

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 12 August 2015 determined that the appellant was not eligible for the short term nutritional supplement (STNS) for nutritional items under section 67(1) and (3) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because the appellant is not a recipient of disability assistance or a dependent child of a recipient of disability assistance and short term nutritional supplements are not a medical supply, medical transportation or medical equipment eligible under s. 69 of the EAPWDR.

PART D – Relevant Legislation

EAPWDR, s. 67 and 69.
EAPWDR, Schedule C, s. 2 (1)(a) and (f), and s. 3.

PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- The appellant is a person with disabilities (PWD) who receives Medical Services Only (MSO) and is not a recipient of disability assistance and is not part of a family unit where there is a recipient of disability assistance.
- A 1-page printout of a prescription dated 23 June 2015 by a medical practitioner for nutritional supplement “Boost or Ensure liquid or pudding. Details: 3 cans/bottles or equivalent per day x 30 days. For nutrition support.” On this document there are handwritten comments, apparently from the appellant addressed to the ministry indicating the cost of the supplement and asking whether the ministry will pay for it and if so, whether it will send a cheque.
- A 1-page letter dated 28 July 2015 by the same medical practitioner indicating that the appellant has suffered with multiple sclerosis (MS) for many years and that recently it appears to have impacted the part of her brain where her appetite is regulated and is very significantly impaired and having a simple regular diet does not work for the appellant. She has been recovering from hospitalization taking a nutritional supplement and her situation is uncommon since she is not interested in food in general but is able to be convinced and reminded to take the nutritional supplement. Her weight has decreased significantly and is now maintained by a nutritional supplement.
- In her request for reconsideration dated also 28 July 2015, the appellant stated that she does not receive any monthly nutritional supplement (MNS), that she weighs less than 100 lbs because of her MS while she used to weigh much more. She stated that a regular diet does not work for her because her illness impacted her appetite negatively and that she is only able to take 1 bottle of Boost per day.

For the purpose of the appeal both the appellant and the ministry relied on the information at reconsideration.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant was not eligible for the STNS for nutritional items under section 67(1) and (3) of the EAPWDR because she is not a recipient of disability assistance or a dependent child of a recipient of disability assistance and short term nutritional supplements are not a medical supply, medical transportation or medical equipment eligible under s. 69 of the EAPWDR, was a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation is as follows:

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 ...

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...

(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 person 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.

Where the appellant may face direct and imminent life threatening health need, s. 69 of the EAPWDR applies:

69 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,

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- (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 (a) of section 3 (1).

Position of the parties:

The ministry argued that because the appellant is not a recipient of disability assistance nor a dependent child of a recipient of disability assistance, she is not eligible for STNS under s. 67 (3) of the EAPWDR. Further, even though the request may be considered life threatening and that the need is direct and imminent, the nutritional supplement requested is not a medical supply, medical transportation or medical equipment that would fall within the eligible items under s. 69 of the EAPWDR.

The appellant argued that she needs 1 bottle of nutritional supplement for 3 months as prescribed by her physician so that she can start gaining weight. She is underweight and a regular diet cannot work because her MS impacts her appetite negatively.

Panel decision:

The panel notes that there is no dispute as to the fact that the appellant is not a recipient of disability assistance and, consequently, the panel finds the ministry reasonably determined she was not eligible for the STNS under s. 67 (3), Schedule C of the EAPWDR as it is an eligibility requirement.

The ministry also considered s. 69, Schedule C of the EAPWDR because of the physician's letter indicating that the appellant's weight has dropped significantly and that she's not interested in food in general, which might be considered as life threatening. However, nutritional supplements are dealt with under s. 67, Schedule C of the EAPWDR while s. 69 applies only to s. 2 (1)(a) [medical or surgical supplies] and (f) [medical transportation] as well as s. 3 [medical equipment and devices] of Schedule C. Thus, nutritional supplements and the STNS do not fall within the regulated items that are eligible under s. 69 and therefore the ministry reasonably determined the appellant was not eligible for STNS under s. 69 of Schedule C of the EAPWDR.

Given the evidence presented and the legislation the panel concludes that the ministry's decision was reasonably supported by the evidence and is a reasonable application of the legislation in the circumstances of the appellant and confirms the decision.