

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation’s (the “ministry”) Reconsideration Decision of May 18th, 2017 in which the ministry deemed the appellant not eligible for a short term nutritional supplement because it was unclear whether the appellant’s condition is chronic in nature – which would require a long term need for caloric supplementation, rather than an acute condition requiring a 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 and therefore determining that not all of the required legislative criteria had been met; pursuant to Section 67.001 of the Employment and Assistance for Persons with Disabilities Regulation (EAPDR)

PART D – Relevant Legislation

EAPDR - *Employment and Assistance for Persons with Disabilities Regulation, Section 67.001*
EAR - *Employment and Assistance Regulation, Section 86(b)*
EAA - *Employment and Assistance Act, Section 22(4)*

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- 1) The appellant is a sole recipient of disability assistance and is currently in receipt of a high protein diet allowance, in the amount of \$40.00 per month.
- 2) **October 17th, 2016** – A denied previous/initial monthly nutritional supplement (MNS) application, signed by the appellant's physician, with corresponding information, including:
 - *Osteoporosis [with] Thoracic compression fracture secondary to seizure
 - *Pt has suffered weight loss secondary to recent back injury
 - *Pt has suffered thoracic compression fracture this year, pain with movement
 - *Weight – 46 kg
 - *Has lost muscle mass and weight over the past year due to immobility
 - *Pt having difficulty getting enough calorie rich foods. Has been losing weight due to compression fracture in spine
 - *Pt would benefit from caloric intake and access to more nutritional food
- 3) The appellant was denied the MNS on **October 19th, 2016**, however she was found eligible for a short term nutritional supplement (in the form of three cans of Ensure or Boost daily for three months).
- 4) **March 24th, 2017** – A letter written by the appellant's physician (dated February 13th, 2017) and received by the ministry stating the following: It is hereby confirmed that the patient was seen at this clinic today, regarding a malnutrition. If we could continue with her ensure program as it was, she would benefit from the extra calories for weight gain and nutrition.
- 5) **March 27th, 2017** – A ministry denial letter for a continued short term nutritional supplement for the following reasons:
 - *short term nutritional supplementation is available to prevent critical weight loss in one or more of the acute situations listed [above] when required as supplementation while recovering , and is not intended as a meal replacement or an ongoing supplement. There is no indication of a critical weight loss while recovering or an acute exacerbation of any condition. Although the physician indicated she would benefit from the extra calories for weight gain and is displaying malnutrition, there were no diagnoses or medical information provided to describe why the applicant has malnutrition. It is unclear whether the condition is chronic in nature, rather than an acute condition requiring a short term need for caloric supplementation. It is not indicated that the applicant is consuming a regular dietary intake (whether it be softened, solid or liquid format,) and that caloric supplementation over and above this dietary intake is required.
- 6) **May 5th, 2017** A Request for Reconsideration – which includes the following information:
 - *A statement provided by the appellant's physician (dated April 26th, 2017) which provides; Please consider this patient for nutritional supplementation. This patient has been under my care for 2 years and her current weight is 44 kg and her BMI is 17.7 which is considered underweight. The appellant has a history of Epilepsy, Depression, Hypertension, and Osteoporosis with a history of compression fractures. She should in addition to nutritional supplementation be on calcium and vitamin D.
 - *A statement written by the appellant's physician to another (specialist) physician dated **April 26th, 2017** – and indicating that the appellant would not benefit from vertebroplasty.
 - *The appellant had old compression fractures.
 - *The appellant has diffuse pain in her back, although not necessarily from the fracture.
 - *The appellant's chronic widespread pain is likely due to degenerative mechanical changes and soft tissues factors.
 - *The appellant requires calcium and vitamin D supplements.

The request for reconsideration also included a dated – **May 3rd 2017** self-assessment;

*The appellant states that she has lost more weight since she the short-term caloric supplementation had been discontinued and is currently underweight.

*The appellant describes her medical conditions, impacts to mental functioning, and a need for caloric supplementation.

Additional Information

The appellant did not attend the hearing. After having waited five minutes past the scheduled start time of the hearing, and after having confirmed that the appellant had received notice of the hearing in accordance with the *Employment and Assistance Regulation* (EAR) section 86(b), the panel determined it would proceed with the hearing in the absence of the appellant.

On May 30th, the appellant submitted a one page letter from her physician dated – May 24th, 2017 that indicated her current health status; the physician noted that the appellant had lost more (15%) of her weight from her baseline since stopping the caloric supplementation.

The ministry objected to the admission of the information, and stated that the information that had been provided was considered, by their assessment, new evidence and not in support of the information that was before the ministry at the time of the reconsideration decision.

