

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated March 20, 2019, which determined that the appellant was not eligible for short-term nutritional supplement in accordance with section 67.001 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

The ministry also determined that the appellant was not eligible for a short-term nutritional supplement under section 69 of the EAPWDR, as he did not demonstrate that he has an imminent life-threatening health need for the item requested. In addition, section 69 of the EAPWDR does not provide for short-term nutritional supplements.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 61.01, 67, 67.001, 69 and schedule C.

## **PART E – SUMMARY OF FACTS**

The ministry was not in attendance at the hearing. After confirming that the ministry 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 in the Request for Reconsideration (March 7, 2019)
- "Doctor reassessed & properly explained why Boost needed"
  
- Ministry records show the appellant is a recipient of disability assistance.
  
- Letter from the ministry to the appellant advising him health supplements (short-term nutritional supplement – Boost) were denied (February 27, 2019).
  
- Letter from appellant's doctors (doctors 1 and 2) advising that the appellant "requires ongoing Boost supplementation...for ongoing gastrointestinal issues which is being investigated by local specialists. He is unable to tolerate solid foods and needs to maintain adequate nutritional intake through Boost or equivalent supplementation."
  
- A prescription note from the appellant's doctor (doctor 1) stating Boost Supplement (meal replacement) ...(Two bottle), Three times daily..." "For ongoing GI issues that's requiring prompt medical attention; cannot tolerate solid foods" (March 7, 2019).
  
- A prescription note from the appellants doctor (doctor 3) stating Boost, three cans x one month (February 26, 2019).

### Additional Evidence

#### **Appellant**

In the "Reasons for Appeal" in the Notice of Appeal, dated April 2, 2019, the appellant states, "I am sick and cannot eat. I need Boost in order to survive. If I eat anything, I am in extreme pain."

The information in the Notice of Appeal was considered as argument.

At the hearing, the appellant stated that the previous medical note he submitted to the ministry provided no explanation as to the need for Boost. Therefore he obtained a subsequent, "proper" note from his doctor explaining the need for Boost. Since January, the appellant has been in the hospital approximately 30 times with stomach issues. He eats very little and can't afford to buy Boost. He sleeps only one or two hours a night because he is in constant pain. His doctors are doing many tests.

## **PART F – REASONS FOR PANEL DECISION**

The issue on appeal is whether the ministry's reconsideration decision, which determined that the appellant was not eligible for short-term nutritional supplement, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

Specifically, was the ministry reasonable in determining that the appellant was not eligible for a short-term nutrition supplement – Boost, in accordance with section 67.001 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR)?

In addition, was the ministry reasonable in determining that the appellant was not eligible for short-term nutritional supplement under section 69 of the EAPWDR as he does not demonstrate that he has an imminent life-threatening health need for the item requested and that section 69 of the EAPWDR does not provide for short-term nutritional supplements?

The ministry based the reconsideration decision on the following legislation:

### **Employment and Assistance for Persons With Disabilities Regulation**

#### **Part 5: Division 4 – Health Supplements**

##### **Definitions**

**61.01** In this Division:

...  
"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;

##### **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.

##### **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...

## **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...

(f) the least expensive appropriate mode of transportation to or from an office, in the local area, of a medical practitioner or nurse practitioner...

### **Medical equipment and devices**

3. (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.12 of this Schedule are the health supplements that may be provided by the minister

...

Medical equipment and devices – canes, crutches and walkers

3.1

...

Medical equipment and devices – wheelchairs

3.2

...

Medical equipment and devices – wheelchair seating systems

3.3

...

Medical equipment and devices – scooters

3.4

...

Medical equipment and devices – bathing and toileting aids

3.5

...

Medical equipment and devices – hospital bed

3.6

...

Medical equipment and devices – pressure relief mattresses

3.7

...

Medical equipment and devices – floor or ceiling life devices

3.8

...

Medical equipment and devices – breathing devices

3.9

...

Medical equipment and devices – orthoses

3.10

...

Medical equipment and devices – hearing instruments

3.11

...

Medical equipment and devices – non-conventional glucose meters

3.12

...

The legislation also includes the following section:

#### **Nutritional supplement**

**67. (1)** The minister may provide a nutritional supplement in accordance with section 7 [monthly nutritional supplement] of Schedule C to or for a family unit in receipt of disability assistance, if the supplement is provided to or for a person in the family unit who

- (a) is a person with disabilities, and
- (b) is not described in section 8 (1) [people receiving special care] of Schedule A unless the person is in an alcohol or drug treatment centre as described in section 8 (2) of Schedule A, if the minister is satisfied that
- (c) based on the information contained in the form required under subsection (1.1), the requirements set out in subsection (1.1) (a) to (d) are met in respect of the person with disabilities,
- (d) the person is not receiving another nutrition-related supplement,
- (e) Repealed. [B.C. Reg. 145/2015, Sch. 2]
- (f) the person complies with any requirement of the minister under subsection (2), and
- (g) the person's family unit does not have any resources available to pay the cost of or to obtain the items for which the supplement may be provided.

