

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (ministry) Reconsideration Decision dated March 13, 2019, which determined that the appellant was not eligible for a short-term nutritional supplement (STNS) of Ensure because the eligibility requirements of section 67.001 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met.

PART D – RELEVANT LEGISLATION

EAPWDR section 67.001

PART E – SUMMARY OF FACTS

The appellant is a recipient of disability assistance.

The information before the Ministry at the time of Reconsideration included:

- A prescription form dated February 12, 2019, signed by the appellant's physician prescribing "Ensure with a dose of one bottle BID; Meal Replacement – weight loss secondary COPD, peripheral vascular disease with a duration of twelve weeks with three repeats".
- A STNS Decision Summary dated February 14, 2019 on which the ministry detailed the various sections of legislation and determined that the appellant had not met all the legislated criteria of EAPWDR section 67.001, and so was denied a STNS.
- A Medical Certificate dated February 25, 2019 from the appellant's physician confirming that the appellant is suffering from ongoing weight loss; has lost five pounds in the last three months; BMI is 22; eats two meals per day with a good appetite; is losing muscle mass; has ongoing muscular atrophy. The physician wrote that he hopes that the meal supplement of Ensure will bring up the appellant's calories and that the appellant will need it on an ongoing basis, permanently.

On his Notice of Appeal form dated March 21, 2019 the appellant wrote: his doctor has said he needs this; they may have to take his leg; they would like him to keep up his body weight; and he is losing body mass.

At the hearing, the appellant explained his medical condition and how he is working closely with his physician, specialist and surgeon and that he may be facing surgery in the future. The appellant emphasized that it was his physician who prescribed the Ensure for his condition and that he needs it ongoing, and that it was not just him requesting extra money.

At the hearing, the ministry relied on the Reconsideration Decision and emphasized that the initial request appeared to be for a STNS because the information before the worker at that time was the prescription form which indicated that the request for Ensure was for a twelve week period, with a repeat of three times and did not contain enough information for the ministry to determine that the appellant was experiencing critical weight loss while recovering or had an acute exacerbation of his medical condition. The ministry noted that it was only at the Reconsideration Stage that additional information from the physician indicated that there was a need for an ongoing requirement of Ensure. An ongoing requirement for a nutritional supplement is considered under the legislation for Monthly Nutritional Supplement (MNS), which requires a specific form and specific information to determine eligibility. The ministry noted that this information was passed along to the appellant in their Reconsideration Decision and that he may consider applying for the MNS.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision dated March 13, 2019, which denied the appellant's request for short-term nutritional supplement of Ensure 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.

Relevant Legislation:

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.

Appellant Position

The appellant's position is that his physician has confirmed that he requires the nutritional supplement of Ensure to build up his calories and that his medical condition is such that the physician has told him that he requires Ensure on an ongoing, permanent basis.

Ministry Position

The ministry's position is that it reasonably determined that the appellant is not eligible for a short-term nutritional supplement of Ensure 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.

Panel Decision

The EAPWDR, section 67.001 sets out the requirements for the ministry to provide a short-term nutritional supplement for a period of up to three months, providing that a medical practitioner has confirmed that there is an acute short-term need for caloric supplementation to prevent critical weight loss while recovering from surgery, a severe injury, a serious disease or side effects of medical treatment.

Regarding the requirement that the ministry may provide a short-term nutritional supplement for a period of up to three months, the appellant provided the ministry with the initial prescription dated February 12, 2019 which prescribed Ensure for a twelve-week period, or three months, with three repeats and the ministry explained that they reviewed the request for a nutritional supplement of Ensure under the STNS legislation. The panel notes that the prescription also indicated that three repeats were prescribed, which would cover a nine-month period. Perhaps the ministry decision made on February 14, 2019 could have included information regarding the MNS, which is for

long-term nutritional supplements, in their initial denial letter. Then the appellant may have been able to better understand the difference between the two supplements. The panel must make a decision regarding the issue under reconsideration, which is for the STNS.

Regarding the provision that a medical practitioner has confirmed an acute short-term need for caloric supplementation to prevent critical weight loss while recovering from surgery, a severe injury, a serious disease or side effects of medical treatment, the panel notes that the appellant's physician wrote an additional letter at reconsideration which confirmed that the appellant will require Ensure on an ongoing basis permanently. The STNS legislation clearly states that there must be an acute short-term need for caloric supplementation to prevent critical weight loss for the specific reasons outlined. The panel considers the definition of acute to mean a condition that is of an abrupt onset and in need of urgent care for a short duration and is in contrast to chronic, which is a persistent and long-lasting condition that lasts for more than three months. EAPWDR section 67.001 references that STNS may be issued for a period of up to three months, which corresponds to the definition of an acute short-term condition. There is no evidence that the appellant's need for Ensure is acute and short term, rather the evidence shows that his physician has confirmed that the appellant will require Ensure on an ongoing basis, permanently, therefore the panel finds that the ministry was reasonable to determine that the appellant is not eligible for a short-term nutritional supplement of Ensure.

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 of Ensure was reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not successful with the appeal.

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION 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? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Janet Ward

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019 April 16

PRINT NAME

Kevin Ash

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 April 16

PRINT NAME

Linda Pierre

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 April 16