



PART C – Decision under Appeal

The decision under appeal is the February 11, 2014 reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”), in which the ministry determined that the appellant, on behalf of her son, was not eligible for a Short Term Nutritional Supplement as provided in Section 67(3) of the Employment and Assistance for Persons with Disabilities Regulation (the “EAPWDR”), a Diet Supplement as provided in Section 66, Infant Formula as provided in Section 67.1 and Schedule C, Section 9 or Medical Supplies as provided by Schedule C, Section 2. In particular, the ministry found that:

- There was insufficient information provided in the appellant’s application and Request for Reconsideration (RFR) to establish that her son has an acute short term need for caloric supplementation to a regular dietary intake, as required by Section 67 (3); and
- There was insufficient information provided by the child’s medical practitioner to establish that the supplement is required to prevent critical weight loss while recovering from any of the conditions, as set out in Section 67(3)(b)(i-iv).

PART D – Relevant Legislation

EAPWDR Sections 66, 67(3) and 67.1;
EAPWDR Schedule C, Sections 2(1)(a), 6 and 9.

PART E – Summary of Facts

The appellant is designated as a person with disabilities, and is a recipient of disability assistance. The appellant applied for funding for Boost or Ensure, for her son, in January 2014 after initially sending a letter to the ministry, from her son's pediatrician in December 2013, to which the ministry responded with a request for additional information. On January 20, 2014 the appellant was advised by the ministry that her son was ineligible for the supplement, and she requested reconsideration of that decision on January 27, 2014.

The information before the ministry at the time of reconsideration included the following:

- A letter from the appellant's son's pediatrician dated December 19, 2013, which stated that the child has been diagnosed with congenital cytomegalovirus (CMV), as well as significant anxiety and attention deficit hyperactivity disorder (ADHD). The pediatrician adds that the child has significant sensory issues, which make it difficult for him to eat in the morning. He recommends some type of breakfast supplements, such as Boost or Ensure.
- A letter from the ministry, dated December 31, 2013, requesting additional information from the appellant as to the specific type of supplement requested, the daily usage amount and duration of need.
- The Short Term Nutritional Supplement Decision Summary dated January 20, 2014 indicating that the medical practitioner has not confirmed that the appellant's dependent child has an acute short-term need for caloric supplementation to regular dietary intake to prevent critical weight loss while recovering from surgery, severe injury, serious disease or side effects of medical treatment. Additionally, it states that no information is provided regarding why the applicant requires extra calories over and above a normal diet.
- A letter from the appellant's son's pediatrician dated January 13, 2014, which includes the same information as the letter of December 19, 2013, adding that Ensure or Boost is recommended on a daily basis for two years. On the bottom of the page is a copy of a pharmacy manager's business card, confirming the price of \$11.99 per 6-pack of Ensure or Boost.
- A copy of the ministry Medical Report for the appellant's son, dated January 2, 2014, completed by the pediatrician, who states that the child has congenital CMV, ADHD and sensory processing issues that are severe and are expected to last the duration of his life. When asked to describe the assistance or supervision required by the child during a typical week, "Boost or Ensure" is written in the space provided.
- A copy of the Individual Education Plan – Program for the Deaf and Hard of Hearing, dated October 28, 2013 which describes the medical diagnoses, assessments, concerns, needs and goals for the appellant's son within his school program.
- A letter from the Aboriginal Student Advocate, dated December 11, 2013 describing the support services she offers to students and their families in the school.
- A meeting log from a School Based Team meeting which had taken place January 9, 2014

regarding the appellant's son and his level of support required to transition to a classroom setting.

- A quote for Boost (\$12.99/6pack) and Glucerna (\$12.49/6pack) written on an unsigned, undated prescription page, which also has "Shopper's Drugs" written at the bottom and "About \$65mo, Walmart priced same" at the top.
- A handwritten letter from the appellant which states that the food bank and other resources, such as churches, do not supply items like Boost due to the high cost. She states that the children's father is not providing support and she was not permitted by the ministry to go to court to receive assistance from him and get off of Social Services. She further states that she has provided documentation to the ministry regarding her son's condition and "his doctors, teachers and (aboriginal) support teams are appalled with the ministry's rejecting a child with extreme significant needs." She concludes by itemizing the amount of support she receives and her monthly expenses, explaining that it leaves her \$138 short each month. She includes that she already spends \$550 each month for "Normal house foods," and an additional \$300 each month for "Fruit Veg, nut extras for healthy foods".
- Section 3 of the appellant's Request for Reconsideration dated January 27, 2014 in which she states that Boost helps her son thrive and that he needs it as a breakfast replacement. She states that the pediatrician has sent a request for this need, that her son is underweight and needs Boost for at least two years, and that his brain function will deteriorate without proper food. She concludes that she has letters of support from school specialists and team leaders regarding the effects of the lack of food in her son's life, adding that he is X years old and only 47 pounds.

