

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated September 25, 2012 which denied the appellant's request for the nutritional supplement of Ensure. The Ministry held that the requirements of Section 67(3)(b) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met as a medical practitioner or a nurse practitioner has not confirmed that the appellant has an acute short term need for caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from surgery, a severe injury, a serious disease, or side effects of medical treatment.

**PART D – Relevant Legislation**

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 67(3)

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Fax dated August 14, 2012 from the ministry to a pharmacy attaching an Eligible Health Goods/Services Purchase Authorization form issued August 14, 2012, with an expiry of September 13, 2012 in the appellant's name for a total cost to the supplier not to exceed \$100 for 4 cases of Ensure (12 cans per case @ \$25.00 each);
- 2) Print out of ministry Service Line & STOB Coding Information, including information for nutritional supplements;
- 3) Letter dated August 20, 2012 from the ministry to the appellant denying his request for the short-term nutritional supplement of Ensure and enclosing a copy of the decision summary; and,
- 4) Request for Reconsideration- Reasons.

In his Request for Reconsideration, the appellant stated that he believes the ministry is wrong because this is a supplement that he has received in the past. The appellant stated that his doctor has prescribed this supplement. The appellant stated that he is in receipt of a \$40 nutritional supplement which he would like to change for a supply of Ensure, that he is not asking for any additional benefits.

At the hearing, the appellant stated that he has GERD, or gastroesophageal reflux disease and, in 2003, he suffered an inguinal hernia. The appellant stated that during surgery to repair the hernia, a nerve close to the area was cut and now he needs a cane to be able to walk. The appellant stated that in 2005 he underwent another surgery in his stomach because he had a problem with his esophagus valve not closing, and since this surgery he has lost his appetite. The appellant stated that he has to force himself to eat and he has lost a lot of weight. He can sometimes go a whole week without eating. The appellant stated that there are only two ways he can eat, by smoking marijuana which he cannot afford, or by forcing himself to eat. However, when he forces himself to eat, he often eats more than he is supposed to. The appellant stated that he was receiving Ensure for a while and then his request to continue receiving it was denied.

The appellant stated that he has been receiving a special diet supplement of \$40 per month, for a high protein diet, for many years but he needs to have the Ensure instead. The appellant stated that he cannot afford to buy the Ensure himself because it costs more than \$40 per month and he has other expenses, such as caring for the support of his service dog. The appellant stated that he receives a supplement of \$95 for a service animal but it is not enough to cover the actual costs of veterinary and other bills. The appellant stated that he is currently on medical leave from his school program until November 5, 2012, because he is not well enough to attend, but he is able to continue with his volunteer work because it is only 3 hours per week. The appellant stated that his doctor told him he needs to take Ensure until he gets better and that is why she wrote the prescription. The appellant stated that he consumes the Ensure instead of food, but it is not a 100% replacement. The appellant showed the Prescription note dated August 9, 2012 which is consistent with the wording as set out in the ministry's decision, and the panel admitted this information as being before the ministry on its reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

The appellant's advocate stated that they have tried numerous times to reach the doctor to provide further details to support the appellant's request, but they have not been able to make contact. The advocate explained that the physician who wrote the prescription note left the clinic but there is another physician who has been there for some time and he would have access to the appellant's medical files. The advocate stated that she has been working with the appellant since 2008 and she has seen a rapid decrease in his weight and they have had to request additional funds for clothing to fit him. The advocate stated that to purchase Ensure on a retail basis is very expensive, whereas the ministry is able to purchase it at a discount.

The ministry's evidence is that on August 9, 2012 the ministry received a prescription note completed by a physician and prescribing Ensure, 2 to 3 cans per day for 3 months with the comment "...would like instead of \$40/month diet special allowance. Indication: chronic decreased appetite post-operatively with some decrease in weight." On August 20, 2012, the ministry denied the appellant's request. Although it is indicated that the

appellant had surgery, it is not specified that weight loss is critical. The physician does not provide the appellant's body mass index or height and weight. It is not specified that extra calories and/or protein are required in order to promote post-surgical recovery. In addition, no information is provided regarding the appellant's current dietary intake. It is not confirmed that he is currently consuming a regular diet and that extra calories over and above this are required. No further information from the appellant's medical practitioner was provided.

