

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the "ministry") dated June 11, 2014 which held that the appellant was not eligible for an infant health supplement because the ministry determined that the appellant did not meet the eligibility requirements set out in section 10 of Schedule C of the Employment and Assistance Regulation. Specifically, the ministry held that a medical or nurse practitioner had not confirmed that the appellant's child has a medical condition that requires specialized infant formula to treat a medical condition.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) section 74.1
Employment and Assistance Regulation (EAR) section 10 of Schedule C

PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was properly notified, the hearing proceeded pursuant to Section 86(b) of the Employment and Assistance Regulation.

The documentary evidence before the ministry at reconsideration included the following:

- a letter from the appellant's physician dated June 9, 2014. The letter indicates that the appellant's breast milk ceased despite medication. Accordingly, the appellant's child requires infant formula without which the child would be at risk for failure to thrive.
- the appellant's *Request for Reconsideration* dated June 9, 2014 in which she states that her child needs (brand name) Probiotics to survive as she will not have any other (infant) formula.

In her Notice of Appeal the appellant indicates that the reason(s) for her appeal are as follows: "I disagree with the decision you have made because (brand name) Formula is expensive and I don't have an option of using different formula brands as (the child) just pukes them up or won't drink them therefore she fails to thrive." The appellant explains that she has tried unsuccessfully to get her child to try other off-the-shelf infant formulae but the child would not accept them. The appellant fears that she will simply waste any money she spends trying other brands. She notes that she is not aware of any other child who isn't lactose-intolerant that has this problem with different types of infant formula.

In the Reconsideration Decision dated June 11, 2014, the ministry noted that the appellant receives income assistance and consequently is eligible to receive health supplements as provided under section 74.1 of the EAR.

At the hearing the ministry acknowledged that the appellant needs to provide her child with infant formula because she is unable to breastfeed her child. Nonetheless, the ministry indicated that the legislation does not cover the appellant's situation. The ministry's explanation for this went to argument and is outlined in Part F. The ministry also confirmed that the appellant is not the first case the ministry has encountered of a non-nursing mother on income assistance who unsuccessfully sought to receive a health supplement for infant formula. The ministry representative indicated that she had spoken with the ministry's "policy people" regarding the shortcomings of the legislation insofar as it failed to deal with the circumstances of appellants who are unable to breastfeed their children but are unable to satisfy the requirements of section 10 of Schedule C of the EAR. The panel decided that it would not admit this information as it was not in support of information and records that were before the ministry at the time of reconsideration.

The ministry acknowledged that infant formula is expensive but explained that a natal allowance is provided to pregnant women who receive assistance. This allowance continues for six months after the child is born. In addition, a family unit consisting of a mother and child receives a higher level of assistance than a single woman. The ministry also noted that the off-the-shelf infant formula that the appellant has found to be tolerated by her child is not a "specialized infant formula." The ministry representative offered an opinion that the infant formula used by the appellant is dairy-based and concluded that the appellant's child is not sensitive to cow's milk. The panel decided that it would not admit this opinion as the ministry representative indicated this opinion was based upon a web-search and she does not claim to be an expert in this matter.

In response to a question from the panel, the ministry clarified that the Reconsideration Decision had incorrectly listed the applicable legislation as being section 67.1 and section 9 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation. The applicable legislation as noted in the body of the decision is section 74.1 and section 10 of Schedule C of the EAR.

In response to a question from the panel, the ministry stated that "being at risk for failure to thrive" is not a medical condition in and of itself but may be the consequence of an underlying condition. Nonetheless the letter from the appellant's physician did not specify that the appellant's child had a medical condition requiring a specialized infant formula. The ministry stated that even if the appellant's child faced a life-threatening situation that the ministry would still be obliged to follow the requirements of the legislation in determining what assistance they could provide.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably denied the appellant's request for an infant formula health supplement because a medical or nurse practitioner had not confirmed that the appellant's child has a medical condition that requires specialized infant formula. Specifically, the issue is whether the ministry's decision is reasonably supported by the evidence, or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is the following:

From the EAR:

Infant health supplement

74.1 (1) Subject to subsection (2), the minister may provide the type of health supplement referred to in section 10 of Schedule C, in accordance with that section, to or for

- (a) a dependent child of a recipient of income assistance under section 4 of the Act,

Infant formula

10 The minister may provide infant formula under section 74.1 of this regulation if

- (a) a medical practitioner or nurse practitioner confirms in writing that
 - (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 child described by paragraph (a) (ii), the 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).

The appellant's position is that she is unable to breastfeed her child and consequently the child requires infant formula. The appellant's doctor has confirmed these claims and warns that without the infant formula the child would be at risk for failure to thrive. The appellant has found only one infant formula product that her child will tolerate but it is expensive to provide.

The ministry's position is that the legislation relating to the provision of infant formula covers only specified situations and the appellant's situation is not covered by the legislation. The ministry explained that there are two conditions under which infant formula may be provided to a recipient of income assistance under section 10 of Schedule C of the EAR. The first condition applies where a medical/nurse practitioner confirms in writing that the dependent child has a medical condition requiring that the child receive a specialized infant formula to treat the condition. In the appellant's case her physician has not confirmed that the child has a medical condition requiring a specialized infant formula. Rather, the physician has recommended that the appellant continue to provide her child with the off-the-shelf infant formula that the appellant has found that her child will tolerate. The ministry explained that this is not "specialized infant formula" and therefore does not satisfy the requirements of section 10(a)(i) of Schedule C of the EAR. The second condition applies where the child is at risk of contracting a disease that is transmissible through the mother's breast milk. The ministry noted that there was no evidence that the appellant had a transmissible disease and therefore she does not satisfy the requirements of section 10(a)(ii) of Schedule C of the EAR. Consequently, the ministry determined that the appellant's request did not meet the legislated requirements and denied the request.

The panel's decision

The panel accepts that the appellant is unable to breastfeed her child and is therefore dependent upon providing her child with infant formula. In addition, the panel acknowledges that infant formula is expensive and that the appellant has had difficulty in finding an infant formula that her child will tolerate. Nonetheless, the panel recognizes that the appellant fails to meet the criteria specified in section 10 of Schedule C of the EAR. The letter from the appellant's physician does not confirm that the appellant's child has a medical condition that requires that the child receive a specialized infant formula. In addition, the infant formula being used by the appellant is not a specialized infant formula necessary to treat a medical condition. Finally, there is no evidence that the appellant's child is at risk of contracting a disease that is transmissible through the appellant's breast milk. Accordingly, the panel concluded that the ministry had reasonably determined that the appellant had not satisfied the requirements of section 10 of Schedule C of the EAR and therefore was not eligible for a health supplement for infant formula.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for a health supplement for infant formula was a reasonable application of the legislation in the circumstances of the appellant.

The panel therefore confirms the ministry decision.