences pain in his feet due to plantar fasciitis.
 - They have tried over the counter inserts that somewhat help, but he still experiences pain.
 - There is a family history of plantar fasciitis.
 - He is active in sports and because of his height and foot size, it is a critical time for him to get orthotics.
 - They have a large family and no resources to pay for custom-made orthotics.
- Along with the RFR, a letter from the school coach was submitted, (in summary):
 - The appellant is active in athletic programs at the school, spending approximately 2 ½ hours being active, followed by walking to and from school.
 - His high level of activity is problematic for his feet, and there is a definite need to have orthotics in his athletic shoes.
 - They would like to see the appellant succeed and continue in the athletic program; however, his plantar fasciitis must be managed to allow him to continue to be active and involved in the sports he loves.
- A doctor letter dated November 23, 2022, confirming a plantar fasciitis diagnosis and that the appellant requires custom orthotics. The letter adds that over-the-counter orthotics have been tried and do not work.

Information Received After Reconsideration

On the Notice of Appeal Form dated December 30, 2022, the appellant wrote similar statements as to what was already noted in the RFR, and (in summary):

- They are willing to accept the \$450 limit as they could put it towards the total cost of the orthotics.
- Please pay attention to the family doctor letter as they point out that he does meet the two objections that were raised in the reconsideration decision.
- A letter from the doctor dated December 21, 2022, supporting the request for orthotics (in summary):
 - The appellant's plantar fasciitis interferes with many activities of daily living: including anything to do with ambulating and moving; walking; running; going up and down stairs; carrying his backpack or grocery bags.
 - He experiences a great deal of pain while doing these daily living activities and it limits his daily functioning.
 - The plantar fasciitis he suffers from is a neuro-musculo-skeletal condition (NMS) which involves the muscles, fascia, nerves and bones.
 - The custom-made orthotics are necessary so that the orthotics can improve his physical functioning which has been impaired by his NMS.

At the hearing, the appellant's mother (her) spoke on behalf of the appellant (he), who is a minor. The panel will refer to her as the appellant.

The appellant addressed what she felt were the three main issues raised in the RD, which she believes were the reasons the orthotics were denied.

1. That activities of daily living activities (DLA) were not initially addressed by the doctor. These were since addressed in the doctor letter dated December 21, 2022. The doctor confirmed the appellant is affected in all areas of DLA including walking, riding bike, climbing stairs, carrying his backpack. The appellant's pain has increased over the past year, and he is in pain all the time due to the pressure on his feet.
2. That plantar fasciitis was not confirmed to be an NMS condition. The appellant stated that the doctor was very upset upon learning that the ministry did not know that plantar fasciitis is an NMS and wondered why the ministry does not consult with physicians if they did not know what this. The doctor confirmed in the December 21, 2022 letter that the appellant's condition is an NMS condition.
3. That the ministry sets a limit of \$450. The appellant read the RD to mean that one of the reasons the request was denied was because the orthotic and fee totalled over \$450 and that unless it was less than that amount the request would be denied.

The appellant added that they have a large family and that recent contacts with the ministry, for a variety of reasons, have left her feeling angry at having to fight so hard to receive help. She added that if she wasn't an educated person she would have given up, but because her son is in such pain, and she has no resources to buy them herself she had to proceed to the appeal stage.

The ministry relied on the RD and noted that the first decision to deny orthotics was denied because the issue of basic mobility was not addressed. Orthotics must be required for basic functionality, and the focus of the request indicated the appellant required the orthotics so he could do sports. The doctor letter of December 21, 2022, confirming the need was for daily functioning, was not received prior to the RD. The same doctor letter also confirmed that the orthotics are required to treat an NMS condition, and this information was not clearly shown in the initial request. The ministry added that it was their opinion that if this letter had been received prior to the RD it likely would have changed the outcome of the decision.

The ministry explained that if orthotics is approved, the maximum amount payable is \$450. If some suppliers charge more than that it would be up to the appellant to cover the difference.

