

Part C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“Ministry”) decision that the Appellant is not eligible for reimbursement of her custom foot orthotics because she did not have pre-authorization as required in the applicable legislation.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation Section 62 (“Regulation”)

Employment and Assistance for Persons with Disabilities Regulation Schedule C Sections 3 and 3.10

Applicable legislation is found in Appendix A.

Part E - Summary of Facts

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

On November 16, 2023, the Ministry received an Orthoses Request and Justification form (SD2894):

- Section 2 of the Orthoses Request and Justification form states, *"Please see attached prescription"* and indicates a custom made orthosis is required.
- Section 3 of the Orthoses Request and Justification form was completed by the Appellant's Pedorthist November 16, 2023. The Pedorthist states the following:

The specifications of the orthoses required to meet your needs are: *"3mm 45 shore A EVA full length custom mold shell. 3 degrees vagus posting bilaterally. Offload strained planter fasciitis. Microfash 3mm met pad."*

The prescribed item will assist with joint motion and/or support as follows: *"Improve STJ alignment to neutral support MLA and LLA + transverse arches. Improving shock absorb and off-load strained soft tissue."*

The prescribed item is required to assist in physical healing from surgery, injury or disease.

The pedorthist also wrote: *"recovery from planter fasciitis right > left."*

The custom-made foot orthotic will be made from a hand cast mold.

In describing any other information that may be relevant to the Appellant's application the pedorthist wrote: *"Please see attached biomechanical assessment. Patient has already paid in full and requires reimbursement."*

The following documents were attached to the Orthoses Request and Justification form:

A prescription from a doctor dated October 26, 2023. The prescription indicated a diagnosis of planter fasciitis and a prescription for custom foot orthotics.

An invoice dated November 16, 2023 for one pair of Custom Foot Orthotics for \$450. The invoice indicates that the balance has been paid in full.

A biomechanical assessment report dated October 24, 2023 completed by the appellant' pedorthist. The report indicates the following:

Significant Clinical Observations: [Patient's name] has been diagnosed with plantar fasciitis right heel, requiring custom foot orthotics. Nothing varus calcaneal alignment, supinated midfoot posture R>L, lateral toe-off R>L. CFO will improve STJ alignment, support MLA and transverse arches, off-loading high-pressure sites and strained soft tissues. Footwear with a still heel counter, shank, increased midsole cushion and stiff forefoot rocker are encouraged. Daily calf stretches and plantar foot rolling required.

Plan:

- *Orthotics to be worn: Everyday.*
- *Orthotic Goal: Provide shock absorption, unload high pressure areas, unload soft tissue.*
- *Stretching Goal: Calf complex, hamstrings*
- *Myofascial Work: Plantar Fascia, Foot Intrinsic. I have discussed footwear that has neutral support, good forefoot rocker, stiff heel counter, stiff shank, increased cushioning, wide toe box.*
- *Sport Mechanical Product: Myofascial device*

On December 21, 2023, the Ministry sent the Appellant a letter denying her request. The Decision Summary attached to the Ministry's letter states:

"I regret to inform you that the ministry has denied your request. After a thorough and careful consideration of your application, the ministry determined that you do not meet the eligibility criteria for this Health Supplement for the following reason(s):

No Pre-Authorization

Denial Reason: Regulation 3 (1) (b) (i) Has the family unit received pre-authorization from the ministry for the medical equipment or device requested? No

Explanation:

The receipt shows that the requested item was paid for in full and ministry pre-authorization was not obtained as required. After thorough and careful consideration of your application, I regret to inform you that the ministry has denied your request for Health Supplements. After reviewing your application, the ministry determined that you did not meet the eligibility criteria for this Health Supplement."

On January 10, 2024, the Appellant requested a reconsideration of the denial for reimbursement of her custom foot orthotics.

On January 15, 2024, the Appellant's Request for Reconsideration was received by the Ministry. In Section 3 of the Request for Reconsideration form the Appellant wrote the following:

- The Appellant was unaware of the possibility that custom foot orthotics could be covered until her appointment at the orthotics office.
- The Appellant did not think to check with the Ministry because she trusted the doctor to know what she was doing, and how the process works.
- The Appellant would have done this the proper way if she was aware that this was an option, but she only knew about the dental and eyeglasses benefits.
- The Appellant did everything to the best of her ability and feels that it is unfair that she was denied because she was unaware that the Ministry offers this type of benefit. The Appellant stated she could really benefit from assistance with being reimbursed right now.

