

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated 24 April 2013 in which the Ministry determined that the appellant was not eligible for a nutritional supplement because the information provided did not demonstrate that a medical practitioner or nurse practitioner confirmed 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 as required by section 67(3) of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 67(3).

PART E – Summary of Facts

Preliminary Matter

At the hearing, the appellant requested an adjournment, as his advocate was not present. He indicated he had contacted her the day before and that earlier, on the hearing day, he had left a message at her office, letting her know the hearing was taking place the same day at 10AM and the location. In support of his application for an adjournment, he also indicated he met a nurse, whose name he did not remember, during the first week of June 2013 who had taken information from him and filled in a form. The ministry did not object to an adjournment. After carefully considering the application, the panel declined the request for an adjournment for the following reasons:

- The panel had already granted an adjournment on 27 May 2013, the date of the first hearing, because the appellant indicated he had contacted an advocate shortly before that hearing and that his advocate was not available then.
- While the appellant had one month to ensure his advocate would be present at the second hearing he nonetheless chose to wait until the eve of the hearing to contact a new advocate and only told her at the last minute of the date and place of the hearing.
- He met the nurse approximately three weeks before the second hearing but he chose not to obtain the form she had filled before the date of the hearing and argued that this document should be faxed to the hearing location or an adjournment be granted. He did not provide any evidence whether that form would be relevant to the reconsideration decision under appeal nor that he had made any effort to have a copy of that form to bring with him at the hearing.

The evidence before the Ministry at reconsideration included:

- The appellant is a recipient of disability assistance.
- A prescription dated 2 January 2013 signed by a medical practitioner stating that the appellant requires a particular nutritional supplement, one bottle twice daily for one year.
- A prescription dated 18 February 2013 signed by the same medical practitioner as the earlier prescription, stating the appellant is on long-term antibiotics for a chronic infection and he needs a particular nutritional supplement, one bottle twice daily for supplement. He also indicates the appellant has extremely poor appetite all the time.
- In the appellant's request for reconsideration dated 25 March 2013, at section 3, a medical practitioner indicates Tecta 40 mg by mouth once per day is being used for the appellant's stomach to good effect and that he has a new prescription for Tecta. The medical practitioner also indicates the appellant is on two more drugs "both have a negative impact, as does the Tecta, on gastro-intestinal absorption and decreasing his nutritional and mineral [intakes?]"

In his notice of appeal, the appellant writes "Due to significant deterioration of the vital organ, frontal lobe cerebral atrophy, left arm contains less muscle unnaturally than right. Surgery inward recession of nose sheath on right. Extra nutrition makes it flare back to a normal curvature." He further indicates that balanced nutrient and mineral intake are needed "to open air passage(s) sufficiently until referral" to specialist. He also indicates his knee was injured when assaulted and that he had surgery in that respect. He joins with his notice of appeal the following documents:

- Copy of a "Emergency Department Physician Assessment and Treatment Record" dated 9 January 2008 dealing with his knee injury and describing it as contusions and abrasions.
- A document titled "Triage Assessment" also dated 9 January 2008 that deals with the appellant's

knee injury and states that the appellant is able to walk independently, that he has not taken any pain medication and that he says his knee is bleeding. However no bandage was on his knee nor blood visible on his pants.

- An Emergency Patient Care Record – Minor Form also dated 9 January 2008 indicating the appellant has no known allergies and is not taking any "Home Medications".
- A form dated 9 January 2008 titled "Emergency Department Minor Form – Primary Nurse Assessment" also dealing with the appellant's knee injury stating that there is no obvious injury. It indicates the knee was cleansed, ointment and bandage applied, antibiotic given and states "Patient wants further treatment – non necessary – Dr. [Name] into speak with patient".
- A document from a Treatment Centre dated 11 April 2008, signed by a medical practitioner, that pertains to the appellant's knee injury but that is mostly illegible.

At the first hearing, the ministry stated that the appellant had applied for an acute short term need for caloric supplementation but that given his condition, he may want to apply for the monthly nutritional supplement under s. 67(1) of the EAPWDR.

At the second hearing, the appellant reiterated that his medical condition required regular, twice a day, nutritional supplement as indicated in his physician's prescriptions given that he was suffering from intestinal ulcers and indicated he had sustained further injuries to his nose on 10 June 2013. He indicated that when he met with the ministry, there was no discussion as to whether his application was for acute short term or long term nutritional supplement.

The ministry explained that at intake, it determined the applicable adjudication for a nutritional supplement based on the information provided by the appellant and his medical information and, on the basis of the documents provided, only acute short term nutritional supplement could be considered.

The panel determined that the additional oral and documentary evidence was admissible under s. 22(4) of the Employment and Assistance Act as it was in support of the records before the minister at reconsideration as it related to the medical condition of the appellant.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision that the appellant was not eligible for a nutritional supplement because the information provided did not demonstrate a medical practitioner or nurse practitioner confirmed the appellant had 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 as required by section 67(3) of the EAPWDR was either a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation is section 67(3) of the EAPWDR that states:

- (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 ministry argues that the information provided by the appellant and the medical practitioners was not sufficient to allow a determination that he was eligible for acute, short term need for nutritional supplement. It did not provide any information as to whether the appellant was suffering from a critical weight loss or that he was recovering from surgery, a severe injury, a serious disease or side effects of medical treatment.

The appellant argues that his medical condition is such that he needs extra nutrition, in particular for his nose so that he can have a better airflow and that because of the side effects of the medication he is taking, he has no appetite and nutritional supplements would address that deficiency as well as alleviate the problems he has with stomach ulcers. He also refers to his knee injury dating back to 2008 as a reason for nutritional supplement.

Given that no form prescribed by the minister was provided to the ministry in support of the appellant's application for nutritional supplement, the panel finds that the ministry reasonably considered the application under s. 67(3) of the EAPWDR as the documents in support were in the form of prescriptions and written comments from medical practitioners, as prescribed under s. 67(3)(b) of the EAPWDR. The panel finds that it was reasonable for the ministry to determine the documents provided by the medical practitioners, while supporting the appellant's need for a specific nutritional supplement, did not address the issues of the acute short term need for caloric supplementation, of critical weight loss or whether the appellant was recovering from surgery, a severe injury or a serious disease. However, the information provided by the medical practitioners, particularly in section 3 of the request for reconsideration, does address the issue related to the side effects of medical treatment but does not relate to any weight loss and discloses more of an ongoing

situation (one prescription is for one year) where the medication used to treat a non-disclosed chronic infection interfere with gastro-intestinal absorption and decrease his nutritional and mineral intake. The panel finds it was reasonable for the ministry to then conclude that this was not an acute short term need and that accordingly the appellant was not eligible for an acute short term nutritional supplement under s. 67(3) of the EAPWDR.

Finally, the panel examined the medical reports provided by the appellant along with his Notice of Appeal but gives them no weight as they relate to an injury that took place over five years ago, in 2008 and do not provide any indication of surgery or suggest a severe injury. Rather, they indicate that there were contusions and abrasions, that there is no obvious injury, that the knee was cleansed, ointment and bandage applied, antibiotic given and state "Patient wants further treatment – non necessary". There is no evidence that he is still recovering from this injury or that the nutritional supplement has any connection to it.

For all those reasons, the panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.