

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation, renamed the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision made pursuant to sections 62, 66, 67, 67.01 and 69 and Schedule C, Section 2 of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)* and dated July 27, 2017, that determined the appellant was ineligible for a tube feed nutritional supplement.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation, (EAPWDR) Sections 62, 66, 67, 67.01 and 69
Employment and Assistance for Persons with Disabilities Regulation, Schedule C, Section 2

PART E – Summary of Facts

The appellant was transitioned to Medical Services Only (MSO) status in August 2016 as she began receiving federal pension payments. The ministry has continued to provide medical equipment and supplies as it is authorized to do so under the Employment and Assistance for Persons With Disabilities (EAPWD) Regulation, subsections 61.1(1)(a)(ii) and (3)(e).

On June 9, 2017 the ministry received a funding request for Tube Feed Supplies; the ministry denied the request. On July 14, 2017 the ministry received a signed request for Reconsideration; on July 27, 2017 the ministry completed its review of the request, the request was denied.

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

- Letter from appellant's community resource personal which stated:
 - the appellant has been with the service provider since 1996
 - the appellant is severely disabled
 - after rent, the remaining \$486 is less than the current amount needed for the appellant's monthly liquid food and supplies
 - the current legislation does not leave any means for someone in the appellant's current situation to access food supplements
- Funding request for tube feed supplies dated June 7, 2017
- Request for Reconsideration dated July 14, 2017

In the appellant's Request for Reconsideration, an advocate wrote the appellant:

- did not have the means to pay for liquid formula
- if under 65 she would be covered
- wished the ministry to look at current legislation as it is age discriminatory and puts undue financial pressure on the appellant and the organization supporting her
- needs the food in order to survive

In the appellant's Notice of Appeal, an advocate wrote:

- funding approval based on age, discriminatory
- no other funding is available
- life or death need

At the hearing the appellant's representative stated:

- the ministry is clear in why they have denied the appellant's request
- she is to find a way to change the legislation as it is age discriminatory
- she has no other recourse to the denial but to appeal
- realizes the tribunal members cannot assist in this situation
- the appellant has just over \$400 to cover a cost of \$700 monthly; the agency cannot afford to cover these costs

In the reconsideration decision summary of facts, the ministry wrote:

- the appellant being designated as a PWD was transitioned to Medical Services Only (MSO) on August 03, 2016 as she had turned 65 earlier in the year
- the appellant is eligible for certain health supplements under MSO however the ministry determined the appellant is not eligible to receive the tube feed nutritional supplement

At the hearing, the ministry noted:

- they would rely on the decision documentation
- people with Persons With Disabilities (PWD) designation from ages 18-65 receive different support than those after age 65 as would any other person after the age of 65.
- if the appellant had had a feeding tube before turning 65, the support would have continued

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision of July 27, 2017 which denied the appellant's request for a feeding tube supplement was a reasonable application of the enactment in the circumstances of the appellant. Specifically, the minister determined the appellant did not meet the eligibility requirement for a tube feed supplement as required by section 67 of the EAR or section 62 of the EAPWDR as the appellant is over 65 years of age.

The relevant legislation is as follows:

EMPLOYMENT AND ASSISTANCE REGULATION

General health supplements

67 (1) The minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for

(a) a family unit in receipt of income assistance, if

(i) the family unit includes a qualifying person, or

(ii) the health supplement is provided to or for a person in the family unit who is a dependent child,

(b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is a dependent child, or

(c) a family unit, if the health supplement is provided to or for a person in the family unit who

(i) is a continued person under section 66.3 (1) or (2) [*access to medical services only*], or

(ii) is a continued person under section 66.4 (1) [*access to transitional health services*] and was, on the person's continuation date, a qualifying person or part of a family unit that then included a qualifying person, or

(iii) is a continued person under section 66.4 (2).

(1.1) and (1.2) Repealed. [B.C. Reg. 145/2015, Sch. 1, s. 8 (b).]

(2) Subject to subsection (3), the minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for a family unit if the health supplement is provided to or for a recipient in the family unit who

(a) has received income assistance under the *BC Benefits (Income Assistance) Act* or the Act continuously from March 31, 1997 and on March 30, 1997 was eligible under section 37 (1) (a) of the BC Benefits (Income Assistance) Regulations, B.C. Reg. 272/96, as it read on March 30, 1997, for the health care services and benefits referred to in that provision, or

(b) is a dependant of a recipient referred to in paragraph (a).

(3) Subsection (2) applies only until the earlier of the following dates:

(a) the date the recipient ceases to receive income assistance;

(b) the first day of the calendar month after the minister makes a determination that the recipient, or any dependant of the recipient other than a dependent child, is capable of accepting employment.

