

Part C – Decision Under Appeal

The Decision under appeal is the reconsideration decision, dated February 23, 2023 (the “Reconsideration”), of the Ministry of Social Development and Poverty Reduction (the “Ministry”).

In the Reconsideration, the Ministry determined that the Appellant was not eligible for a second pair of orthopaedic footwear, pursuant to section 3.10 of Schedule C to the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”), because of the limits on those items set out in section 3.10(9) of Schedule C to the EAPWDR.

Part D – Relevant Legislation

EAPWDR- section 62, Schedule C- sections 1, 3, and 3.10

Part E – Summary of Facts

The Appellant has been designated as a person with disabilities (“PWD”) and is in receipt of disability assistance.

The information before the Ministry at the time of the Reconsideration included:

- the Orthoses request and Justification form, dated December 8, 2022 (the “Request”), signed by the Appellant’s doctor;
- an estimate from a supplier of orthotics, quoting a price of \$1,060.00 for:
 - one pair of custom foot orthotics (the “Orthotics”);
 - 1 pair of Hoka Bondi 8 orthopaedic footwear (the “Footwear”); and
 - 1 pair of Salomon Shelter boots;
- the Ministry’s decision summary, dated January 12, 2023;
- letter from the Ministry to the Appellant, dated January 12, 2023, denying the request for the Salomon Shelter boots;
- purchase authorization from the Ministry for the Footwear and the Orthotics;
- the Appellant’s request for Reconsideration, dated February 7, 2023 (the “RFR”), which included the above-described documentation and a letter from an assistant at a local disability resource centre who works with the Appellant, setting out that the Appellant had last requested off-the shelf footwear over two years ago and did not make requests for frivolous funding;
- a handwritten note attached to the RFR in which the Appellant’s mother noted that:
 - a second set of footwear, with better traction, would enable the Appellant to avoid falls and injury when engaged in outdoor activities;
 - the Appellant had not made annual requests for orthoses, which is permitted under the EAPWDR;
 - the Appellant currently requires two sets of footwear; and
 - the Appellant would not need to make a request next year should a second set of footwear be approved now.

In the Appellant’s Notice of Appeal, dated March 16, 2023, the Appellant stated that the second set of orthopaedic footwear would provide better traction in inclement weather and permit the Appellant to go hiking.

The Appellant also filed a submission (the “Submission”) with the Tribunal prior to the hearing of the appeal in which the Appellant stated that:

- the orthotics had been accepted by the Ministry as medically necessary;

- the request for the Footwear was originally made in November but not approved until January; and
- the Appellant has, in the past, suffered broken bones and other injuries from falls.

The panel admits the Submission under section 22(4) of the Employment and Assistance Act as evidence that is not part of the record but which is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The Submission contains evidence that addresses the matter of the Appellant's need for orthopaedic footwear as well as the matter of the Ministry's legislative authority to provide orthopaedic footwear.

Part F – Reasons for Panel Decision***Issue on Appeal***

The issue in this appeal is whether the Ministry was reasonable in its determination that the Appellant was not eligible for a second pair of orthopaedic footwear, pursuant to section 3.10 of Schedule C to the EAPWDR because of the limits on those items set out in section 3.10(9) of Schedule C to the EAPWDR.

Panel Decision

The Ministry determined that the Appellant was eligible for orthotics, one of the devices described in Schedule C to the EAPWDR, under section 62 of the EAPWDR.

The Ministry also determined that the Appellant met the basic requirements set out in section 3 of Schedule C to the EAPWDR.

In addition to the above, however, there are specific requirements that must be met for an applicant to be eligible for supplements in respect of each of the various classes of equipment described in sections 3.1 through 3.12 of Schedule C to the EAPWDR. Those sections also impose certain statutory limits on what the Ministry may and may not provide in the way of supplements.

It is section 3.10 of Schedule C to the EAPWDR that addresses orthoses of the type requested by the Appellant. The Appellant had met the requirements set out in subsections (2), (3), and (4.2) of section 3.10 of Schedule C to the EAPWDR and subsections (4), (4.1), (5), (6), (7), and (8) do not apply to the Appellant's request for a second set of orthopaedic footwear.

Section 3.10(9) and 3.10(1) of Schedule C to the EAPWDR set limits on what the Ministry may provide in the way of a supplement in respect of any of the various types of orthoses described in section 3.10 of Schedule C to the EAPWDR.

