

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated September 25, 2018, which denied the appellant's request for coverage of a tube feed nutritional supplement as set out in section 74.01(1) of the Employment and Assistance Regulation (EAR) for the following reasons:

- the appellant is not in receipt of income assistance as set out in section 74.01(2);
- the appellant is not a "continued" person as defined in sections 66.3(1) and 66.4(1); and
- section 76 of the EAR and Schedule C sections 2 and 3 only applies to medical supplies, medical transportation and medical equipment and devices; a tube feed nutritional supplement is not among the items set out in these sections.

PART D – RELEVANT LEGISLATION

EAR sections 66.3, 66.4, 74.01, and 76, and Schedule C sections 2 and 3.

PART E – SUMMARY OF FACTS

The information before the ministry at reconsideration included the following:

The appellant receives CPP of \$1101.12 and OAS of \$ 793.18 monthly.

The appellant requires nutritional supplementation via “tube feed” at a cost of \$600 per month.

On July 31, 2018 the appellant provided various documents, including financial documents. Also provided was a medical report which lists the medical condition of dysphagia and states that the appellant needs tube feed 3 times daily.

On August 3, 2018 the appellant provided a letter written by a registered dietician who describes the appellant’s medical need for tube feeding.

In his Notice of Appeal dated October 11, 2018, the appellant writes that although his income appears high, he has costs including medications (approximately \$200 per month), ostomy supplies (\$200-300/month) as well as rent and bills. The appellant wrote further that the additional cost of \$600 for the tube feed nutritional supplement is not sustainable and he should not have to pay for life-sustaining equipment.

At the hearing the appellant’s son and advocate stated that \$600 is a lot of money for a pensioner, and there is no help from other family members available. He had to give up his job to help his father. Since his last trip to the hospital his father’s condition became worse – due to his tubes he can hardly swallow. The situation is very stressful. His father was given a feeding tube for which he cannot pay. In addition, he suffers from side effects from radiation due to cancer treatment. His colon had to be removed.

The ministry summarized the reconsideration decision and added that the BC Home Parenteral and Enteral Nutrition Programs may be able to help the appellant. The ministry stated further that all new information could be admitted into evidence.

Pursuant to section 22(4) of the *Employment and Assistance Act* the panel notes that the appellant in his Notice of Appeal provides a list of monthly expenses which includes expenses for treatments unrelated to the feed tube supplement. Nonetheless, the Panel considers these items to be presented as supportive information to the contention of the Appellant that the cost of the feed tube was prohibitive which was disclosed in the Request for Reconsideration Decision where the Ministry also noted the appellant’s income was \$1700 per month. This information is therefore considered admissible.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry reconsideration decision that denied the appellant's request for coverage of a tube feed nutritional supplement was a reasonable application of the legislation or reasonably supported by the evidence. Specifically, did the ministry reasonably determine that

- the appellant is not in receipt of income assistance as set out in section 74.01(2);
- the appellant is not a "continued" person as defined in sections 66.3(1) and 66.4(1); and
- the remedy provided under section 76 of the EAR and Schedule C sections 2 and 3 only applies to medical supplies, medical transportation and medical equipment and devices while the tube feed nutritional supplement is not set out in these sections?

EAR

Access to medical services only

66.3 (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 income assistance, and

(ii) a qualifying person on that date, and

(b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance.

...

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

(a) on a date the family unit included 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*, or

(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.

Access to transitional health services

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

(a) the person was, on or after September 1, 2015,

(i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for income assistance, and

- (ii) a recipient of income assistance on the date referred to in subparagraph (i), and
- (b) the person has not, since the date referred to in paragraph (a) (i), been part of a family unit in receipt of income assistance, hardship assistance or disability assistance.

...

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of income assistance,

(a) ceased to be eligible for income assistance as a result of employment income, and

(b) included on the date the family unit ceased to be eligible for income assistance

(i) a dependent child, or

(ii) a person providing care to a supported child.