In her Notice of Appeal, dated February 18, 2014, the appellant states that she disagrees with the ministry's decision and has attached a two page letter to explain her reasoning. In her letter she states that the ministry decision is a, "harsh insult," and that she has provided plenty of evidence regarding her son's need for supplement support. She states that she and her family live on very little and without the supplement, she will find a way to manage but activities, such as swimming, will have to be taken away from her family. She goes on to describe previous circumstances regarding her custody challenges and how grateful she is, to have her children currently in her care, but wants the ministry to allow her to pursue child support from the children's father in court.

The appellant's oral evidence on appeal included the following information:

The appellant is struggling to cope with all of the expenses that are necessary to manage the special needs of her children and herself and does not have resources to purchase the Boost or Ensure she has requested for her youngest son.

The appellant stated that due to her youngest son's congenital CMV she experiences considerable fear and anxiety about the impact this will have on his ongoing health, particularly with respect to his hearing loss, vision, brain development and sensory issues. He currently requires specific batteries

for his FM hearing aid he uses at school, good quality shoes due to paralysis of his right side earlier in his life and numerous vitamins and minerals in order to maintain his health. He has also recently incurred dental expenses in excess of \$650, although a worker with Interior Health was able to provide some assistance for these expenses. The appellant's eldest son has diabetes and his medical supplies and care are also very expensive. The appellant herself has ongoing health problems for which she is seeking the care and advice of medical specialists.

The appellant stated that in November the family had to unexpectedly move to a new residence in a different community. The rent increased from \$600 per month to \$1100 and the community supports the appellant her family had accessed are not as available in the new community, although the appellant is doing her best to navigate the resources available to her now.

The appellant stated that she is very meticulous about the nutrition her children receive because she knows that it is important to their health. She states that she bakes for the family, in order to be certain of nutritional content and to save money. She adds that because her youngest son is unable to tolerate the smells of food being prepared in the home in the morning due to his sensory issues and sensitivities, she will make breakfast foods for her older children the evening before so that they can have a nutritious breakfast.

The appellant stated that to assist with her food expenses, her children do take advantage of an excellent lunch/meal program at their school and she is grateful for that.

The appellant stated that her son requires Boost or Ensure, rather than a blender drink or smoothie because the pediatrician told her that if she wished to make those, she would have to purchase a protein powder to add to the drink. When she researched the cost of protein powder she found it to be too expensive.

The ministry relied primarily on its reconsideration decision, however, the ministry representative highlighted that at reconsideration, the ministry did consider the appellant's request under the legislation governing the provision of short-term nutritional supplements, diet supplements, infant formula, and medical supplies, in an attempt to find a way to provide assistance for the requested items in the circumstances of the appellant.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's February 11, 2014 reconsideration decision in which the ministry determined that the appellant's son was not eligible for a Short Term Nutritional Supplement as provided in Section 67(3) of the EAPWDR, a Diet Supplement as provided in Section 66, Infant Formula as provided in Section 67.1 and Schedule C, Section 9 or Medical Supplies as provided by Schedule C, Section 2.

The relevant legislation is as follows:

EAPWDR

Diet supplement

66 (1) The minister may pay for a diet supplement in accordance with section 6 [diet supplements] of Schedule C for a recipient of disability assistance under 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 a dependant of that person if the recipient or dependant requires

- (a) a special diet for a specific medical condition described in section 6 of Schedule C, or
- (b) a special diet described in section 6 of Schedule C. (B.C. Reg. 64/2010)

(2) A person is not eligible for a supplement under subsection (1) unless the need for the special diet is confirmed in writing by

- (a) a medical practitioner,
 - (a.1) a nurse practitioner, or (B.C. Reg. 317/2008)
 - (b) a registrant of the College of Dietitians of British Columbia established under the Health Professions Act. (B.C. Reg. 202/2006)

(3) The minister may not provide a supplement under this section to or for a family unit for a person on account of whom the minister is providing a supplement under section 67 (1) or (3) [nutritional supplements]. (B.C. Reg. 288/2003)

Nutritional supplement

67 (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 (B.C. Reg. 317/2008)
 - (i) surgery,
 - (ii) a severe injury,
 - (iii) a serious disease, or
 - (iv) side effects of medical treatment.

EAPWDR Schedule C Health Supplements

General health supplements

2 (1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 [general health supplements] of this regulation:

(a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:

(i) the supplies are required for one of the following purposes:

- (A) wound care;
- (B) ongoing bowel care required due to loss of muscle function;
- (C) catheterization;
- (D) incontinence;
- (E) skin parasite care;
- (F) limb circulation care;

(ii) the supplies are

- (A) prescribed by a medical practitioner or nurse practitioner,
- (B) the least expensive supplies appropriate for the purpose, and
- (C) necessary to avoid an imminent and substantial danger to health;

(iii) there are no resources available to the family unit to pay the cost of or obtain the supplies.

