

### **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 January 14, 2023, which denied the appellant's request for reimbursement of custom foot orthotics.

The ministry found that the custom-made orthosis was medically required and was fitted by a podiatrist pursuant to the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C subsection 3.10(2)(d), (3)(a) and (b).

However, the ministry found that the orthosis was not:

- pre-approved by the minister,
- the least expensive,
- made from a hand-cast mold, or
- below the cost of \$450

pursuant to subsections 3(1)(b)(i) and (iii), 3.10(2)(b) and (c), and 3.10(3)(d) and (e) of Schedule C.

### **Part D – Relevant Legislation**

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

**Part E – Summary of Facts**

The appellant is designated as a person with disabilities (PWD) and is in receipt of disability assistance.

**Information Before the Ministry at Reconsideration**

- A prescription from a podiatrist dated November 16, 2022, that confirms the appellant has plantar fasciitis and requires functional orthotics for daily use. They are custom made to correct and treat the specific pathology mentioned.
- An invoice and a receipt showing the appellant paid \$770 for orthotics.
- A 3D scan and information explaining the digitally milled orthotic process used in the production of the recommended orthotics.
- A printout from the ministry dated November 16, 2022, that confirms the appellant is covered by Pacific Blue Cross (PBC) and is eligible for extended health benefits.
- A letter from the ministry's Health Assistance Branch (HAB) dated November 23, 2022, that denies the appellant's request for reimbursement of orthotics because he had not received prior approval from the ministry, and because the orthotics were not made from a hand cast mold.
- A Request for Reconsideration (RFR) form signed by the appellant on December 19, 2022, in which he outlines as his reasons for requesting a reconsideration as (summarized):
  - He has spoken to several different ministry employees and was provided with incorrect information several times:
    - On November 16, 2022, he spoke to a ministry worker to explain he required foot orthotics and was told that, because he was covered by Medical Services Plan (MSP) of BC, he was covered for the cost of going to the podiatrist. He received printed confirmation that he was also covered by the ministry for extended health coverage (PBC). The worker informed him that if other things come up about the problem with his feet that need to be paid for, to bring the ministry an estimate of the cost, or if he pays for it himself, they will reimburse him.
    - That same day, November 16, 2022, he saw the podiatrist, who prescribed a custom made orthotic for a total cost of \$770. The podiatrist office explained that they do not deal with the ministry, and he would have to pay the cost himself and take up the bill matter with the ministry. So, he paid the entire amount.
    - On November 17, 2022, he spoke with a different ministry worker to ask how he would be reimbursed the \$770. He was told they do not reimburse. When shown the PBC paperwork the previous worker had

given him, this worker informed him that this is covered under MSP, not PBC. He was confused by the jargon used, and the worker informed him that a supervisor would call him.

- He had not heard from the supervisor, so on November 21, 2022, he went to the office again where a supervisor spoke to him. She reviewed all the paperwork and informed him that he should call PBC directly himself. The supervisor provided him with the phone number. When asked if the original worker could not join their conversation, the supervisor declined and added that she would submit all the documents.
- After returning home, he called the PBC number he had been given and was informed that the number is not for client use, only ministry use, and they would not speak to him.
- On November 22, 2022, he spoke to the second worker at the ministry who explained that neither PBC nor MSP covers the \$770 cost of orthotics, and she then connected him with the supervisor of the orthotics department of the ministry. That person explained the ministry's regulations and requirements, that he was given bad information, that he should have filled out a form to request orthotics. She then told him to file an RFR.
  - He did not know about pre-authorization being required, in fact, was told he would be reimbursed.
  - He did not know about the requirement that the orthotics to be the least expensive. Other podiatrists charge a similar amount, and this podiatrist was very reasonable.
  - He did not know that he required a letter from his medical doctor. After being notified by the ministry it was required, he did obtain one, which he submitted with the RFR.
- A letter dated December 15, 2022, from the appellant's doctor, which confirms that the appellant has bilateral feet pain and that he appropriately saw the podiatrist. The doctor writes the appellant will benefit from wearing custom foot orthotics daily for treatment.

### **Information Received After Reconsideration**

On the Notice of Appeal form dated January 24, 2023, the appellant wrote (summarized):

- In the ministry's pamphlet that outlines an appellant's rights, they cite that he has a right to quality services, fair access to programs and transparent decision making.