Employment and Assistance for Persons with Disabilities Regulation

Division 4 — Health Supplements

Definitions

61.01 In this Division:

"continued person" means

- (a) a main continued person under section 61.1 (1), or
- (b) a dependent continued person under section 61.1 (2);

"nutrition-related supplement" means any of the following supplements:

- (a) a supplement under section 66 [*diet supplement*];
- (b) a supplement under section 67 [*nutritional supplement — monthly*], other than a supplement for vitamins and minerals;
- (c) a supplement under section 67.001 [*nutritional supplement — short-term*];
- (d) a supplement under section 67.01 [*tube feed nutritional supplement*];
- (e) a supplement under section 2 (3) of Schedule C that is related to nutrition;

Access to medical services only

61.1 (1) Subject to subsection (4), a person is a main continued person if

(a) the person was

- (i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for disability assistance, and
- (ii) a person with disabilities on that date,
- (b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance, and
- (c) in the case that the family unit referred to in paragraph (a) (i) was a family unit identified in subsection (3) (g), the agreement referred to in subsection (3) (g) is in force.

(2) Subject to subsection (6), a person is a dependent continued person if

- (a) the person was a dependant of a main continued person under subsection (1) on the main continued person's continuation date and is currently a dependant of the main continued person, or
- (b) the person is a dependant of a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (b), (c), (d), (e), (f) or (g).

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of disability assistance, ceases to be eligible for disability assistance

- (a) on a date the family unit includes a person aged 65 or older,
- (b) as a result of a person in the family unit receiving an award of compensation under the [Criminal Injury Compensation Act](#) or an award of benefits under the [Crime Victim Assistance Act](#),
- (c) as a result of a person in the family unit receiving a payment under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,
- (d) as a result of a person in the family unit receiving employment income,
- (e) as a result of a person in the family unit receiving a pension or other payment under the [Canada Pension Plan](#) (Canada),

(f) as a result of a person in the family unit receiving money or value that is maintenance under a maintenance order or a maintenance agreement or other agreement, or

(g) as a result of a person in the family unit receiving financial assistance provided through an agreement under section 12.3 of the [Child, Family and Community Service Act](#).

(4) Subject to subsection (5), a person's status as a main continued person under subsection (1) is suspended for a calendar month if

- (a) the person fails to meet an applicable income test under subsection (7) in the calendar month and in each of the immediately preceding 12 calendar months, and
- (b) the person's continuation date is before those immediately preceding 12 calendar months.

(5) Subsection (4) does not apply to a person who is a main continued person under subsection (1) as a result of having been part of a family unit described in subsection (3) (c) or (g).

(6) A person's status as a dependent continued person under subsection (2) of a main continued person under subsection (1) is suspended if the main continued person's status is suspended under subsection (4).

(7) For the purposes of subsection (4),

- (a) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (a), (b), (d) or (f) meets the income test for a calendar month if,
- (i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes

a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main continued person or another person in the family unit is eligible to receive premium assistance under the [Medicare Protection Act](#), and

(b) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (e) meets the income test for a calendar month if,

(i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main continued person or another person in the family unit receives a pension or other payment under the [Canada Pension Plan](#) (Canada).

(8) Despite this Division, a person is not eligible, as a main continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the person's continuation date occurs.

(9) Despite this Division, a person is not eligible, as a dependent continued person under subsection (2) of a main continued person under subsection (1), to receive a health supplement under this Division for a calendar month in which the main continued person's continuation date occurs.

General health supplements

62 The minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for

(a) a family unit in receipt of disability assistance,

(b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is under 19 years of age, or [B.C. Reg. 161/2017]

(c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

Tube feed nutritional supplement

67.01 (1) In this section, "**tube feed nutritional supplement**" means a liquid nutritional product that is fed to a person via a tube to the stomach or intestines of the person and the pumps, tubes, bags and other medical equipment or supplies that are required to feed the nutritional product to the person.

(2) Subject to subsection (3), the minister may provide a tube feed nutritional supplement to or for

(a) a family unit in receipt of disability assistance, if the supplement is provided to or for a person in the family unit who is not described in section 8 (1) [*people receiving special care*] of Schedule A, or

(b) a family unit, if the supplement is provided to or for a person in the family unit who

(i) is a continued person, and

(ii) was, on the person's continuation date, receiving the supplement.

(3) The minister may provide a tube feed nutritional supplement under this section if

(a) a medical practitioner, nurse practitioner or registrant of the College of Dietitians of British Columbia established under the [Health Professions Act](#) confirms in writing that the person's primary source of nutrition is through tube feeding,

(b) the person is not receiving another nutrition-related supplement, and

(c) there are no resources available to the person to pay for the tube feed nutritional supplement.

Health supplement for persons facing direct and imminent life threatening health need

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,

(b) the health supplement is necessary to meet that need,

(c) a person in the family unit is eligible to receive 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).

