



PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (ministry) dated March 11, 2014 in which the ministry denied the appellant's request for a short term nutritional supplement (Ensure). The ministry held that the appellant was not eligible for the supplement pursuant to subsection 67(3) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because a medical practitioner had not confirmed in writing 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, severe injury, serious disease, or the side effects of medical treatment as required under paragraph (b) of subsection 67(3).

PART D – Relevant Legislation

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



PART E – Summary of Facts

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

- 1) The appellant's Request for Reconsideration dated February 18, 2014 in which he states that he needs Ensure for three months "for caloric supplement, not a meal replacement."
- 2) Two prescription pad notes from two different physicians as follows:
 - Undated prescription (Dr. E.'s prescription) for the appellant stating "Ensure x 3 months, for caloric supplement, not a meal replacement"; and
 - February 11, 2014 prescription (Dr. D.'s prescription) for the appellant noting "Ensure 1 can tid 3 months".
- 3) Ministry's Short Term Nutritional Supplement Decision Summary (Decision Summary) dated February 13, 2014 in which the ministry notes that the appellant's physician has indicated the appellant requires Ensure "due to Hepatitis C, hypertension, COPD, tobacco use and dental problems with no teeth."
- 4) Ministry File Notes on the appellant as follows:
 - February 12, 2014: "Client was involved in car accident resulting in shattered jaw and lost all his teeth in an emergency surgery. Client states he will be going in for shoulder surgery at 1 pm today and requesting decision on liquid meal supplements as he will be on bed rest and have limited mobility after shoulder surgery to deal with food situation." The ministry marked the appellant's request as urgent, and noted that he has no phone.
 - March 6, 2014: Call from the appellant: "Insists that Ensure is his 'medication'." He was upset that he had not yet received the reconsideration decision and hung up the phone.
 - March 6, 2014: The appellant came into the ministry office enquiring on the status of the reconsideration. He stated that he was "very concerned, as surgery to extract all remaining teeth is scheduled tomorrow and clt will be unable to eat solid foods following. Sts in need of Ensure to meet nutritional requirements." The appellant stated he was not aware of the reason why he was denied the Ensure supplement. The ministry provided him with a copy of the original decision.
- 5) Ministry Telephone Log dated March 11, 2014 which summarizes a call to the appellant's physician (Dr. D.) from a ministry reconsideration officer. The ministry initially spoke with a Medical Office Assistant (MOA) "who reviewed the clinical notes and could find no mention of surgery to extract remaining teeth on March 7th. A note re: need for Ensure was indicated." The ministry noted that it then spoke with Dr. D. who stated that she had not seen the appellant since February 2014 and had no information regarding dental surgery. Dr. D. "confirms there was no acute medical condition that she is aware of, he has chronic conditions."

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In his Notice of Appeal dated March 12, 2014, the appellant stated that he disagrees with the ministry's reconsideration decision "because I can't eat, I gag when I try to eat solid food"; he also reported the following symptoms: "headache, dizzy, weak with no energy."

The panel admits the statements in the Notice of Appeal under section 22(4)(b) of the *Employment and Assistance Act* as testimony in support of information that was before the ministry at the time the decision being appealed was made. The panel finds that the appellant's statements relate to his medical symptoms and need for a liquid nutritional supplement.

The ministry relied on the reconsideration decision and did not submit any further information. Neither the appellant nor the ministry attended the hearing. After establishing that the parties had been notified of the hearing, the panel proceeded under section 86(b) of the *Employment and Assistance Regulation*.

The panel makes the following findings of fact:

1. The appellant is a recipient of disability assistance and is not receiving a nutritional supplement under subsections 67(1), or 2(3) of Schedule C of the EAPWDR.
2. A medical practitioner has confirmed that the appellant requires Ensure due to Hepatitis C, hypertension, COPD, tobacco use and dental problems.
3. A medical practitioner has prescribed Ensure for caloric supplementation and not as a meal replacement.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the following determination of the ministry was reasonably supported by the evidence, or was a reasonable interpretation of the legislation in the circumstances of the appellant: that a medical practitioner had not confirmed in writing 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 as required under subsection 67(3) of the EAPWDR.

The relevant sections of the legislation are as follows:

Employment and Assistance for Persons with Disabilities Regulation

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,

if the minister is satisfied that

(c) based on the information contained in the form required under subsection (1.1), the requirements set out in subsection (1.1) (a) to (d) are met in respect of the person with disabilities,

(d) the person is not receiving a supplement under section 2 (3) [general health supplement] of Schedule C,

(e) the person is not receiving a supplement under subsection (3) or section 66 [diet supplements],

(f) the person complies with any requirement of the minister under subsection (2), and

(g) the person's family unit does not have any resources available to pay the cost of or to obtain the items for which the supplement may be provided.

