

### PART C – Decision under Appeal

Under appeal is the Ministry of Social Development and Social Innovation's ("the ministry") October 10, 2014 reconsideration decision that the appellant was not eligible for a nutritional supplement, because a medical practitioner or nurse practitioner did not confirm in writing 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 by Employment and Assistance for Persons With Disabilities Regulation section 67 (3).

### PART D – Relevant Legislation

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

## PART E – Summary of Facts

The evidence before the ministry at reconsideration was

- the appellant is a recipient of disability assistance.
- June 2014 hospital investigation report diagnosing low-grade papillary urothelial carcinoma.
- July 18, 2014 physician report of visit to review ultrasound, new mucosal tumor
- undated letter from urologist to appellant confirming September 25 date of surgery (cystoscopy and bladder biopsy) with instructions.
- August 31, 2014 physician's prescription note saying "*requires boost 3 daily up to 3 mo. - eating disorder diverticulitis.*"
- August 31, 2014 pharmacy estimate for 45 six packs of Boost at \$539.55.
- August 31, 2014 pharmacy estimate for 45 packages of Boost at \$494.55.
- September 3, 2014 message from appellant to ministry worker accompanying documents and describing her eating difficulties resulting from her treatments.
- September 25, 2014 physician's prescription note saying "*This pt had surgery and has lost weight recently. She may benefit from Boost as a supplement.*"

Upon appeal the appellant reported she has had fifteen surgeries over the past five years, as well as BCA treatments and chemotherapy after surgery. She submitted an October 3, 2014 hospital report diagnosing low-grade papillary urothelial carcinoma and information from the BC Cancer Agency about the type of treatments she had for bladder cancer that affect her well being and diet.

The panel determined the additional documentary evidence was admissible under section 22(4) of the Employment and Assistance Act as it is in support of the records before the ministry at reconsideration.

## PART F – Reasons for Panel Decision

The issue is the reasonableness of the ministry's reconsideration decision that the appellant was not eligible for a nutritional supplement, because a medical practitioner or nurse practitioner did not confirm in writing 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 by Employment and Assistance for Persons With Disabilities Regulation section 67 (3).

### Relevant Legislation

#### EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

##### ***Nutritional supplement (excerpts)***

*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*

*(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 argues she provided written confirmation of her medical conditions from her physicians indicating a need for the nutritional supplement, and the supplement would not have been prescribed by both doctors if it were not needed.

### Ministry's Position

The ministry argues that the appellant's physicians have not confirmed an acute short term need for caloric supplementation to a regular diet, or reported a critical weight loss, and that although the appellant was diagnosed with carcinoma and may be recovering from surgery, her physicians have not reported a related need for the supplement. Also the ministry says there are no reports indicating a treatment schedule such as chemotherapy or other treatments or medications that would indicate the appellant requires caloric supplementation due to side effects of medical treatment.

**Panel's Decision**

The legislation under which the requested nutritional supplement may be provided requires that 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 surgery, a severe injury, a serious disease, or side effects of medical treatment.

The medical reports provided show the appellant has a serious disease and recently had surgery, and the appellant reports that she suffers from side effects of her medical treatment. The physicians' prescription notes about the supplement are brief. The August 31, 2014 note does not mention weight loss. The September 25, 2014 note reports only that the appellant had surgery and lost weight recently and may benefit from the supplement. The physician did not provide the appellant's current weight, how much weight she lost or over what period of time. There are no other practitioner reports mentioning a nutritional supplement or weight loss. The panel finds that the medical reports do not confirm the recipient has an acute short term need for caloric supplementation to a regular dietary intake to prevent critical weight loss.

In the absence of a written medical report stating the appellant needs a nutritional supplement to prevent critical weight loss, the panel finds the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.