

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration decision dated November 16, 2012 wherein the ministry denied the appellant's request for a short term nutritional supplement product, namely Ensure. The ministry denied the request because the appellant is not eligible pursuant 67(1) (a) or (b) of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWD) Section 67(1)

PART E – Summary of Facts

The appellant is eligible for medical services only and is a recipient of CPP disability assistance.

In October 24, 2012 the appellant made a request for a short term nutritional supplement of Ensure (3 cans per day). On October 25, 2012 the ministry denied the request. The appellant applied for reconsideration and on November 16, 2012 the ministry confirmed the decision.

The appellant suffers from a condition called failure to thrive due to congestive heart failure, chronic obstructive pulmonary disorder, hypertension, hemochromatosis and previous alcoholism. According to his doctor's medical letter dated October 31, 2012, the appellant requires a protein supplement 3 times/ day for at least six weeks to twelve months. A prescription note dated October 27, 2012 indicates the cost of this supplement to be \$4.78 per day.

The ministry denied the request saying that the appellant is not eligible as he is not a recipient of disability assistance pursuant to EAPWD Regulation section 67(1).

In his notice of appeal, the appellant confirms that he is not in receipt of disability assistance from the ministry, but says he is a recipient of CPP disability. He says he cannot afford to pay for a supplement which he needs in order to continue living. He asks the ministry to consider designating him as a recipient of disability assistance and/or hardship assistance so that he can purchase the supplement on his own.

The panel has considered the new evidence submitted by the appellant in his notice of appeal and finds that it is admissible under section 22(4) of the Employment and Assistance Act as it is evidence in support of the information and records that were before the Ministry when the original decision was made.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry reasonably concluded that the appellant's request for short term nutritional supplement should be denied as he is not eligible pursuant to EAPWD Regulation section 67(1).

The following section of the Employment and Assistance for Persons with Disabilities Regulation applies to this decision:

Nutritional supplement

67 (1) The minister may provide a nutritional supplement in accordance with section 7 [*monthly nutritional supplement*] of Schedule C to or for a person with disabilities in a family unit who receives disability assistance under

(a) section 2 [*monthly support allowance*], 4 [*monthly shelter allowance*], 6 [*people receiving room and board*] or 9 [*people in emergency shelters and transition houses*] of Schedule A, or

(b) section 8 [*people receiving special care*] of Schedule A, if the special care facility is an alcohol or drug treatment centre...

The Ministry's position is that the appellant does not meet the eligibility criteria for a nutritional supplement as set out by section 67(1)(a) or (b) because he is not "...a person with disabilities in a family unit who receives disability assistance under (a) section 2 ...of Schedule A or (b) section 8...of Schedule A".

The appellant's positions that he is in receipt of "disability assistance" albeit "CPP disability assistance". He says that he has no money to buy the supplement on his limited income and requests that, in the alternative, the ministry provide him with disability and/or hardship assistance.

The appellant's application to the ministry is for a nutritional supplement. As such, the reconsideration decision was limited to this request. Under section 24 of the Employment and Assistance Act, the panel's authority is limited to the decision under appeal. Accordingly, the panel does not have the authority to consider the appellant's alternative request for hardship and/or disability assistance.

In considering his request for nutritional supplement, the ministry is bound by the legislation which clearly stipulates that nutritional supplement can only be considered for persons who receive disability assistance as defined by this legislation under Schedule A. The appellant does not received disability assistance under the relevant legislation and therefore does not meet the eligibility criteria.

As such, the panel finds that the Ministry's decision was a reasonable application of the legislation and was reasonably supported by the evidence and therefore confirms the decision pursuant to section 24(1)(a) and (b) of the Employment and Assistance Act.