

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated March 8, 2018, which determined that the appellant was not eligible for short-term nutritional supplement as it is not confirmed in writing 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 surgery, a severe injury, a serious disease or side effects of medical treatment, in accordance with 67.001 of the Employment and Assistance for Persons With Disabilities Regulation.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 67.001

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.

Relevant Evidence Before the Minister at Reconsideration

- Information provided by the appellant (reason for request for reconsideration)
- Life and death issue due to undiagnosed illness along with not eating – require supplement.
- The appellant urgently requires the Ensure Plus as he does not wish to die from malnutrition. Something has blocked his bowels – undiagnosed.
- Very dangerous to his health and he hardly can eat anything at this point.
- He is losing weight and is in severe pain 24/7.

Ministry records show:

- The appellant is a recipient of disability assistance.
- The ministry received the following documents from the appellant's doctor:
 - A prescription note, dated January 9, 2018, which states, "ENSURE, please supply 4 cans daily for next 2 months."
 - A letter dated January 23, 2018, which states, he is the appellant's new physician. The appellant "does have a number of medical problems, which are still being investigated and it is important that the appellant take his regular medications.
 - A prescription note dated January 30, 2018, which states, "ENSURE – please supply 4 cans daily for next 2 months" "...Chronic abdominal pain NYD. Prevention of weight loss."
 - A letter, dated February 6, 2018, which states, the appellant "has chronic abdominal pain, not yet diagnosed. He does have episodic severe abdominal pain that is being investigated. He is taking regular medication for this."

Additional Evidence

Appellant

With the Notice of Appeal, received March 27, 2018, the appellant states that he requires supplements for his health.

The information in the Notice of Appeal was in support of the evidence before the ministry at reconsideration.

Ministry

At the hearing, the ministry referred to the reconsideration decision, dated March 8, 2018.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision, dated March 8, 2018, denying the appellant's request for short-term nutritional supplement in accordance with 67.001 of the EAPWDR was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances.

The legislation provides:

Employment and Assistance for Persons With Disabilities Regulation

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.]

Ministry Position

The ministry's position is that it reasonably determined that the appellant is not eligible for short-term nutritional supplement, as there is no evidence to confirm 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 surgery, severe injury, a serious disease, or side effects of medical treatment, as is required under section 67.001(b) of the EAPWDR.

Appellant Position

The appellant's position is that he requires nutritional supplement for his health. He argues that he urgently requires the Ensure Plus as he does not wish to die from malnutrition. Something has blocked his bowels, which is very dangerous to his health and he can hardly eat anything. He is losing weight and is in severe pain 24/7.

Panel Decision

The EAPWDR, section 67.001 sets out the requirements for the ministry to provide a short-term nutritional supplement.

The appellant submitted the following documents, from his doctor to support his position that he urgently requires a nutritional supplement for his health.

- A prescription note dated January 9, 2018, which states, "ENSURE, please supply 4 cans daily for next 2 months."
- A letter dated January 23, 2018, which states, he is the appellant's new physician. The appellant "does have a number of medical problems, which are still being investigated and it is important that the appellant take his regular medications."
- A prescription note dated January 30, 2018, which states, "ENSURE – please supply 4 cans daily for next 2 months" "...Chronic abdominal pain NYD. Prevention of weight loss."
- A letter, dated February 6, 2018, which states, the appellant "has chronic abdominal pain, not yet diagnosed. He does have episodic severe abdominal pain that is being investigated. He is taking regular medication for this."

Although the panel finds that the documents were provided by a medical practitioner, in writing, as per the EAPWDR, section 67.001(b), they do not confirm 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, surgery, a severe injury, a serious disease, or side effects of medical treatment, as is required under the EAPWDR, section 67.001(b).

As the EAPWDR, section 67.001 was not met, the ministry was reasonable to determine that the appellant is not eligible for a short-term nutritional supplement.

Although the panel acknowledges that the appellant is disabled and is in receipt of disability assistance, the panel finds that the appellant has not provided evidence to support the requirement for a short-term nutritional supplement, as is required under the legislation.

Conclusion:

The panel finds that the ministry reasonably concluded that the appellant's request for short-term nutritional supplement has not met the criteria set out in the EAPWDR, section 67.001. The panel therefore finds that the ministry's decision to deny the appellant's request for a short-term nutritional supplement, was reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not successful with the appeal.