

APPEAL NUMBER
2021-00013

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) January 11, 2021 reconsideration decision which determined the appellant was not eligible for a Tube Feed Nutritional Supplement (TFNS) because:

- the appellant is a recipient of medical services only (MSO) and is not a recipient of disability assistance (DA), therefore they are not eligible for the TFNS pursuant to section 67.01 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR); and
- the appellant’s request cannot be considered as a Life-Threatening Health Need as TFNS are not set out under Schedule C which is a requirement of section 69 of the EAPWDR.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulations sections 67.01, 69 and Schedule C

PART E – SUMMARY OF FACTS

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

Background Information

- The appellant was last a recipient of disability assistance in January 2019 at which time they started to receive federal benefits (OAS/GIS) so their file transitioned to MSO as a continued person.
- On November 26, 2020 the appellant's clinical dietitian submitted a request to the ministry requesting nutritional products and supplies for the appellant. The diagnosis was described as severe and noted that the appellant would require tube feeds ongoing.
- On December 1, 2020 the ministry's Health Assistance Branch (HAB) denied the appellant request citing that TFNS may only be considered for persons in receipt of DA and is not provided to persons who are receiving MSO unless they were receiving TFNS at the time they transitioned to MSO.
- On December 24, 2020 the appellant requested a reconsideration of the decision and wrote as their reasons:
 - They are unable to financially pay for tube feed supplies because they are currently on OAS and their partner is on disability and they are barely able to meet their basic needs.
 - They are unable to intake food orally and is completely dependent on tube feeds to keep them alive;
 - They have looked into external funding however was not able to find any other source of funding.
- Attached to the reconsideration request was a letter from the appellant's Social Worker which noted:
 - The appellant is fragile and requires twenty-four hour care, which is provided by her partner and the health authority.
 - A financial assessment was completed and the appellant's expenses go over their monthly income for just their basic needs and that the tube feed expenses are over and above these expenses.
- Attached to the reconsideration request was a letter from the appellant's Dietitian which noted:
 - The appellant had a stroke in September 2020 and since that time is completely reliant on enteral feeding to meet nutrition needs and the cost of this is approximately \$650 per month for tube feeding formula and supplies.
 - Funding from community resources has been sought out but there is no long term funding available.
 - It is only a technicality stopping the appellant from being eligible because if the dietitian had applied for the TFNS before the appellant was switched to MSO the appellant would have been able to receive the TFNS.
- On January 11, 2021 the ministry wrote a reconsideration decision which included, in summary:
 - The appellant is eligible for MSO as a continued person since January 2019.
 - The requested nutrition and supplies are included in the list of items that may be provided by TFNS so the requirement of section 67.01(1) is met.
 - A registered dietitian has confirmed in writing that the appellant's primary source of nutrition is through tube feedings, so the requirement of section 67.01(3)(a) is met.
 - The appellant is not receiving another nutrition-related supplement so the requirement of 67.01(3)(b) is met.
 - There are no resources available to the appellant to pay for TFNS so the requirement of section 67.01(3)(c) is met.
 - The appellant was not in receipt of DA at the time they requested TFNS, so the requirement of section 67.01(2)(a) of the EAPWDR has not been met.
 - The appellant was not receiving TFNS from the ministry on the date they were designated as MSO so the requirement of section 67.01(2)(b) has not been met.
 - Section 69 of the EAPWDR allows the ministry to pay a health supplement providing it is set out in Schedule C sections 2(1)(a) or (f) or sections 3 to 3.12. The appellant is not eligible for TFNS as a life-threatening health need because TFNS is not listed in Schedule C.

On the Notice of Appeal form dated January 15, 2021 the appellant wrote:

- It was unfair they were denied only because they had requested tube feed supplies after being put on MSO, yet they would have been eligible before the conversion.
- They are unable to meet the cost themselves.

For the written submission the appellant wrote:

- They are unable to pay for the tube feeds, which costs around \$650 per month because they are barely managing to make ends meet.
- They tried getting funding from the community but they assist short term only and will only meet their needs for one month maximum.
- This is life-threatening as they are completely dependent on tube feeds for nutritional needs and cannot take food orally.
- They feel it was only because their need for tube feed came about after their file was converted to MSO that they do not qualify for help from the ministry.

The appellant provided a note from their physician dated January 14, 2021 that confirms the appellant's medical condition and the need for nutritional products.

For the written submission the ministry wrote their submission in this matter is the reconsideration summary provided in the Record of Ministry Decision.

Admissibility of Additional Information

The panel admitted the appellant's written submission, which included a note from their doctor, in accordance with section 22(4) of the Employment and Assistance Act because the information was reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The ministry did not object to the submission.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision dated January 11, 2021, which denied the appellant's request for a Tube Feed Nutritional Supplement (TFNS) because:

- the appellant is a recipient of medical services only (MSO) and is not a recipient of disability assistance (DA), therefore they are not eligible for the TFNS pursuant to section 67.01 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR); and
- the appellant's request cannot be considered as a Life-Threatening Health Need as TFNS are not set out under Schedule C which is a requirement of section 69 of the EAPWDR.

was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances.