In her Notice of Appeal form, under Reasons for Appeal, the Appellant wrote: "I do not feel I should be denied support for orthotics from the Ministry simply because I

paid for them first and then applied for the assistance, with the kind help of the orthotics specialist who made me aware that I could even have any support at all from the Ministry.”

During the hearing, the Appellant restated that she would have followed the Ministry’s process requiring pre-authorization of her request for reimbursement for her custom orthotics had she known about the pre-authorization requirement.

The Appellant only learned that she could receive coverage for her custom orthotics when the doctor told her about it. The doctor at the clinic where she was purchasing her custom orthotics told her that the Appellant would pay first, and the clinic then would submit the receipt to the Ministry for reimbursement. The Appellant said that she had no reason to doubt the doctor’s explanation.

The Appellant explained that the Ministry’s process is different from how they handle dental and eye care. In both of these cases, the Appellant visits the doctor, and their office submits paperwork for payment directly to the Ministry. The Appellant also stated that she has gone onto the Ministry’s website and the information about the procedure that explains how to handle requests for eligibility and repayment for custom orthotics is not easy to find; she eventually found it under medical equipment.

A panel member asked the Appellant if she had any issues with the way the Ministry has described the timeline for this situation, including that she received and paid for her custom orthotics and then sought reimbursement from the Ministry. The Appellant stated that she did not dispute the timeline.

During the hearing, the Ministry representative relied on their Reconsideration Decision and explained that Ministry workers are required to follow the legislation. The applicable legislation for medical equipment, including customs orthotics, requires pre-authorization and unfortunately, the Appellant did not seek pre-authorization.

A panel member asked the Ministry representative if there is any area of the legislation, regulation, or policy that allows the Ministry to make an exception for situations like this where the Appellant did not know about the need for pre-authorization before purchasing her custom orthotics. The Ministry representative said that the only discretion a Ministry worker has is to approach their supervisor to discuss an extraordinary situation. It is extremely rare for a Ministry supervisor to

make an exception for this type of claim, for example, it might occur in a situation where someone is newly designated as a person with disabilities and does not follow the correct procedure in their first month. This would not apply in the Appellant's case as she has been receiving assistance from the Ministry for more than a year.

The Ministry representative also encouraged the Appellant to call their 1-800 number and speak with a Ministry worker when she has questions about whether there is coverage for something and the procedure that needs to be followed.

Admissibility of New Evidence

The panel admits the Appellant's statement under the Reasons for Appeal section of her Notice of Appeal application and her testimony during the hearing, along with the Ministry's testimony during the hearing as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, and the panel has weighed that evidence in making its decision as provided under 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The panel is required to determine if the Ministry's reconsideration decision was a) supported by the evidence, or b) a reasonable application of the applicable enactment.

Applicable Legislation**Legislation**

General eligibility requirements for the provision of medical equipment and devices are set out in the Regulation, Schedule C; **section 3**.

As set out in the Regulation, Schedule C, subsection **3(1)**, the medical equipment and devices described in sections 3.1 to 3.12 of Schedule C 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 the 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.

Eligibility criteria for the provision of orthosis are set out in the Regulation, Schedule C, sections 3.10(1) to (12).

As set out in the Regulation, section 3.10(2), an orthosis is a health supplement for purposes of section 3 of Schedule C 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-musculoskeletal condition, and
- (d) an orthosis is off-the-shelf unless
 - (i) a medical practitioner or nurse practitioner confirms that a custom-made orthotic is medically required, and
 - (ii) the custom-made orthosis is fitted by an orthotist, pedorthist, occupational therapist, physical therapist or podiatrist.

The Regulation, Schedule C, section 3.10(3) sets out further criteria for the provision of a custom-made foot orthotic, which are:

- (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;
- (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. (B.C. Reg. 144/2011).

Appellant's Position

The Appellant's position is that she would have followed the correct procedure and requested pre-authorization for her custom orthotics if she had known about this requirement and process. The appellant said it is difficult to find information about custom orthotics on the Ministry's website; she had to go digging for it and found it under medical equipment.

Ministry's Position

The Ministry's position is that the legislation requires that pre-authorization be received for custom orthotics. The Appellant did not make a request for pre-authorization and is not eligible for reimbursement.

Panel Decision

The panel is required to determine if the Ministry's reconsideration decision was supported by the evidence, or a reasonable application of the applicable enactment. The panel does not have any discretion to make a decision that would contradict the applicable legislation.

Under Regulation, Schedule C, subsection 3(1), the medical equipment and devices described in sections 3.1 to 3.12 of Schedule C 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 the Regulation, and (b) all of the following requirements are met:

- (iv) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;
- (v) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
- (vi) the medical equipment or device is the least expensive appropriate medical equipment or device.

