

## PART C – Decision under Appeal

This is an appeal of the reconsideration decision of the Ministry of Social Development and Social Innovation (“ministry”) dated May 20, 2014, in which the ministry denied the appellant’s request for a short term nutritional supplement on the basis it did not meet the criteria set out in the *Employment and Assistance Regulation* (“EAR”). The ministry determined that the appellant’s request did not meet the legislative criteria for the following reasons: the information provided by the appellant’s medical practitioner did not establish that the appellant has an acute short term need for caloric supplementation to a regular dietary intake while recovering from surgery, a severe injury, serious disease or the side effects of medication, as required by section 74(b) of the EAR; and the requested nutritional supplement is not a “medical supply”, “medical transportation” or “medical equipment and devices” eligible under section 76 of the EAR which provides health supplements to meet a life-threatening health need.

## PART D – Relevant Legislation

*Employment and Assistance Regulation* (EAR) sections 74 and 76 and Schedule C – Health Supplements, sections 2(1)(a), (f) and 3.

## PART E – Summary of Facts

The information before the ministry at reconsideration consisted of the following:

- The appellant's request for reconsideration dated April 24, 2014;
- A copy of a page from a ministry application for designation as a Person With Disabilities on which the appellant's physician has indicated the appellant has Crohn's disease, onset April 2000, and to which a copy of a prescription from the appellant's physician dated January 23, 2014 has been attached on which the physician has written "Patient has Crohn's and uses Ensure X6/day for nutrition"; and
- A copy of a note from a pharmacy with the words, "Ensure 6 X 237 ML \$14.49" and the appellant's name.

In her request for reconsideration, the appellant indicated that she has severe Crohn's disease, which she has been dealing with since 1999. She indicated that since 2009, she has a physician's prescription for 6 bottles of Ensure per day because, although she eats regular food every day, she needs the extra calories provided by the 6 bottles of Ensure (1500 calories) to maintain her weight to survive. The appellant wrote that the documentation of her severe Crohn's disease is in her medical file in another province as she has recently moved to British Columbia.

In her notice of appeal, the appellant wrote that she has a severe disability and needs Ensure to supplement the protein, vitamins and minerals that she does not get from regular food because of absorption problems.

At the hearing, the appellant restated the information set out in her request for reconsideration and her notice of appeal. In its reconsideration decision and at the hearing, the ministry noted that at the time of her request for short term nutritional supplement, the appellant was receiving income assistance under the EAR – she was not designated a Person with Disabilities ("PWD") under the *Employment and Assistance for Persons with Disabilities Act*. At the hearing, the appellant and the ministry confirmed that on June 5, 2014, the ministry approved the appellant's application for designation as a PWD. Both the appellant and the ministry confirmed at the hearing that the appellant had not applied for "diet supplements" under section 73 of the EAR at the time she applied for nutritional supplement under section 74 of the EAR, or at any other time.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant's request for short term nutritional supplement under section 74 of the EAR was reasonable based on the evidence or a reasonable application of the legislation in the appellant's circumstances. The ministry denied the appellant's request on the basis it did not meet the legislative criteria for the following reasons: the information provided by the appellant's medical practitioner did not establish that she has an acute short term need for caloric supplementation to a regular dietary intake while recovering from surgery, a severe injury, serious disease or the side effects of medication, as required by section 74(b) of the EAR; and the requested nutritional supplement (6 bottles of Ensure per day) is not a "medical supply", "medical transportation" or "medical equipment and devices" eligible under section 76 of the EAR which provides health supplements for persons facing direct and imminent life-threatening health need.

### *Legislation*

The following are the relevant provisions of the legislation (the EAR) applicable to the appellant's request for short term nutritional supplement of Ensure.

#### **74. Nutritional supplement**

- (1) The minister may provide a nutritional supplement for a period of 3 calendar months for a recipient of income assistance ... if
  - (a) the recipient ... is not receiving a supplement under section 2(3) of Schedule C, and
  - (b) a medical practitioner or nurse practitioner confirms in writing that the recipient ... 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.

#### **76. Health supplement for persons facing direct and imminent life threatening health need**

- (1) The minister may provide to a family unit any health supplement set out in sections 2(1)(a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that
  - (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
  - (b) the health supplement is necessary to meet that need,
  - (c) the person's family unit is receiving premium assistance under the *Medicare Protection Act*, and
  - (d) the requirements specified in the following provisions of Schedule C, as applicable are met:
    - (i) paragraph (a) or (f) of section 2(1);
    - (ii) sections 3 to 3.12, other than paragraph (1) of section 3(1).

## Schedule C – Health Supplements

### 2. General health supplements

(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 67 [general health supplements] of this regulation:

- (a) medical or surgical supplies .....
- ...
- (f) the least expensive appropriate mode of transportation to or from
  - (i) an office, in the local area, of a medical practitioner or nurse practitioner ....

### 3. Medical equipment and devices

(1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.12 of this Schedule are the health supplements that may be provided by the minister if

- (a) the supplements are provided to a family unit that is eligible under section 67 [*general health supplements*] of this regulation, and
- (b) all of the following requirements are met:
  - (i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;
  - (ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
  - (iii) the medical equipment or device is the least expensive appropriate medical equipment or device.