Panel Decision

Tube Feed Nutritional Supplement

Section 67.01 of the EAPWDR sets out that a TFNS may be provided to a person who requires a liquid nutritional product that is fed via a tube and the person who requires the TFNS is in receipt of DA, or is a person who is a "continued" person who was, on the person's continuation date, receiving the TFNS. It also requires the TFNS to be prescribed by a medical practitioner, nurse practitioner or a dietician and the person has no resources available to pay for the TFNS.

The ministry has determined the appellant requires a liquid nutritional product that is fed via a tube, is prescribed by a dietitian, and there are no resources available to the appellant to pay for the TFNS. The panel agrees that these conditions of section 67.01 have been met.

Section 67.01(2) sets out that the minister may provide a TFNS to a person in receipt of DA, or is a continued person who was, on the person's continuation date, receiving the TFNS. The panel notes the appellant was last in receipt of DA in January 2019 and the appellant suffered a stroke in September 2020. The legislated definition of "continuation date" indicates it is the date the person ceased to be eligible for DA, which, in the appellant's circumstance, is January 2019. The appellant became completely reliant on enteral feeding to meet their nutritional needs in September 2020. The panel found no evidence the appellant was in receipt of the TFNS at the time they stopped receiving DA and became a continued person (medical services only). Therefore, the panel finds the ministry was reasonable to determine the conditions of section 67.01(2) of the EAPWDR had not been met.

TFNS as a Life Threatening Health Need

Section 69 of the EAPWDR sets out that the ministry may provide a health supplement that is set out in sections 2(1)(a) and (f) [general health supplements] or section 3 [medical equipment and devices] of Schedule C of the EAPWDR providing certain conditions are met. There must be a direct and imminent life threatening need and no resources available to meet that need.

The ministry determined the appellant faces a direct and imminent life threatening need and does not have resources available to meet that need, however, because a TFNS is not one of the listed health supplements that is eligible for consideration, they could not approve the appellant's request.

Section 2(1)(a) of Schedule C lists medical or surgical supplies required for specific medical purposes. The purposes listed are for wound care, ongoing bowel care, catheterization, incontinence, skin parasite care, and limb circulation care. The panel notes none of these listed purposes are applicable in the appellant's request for TFNS.

Section 2(1)(a.2) of Schedule C indicates the ministry may assist with consumable medical supplies if the supplies are required to thicken food. Section 69 of the EAPWDR does not specifically list Section 2(1)(a.2) as a health supplement that may be provided in a life-threatening situation but the panel questions whether (a.2) would be considered as part of 2(1)(a). However, In the appellant's circumstance, although they are requesting a

consumable medical supply, their need is not to thicken food.

Section 2(1)(f) of Schedule C pertains to a request for medical transportation expenses and is not applicable in the appellant's request for TFNS. Section 3 of Schedule C pertains to a request for medical equipment and devices and is not applicable in the appellant's request for TFNS.

The panel finds the ministry was reasonable to determine a request for TFNS does not meet the requirements section 69 of the EAPWDR because TFNS are not set out in section 2(1)(a), (f) or section 3 of Schedule C.

Conclusion

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

Relevant Legislation

Definitions

61.01

"continuation date",

(a) in relation to a person who is a main continued person under section 61.1 (1) [*access to medical services only*] as a result of having been part of a family unit on the date the family unit ceased to be eligible for disability assistance, means that date, and

(b) in relation to a dependent continued person under section 61.1 (2) of a main continued person, means the continuation date of the main continued person;

"continued person" means

(a) a main continued person under section 61.1 (1), or

(b) a dependent continued person under section 61.1 (2);

Tube feed nutritional supplement

67.01 (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 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 disability assistance or hardship 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 dietitian 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

69 (1) 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) the adjusted net income of any person in the family unit, other than a dependent child, does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation, 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

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, 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;
- (ii) the supplies are
 - (A)prescribed by a medical practitioner or nurse practitioner,
 - (B)the least expensive supplies appropriate for the purpose, and
 - (C)necessary to avoid an imminent and substantial danger to health;
- (iii) there are no resources available to the family unit to pay the cost of or obtain the supplies;

(a.2) consumable medical supplies, if the minister is satisfied that all of the following requirements are met:

- (i) the supplies are required to thicken food;
- (ii) all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies;

(f) the least expensive appropriate mode of transportation to or from

- (i) an office, in the local area, of a medical practitioner or nurse practitioner,
- (ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,
- (iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or
- (iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*,

provided that

- (v) the transportation is to enable the person to receive a benefit under the *Medicare Protection Act* or a

general hospital service under the *Hospital Insurance Act*, and
(vi) there are no resources available to the person's family unit to cover the cost.

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 if

(a) the supplements are provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation, and

(b) all of the following requirements are met:

(i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;

(ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;

(iii) the medical equipment or device is the least expensive appropriate medical equipment or device.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

(a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;

(b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

(a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;

(b) an assessment by a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if

(a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and

(b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

(4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.

(5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if

(a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and

(b) it is more economical to repair the medical equipment or device than to replace it.

(6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

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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)

2021 February 23

PRINT NAME

Linda Smerychcki

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 February 23

PRINT NAME

Rick Bizarro

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 February 23