(1.1) In order for a person with disabilities to receive a nutritional supplement under this section, the minister must receive a request, in the form specified by the minister, completed by a medical practitioner or nurse practitioner, in which the practitioner has confirmed all of the following:

(a) the person with disabilities to whom the request relates is being treated by the practitioner for a chronic, progressive deterioration of health on account of a severe medical condition;

(b) as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the following symptoms:

(i) malnutrition;

(ii) underweight status;

(iii) significant weight loss;

(iv) significant muscle mass loss;

(v) significant neurological degeneration;

(vi) significant deterioration of a vital organ;

(vii) moderate to severe immune suppression;

(c) for the purpose of alleviating a symptom referred to in paragraph (b), the person requires one or more of the items set out in section 7 of Schedule C and specified in the request;

(d) failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life.

(2) In order to determine or confirm the need or continuing need of a person for whom a supplement is provided under subsection (1), the minister may at any time require that the person obtain an opinion from a medical practitioner or nurse practitioner other than the practitioner referred to in subsection (1) (c).

(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.
- [am. B.C. Regs. 317/2008, s. 8; 68/2010, ss. 1 and 2.]

Appellant's position

The appellant's position is that he needs Ensure for three months as a caloric supplement, not a meal replacement. He argues that he should receive the supplement because he can't eat solid food and suffers from headaches, dizziness, weakness, and a lack of energy. Furthermore, he had emergency surgery and lost all his teeth; was going in for shoulder surgery in February; and had surgery scheduled in early March to extract all of his remaining teeth and would be unable to eat solid foods.

Ministry's position

The ministry's position is the appellant's request for Ensure does not satisfy the legislated criteria for a short term nutritional supplement under subsection 67(3) of the EAPWDR. The ministry argued three points:

- There is no evidence that Ensure is required to prevent critical weight loss while the appellant is recovering from surgery, a severe injury, serious disease, or the side effects of medication.
- There is no indication that the appellant's medical conditions are acute, and appear instead to be chronic in nature.
- While Dr. E. prescribed Ensure for three months "for caloric supplement, not a meal replacement", a medical practitioner has not confirmed in writing 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 (i) surgery, (ii) a severe injury, (iii) serious disease, or (iv) side effects of medical treatment."

The ministry was satisfied that the appellant is a recipient of disability assistance and is not receiving a nutritional supplement under subsections 67(1), or 2(3) of Schedule C of the EAPWDR. These criteria for a short term nutritional supplement as set out in subsection 67(3) and paragraph 67(3)(a) of the EAPWDR are therefore not in dispute in this appeal.

Decision

In order for a recipient of disability assistance to be eligible for a nutritional supplement for a period of three calendar months under subsection 67(3) of the EAPWDR, and having established that the appellant is not receiving nutritional supplements pursuant to paragraph 67(3)(a), the criteria set out in paragraph 67(3)(b) must be satisfied.

Paragraph 67(3)(b) requires a medical practitioner to confirm in writing that the appellant has "an acute short term need" for caloric supplementation "to prevent critical weight loss" while recovering from any of four medical situations: "(i) surgery, (ii) a severe injury, (iii) a serious disease, or (iv) side effects of medical treatment."

While the ministry's Decision Summary notes that the appellant's physician has indicated that the appellant requires Ensure "due to Hepatitis C, hypertension, COPD, tobacco use and dental problems with no teeth", and Dr. E.'s prescription indicates "Ensure x 3 months, for caloric supplement, not a meal replacement", the panel finds that the ministry reasonably determined that the evidence contains no written statements from the physician to indicate:

- that the appellant has an "acute short term need" for Ensure, and
- that Ensure is needed to "prevent critical weight loss" while recovering from surgery or other medical situation as required under paragraph 67(3)(b) of the EAPWDR.

First, neither Dr. E.'s prescription nor Dr. D.'s prescription for Ensure indicate why Ensure is needed other than Dr. E. noting that Ensure is for caloric supplementation. Rather, the ministry's Telephone Log indicates that the appellant's physician has confirmed that the appellant has "no acute medical condition that she is aware of, he has chronic conditions."

Second, while the appellant argued that he needs Ensure because he can't eat solid food and suffers from headaches, dizziness, weakness, and a lack of energy; and the ministry's File Notes indicate that he had had a car accident, lost his teeth in an emergency surgery and was scheduled for both shoulder and dental surgery, there is no written confirmation from his physician regarding a need for Ensure to prevent weight loss while recovering from his accident or surgeries. Rather, the ministry's telephone log indicates that neither Dr. D. nor her MOA had any information regarding the appellant's dental surgery.

Given the lack of confirmation from a medical practitioner as required under paragraph 67(3)(b) of the EAPWDR, the panel finds that the ministry reasonably determined that there is no evidence to indicate that Ensure is needed for three months to prevent critical weight loss during the appellant's recovery from his accident or surgeries.

Conclusion

The panel confirms the ministry's reconsideration decision as being reasonably supported by the evidence.