In particular, section 3.10(9) sets out that the Ministry may only provide one set of off the shelf orthopaedic footwear in the time period referenced in section 3.10(10) which corresponds to off the shelf orthopaedic footwear. That time period is one year, meaning that the Ministry is only authorized to provide one pair of off the shelf orthopaedic footwear per year. While the Appellant noted that the Request was actually made in 2022, both pairs of footwear were made in the Request itself.

While the panel notes that the EAPWDR, in a case such, operates in a manner that may seem unfair to the Appellant, particularly where the Appellant has not made requests in the previous two calendar years for any off the shelf orthopaedic footwear, the Ministry is nonetheless bound by the provisions of the EAPWDR. The panel finds that the Ministry reasonably determined that it is not able to provide a second set of off the shelf orthopaedic footwear to the Appellant in the same year as it has approved the Footwear.

The Appellant is not successful in the appeal.

Relevant Legislation**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.

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.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

(a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;

(b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

(a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;

(b) an assessment by a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the 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.

(4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.

(5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if

(a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and

(b) it is more economical to repair the medical equipment or device than to replace it.

(6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

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.

(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.

(4) For an orthosis that is custom-made footwear, in addition to the requirements in subsection (2) of this section, the cost of the custom-made footwear, including the assessment fee, must not exceed \$1 650.

(4.1) For an orthosis that is off-the-shelf footwear, in addition to the requirements in subsection (2) of this section,

- (a) the footwear is required to accommodate a custom-made orthosis, and
- (b) the cost of the footwear must not exceed \$125.

(4.2) For an orthosis that is off-the-shelf orthopaedic footwear, in addition to the requirements in subsection (2) of this section, the cost of the footwear must not exceed \$250.

(5) For an orthosis that is a knee brace, in addition to the requirements in subsection (2) of this section, the medical practitioner or nurse practitioner who prescribed the knee brace must have recommended that the knee brace be worn at least 6 hours per day.

(6) For an orthosis that is an upper extremity brace, in addition to the requirements in subsection (2) of this section, the upper extremity brace must be intended to provide hand, finger, wrist, elbow or shoulder support.

(7) For an orthosis that is a cranial helmet, in addition to the requirements in subsection (2) of this section, the cranial helmet must be a helmet prescribed by a medical practitioner or nurse practitioner and recommended for daily use in cases of self abusive behaviour, seizure disorder, or to protect or facilitate healing of chronic wounds or cranial defects.

(8) For an orthosis that is a torso or spine brace, in addition to the requirements in subsection (2) of this section, the brace must be intended to provide pelvic, lumbar, lumbar-sacral, thoracic-lumbar-sacral, cervical-thoracic-lumbar-sacral, or cervical spine support.

(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
2	custom-made footwear	1 or 1 pair
3	modification to footwear	1 or 1 pair
4	ankle brace	1 per ankle
5	ankle-foot orthosis	1 per ankle

6	knee-ankle-foot orthosis	1 per leg
7	knee brace	1 per knee
8	hip brace	1
9	upper extremity brace	1 per hand, finger, wrist, elbow or shoulder
10	cranial helmet	1
11	torso or spine brace	1
12	off-the-shelf footwear	1 or 1 pair
13	off-the-shelf orthopaedic footwear	1 or 1 pair
14	foot abduction orthosis	1 or 1 pair
15	toe orthosis	1

(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
2	custom-made footwear	1 year
3	modification to footwear	1 year
4	ankle brace	2 years
5	ankle-foot orthosis	2 years
6	knee-ankle-foot orthosis	2 years
7	knee brace	4 years
8	hip brace	2 years
9	upper extremity brace	2 years
10	cranial helmet	2 years
11	torso or spine brace	2 years
12	off-the-shelf footwear	1 year

13	off-the-shelf orthopaedic footwear	1 year
14	toe orthosis	1 year

(11) The following items are not health supplements for the purposes of section 3 of this Schedule:

- (a) a prosthetic and related supplies;
- (b) a plaster or fiberglass cast;
- (c) a hernia support;
- (d) an abdominal support.
- (e) Repealed. [B.C. Reg. 94/2018, App. 2, s. 1 (b).]
- (f) Repealed. [B.C. Reg. 144/2011, Sch. 2.]

(12) An accessory or supply that is medically essential to use an orthosis that is a health supplement under subsection (2) is a health supplement for the purposes of section 3 of this Schedule.

2023-0084

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

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2023/May/2

Print Name

Katherine Wellburn

Signature of Member

Date (Year/Month/Day)

2023/May/3

Print Name

Rick Bizarro

Signature of Member

Date (Year/Month/Day)

2023/May/2