- The ministry, in the RD, acknowledges that he was provided with misinformation. The way the ministry dealt with this matter amounts to being evasive, deflective, and, in other words, obstruction of justice/not being transparent in their decision making.
- By providing him with the information about being covered under PBC and MSP, the ministry is in blatant breach of a binding contract.
- He was denied the right to quality services, fair access to programs and transparent decision making. Clearly, the service given to him was not in any way a quality service. He was not told the right information, therefore, denied fair access to programs by incorrectly explaining how to apply for orthotics and not providing the governing regulations and requirements up front.
- There was no reason that he would not have followed the governing regulations and requirements, had the ministry done their job. This matter occurred because of negligence by the ministry.
- Even though the ministry acknowledged that they were wrong, they are pushing him to take responsibility and pay for the cost of their wrongdoings. He would like to see in the regulations and requirements where this is allowed.
- By providing letters from the medical doctor and the podiatrist there is sufficient proof the ministry should reimburse him for what he paid.
- The total cost for all expenses relating to this matter are: \$105 for the podiatrist fee; \$665 for the orthotics; \$40 for the medical report; and \$28.67 for making copies/sending faxes. Total due of \$838.67.
- If the ministry will not reimburse him the sum of \$838.67, he will take the matter to Small Claims Court.

On February 6, the appellant submitted a note from the bank that states he paid a \$40 for an e-transfer. The appellant added a statement that he had also paid \$39.85 for making copies and sending faxes.

At the hearing, the appellant stated that he is not asking for sympathy, but for the law to be applied correctly. He states that his right foot is very painful and that he had applied for orthotics before, but they need to be changed. The appellant described how his excruciating foot pain caused immobility. He said that he could not even walk five feet from his bed to the bathroom. The appellant then voiced all the points he had previously written in his RFR and NOA statements (as above in Summary of Facts).

The appellant emphasized that although the ministry may be right that he does not meet all the legislation requirements, he was never told what he needed to provide. He was not aware that the orthotics must be made by a hand-cast mold or that an orthotic produced using 3D technology is not permitted, or there was a limit of \$450. He states that the

podiatrist informed him that no one uses hand cast molds anymore, they use 3D technology. He emphasized that the ministry has gone against their stated objectives, which are: A Right to Quality Service; Fair Access to Programs; and Transparent Decision Making.

The appellant states that both his podiatrist and doctor confirm that his condition requires he wears orthotics for daily living, and he would like to be reimbursed the entire cost of the money he has spent, \$838.67. He was informed that he only had to submit his receipts and he would be reimbursed. This has not happened, so the ministry is in breach of contract. The appellant added that he paid for the orthotics using his disability assistance. He states that because he had been informed by the worker that he would be reimbursed, he used some of his rent money, expecting to be reimbursed. Because he was not reimbursed, he had to resort to going to his local church for food.

The appellant reiterated that if he had been told right away what the requirements were, he would have followed the direction, however, he was never given the opportunity to do so.

At the hearing, the ministry confirmed the appellant had been given incorrect information regarding orthotics on several occasions. She thought it is possible that the first worker misunderstood what was being requested, because some services provided by a podiatrist are covered by MSP, which is why he was given the confirmation of MSP form. The ministry acknowledged that the appellant was again given incorrect information when he came in with his receipts and was told that orthotics were covered under PBC and he was given the PBC phone number to call.

The ministry explained the correct process is that he should have been give the orthotics request form for the doctor to complete and send in for pre-authorization. When asked if this form identifies the legislative requirements, the ministry answered that it asks the doctor to respond to questions that relate to the legislative requirements but does not contain the actual legislation on the form. For example, it does not inform the podiatrist that a hand-cast mold is all that would be approved, it just asks, "Is the orthotic made from a hand-cast mold?" It asks about the patient's health to determine whether the medically related requirements have been met.

When asked if front counter staff should have given the appellant more information about the requirements for approval for the orthotics, the ministry said that the Employment and Assistance worker should have talked to the appellant about the requirements including the kind of mold that was permitted in the regulations. Asked whether, in the

ministry's view, the appellant could have understood all his conversations with staff to mean that he had pre-authorization, the ministry said that it was possible and that she understood how he could have had that impression.

The ministry added that no blanket approval is ever given for any requests because there are many criteria that have to be met. The ministry explained that the appellant's information was reviewed, and it was determined that he was not eligible for orthotics because:

- 1) The orthotics were not pre-approved.
- 2) The orthotics were not the least expensive because those made with a 3d mold are more expensive than those made with a hand-cast mold.
- 3) There is a limit of \$450. Some podiatrists charge the ministry approved rate and some are a bit higher. If a higher amount, the client would have to pay the difference.
- 4) The orthotics were not made from a hand-cast mold.
- 5) The legislation requires that the orthotics are required for basic functioning. The podiatrist indicated that orthotics would be beneficial for the appellant, not that it is for basic mobility.