At the hearing, the ministry clarified that the Purchase Authorization was issued August 14, 2012 as a result of a decision by the district office to allow a 2-week supply of Ensure for the appellant pending a final decision from the Health Assistance Branch regarding the balance of the potential 3-month term. The ministry stated that when the nutritional supplement is provided, the ministry will pay a supplement and it does not usually provide the product, such as Ensure, directly.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the requirements of Section 67(3) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met as a medical practitioner or a nurse practitioner has not confirmed that the appellant has an acute short term need for caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from surgery, a severe injury, a serious disease, or side effects of medical treatment and, therefore, that the appellant is not eligible for the requested nutritional supplement of Ensure.

Section 67(3) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) sets out the eligibility requirements which are at issue on this appeal for providing the nutritional supplement of Ensure, as follows:

- (3) The minister may provide a nutritional supplement for a period of 3 calendar months to or for a family unit if the supplement is provided to or for a recipient of disability assistance or a dependent child of a recipient of disability assistance if
- (a) the recipient or dependent child is not receiving a supplement under subsection (1) of this section or section 2 (3) of Schedule C, and
  - (b) a medical practitioner or nurse practitioner confirms in writing that the recipient or dependent child has an acute short term need for caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from
    - (i) surgery,
    - (ii) a severe injury,
    - (iii) a serious disease, or
    - (iv) side effects of medical treatment.

The appellant's position is that a physician has provided a Prescription note dated August 9, 2012 which confirms that he needs 2 to 3 cans of Ensure per day for 3 months because he has decreased appetite and decreased weight. The appellant argues that the ministry has all the information about his medical conditions and surgeries in his file since he is a Person With Disabilities (PWD) and had to make an application to the ministry. The appellant admits that his problems have been ongoing but argues that his doctor confirms that he needs Ensure for his well being, that he is losing weight and is not well enough to continue with his school program. The appellant argues that he cannot afford to pay for Ensure because it costs more than the \$40 per month he receives for a special diet allowance.

The ministry argues that the medical practitioner does not provide a clear description of the appellant's current medical condition or the nature and date of his surgery. The ministry argues that the medical practitioner also does not provide details of the impacts to the appellant's ability to consume a regular dietary intake (i.e. soft or blended foods), the amount of weight he has lost and in what period, or details of the appellant's height and weight. The ministry argues that there is insufficient information to establish that a medical practitioner has confirmed the appellant requires caloric supplementation to a regular dietary intake. The ministry points out that the appellant stated that he is not eating a regular diet, that he has consumed only Ensure, which indicates that it is being used by the appellant as a meal replacement rather than a "caloric supplementation to a regular dietary intake". The ministry argues that there is insufficient information to establish that a medical practitioner has confirmed that the appellant requires the supplement to prevent critical weight loss while recovering from surgery. The ministry argues that the appellant stated he has experienced loss of appetite since his surgery in 2005, which is indicative of a chronic, ongoing problem rather than an acute, short-term need, as required by Section 67(3) of the EAPWDR.

The panel finds that a medical practitioner has confirmed in writing , in the Prescription note date August 9, 2012, that the appellant has experienced a chronic decreased appetite with some decrease in weight "post-operatively", which the appellant states refers to the surgery to his stomach in 2005. The panel finds that the appellant is consuming a small amount of food as a result of his decreased appetite, when he either smokes marijuana or forces himself to eat, and the ministry's conclusion that there is insufficient information to demonstrate that the appellant is consuming a "regular dietary intake," to which the Ensure would serve as a "...caloric supplementation" as required by Section 67(3)(b) of the EAPWDR, was reasonable. The medical practitioner has confirmed in writing that the appellant has experienced a "chronic" decreased appetite with "some" decrease in weight. There was no additional information provided from the medical practitioner to indicate the amount of weight that the appellant has lost over a specified period of time. The panel finds that the ministry's conclusion that there is insufficient information to show that a medical practitioner has confirmed that the appellant requires Ensure to prevent "critical weight loss" while recovering from surgery, as required by Section 67(3)(b)(i) of the EAPWDR, was reasonable. Rather, the panel finds that the appellant's surgery occurred several years ago and his decrease in appetite and associated weight loss have been chronic, or ongoing, and not indicative of an acute, short-term need for caloric supplementation.

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for the nutritional supplement of Ensure because the requirements of Section 67(3)(b) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met, was reasonably supported by the evidence and the panel confirms the ministry's decision.