

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated May 13, 2014, which denied the Appellant's request for Monthly Nutritional Supplement (MNS), specifically Ensure/Boost. The Ministry found that the Appellant's application did not meet the requirements of section 67(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and section 7(a) of Schedule C, EAPWDR. The Ministry found that a medical practitioner or nurse practitioner did not confirm that failure to obtain the requested items will prevent imminent danger to the Appellant's life and did not describe how the requested items will alleviate one or more of the symptoms described and provide caloric supplementation to a regular diet.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 67; Schedule C, section 7

PART E – Summary of Facts

The Appellant and the Ministry attended the hearing scheduled for June 25, 2014. The Appellant's representative arrived late, after the Appellant had given oral evidence, and asked for an adjournment, which was granted. At the rescheduled hearing, the Appellant, his representative and the Ministry were not in attendance. After confirming that all of the parties were notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

Information before the Ministry at Reconsideration included:

- The Appellant's Application for Monthly Nutritional Supplement, dated January 20, 2014.
- The Ministry's Monthly Nutritional Supplement Decision Summary, dated April 15, 2014.
- A copy of the Ministry's letter to the Appellant advising him of their decision, dated April 15, 2014.
- The Appellant's Request for Reconsideration, dated May 7, 2014.

At the hearing, the Appellant stated that he has had Hepatitis C for over 20 years and cannot keep food down. He stated that he weighs 130 pounds, not 150 as stated by the physician on his application for nutritional items. He stated that he has muscle mass loss and he has a strain of Hepatitis C that cannot be cured. He stated that he needs Ensure because he cannot keep solid food down and he needs it to stay alive.

In response to questions from the Ministry, the Appellant stated that his physician did not weigh him at the clinic, but he has no confirmation of his weight loss, and he has no family doctor. He stated that he has seen the doctor who completed the form three or four times, but he did not consult any records when completing the form. He stated that he has gastritis and no teeth, so he cannot eat vegetables or meat without vomiting. He stated that he can eat chicken or Ensure.

In response to questions from the Panel, the Appellant stated that his nutritional problems started three years ago when the vomiting started; prior to that, he weighed 180 pounds.

At this point, the June 25, 2014 hearing was adjourned.

In the Reconsideration Decision, the Ministry stated that the Appellant's physician did not specify the expected duration of the need for nutritional items, answered 'no' to the question "Does this applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake?", did not complete the section of the form describing how the nutritional items required will prevent imminent danger to the Appellant's life and indicated that the Appellant's body mass index (BMI) is within the normal range, therefore it cannot be established that the Appellant is underweight, requiring caloric supplementation to a regular dietary intake. The Ministry therefore concluded that the eligibility criteria set out in the relevant legislation had not been met.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's reconsideration decision dated May 13, 2014, which denied the Appellant's request for Monthly Nutritional Supplement (MNS), specifically Ensure/Boost. The Ministry found that the Appellant's application did not meet the requirements of section 67(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and section 7(a) of Schedule C, EAPWDR. The Ministry found that a medical practitioner or nurse practitioner did not confirm that failure to obtain the requested items will prevent imminent danger to the Appellant's life and did not describe how the requested items will alleviate one or more of the symptoms described and provide caloric supplementation to a regular diet.

Legislation

EAPWDR

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.

Schedule C

Monthly nutritional supplement

7 The amount of a nutritional supplement that may be provided under section 67[*nutritional supplement*] of this regulation is the sum of the amounts for those of the following items specified as required in the request under section 67 (1) (c):

- (a) for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to \$165 each month;
- (b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]
- (c) for vitamins and minerals, up to \$40 each month.

The Appellant's position is that he needs the requested items because he has significant muscle mass loss due to Hepatitis C and cannot tolerate solid food. He argued that the physician who completed the application for MNS did not weigh him and recorded his weight inaccurately, and he actually weighs 130 pounds, not 150.

He argued that he requires the requested items to stay alive.

The Ministry's position is that the Appellant's application does not meet the legislative requirements for approval of MNS. The physician did not confirm that failure to obtain the requested items will result in imminent danger to the Appellant's life and did not establish that the Appellant is experiencing significant weight loss, and therefore requires caloric supplementation to a regular dietary intake.

The Panel notes that the EAPWDR, section 67(1.1) requires that a medical practitioner or nurse practitioner must confirm, among other things, that for the purpose of alleviating a symptom described (malnutrition, underweight status, significant weight loss, significant muscle mass loss, significant neurological degeneration, significant deterioration of a vital organ, moderate to severe immune suppression) failure to obtain the items referred to will result in imminent danger to the person's life. In the application for MNS submitted by the Appellant, that section is blank. With reference to the requirement for nutritional items, section 7 of Schedule C, EAPWDR refers to nutritional items that are part of a caloric supplementation to a regular dietary intake. The Panel finds that the Ministry reasonably determined that the information provided by the Appellant's physician does not confirm that the Appellant is experiencing significant weight loss or that he has a problem absorbing nutrients or has gastritis and vomiting. The Panel finds that the Ministry reasonably concluded that the eligibility criteria set out in EAPWDR section 67 and Schedule C, section 7 have not been met as the medical practitioner has not confirmed the need for Ensure as part of a caloric supplementation to a regular dietary intake to alleviate a listed symptom and prevent imminent danger to life.

The Panel therefore confirms the Ministry's decision as reasonably supported by the evidence.