### **Admissibility of Additional Information**

The panel admits the appellant's NOA and oral evidence 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 reimbursement of custom foot orthotics is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

**Appellant Position**

The appellant's position is that he was told before he went to his podiatrist appointment that he is covered for orthotics, and he could either bring in an estimate or receipts showing payment and he would be reimbursed. He was not provided with all the necessary information the ministry required, and if he had he would have ensured all the proper steps would be taken. He feels that he has been poorly treated by the ministry and they should reimburse him, as promised.

The appellant believed that he had received approval and therefore pre-authorization to purchase the orthotics and that that he would be reimbursed for the cost of them. In three separate conversations with ministry staff, confirmation of coverage was repeated and assured. He took this approval in good faith and did not think he needed to further check any requirements.

**Ministry Position**

The ministry's position is that the appellant did not receive prior approval for the orthotics, that they are not required for basic functioning, and the orthotics he did receive are not the least expensive type and are not made from a hand-cast mold as specified in legislation.

**Majority Panel Decision**

The legislation that allows the ministry to authorize payment for orthotics is provided by Schedule C of the EAPWDR. There are a number of requirements that are set out, and **all** these requirements must be met before orthotics may be issued.

The ministry found that the custom-made orthosis was medically required and was fitted by a podiatrist pursuant to Schedule C subsection 3.10(2)(d), (3)(a) and (b). However, the ministry found that the orthosis was not: pre-approved by the minister, the least

expensive, made from a hand-cast mold, or below the cost of \$450 pursuant to subsections 3(1)(b)(i) and (iii), 3.10(2)(b) and (c), and 3.10(3)(d) and (e) of Schedule C.

**Section 3(1)(b)(i)** requires pre-authorization of the minister.

In the appellant's circumstance, the ministry determined that there was no pre-authorization because the podiatrist did not submit the necessary form to the Orthotics branch and did not receive approval prior to making the orthotics. The appellant argues that he was authorized by the local ministry office to proceed with getting orthotics, and he was told that he would be reimbursed if he brought in a receipt. The panel notes that the appellant has received orthotics in the past and that there should be some accountability on the appellant's part to know that it is not usual for the ministry to reimburse for orthotics.

The ministry acknowledged an error was made when he was told to bring in a receipt and he would be reimbursed. Their usual process is to provide the orthotics request form to be completed prior to orthotics being made. The majority panel finds that although the appellant may consider that pre-approval was implied when a ministry worker directed him to bring in a receipt to be reimbursed, they also had directed the appellant to submit an estimate. There could have been a misunderstanding about the purpose of the ministry providing the appellant with the form that confirms he is a recipient of disability assistance who is eligible for orthotics, in general. The appeal record does not contain the orthotics request form, which provides the necessary and required information to determine whether orthotics may be authorized. Therefore, because there was no pre-authorization for the specific orthotics the appellant ended up having made for him, the majority panel finds the ministry was reasonable to determine the requirement of 3(1)(b)(i) has not been met.

**Section 3(1)(b)(iii)** requires that the orthotics be for the least expensive appropriate ones.

The appellant was not informed of this requirement and accepted the podiatrist's opinion that the 3D cast orthotic he prescribed was appropriate for him. Although it is unfortunate the appellant was not aware of the least expensive requirement, the legislation is clear that an orthotic must be for the least expensive option. The panel finds it is reasonable to determine that a 3D cast orthotic is more expensive than those made in-house from a hand-cast mold. The majority panel finds the ministry was reasonable to determine the requirement of section 3(1)(b)(iii) has not been met.



**Section 3.10(2)(b)** requires that the orthosis is medically essential to achieve or maintain basic functionality.

The appellant's doctor and podiatrist both wrote letters supporting his need for orthotics because of his medical condition, plantar fasciitis. The ministry argues that the doctor only stated that the appellant would benefit from having a orthotics, not that they were required for basic mobility. The podiatrist confirms the orthotics are for daily use and are custom made to correct and treat the condition. The appellant's doctor also wrote that the appellant has bilateral feet pain and he appropriately saw the podiatrist, who diagnosed plantar fasciitis. The doctor also added that the custom foot orthotics would be worn daily for treatment of his condition. The panel finds that when a person is diagnosed as requiring foot orthotics be worn daily, that this is indicative of needing them for basic mobility. The majority panel finds that the ministry was not reasonable to determine that the requirement of section 3.10(2)(b) has not been met.