(1.1) In order for a person with disabilities to receive a nutritional supplement under this section, the minister must receive a request in the form specified by the minister, completed by a medical practitioner or nurse practitioner, in which the practitioner has confirmed all of the following:

- (a) the person with disabilities to whom the request relates is being treated by the practitioner for a chronic, progressive deterioration of health on account of a severe medical condition;
- (b) as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the following symptoms:
  - (i) malnutrition;
  - (ii) underweight status;
  - (iii) significant weight loss;
  - (iv) significant muscle mass loss;
  - (v) significant neurological degeneration;
  - (vi) significant deterioration of a vital organ;
  - (vii) moderate to severe immune suppression;
- (c) for the purpose of alleviating a symptom referred to in paragraph (b), the person requires one or more of the items set out in section 7 of Schedule C and specified in the request;
- (d) failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life.

(2) In order to determine or confirm the need or continuing need of a person for whom a supplement is provided under subsection (1), the minister may at any time require that the person obtain an opinion from a medical practitioner or nurse practitioner other than the practitioner referred to in subsection (1) (c).

#### **Appellant Position**

The appellant argues that he is sick and cannot eat and needs Boost in order to survive. If he eats anything, he is in pain. He eats very little and cannot afford to buy Boost. He sleeps only one or two hours a night because he is in constant pain.

#### **Ministry Position**

The ministry argues that the evidence does not demonstrate that the appellant requires Boost due to an acute short-term need for caloric supplementation to a regular dietary intake nor to prevent weight loss. As well, the ministry argues that the evidence does not demonstrate that the appellant requires Boost while recovering from surgery, a severe injury, a serious disease, or the side effects of medical

treatment. In addition, the ministry's position is that the appellant has not demonstrated that he has an imminent life-threatening need for Boost.

### Panel Decision

Ministry records show the appellant is a recipient of disability assistance.

The appellant submitted the following evidence.

- Letter from appellant's doctors (doctors 1 and 2) advising that the appellant, "requires ongoing Boost supplementation...for ongoing gastrointestinal issues which is being investigated by local specialists. He is unable to tolerate solid foods and needs to maintain adequate nutritional intake through Boost or equivalent supplementation."
- A prescription note from the appellant's doctor (doctor 1) stating Boost Supplement (meal replacement) ...(Two bottle), Three times daily...", "For ongoing GI issues that's requiring prompt medical attention; cannot tolerate solid foods" (March 7, 2019).
- A prescription note from the appellants doctor (doctor 3) stating Boost, three cans x one month (February 26, 2019).

At the hearing, the appellant stated that the previous medical note he submitted to the ministry provided no explanation as to the need for Boost. Therefore he obtained a subsequent, "proper" note from his doctor explaining the need for Boost. Since January, the appellant has been in the hospital approximately 30 times with stomach issues. His doctors are doing many tests.

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for short-term nutritional supplement, was not a reasonable application of the legislation in the circumstances of the appellant. The ministry relied on section 67.001 of the EAPWDR, which provides for short-term nutritional supplements for an "acute short-term need for caloric supplementation".

The evidence demonstrates that the appellant's medical issue and therefore his need for nutrition supplementation cannot reasonably be determined as "short-term". Therefore the panel finds that the issue should have been considered under the EAPWDR, section 67 – Nutritional Supplement, instead of 67.001 - Nutritional supplement – short-term. The panel noted that a copy of section 67 of the EAPWDR was included as part of the Record of the Ministry; however it is unclear as to why the ministry did not apply this section of the legislation.

The panel noted the facts indicate the appellant has been dealing with this medical issue since at least January 2019. The facts also indicate that there is no known or anticipated time as to when the situation may be resolved. Therefore the panel finds that it is not reasonable for the ministry to consider the appellant's claim under section 67.001, which applies to short-term nutritional supplements, rather than under section 67 of the EAPWDR, which applies to monthly nutritional supplements. Section 67 has different criteria for approval than section 67.001, and different documentation may be required. It is not within the panel's jurisdiction to make a finding about whether the request meets the criteria for approval under section 67.

The panel finds that approximately 30 visits to the hospital since January, with the issue still unresolved, cannot be considered short-term. As well, the letter from the appellant's doctors (doctors 1 and 2), states the appellant, "requires ongoing Boost supplementation...for ongoing gastrointestinal issues which is [sic] being investigated by local specialists..." The panel finds that an issue that is "on-going" and being

investigated, with no evidence to suggest when there may be a conclusion, cannot be considered short-term.

In addition, a prescription for Boost was given to the appellant on February 28, 2019 (doctor 3) and a second prescription for Boost was given to the appellant on March 7, 2019 (doctor 1). The second prescription states, " For ongoing GI issues that's requiring prompt medical attention: cannot tolerate solid foods." This prescription also shows that the issue is not short-term; it is "ongoing".

In regard to section 69 of the EAPWDR, the panel finds the ministry reasonably determined that the appellant was not entitled to receive a nutritional supplement under this section, as nutritional supplements are not available under this part of the legislation.

### **Conclusion**

In conclusion, the panel finds the ministry's decision was not a reasonable application of the applicable enactment in the circumstances of the appellant and rescinds the decision.

The appellant is successful on 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 Connie Simonsen	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/04/24

PRINT NAME Susan Ferguson	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/04/24

PRINT NAME Nancy South	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/04/24