Schedule C

General health supplements

2 (1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation:

(a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:

(i) the supplies are required for one of the following purposes:

- (A) wound care;
- (B) ongoing bowel care required due to loss of muscle function;
- (C) catheterization;
- (D) incontinence;
- (E) skin parasite care;
- (F) limb circulation care;

(ii) the supplies are

- (A) prescribed by a medical practitioner or nurse practitioner,
- (B) the least expensive supplies appropriate for the purpose, and
- (C) necessary to avoid an imminent and substantial danger to health;

(iii) there are no resources available to the family unit to pay the cost of or obtain the supplies;

(a.1) the following medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies:

- (i) lancets;
- (ii) needles and syringes;
- (iii) ventilator supplies required for the essential operation or sterilization of a ventilator;
- (iv) tracheostomy supplies;

(a.2) consumable medical supplies, if the minister is satisfied that all of the following requirements are met:

- (i) the supplies are required to thicken food;
- (ii) all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies;

Is the appellant eligible pursuant to section 67 of the EAR or section 62 of the EAPWDR- to receive disability assistance and/or health supplement?

The appellant's position is the legislation was clearly followed by the ministry but that the legislation is unfair and discriminatory to clients over the age of 65 as they lose their eligibility for disability assistance which would cover a feeding tube supplement and are placed into Medical Services Only (MSO) which does not cover a feeding tube supplement.

The ministry's position is as the appellant is over 65 years of age; she is eligible for certain medical supplies but is not for any nutritional supplements or financial supplements for nutrition.

The panel found that the ministry reasonably concluded that the appellant did not meet the requirements of section 67 of the EAR or Section 62 of the EAPWDR as the appellant had turned 65 on May 25, 2016 which transitioned her from PWD status to MOS on August 03, 2016; she no longer was in receipt of disability assistance, a criteria required by both section 62 and 67 to be eligible for a tube feeding supplement.

The appellant is not eligible under subsection 67.01(2) of the EAPWDR- main continued person

The appellant did not address this section of legislation.

The ministry's position is the appellant is a "main continued person" as defined in subsection 61.01 and subsection 61.1(1)(a) and (3)(e) (Medical Services Only) however the appellant is not a person described in the EAPWDR, subsection 67.01(2)(b)(iii) as she was not receiving the tube feed supplement on her continuation date, August 03, 2016. Therefore the ministry is not authorized to

provide the appellant with the tube feed supplement.

The panel found that the ministry reasonably concluded that the appellant did not meet the requirements of under section 67.01(2)(b)(iii) as the appellant was not receiving a feeding tube supplement before she turned the age of 65.

Life Threatening Health Need- section 69 sets out the minister may provide a health supplement set out in sections 2 and 3 of schedule C if the person faces a “direct and imminent life threatening need”.

The appellant did not address this section of legislation.

The ministry’s position is the appellant does face a direct and imminent life-threatening health need however section 69 applies to health supplements set out under Schedule C sections 2 (1) (a)(medical supplies) and (f) (medical transportation) and section 3 (medical equipment and devices). The tube feed nutritional supplement is not set out under Schedule C therefore the ministry is not authorized to provide the tube feed nutritional supplement.

The panel found that the ministry reasonably concluded that the appellant did not meet the requirements of Schedule C as the tube feed supplement is not included in sections 2(1)(a) of (f) or sections 3 to 3.12 of the EAPWDR

Tube feed nutritional supplement as a medical supply- schedule C, subsection 2(1)(a) of the EAPWDR

The appellant did not address this section of legislation.

The ministry’s position is subsection (1)(a), medical and surgical supplies does not include nutritional supplements. As well, information is not provided to establish that the tube feed is required for any of the purposes set out in subsection 2(1)(a)(i). Further, the EAPWDR, Schedule C, sets out that for the purposes of subsection 2(1)(a), medical and surgical supplies do not include nutritional supplements. The ministry therefore is not authorized to provide the tube feed nutritional supplement as a medical supply.

The panel found that the ministry reasonably concluded that the appellant did not meet the requirements of Schedule C, subsection 2(1)(a)as medical and surgical supplies do not include nutritional supplements.

Tube feed supplement as any other Nutritional Supplement-EAPWDR sections 67.01 (monthly Nutritional Supplement, 67.001 (short term Nutritional Supplement) and section 66 (Diet Supplements))

The appellant did not address this section of legislation.

The ministry’s position is in each section noted above; the appellant is not eligible to receive these supplements.

The panel found that the ministry reasonably concluded that the appellant did not meet the requirements of EAPWDR sections 67.01 (monthly Nutritional Supplement, 67.001 (short term Nutritional Supplement) and section 66 (Diet Supplements)) as the appellant did not meet the eligibility of each case as she is not a recipient of disability assistance.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for a tube feed nutritional supplement as she did not meet all the eligibility requirements of the EAPWDR was reasonably supported by the evidence, and therefore confirms the decision. The appellant is not successful in her appeal.