The panel noted the objection, however, it determined that this evidence is admissible under section 22(4) of the *Employment and Assistance Act* as it is in support of the information that was before the reconsideration officer at the time the decision was made. The letter does not add any new diagnoses or symptoms but rather provides a description of the appellant's weight loss, a medical issue that was identified and discussed in the information before the ministry at reconsideration. Specifically, the concern of the physician that the appellant will continue to lose weight if she is not provided caloric supplementation is noted in the initial Monthly Nutritional Supplement application (MNS). As well, the appellant's weight had been noted by the physician as 46 kg on the initial September 14th, 2016 MNS application, and then again within the April 26th, 2017 Short Term Nutritional Supplement (STNS) Reconsideration Request reason provided by the physician at 44 kg, and then again on the health status letter – dated May 24th, 2017 indicating the appellant's weight at 43 kg. The panel determined that while the amount of loss was not specifically stated previously, the weight loss had in fact been noted within the information that was before the reconsideration officer at the time the decision was made. Further, the appellant's self-assessment letter, dated May 3rd, 2017 indicated a continued weight loss after the discontinuation of the supplementation, and the panel determined that the content of the current letter by the physician confirms/supports the appellant's self-assessment.

At the hearing, the ministry relied on the reconsideration decision and did not introduce any additional evidence.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry of Social Development and Social Innovation's (the "ministry") Reconsideration Decision of May 18th in which the ministry deemed the appellant not eligible for a short term nutritional supplement because it was unclear whether the appellant's condition is chronic in nature – which would require a long term need for caloric supplementation, rather than an acute condition requiring a 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 and therefore determining that not all of the required legislative criteria had been met; pursuant to Section 67.001 of the Employment and Assistance for Persons with Disabilities Regulation (EAPDR)

The relevant sections of the legislation are as follows:

EAPDR - *Employment and Assistance for Persons with Disabilities Regulation, Section 67.001*

Nutritional supplement — short-term

67.001 The minister may provide a nutritional supplement for up to 3 months to or for a family unit in receipt of disability assistance, if

(a) the supplement is provided to or for a person in the family unit who is not receiving another nutrition-related supplement, 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.

[en. B.C. Reg. 145/2015, Sch. 2, s. 9.]

Panel Decision

The ministry's position, as set out in the reconsideration decision, is that the appellant is not eligible for a short term nutritional supplement pursuant to Section 67.001(b) of the EAPDR. In her Notice of Appeal dated May 29th, 2017 the appellant stated that she disagrees with the decision to deny the short term nutritional supplement on the basis that she had been approved before, and since the time she has not taken the Ensure (caloric supplementation), her physical, emotional and mental health has been depleted.

The ministry notes that the purpose of a short term nutritional supplement is to address 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, and that the appellant failed to demonstrate that she currently has a short-term acute need for caloric supplementation.

The ministry notes that the physician indicated the appellant has a history of epilepsy, depression, hypertension, and osteoporosis - with a history of compression fractures. The ministry notes however, that the aforementioned statement

is indicative of chronic long-term medical conditions as opposed to acute short-term conditions, and that based on the information provided regarding each of these medical conditions, it is not sufficiently clear whether the appellant is experiencing an exacerbation of symptoms related to chronic conditions that would lead to an acute need for caloric supplementation.

The ministry does consider that the appellant's physician provided information indicating that the appellant may require caloric supplementation to prevent critical weight loss, and accepts that the appellant's weight loss may be critical, however at the time of reconsideration, the appellant's baseline weight, the amount of weight loss, and the period of time the weight loss had occurred over - had not been provided, and that the information that was provided, does not establish the other eligibility requirements set out in the legislation such as: the appellant's need for caloric supplementation in order to prevent critical weight loss while recovering from surgery, a severe injury, a serious disease, or side effects of medical treatment.

The ministry notes that the appellant, based on the information provided with the initial (denied) monthly nutritional supplement application, along with the current (denied) short-term nutritional supplement application *may* in fact qualify the appellant for monthly nutritional supplement eligibility.

The ministry's position is that because the appellant's request does not meet all of the required eligibility criteria, approval for a short-term nutritional supplement cannot be granted.

Section 67.001 of the EAPDR states that the minister may provide a nutritional supplement for up to 3 months to or for a family unit in receipt of disability assistance, if (a) the supplement is provided to or for a person in the family unit who is not receiving another nutrition-related supplement, 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.

The panel finds that the evidence establishes the appellant's weight loss may be considered critical, and that caloric supplementation is required to prevent further weight loss. However, while the panel acknowledges that the appellant's need for caloric supplementation has been established as necessary to prevent critical weight loss, the panel finds that the ministry was reasonable when it determined that the information provided does not establish the appellant's acute short-term need, rather, that the medical information provided indicates the appellant's need for caloric supplementation as potentially chronic or long-term.

Overall, the panel finds that the ministry reasonably determined that the appellant is not eligible for a short-term nutritional supplement as not all of the eligibility requirements pursuant to Section 67.001(b) of the EAPDR had been met.

Accordingly, the panel finds that the decision of the ministry to deem the appellant not eligible for a short-term nutritional supplement due to not meeting all of the eligibility requirements of Section 67.001(b) of the *Employment and Assistance for Persons with Disabilities Regulation*, was a reasonable application of the applicable legislation in the circumstances of the appellant. Therefore, the panel confirms the ministry's decision pursuant to section 24(1)(b) and section 24(2)(a) of the Employment and Assistance Act. The appellant therefore is not successful in her appeal.