Admissibility of Additional Information

The appellant provided oral evidence at the hearing, as well as a more comprehensive statement on the NOA, and included a doctor letter which confirmed that the orthotics are required for basic functioning and that plantar fasciitis is an NMS condition. The ministry did not object to the additional information. Therefore, the panel admits the additional information under section 22(4) of the Employment and Assistance Act, which allows for the admission of evidence 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 in this appeal is whether the ministry's denial of the appellant's request for custom-made foot orthotics and the biomechanical assessment fee 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's position is that he requires orthotics to manage the pain he experiences in his feet every day while doing DLA. He has plantar fasciitis, which is an NMS condition, and he believes he meets the requirements.

Ministry's Position

The ministry's position at reconsideration was they were satisfied the orthotics were prescribed by a medical practitioner, they would be fitted by an orthotist, they would be made from a hand-cast mold, they are the least expensive option as over-the-counter orthotics are not effective, and there are no resources available to pay the cost. However, there was no evidence to suggest the orthotics are required to achieve or maintain basic functioning as required by section 3.10(2)(b), nor are they required for any of the purposes set out in section 3.10(2)(c). The ministry also determined that the biomechanical assessment fee is part of the total cost of orthotics, which has a limit of \$450.

Panel Decision

The ministry has determined the requirements of EAPWDR Schedule C section 3(1) and 3.10(2)(a) and 3.10(3)(a)-(d) have been met, so the panel will focus on whether the remaining requirements of section 3.10(2)(b), (c) and (3)(e) have been met.

Section 3.10(2)(b) requires that the orthosis is medically essential to achieve or maintain basic functionality. The ministry argues that there was insufficient evidence to make that determination because the supporting information related only to needing them for sports activities. The panel notes in the RFR the appellant stated he has pain in his feet all the time, including walking to school and then an additional letter from the doctor was submitted to confirm they are required for basic mobility such as walking, biking, climbing up stairs, carrying his backpack. Based on the additional information provided to clarify the appellant's situation, the panel considers all these activities to be basic functionality. Therefore, the panel finds that based on the new evidence submitted the ministry was not reasonable to determine the requirements of section 3.10(2)(b) had not been met.

Section 3.10(2)(c) requires the orthosis is required for one or more purposes: (i) to prevent surgery; (ii) for post-surgical care; (iii) to assist in physical healing from surgery, injury, or disease; and (iv) to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition. The appellant provided an additional doctor letter that confirmed that plantar fasciitis is an NMS condition. The appellant has tried over-the-counter orthotics and still experiences pain. There is a family history of orthosis use where their physical functioning improved with the use of foot orthotics, so it would be reasonable to conclude that the appellant's physical functioning would also improve. For these reasons, the panel finds that based on the new evidence submitted the ministry was not reasonable to determine that the requirement section 3.10(2)(c) had not been met.

Section 3.10(3)(e) limits the cost of one pair of custom-made foot orthotics, including the assessment fee, to \$450. The RD determined the biomechanical assessment fee is not an item that is identified in legislation. The panel did not find any other area in legislation that specifically identifies that a biomechanical assessment fee is an authorized item. However, 3.10(3)(e) specifically includes an assessment fee as part of the \$450 limit. The panel considers the ministry was reasonable to determine the cost of orthotics, including the biomechanical assessment fee, cannot exceed \$450.

Conclusion

The panel finds the ministry's reconsideration decision that the appellant is not eligible for foot orthotics was not reasonable based on the evidence provided. The biomechanical assessment fee is considered part of the entire cost of the orthotics. The appellant is successful in this appeal.

Relevant Legislation

EAPWDR Schedule C

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.

APPEAL NUMBER 2022-0326

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

Janet Ward

Signature of Chair

Date (Year/Month/Day)

2023/01/16

Print Name

Richard Franklin

Date (Year/Month/Day)

2023/01/17

Print Name

Effie Simpson

Signature of Member

Date (Year/Month/Day)

2023/01/17