Infant Formula

9 The minister may provide infant formula under section 67.1 of this regulation if

(a) a medical practitioner or nurse practitioner confirms in writing that (B.C. Reg. 317/2008)

(i) the dependent child for whom a specialized infant formula is to be provided has a medical condition and the specialized infant formula is necessary to treat the medical condition, or

(ii) the dependent child for whom the infant formula is to be provided is at risk of contracting a disease that is transmissible through the mother's breast milk,

(b) in the case of a dependent child described by paragraph (a) (ii), the dependent child is under 12 months of age, and

(c) the minister is satisfied that the infant formula is medically required to treat the medical condition or respond to the risk referred to in paragraph (a). (B.C. Reg. 159/2005)

* * *

Whether the appellant's dependent child has an acute short term need for caloric supplementation to prevent critical weight loss during recovery from surgery, a severe injury, a serious disease or side effects of medical treatment (Section 67 (3))

The appellant argued that Boost or Ensure is vital to her son's health and life and that he is X years old and only weighs 47 pounds. She states that the pediatrician, teachers and school aids have all stressed the importance of him having the Boost or Ensure for breakfast.

The ministry determined that the information provided by the medical practitioner does not establish that the appellant's son has an acute short term need for caloric supplementation to a regular dietary intake, specifically when it was noted by the pediatrician that he will require this supplement as a meal replacement, not caloric supplementation, on a daily basis for two years. The appellant's son, therefore, has not met the legislated criteria for EAPWDR (Section 67 (3)).

The panel finds that the ministry reasonably determined that the information provided did not demonstrate that the appellant's son has an acute short term need for caloric supplementation to a regular dietary intake and the pediatrician does not indicate that the appellant's son is underweight, malnourished or had significant weight loss. Therefore, the panel finds that the ministry's decision, that the appellant's request for a Short Term Nutritional Supplement does not meet the eligibility criteria as required by EAPWDR Section 67(3), was reasonable.

Whether the appellant's dependent child requires a diet supplement for any of the conditions set out in EAPWDR Section 66 and Schedule C subsection 6

The appellant does not indicate that her son has any of the conditions listed in Schedule C, subsection 6.

The ministry determined that the information provided by the medical practitioner does not establish that the appellant's son has any of the conditions listed in Schedule C, subsection 6.

The panel finds that the ministry reasonably determined that the medical practitioner does not establish that the appellant's son has any of the conditions listed in Schedule C, subsection 6.

Whether the nutritional items are specialized infant formulas needed to treat a medical condition for which specialized infant formula is necessary (Section 67.1 and Schedule C, section 9)

The appellant stated that her son's pediatrician described the significant sensory issues that make it difficult for him to eat solid food first thing in the morning and that Boost and Ensure are specialized formulas that were recommended.

The ministry determined that the information provided by the medical practitioner does not establish that Boost or Ensure are specialized infant formulas or that the appellant's son has a medical condition for which a specialized infant formula is necessary. Additionally, the medical practitioner did not establish that a blender could not be used to prepare a nutritious drink that would be palatable. The appellant's son, therefore, has not met the statutory criteria for EAPWDR (Section 67.1 and Schedule C, section 9).

The panel finds that the ministry reasonably determined that the information provided by the medical practitioner does not establish that the appellant's son has a medical condition for which a specialized

infant formula is necessary and that the appellant's son is older than 12 months of age. Therefore, the panel finds that the ministry's decision, that the appellant's request for Specialized Infant Formula does not meet the eligibility criteria as required by EAPWDR Section 67.1 and Schedule C, section 9, was reasonable.

Do the requested items meet the eligibility requirements for Medical Supplies (Schedule C, section 2(1.1))

The appellant did not discuss whether the items meet the eligibility requirements for Medical Supplies as listed in Schedule C, section 2(1.1).

The ministry determined that the information provided by the medical practitioner does not establish that the items meet the eligibility requirements for Medical Supplies as listed in Schedule C, section 2(1.1), specifically that Medical Supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

The panel finds that the ministry reasonably determined that the requested nutritional items, which were expressly excluded, do not meet the eligibility requirements for Medical Supplies as listed in Schedule C, section 2(1.1).

Conclusion

For the reasons detailed above, the panel finds that the ministry decision to deny the applicant's request for the Short Term Nutritional Supplement of Boost or Ensure for her son was a reasonable application of the legislation in the circumstances of the appellant. Accordingly, the ministry decision is confirmed.