

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision dated October 24, 2017, which denied the appellant's request for a short-term Nutritional Supplement of Ensure. The Ministry found that not all of the requirements of Section 67.001 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were met. The Ministry also found that Section 69 of the EAPWDR, which provides for a life-threatening health need, does not apply to the appellant's circumstances.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 67.001 and 69

PART E – SUMMARY OF FACTS

The appellant did not attend 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 the time of the reconsideration decision included:

- 1) Letter dated September 26, 2017 in which the appellant's physician wrote that the appellant has "severe dental pain and gum disease that prevents him from being able to gain adequate nutrition from regular food sources." The physician strongly advocated for the provision of four cans of Ensure liquid nutritional supplement to be provided for the next three months to prevent further weight loss and to maintain adequate nutritional levels;
- 2) Letter dated October 6, 2017 in which the appellant's physician wrote that the appellant has chronic and progressive hepatitis C and, as a result, "he has significant immune compromise and difficulty to maintain adequate caloric intake." In addition, the appellant has severe dental caries, further complicating his ability to maintain adequate calories;
- 3) Print out of Pacific Blue Cross claim details dated October 24, 2017 indicating dental services on March 23, 2016; and,
- 4) Request for Reconsideration dated October 16, 2017.

In his Request for Reconsideration, the appellant wrote that people were not aware of his chronic Hepatitis C.

Additional information

In his Notice of Appeal dated November 6, 2017, the appellant expressed his disagreement with the Ministry reconsideration decision and wrote that the Ministry did not receive all of his doctor's information regarding this situation which would have changed the outcome.

The Ministry relied on the reconsideration decision, as summarized at the hearing.

PART F – REASONS FOR PANEL DECISION

The issue on the appeal is whether the Ministry decision, which denied the appellant's request for a short-term Nutritional Supplement of Ensure because all of the requirements of Section 67.001 of the EAPWDR were not met and Section 69 of the EAPWDR does not apply to the appellant's circumstances, was reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 67.001 of the EAPWDR sets out the eligibility requirements, which are at issue on this appeal for providing the short-term nutritional supplement, as follows:

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.

Section 69 of the EAPWDR sets out the eligibility requirements for those facing a life-threatening health need:

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).

In the reconsideration decision, the Ministry found that the appellant does not meet the requirement in Section 67.001 of the EAPWDR as there is insufficient information to establish that the medical practitioner has confirmed the appellant has an acute short-term need for the nutritional supplement. The Ministry acknowledged that the medical practitioner confirmed that the appellant has serious diseases, both gum disease and Hepatitis C, but wrote that these conditions are chronic and there was no evidence of an exacerbation of symptoms that would create an acute need. The Ministry wrote that dental pain and gum disease have been cited as the reason for many requests for short-term supplements over the years and, while the appellant may have difficulty chewing foods properly because of these conditions, the appellant is eligible for \$30 from the Ministry towards the cost of a blender to prepare liquid, high protein shakes to address his nutritional needs. The Ministry wrote that the medical practitioner did not provide information in either of the letters submitted to show that the appellant requires caloric supplementation to prevent critical weight loss. The Ministry pointed out that there are no details provided by the medical practitioner about the appellant's normal weight, how much weight he has lost and the time period over which the weight has been lost.

The appellant argued in his Request for Reconsideration that the Ministry was not aware of the Hepatitis C and, in the reconsideration decision, the Ministry considered the letter from the medical practitioner dated October 6, 2017 that confirmed the appellant's chronic and progressive hepatitis C. The medical practitioner confirmed that the appellant has "significant" immune compromise and "difficulty" to maintain adequate caloric intake, but the medical practitioner did not confirm there had been a flare-up in symptoms resulting in an acute need for caloric supplementation, or specific information about the appellant's experience of weight loss.

In the letter dated September 26, 2017, the medical practitioner wrote that the appellant has severe dental pain and gum disease and that he requires Ensure liquid nutritional supplement to be provided for the next three months to prevent "further weight loss" and to maintain adequate nutritional levels. However, the medical practitioner did not provide details to establish the rate of the appellant's weight loss, which the Ministry reasonably required in order to determine that the supplement is required to prevent "critical" weight loss. The appellant did not dispute the Ministry's information that he has requested short-term supplements for years based on his dental pain and gum disease, and the panel finds that the Ministry reasonably determined that these conditions are on-going and chronic, and there is no information that there has been a recent acute exacerbation of his dental symptoms.

In his Notice of Appeal, the appellant wrote that the Ministry did not receive all of his doctor's information regarding this situation which would have changed the outcome; however, there was no additional information provided to the panel on the appeal. The panel finds that the Ministry reasonably concluded that there was not sufficient information to establish that a medical practitioner has confirmed that the appellant has an acute short-term need for caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from a serious disease.

Section 69 of the EAPWDR allows the Ministry to provide a health supplement in Schedule C, Sections 2 and 3 and the panel finds that the Ministry reasonably determined that short-term nutritional supplements are not included in these sections of Schedule C that relate to medical supplies, medical transportation, and medical equipment and devices. Therefore, the panel finds that the Ministry's decision, which concluded that Section 69 of the EAPWDR does not apply in the appellant's circumstances, was reasonable.

Conclusion

The panel finds that the Ministry's reconsideration decision, which denied the appellant's request for a short-term Nutritional Supplement of Ensure because all of the requirements of Section 67.001 of the EAPWDR were not met and Section 69 of the EAPWDR does not apply to the appellant's circumstances, was reasonably supported by the evidence. The panel confirms the Ministry's reconsideration decision. The appellant's appeal, therefore, is not successful.