Regulation, Schedule C, subsection 3(1)(a) states that all of the requirements listed are met. Schedule C, subsection 3(1)(iv) requires that "the family unit has received the pre-authorization of the minister for the medical equipment or device required."

By not requesting pre-authorization for reimbursement of her custom orthotics, the appellant has not met the legislative requirement and is not eligible for reimbursement of her custom orthotics.

Conclusion

The panel confirms the Ministry's reconsideration decision. The Appellant's request for reimbursement for her custom orthotics is denied because she did not request pre-authorization, as required in the applicable legislation.

The Appellant is not successful in her appeal.

Appendix A**Applicable Legislation****EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION****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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 4; am. B.C. Reg. 161/2017, App. 2, s. 2.]

SCHEDULE C**Definitions**

1 In this Schedule:

"orthotist" means a person who is certified by and in good standing with the Canadian Board for Certification of Prosthetists and Orthotists; (B.C. Reg. 9/2004)

"pedorthist" means a person who is certified by and in good standing with the College of Pedorthics of Canada; (B.C. Reg. 61/2010)

"physical therapist" means a physical therapist registered with the College of Physical Therapists of British Columbia established under the *Health Professions Act*; (B.C. Reg. 85/2012)

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 (B.C. Reg. 197/2012)

- (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: (B.C. Reg. 197/2012)

- (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.

(B.C. Reg. 197/2012)

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or 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.

(B.C. Reg. 197/2012)

(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.C. Reg. 197/2012)
 - (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; (B.C. Reg. 197/2012) (o) a toe orthosis.
(B.C. Reg. 197/2012) (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; (B.C. Reg. 144/2011)
 - (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)
 - (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. (B.C. Reg. 144/2011)
- (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. (B.C. Reg. 144/2011)

(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 (B.C. Reg. 144/2011)
13	off-the-shelf orthopaedic footwear	1 or 1 pair (B.C. Reg. 144/2011)
14	foot abduction orthosis	1 or 1 pair (B.C. Reg.197/2012)
15	toe orthosis	1 (B.C. Reg.197/2012)

(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. (B.C. Reg. 61/2010)

Table 2

Item	Column 1 Orthosis	Column 2 Time Period
1	custom-made foot orthotic	3 years (B.C. Reg. 144/2011)
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 (B.C. Reg. 144/2011)
13	off-the-shelf orthopaedic footwear	1 year (B.C. Reg. 144/2011)
14	toe orthosis	1 year (B.C. Reg.197/2012)

(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];h
- (f) Repealed (B.C. Reg. 144/2011)

(B.C. Reg. 61/2010)

(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. (B.C. Reg.197/2012)

Excerpt from the Ministry Policy and Procedure Manual

Medical Equipment – Orthoses

Repairing or Replacing Orthoses: October 1, 2012

October 1, 2012

The ministry may consider repairing **or** replacing orthoses due to the item being damaged, worn out, or not functioning.

Repairs may be considered if all of the following are met:

- it is more economical to repair, rather than replace, the orthosis
- the orthosis has not been damaged by misuse
- if the orthosis was not previously provided by the ministry, all other eligibility requirements must be met (e.g., prescription)

Note: Repairs, including modifications, should be completed by an appropriate professional. For example, the professional who fitted the orthosis when it was first provided.

Replacement may be considered if all of the following are met:

- it is more economical to replace, rather than repair, the orthosis
- the orthosis has not been damaged by misuse
- the time period, if any, set out in the table below has passed

Note: The replacement time period does not apply when an item is required due to changes in a person's medical condition or growth.

Orthosis	Replacement Time Period
Custom-made Foot Orthotics	3 years
Off-the-shelf Foot Orthotics	As needed
Custom-made Footwear	1 year
Modification to Footwear	1 year
Off-the-shelf Orthopaedic Footwear	1 year
Off-the-shelf Footwear	1 year

Ankle Brace	2 years
Ankle-Foot Orthosis	2 years
Knee-Ankle-Foot Orthosis	2 years
Knee Brace	4 years
Hip Brace	2 years
Upper Extremity Brace	2 years
Cranial Helmet	2 years
Torso or Spine Brace	2 years
Foot Abduction Orthosis	As needed
Toe Orthosis	1 year

APPEAL NUMBER 2024-0052

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

Melissa McLean

Signature of Chair

Date (Year/Month/Day)

2024/03/11

Print Name

Joe Rodgers

Signature of Member

Date (Year/Month/Day)

2024/03/11

Print Name

Mary Chell

Signature of Member

Date (Year/Month/Day)

2024/03/11