Tube feed nutritional supplement

74.01 (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 liquid 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 income 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

76 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

Health Supplements

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 67 [*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;

...

(f) the least expensive appropriate mode of transportation ...

3 Medical equipment and devices

3.1 Medical equipment and devices — canes, crutches and walkers

3.2 Medical equipment and devices — wheelchairs

3.3 Medical equipment and devices — wheelchair seating systems

3.4 Medical equipment and devices — scooters

3.5 Medical equipment and devices — toileting, transfers and positioning aids

3.6 Medical equipment and devices — hospital bed

3.7 Medical equipment and devices — pressure relief mattresses

3.8 Medical equipment and devices — floor or ceiling lift devices

3.9 Medical equipment and devices — breathing devices

3.10 Medical equipment and devices — orthoses

3.11 Medical equipment and devices — hearing instruments

3.12 Medical equipment and devices — non-conventional glucose meters

Appellant's position:

The appellant argues that the ministry should provide coverage for the cost of the Tube Feed Nutritional Supplement because he should not have to pay for life-sustaining equipment, and he cannot afford the additional expense of \$ 600 because his living expenses already include medications as well as rent and bills.

Ministry Position:

The ministry acknowledged that even though the appellant has a medical need for the Tube Feed Nutritional Supplement he is not eligible for the following reasons.

The ministry found that the appellant is not in receipt of income assistance as set out in section 74.01(2) because his monthly combined CPP/OAS income is above ministry assistance rates. Furthermore, the ministry found that the appellant is not a "continued person" as set out in sections 66.3(1) and 66.4(2).

Section 76 of the EAR states that the ministry may provide any health supplement set out in Schedule C, section 2(1)(a) [medical supplies] and (f) [medical transportation] and 3 [medical equipment and devices]. Unfortunately, the remedy provided under section 76 only applies to medical supplies, medical transportation and medical equipment and devices. The Tube Feed Nutritional Supplement is not set out in these sections.

Panel Decision:

Section 74.01(2) sets out that the ministry may provide a tube feed nutritional supplement to a family unit in receipt of income assistance or to a person who is a "continued person".

While the appellant argues that the ministry should provide coverage for the cost of the Tube Feed Nutritional Supplement because he cannot afford the additional expense the panel finds that the ministry's determination that the appellant is not in receipt of income assistance as his combined monthly CPP/OAS income exceeds ministry assistance rates is reasonably supported by the evidence. The panel finds further that there is no evidence that the appellant is a "continued person" as set out under sections 66.3(1) and 66.4(2). Consequently, the panel finds the ministry reasonably determined that the appellant was not eligible for coverage of the Tube Feed Supplement in accordance with section 74.01(2).

Section 76 states that the ministry may provide any health supplement set out in sections 2(1)(a) and (f) [general health supplements] and 3 [medical equipment and devices] of Schedule C.

While the appellant argues that he should not have to pay for life-sustaining equipment the panel finds the ministry reasonably determined that it could not be established that the appellant is eligible for a tube feed nutritional supplement as set out in section 76 and Schedule C: a tube feed nutritional supplement is not among the items listed in sections 2(1)(a) and (f) and section 3 of Schedule C.

Thus, the panel finds the ministry reasonably established that the appellant was not eligible for coverage for a Tube Feed Nutritional Supplement.

Conclusion:

The panel finds that the ministry's determination that the appellant is not eligible for coverage of a Tube Feed Nutritional Supplement is a reasonable application of the legislation in the appellant's circumstances. The ministry's reconsideration decision is confirmed and the appellant is not successful on appeal.

PARTG-ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> RESCINDS THE MINISTRY DECISION If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION: <i>Employment and Assistance Act</i> Section 24(1)(a) <input type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/> and Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PARTH-SIGNATURES	
PRINT NAME Inge Morrissey	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018/10/31

PRINT NAME Joan Cotie	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/10/31
PRINT NAME Keith Lacroix	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/10/31