**Section 3.10(2)(c)** requires that the orthotic is required for one or more of the following purposes: to prevent surgery; for post-surgical care; 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 (NMS).

The ministry determined there was no evidence to support that the orthotics are required for any of the listed reasons. The appellant's podiatrist and doctor both confirm the appellant has plantar fasciitis, which is an NMS condition, and that he requires them for daily use. The appellant shared how painful his feet are when not using an orthotic, that he can hardly walk to the bathroom in the morning due to the pain. The panel finds that following the requirements set out by the podiatrist and doctor to wear orthotics daily would improve the appellant's physical functioning. The majority panel finds the ministry was not reasonable to determine the requirement of section 3.10(2)(c) has not been met.

**Section 3.10(3)(d)** requires the custom-made foot orthotic must be made from a hand-cast mold.

The appellant did not receive any information from the ministry prior to his podiatrist appointment to inform him of this requirement. He received a mold that is produced using 3D technology, not a hand-cast mold. Although it is unfortunate that he was not informed

of this limitation, the legislation is clear that the orthotic must be made from a hand-cast mold. Therefore, the majority panel finds the ministry was reasonable to determine that the requirements of section 3.10(3)(d) has not been met.

**Section 3.10(3)(e)** requires that the cost of one pair of custom-made foot orthotics, including the assessment fee, must not exceed \$450.

Again, the appellant did not receive information prior to the ministry that the cost of orthotics is limited to \$450. He stated that he called around afterwards to other foot clinics and found out that the \$770 he paid is within line with other clinics. The ministry shared that some clinics charge the ministry rate and if others are higher, the clients may pay the difference themselves. If the panel had found the appellant met all the other criteria, which the majority panel has not found, the maximum amount the ministry could pay is \$450. The majority panel finds the ministry was reasonable to determine that \$450 is the legislated amount set in section 3.10(3)(e).

The majority panel finds that there were serious shortcomings in the ministry's process when they did not provide the appellant with all the necessary information he needed, or the orthotics request form, form HR2894, before going to his podiatrist appointment. Even after he had purchased the orthotics, on two occasions when he went to the ministry, he was not given the correct form and was given misinformation. The majority panel finds that the subsequent contacts the appellant had with the ministry would not have changed the fact that he did not have pre-authorization and had already paid for the orthotics himself. The majority panel is hopeful the ministry will address these shortcomings in the future.

### **Majority Panel Conclusion**

The legislation is clear that all the listed requirements must be met before orthotics may be issued. Although the majority panel found the ministry was not reasonable in some of the requirements, not all the requirements have been met.

Therefore, the majority panel finds the ministry's decision was reasonable based on the evidence provided and is an appropriate application of the legislation. The appellant is not successful in this appeal.

### **Dissenting Member Opinion**

The Dissenting Member would find that the ministry's decision was unreasonable and unjustified.

Through no fault of his own nor a lack of trying to obtain the right information about obtaining prior approval for coverage of his orthotics, the appellant has been put in an untenable position of being denied assistance because of mistakes that the ministry was responsible for. He was given wrong and confusing information by ministry staff on three separate occasions and was not advised of or was misled about the correct process to follow until his fourth visit during which he was finally given the correct form and guidance. In good faith, he followed the instructions he was initially given by the ministry and had every reason to believe in good faith that he had received the necessary authorization to proceed to obtain the orthotics he needed for medical reasons. The appellant was led by ministry representatives to believe that he had approval from the ministry to purchase the orthotics and that he would be reimbursed. It would be unreasonable to expect any applicant to verify the advice they receive from a ministry representative against the requirements of the law. It was not reasonable for the ministry to deny him reimbursement when he was simply following misleading advice given him by the ministry. It was therefore not reasonable for the ministry to expect the appellant to have to check the finer points of the legislation in order to comply with them.

If the Tribunal had the jurisdiction, the Dissenting Member would order the full reimbursement of all costs.

**APPENDIX  
RELEVANT LEGISLATION**

**EAPWDR**

**EAPWDR 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.

**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; the cost of one pair of custom-made foot orthotics, including the assessment fee, must not exceed \$450.

APPEAL NUMBER 2023-0024

**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/February/08

Print Name

Perihan (Iris) Sucu

Signature of Member

Date (Year/Month/Day)

2023/February/10

Print Name

Vivienne Chin (Dissenting Member)

Signature of Member

Date (Year/Month/Day)

2023/February/10