

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the ministry”) reconsideration decision of March 11, 2015 in which the ministry denied a short term nutritional supplement (STNS) to the appellant because his application failed to meet the eligibility criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 67 (3), specifically that the appellant has not demonstrated an acute short-term need for caloric supplementation to prevent critical weight loss while recovering from surgery, severe injury, serious disease or treatment side effects.

PART D – Relevant Legislation

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

PART E – Summary of Facts

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

The evidence before the ministry at reconsideration included the following:

- December 15, 2013 letter from the appellant's family physician stating that:
 - the appellant had been diagnosed with a brain tumour which may be causing headaches, fits of anger and depression;
 - the patient is being monitored by the neurosurgery team but a treatment plan has yet to be developed;
 - it is too early to give a prognosis.
- doctor's prescription dated January 21, 2014 for a high energy nutritional supplement three times daily for three months;
- ministry document dated February 4, 2014 granting a STNS to the appellant for a 3-month period ending May 15, 2014;
- doctor's prescription dated January 27, 2015 for "ensure high protein" three times daily for three months;
- January 30, 2015 letter from the ministry to the appellant denying his request for a health supplement, to which was appended the ministry's STNS decision summary;
- undated service request form completed by the appellant and received by the ministry on February 18, 2015 in which the appellant states that he has recently had surgery and has not yet received his high protein meal supplement as ordered by his doctor;
- Request for Reconsideration submitted by the appellant on March 6, 2015 with Section 3 "Reason for Request for Reconsideration" left blank by the appellant.

In his Notice of Appeal dated March 20, 2015 the appellant stated that he believes he is entitled to a STNS as per doctor's orders and for the reasons in the legislation.

At the hearing the ministry representative relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry decision of February 5, 2015 in which the ministry denied a short term nutritional supplement (STNS) to the appellant because his application failed to meet the eligibility criteria set out in Employment and Assistance for Persons with Disabilities Regulation 67 (3), specifically that the appellant has not demonstrated an acute short-term need for caloric supplementation to prevent critical weight loss while recovering from surgery, severe injury, serious disease or treatment side effects.

The relevant legislation is as follows:

Nutritional supplement

67 (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.

The appellant argues that he requires a STNS because he has recently undergone surgery and his physician has prescribed a high-protein supplement during his post-surgery recovery period. He adds that the ministry has a letter on file from his physician which reports that the appellant requires a STNS because his medical condition is a direct and imminent threat to his life.

The ministry argues that the physician's letter dated December 15, 2013 stated that it was too early to give more information about prognosis until surgeons decided on a course of treatment and did not assert that the appellant required supplements due to a life-threatening health condition. The ministry also argues that there is no medical evidence to confirm that the patient has undergone surgery or is facing a critical weight loss as a result of surgery or serious disease.

Panel Decision

EAPWDR Section 67 (3) states that the minister may provide a nutritional supplement for a period of 3 calendar months if the recipient is not receiving a supplement under other sections of the legislation, and if 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, severe injury, serious disease or treatment side effects.

The ministry granted a STNS to the appellant for the period February 4, 2014 – May 15, 2014. When the appellant requested a STNS in January 2015 he submitted a physician's prescription for "ensure high protein" three times daily for three months. Because the physician did not confirm that the appellant had a short term need for caloric supplementation to his regular diet to prevent critical weight loss while recovering from surgery or any other serious medical condition the ministry reasonably determined that the legislative criteria for a STNS set out in EAPWDR Section 67 (3) were not met.

The panel therefore finds that the ministry's decision to deny a STNS to the appellant because his request did not meet the eligibility requirements set out in EAPWDR Section 67 (3) was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.