

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 March 5, 2024 (the “**Reconsideration Decision**”), in which the Ministry determined that the Appellant was not eligible for replacement custom foot orthotics (the “**Health Supplement**”).

The Ministry determined that the appellant’s request met all the legislated eligibility requirements except that three years had not passed since the Ministry provided the current custom orthotics. The Ministry noted they have a policy that this time requirement does not apply when a repair or replacement is required due to medical changes or growth.

Part D – Relevant Legislation

- *Employment and Assistance for Persons with Disabilities Regulation* (the “**Regulation**”) – section 62 and Schedule C sections 3 and 3.10

Note: The full text of the applicable legislation is available after the Decision.

Part E – Summary of Facts

The Appellant's hearing was held as a written hearing on April 22, 2024.

The Reconsideration Decision

The evidence before the Ministry at the Reconsideration Decision consisted of:

- The Appellant is designated as a person with disabilities ("PWD") and is in receipt of disability assistance.
- On January 3, 2024, Appellant submitted to the Ministry an Orthoses Request and Justification form.
 - Section 2 of the Orthoses Request and Justification form completed by the Appellant's doctor on December 12, 2023, and indicated:
 - The Appellant's medical condition is described as "Bilateral hallux valgus deformity-severe, bunion deformity."
 - Recommended type of orthosis is "bilateral custom orthotics and orthopaedic footwear."
 - Section 3 of the Orthoses Request and Justification form completed by the Appellant's Podiatrist on December 12, 2023, indicated:
 - The specifications of the orthoses;
 - How the prescribed item will assist with joint motion and/or support;
 - That the prescribed item is required for prevention of surgery and to improve physical functioning that has been impaired by a neuro-musculo-skeletal condition;
 - That the custom-made foot orthotic will be made from a hand cast mold.
 - Documents attached to the Orthoses Request and Justification form:
 - A prescription dated December 12, 2023, indicating a diagnosis of bunions/Hallux Valgus and a treatment of bilateral custom-made foot orthotics and orthopaedic footwear;
 - An estimate for custom foot orthotics for \$475 and orthopaedic footwear for \$230.
- On January 25, 2024, the Ministry denied the Appellant's request for replacement custom foot orthotics and approved the request for orthopaedic footwear. The reason given for the denial was:
 - The 3-year replacement period for custom foot orthotics has not yet passed.

- The Ministry also noted in their decision that:
 - If the Appellant's custom foot orthotics are damaged and can be repaired, she should contact the Ministry;
 - If custom foot orthotics are required due to a change in the Appellant's medical condition or growth since the last pair were issued in November 2021, she should provide verification from a medical or nurse practitioner;
 - The Appellant may be eligible for custom foot orthotics in November 2024 once the 3-year replacement period has elapsed.
- On February 8, 2024, the appellant requested a reconsideration of the denial for replacement custom foot orthotics.
- On February 21, 2024, the Appellant's Request for Reconsideration was received by the Ministry. In Section 3 of the Request for Reconsideration form the Appellant wrote:
 - "Please note I am on my feet for my entire shift and have worn the [custom foot orthotics] I have out. Without them I could not do my job. They help me."

The Appeal

On March 22, 2024, the Appellant filed a Notice of Appeal (the "**Appeal Notice**"). In the Appeal Notice, the Appellant attached:

- A photocopy of Section 3 of the Orthoses Request and Justification form (noted above);
- The Appellant's doctor prescription dated December 12, 2023, noting:
 - Bilateral custom fit orthotics;
 - Bilateral hallux valgus with bunion formation; and
 - Metatarsalgia.
- Pictures of the Appellant's custom foot orthotics;
- A letter which stated:
 - She was aware she was denied as it has not been three years since she last received a pair of orthotics;
 - Her orthotics are not working any more causing discomfort;
 - She has tried the orthotics in her new shoes but after two hours she had to leave her six-hour shift to soak and ice her feet;

- She has tried over the counter inserts without success;
- Not being able to stand on her feet, she has had to give up work shifts; she needs to work to support her adult son and herself;
- She understands the Ministry does not like to do things earlier, but she hopes the Ministry will consider her case differently due to her medical condition;
- She hopes the Tribunal will reconsider her application for new orthotics so she can work pain free.

Admissibility of New Evidence

New evidence was offered by the Appellant in her Notice of Appeal, the Ministry did not object to the submission of this evidence. The panel finds that the Appellant's submission summarized her Request for Reconsideration and included pictures that depicted the "worn" state of her orthotics noting they were not mistreated. The doctor's prescription included in the submission, dated the same as the orthotic order, found in the Orthoses Request and Justification, noted, an additional diagnosis of metatarsalgia and no request for orthopaedic footwear. The panel finds this evidence was reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Accordingly, the panel admits all the new information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Reconsideration Decision in which the Ministry determined that the Appellant was ineligible for replacement custom foot orthotics.

Appellant's Position

Per the Appeal Notice, the Appellant argues that because of her medical condition, the Ministry should reconsider the time requirement of three years for replacement as she is unable to work due to pain suffered while wearing her orthotics.

Ministry's Position

The Ministry maintains that the Appellant is not eligible for new orthotics for the reasons stated in the Reconsideration Decision.

Panel Decision

Pursuant to section 3(3)(a) of Schedule C of the Regulation the Minister 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. The Ministry recognises the Appellant has reported her current custom foot orthotics are worn out and must be replaced. However, the *Regulation* under section 3.10(10) of Schedule C dictates three years must pass prior to the Ministry providing funding replacement custom foot orthotics.

As provided in the Reconsideration Decision, 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.

Timeline

On review of the Appeal Record, the Appellant's current orthotics were provided to her in November 2021 and in the absence of other intervening circumstances, are not eligible for replacement until November 2024. The panel finds that the Appellant has not met the criteria of section 3.10(10) of three years. Further, the Appellant acknowledges she has not met the three-year criteria but hopes the Ministry will consider her request on its own merits.

As a result of the foregoing, the Panel finds that it was reasonable for the Ministry to conclude that the Appellant did not meet the three-year replacement criterion.

Ministry Policy

Ministry policy makes an exception to the three-year replacement criteria when the orthotic replacement is required due to medical changes or growth. On review of the Appeal Record, the Panel finds that the Appellant did not provide the Ministry with any information confirming that her orthotic replacement is required due to changes in a medical condition or growth. The Ministry policy that is more generous than the legislated requirements is outside the scope of the panel's jurisdiction.

Conclusion

The Panel is sympathetic with the circumstances of the Appellant and as with the Ministry, acknowledges that the Appellant may benefit from the replacement custom foot orthotics. Even with the circumstances of the Appellant, the panel must note the Ministry is bound by legislation when considering supplement requests.

The Panel finds that the Ministry's decision determining that the Appellant was ineligible for replacement custom foot orthotics was a reasonable application of the applicable legislation in the circumstances. Therefore, the Panel finds that the Appellant is not eligible for custom foot orthotics at this time pursuant to the Regulation, Schedule C, section 3 and 3.10.

The Appellant is not successful on appeal.

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.

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

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 neuromusculo-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

2024-0109

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

2024-0109

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

Charles Schellinck

Signature of Chair

Date (Year/Month/Day)

2024/04/26

Print Name

Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)

2024/05/06

Print Name

John Pickford

Signature of Member

Date (Year/Month/Day)

2024/04/27