Subsection 3(2) applies to medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12 (canes, crutches and walkers, wheelchairs, wheelchair seating systems, scooters, bathing and toileting aids, hospital bed, pressure relief mattresses, floor or ceiling lift devices and non-conventional glucose meters) – none of which are relevant to the appellant's request for nutritional supplements of Ensure. Subsection 3(2.1) applies to medical equipment or devices referred to in section 3.9 – breathing devices – which is not relevant to the appellant's request. Subsection 3(3) sets out the requirements for replacement of medical equipment previously provided by the minister under this section, subsection 3(4) sets out the requirements for the repair of medical equipment previously provided by the minister, and subsection 3(5) sets out the requirements for repairs of medical equipment not previously provided by the minister. These sections are not relevant to the appellant's request for nutritional supplements of Ensure.

#### *Submissions*

The appellant argued that she has severe Crohn's disease, which she has had for several years. As a result of her Crohn's disease and surgery related to the Crohn's, the appellant can no longer absorb nutrients properly. She argues that she has had a prescription from a doctor for 6 bottles of Ensure per day to supplement her diet for several years – although she eats regular meals, because of her Crohn's she requires the supplement of Ensure to ensure she gets the nutrients she needs to survive. The appellant recently moved to British Columbia from another province and she said that her medical information from her previous province has not been forwarded to her physician here and to the ministry. The appellant was frustrated that she was denied her request for the short term supplement of Ensure and told the panel that she had applied in accordance with the advice and

direction of Ministry staff to apply for short term nutritional supplement. She had not been told that she could apply for diet supplements.

The ministry said that at the time the appellant applied for the short term nutritional supplement under section 74 of the EAR, she was not designated a PWD (she was receiving income assistance). The ministry argues that the appellant's request did not meet the criteria set out in section 74 of the EAR. As set out in its reconsideration decision, the written information provided by the appellant's physician with her request for short term nutritional supplement of Ensure did not confirm that the appellant has an acute short term need for caloric supplementation to a regular dietary intake – the ministry says that the appellant's severe Crohn's disease is not an acute condition, but a chronic condition. The ministry also argued that the appellant's request does not meet the requirements as a health supplement for a person facing direct and imminent life threatening health need set out in section 76 of the EAR. The requested nutritional supplements of Ensure are not medical or surgical supplies (as defined in subsection 2(1)(a) of Schedule C of the EAR) or a mode of transportation to or from a medical or nurse practitioner's office (as defined in subsection 2(1)(f) of Schedule C of the EAR). Further, the requested nutritional supplements of Ensure are not among those medical equipment and devices set out in sections 3 through 3.12 of Schedule C of the EAR.

### *Panel Decision*

The appellant applied under section 74 of the EAR for the nutritional supplement of 6 bottles of Ensure per day as a result of her severe Crohn's disease. With her application, the appellant submitted a prescription from her physician on which the physician wrote, "Patient has Crohn's and uses Ensure X6/day for nutrition," together with a copy of the page from her PWD application on which her physician indicated she suffers from Crohn's disease with an onset date of April 2000. The appellant was not a designated PWD at the time she submitted her application and did not apply under section 73 of the EAR for diet supplements.

In its reconsideration decision, the ministry found that the information provided by the appellant's medical practitioner did not establish that she has an "acute short term need" for caloric supplementation to her regular dietary intake. The ministry noted that the appellant has a "chronic condition" with an "ongoing need" for the requested supplement of 6 bottles of Ensure per day, as opposed to an "acute short term need." The ministry also found that the appellant's physician did not confirm that the requested supplement is required to prevent "critical weight loss" or that any of the situations set out in section 74(b) exist (surgery, severe injury, a serious disease, or side effects of medical treatment).

Section 74 expressly provides that a medical or nurse practitioner "confirms in writing that the recipient ... has an acute short term need" for the requested caloric supplementation to a regular dietary intake. The information provided by the appellant's physician in the prescription and accompanying page of the PWD application indicates that the appellant has Crohn's disease and "uses Ensure X6/day for nutrition" but does not confirm that she has an acute short term need for the Ensure or that she requires it to prevent critical weight loss while recovering from surgery, severe injury, serious disease or side effects of medical treatment. The panel finds that the ministry's determination that the appellant's request for short term nutritional supplement of 6 bottles of Ensure per day does not meet the criteria set out in section 74(b) of the EAR is reasonable based on the evidence.

In its reconsideration decision, the ministry acknowledged that the information submitted by the appellant indicates that she “may have a life-threatening health need” for the requested 6 bottles of Ensure per day. However, the ministry noted that the remedy provided under section 76 (eligibility for coverage as a person facing direct and imminent life threatening health need) “only applies to medical supplies, medical transportation and medical equipment and devices” and the requested short term nutritional supplement of 6 bottles of Ensure per day is not set out in the relevant sections (subsection 2(1)(a) and 2(1)(f) and sections 3 through 3.12 of Schedule C of the EAR).

Section 76 of the EAR allows for the provision of health supplements to or for a person who is otherwise not eligible if the minister is satisfied that the person faces a direct and imminent life threatening need and the other requirements set out in section 76 are met. The panel notes that section 76 expressly states that the health supplements which may be provided must meet the requirements as “general health supplements” as set out in subsections 2(1)(a) and (f) of Schedule C of the EAR, or the requirements as “medical equipment and devices” as set out in sections 3 through 3.12 of Schedule C of the EAR. The requested nutritional supplement of 6 bottles of Ensure per day does not meet the requirements of subsections 2(1)(a), 2(1)(f) and sections 3-3.12 of Schedule C of the EAR. Accordingly, the panel finds that the ministry’s determination that the appellant’s request does not meet the criteria of section 76 of the EAR is a reasonable application of the legislation to the appellant’s circumstances.

Therefore, the panel confirms the ministry’s decision to deny the appellant’s request for the nutritional supplement as the legislative requirements set out in sections 74 and 76 of the EAR were not met.