

| |
|---------------------------------------|
| |
| PART C – DECISION UNDER APPEAL |

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated April 10, 2019, which determined that the appellant was not eligible for short-term nutritional supplement in accordance with section 67.001(b) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

Specifically the ministry determined that it has not been demonstrated that the appellant has an acute short-term need for caloric supplementation and requires caloric supplementation to prevent critical weight loss.

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, 67.001, 69 and schedule C.

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 in the Request for Reconsideration (April 4, 2019).
"Please see attached Medical Report for CPP completed by dr... on April 4th" explaining the need for nutritional supplements.
- Medical Report for a Canada Pension Plan Disability Benefit (information provided by doctor 2)
 - The appellant has been in the doctor's care for one to two years and has visited the doctor's office eight times in the past 12 months. The date of the last visit was April 4, 2019.
 - The medical condition is frontal lobe syndrome and the date of symptom onset is June 2009.
 - Impairments are poor motivation and muscle disuse – deconditioning.
 - Functional limitations are exercise, regular activity.
 - The prognosis remains the same.
 - The expected duration is more than one year.
 - The frequency is continuous
 - The medications are:
 - Methadone - actual/proposed start date of 2017, and actual/estimated end date of cont.
 - Mirtazapine - actual/proposed start date of 2017, and actual/estimated end date of cont.
 - Recommendation that the appellant stop working as of 2017.
 - Other relevant information, "Severe frontal lobe syndrome & depression leading to nutritional compromise. He would benefit from Boost-Ensure as a Supplement."
- 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 – liquid meal replacement) were denied (March 20, 2019).

Details

"The medical practitioner requests liquid meal replacement as the appellant "currently has dental issues that are impairing his ability to eat well".

"Although some consideration is given in situations where significant weight loss or full dental clearance... are present, generally, the inability to chew or eat solid foods due to dental issues is not a consideration for Short-Term Supplementation as a liquid, softened or blended diet can be taken in place of solid foods for a short while to avoid an underweight status and maintain nutrition."

Also, it is not specified that extra calories and/or protein are required in order to recover from surgery, a severe injury, serious disease or the side effects of medical treatment. It is not indicated the appellant is consuming a regular dietary intake (whether it be softened, solid or liquid format) and that supplementation over and above this dietary intake is required. As a result the applicant does not meet the criteria for short-term nutritional supplementation.

- Letter "To Whom It May Concern" from doctor 1

The appellant "currently has dental issues that are impairing his ability to eat well. He is thus not keeping up with his caloric needs. Please fund liquid meal replacement three times a day until he can get his teeth fixed."

Additional Evidence

Appellant

In the "Reasons for Appeal" in the Notice of Appeal (April 23, 2019), the appellant states, "I am on disability and in the methadone program. Loss of weigh, [sic] muselle[sic] mass and nutritional supplements are needed. Manny[sic] Broken Teeth unable too[sic] Eat properly broken Jaw 5x"

The information in the Notice of Appeal was considered as information before the minister when the decision being appealed was made and therefore was admitted under section 22 of the *Employment and Assistance Act*.

Ministry

At the hearing, the ministry relied on its reconsideration decision and reiterated that the evidence does not demonstrate that the appellant requires short-term nutritional supplement – liquid meal replacement, due to an acute short-term need for caloric supplementation to a regular dietary intake nor to prevent weight loss. The medical practitioner requested liquid meal replacement as the appellant currently has dental issues that are impairing his ability to eat well.

The ministry stated that although it provides some consideration in situations where significant weight loss is present, generally, the inability to chew or eat solid foods due to dental issues is not a consideration for short-term supplementation as a liquid, softened or blended diet can be taken in place of solid foods for a short while to avoid an underweight status and maintain nutrition. The ministry confirmed that the appellant is not receiving any dietary supplements.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision, dated April 10, 2019, which determined that the appellant was not eligible for short-term nutritional supplement in accordance with section 67.001(b) of the Employment and Assistance for Persons With Disabilities Regulation is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

Specifically did the ministry reasonably determine that it has not been demonstrated that the appellant has an acute short-term need for caloric supplementation and requires caloric supplementation to prevent critical weight loss?

Did the ministry also reasonably determine 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 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

...

Appellant Position

The appellant argues that he is on disability and in the methadone program. He has experienced loss of weight and muscle mass and requires nutritional supplements. He is unable to eat properly as he has broken teeth and has broken his jaw five times.

Ministry Position

The ministry argues that the evidence does not demonstrate that the appellant requires short-term nutritional supplement – liquid meal replacement, 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 a liquid meal replacement while recovering from surgery, a severe injury, a serious disease, or the side effects of medical treatment. The ministry's position is that it is not indicated that the appellant is consuming a regular dietary intake (softened, solid or liquid) and that supplementation over and above this diet is required.

The ministry's position is that monthly nutritional supplements are available for long-term severe medical conditions but because the appellant's dental work would be expected to heal, it is therefore a short-term issue.

In addition, the ministry argues that the appellant has not demonstrated that he has an imminent life-threatening need for a liquid meal replacement.

Panel Decision

Section 61.01 of the EAPWDR states,

"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]...

Section 67.001 of the EAPWDR states that, "The minister may provide a nutritional supplement for up to 3 months to or for a family unit in receipt of disability assistance, if ... (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".

Information provided by doctor 1 states, the appellant "currently has dental issues that are impairing his ability to eat well. He is thus not keeping up with his caloric needs. Please fund liquid meal replacement three times a day until he can get his teeth fixed." The panel finds the facts indicate that although the doctor's note suggests the requirement for nutritional supplementation is short-term - a temporary situation "until he can get his teeth fixed", the letter does not indicate that the appellant has an acute short-term need for caloric supplementation to a regular diet to prevent critical weight loss, while recovering from surgery, a severe injury, a serious disease or side effects of medical treatment. Therefore, the panel finds, with this evidence, the ministry reasonably concluded that the appellant was not eligible for short-term nutritional supplements under section 67.001 of the EAPWDR.

Information in the Medical Report for a Canada Pension Plan Disability Benefit (information provided by doctor 2) states the appellant's medical condition is frontal lobe syndrome with a date of symptom onset of June 2009. The impairments are poor motivation and muscle disuse – deconditioning. His prognosis remains the same and the expected duration is more than one year. The frequency is continuous. The appellant is on two medications, methadone and mirtazapine (start date of 2017). As well, the doctor recommended that the appellant stop working as of 2017. Other relevant information provided was, "Severe frontal lobe syndrome & depression leading to nutritional compromise. He would benefit from Boost-Ensure as a Supplement."

The panel noted the facts indicate the appellant has been dealing with severe frontal lobe syndrome and depression since 2009, which has led to nutritional compromise. The information may reflect the need for ongoing supplementation.

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 there is no evidence to demonstrate that the appellant has an imminent life-threatening health need for nutritional supplements and nutritional supplements are not available under this part of the legislation.

Conclusion

In conclusion, the panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.

The appellant is not successful on appeal.

APPEAL NUMBER

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/May/14

PRINT NAME
Nancy Eidsvik

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2019/May/14

PRINT NAME
Shirley Heafey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2019/May/14