

APPEAL NUMBER
2021-0139

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated June 10, 2021, which determined that the appellant was not eligible for a short-term nutritional supplement as per section 67.001 of the Employment and Assistance for Persons with Disabilities Regulation.

Specifically, the ministry determined that the appellant was not eligible for a short-term nutritional supplement as he is not currently eligible for disability or hardship assistance.

The ministry's reconsideration decision pertained to the denial of the short-term nutritional supplement only. The request for disposable bags and other supplies is being addressed separately. Therefore, the panel only addressed the denial of the short-term nutritional supplement.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 61.01 and 67.001

Part E – Summary of Facts

Relevant Evidence Before the Minister at Reconsideration

Ministry records show:

- The appellant has been designated as a Person with Disabilities and is eligible for Medical Services Only as a “continued person”.
- The appellant is not in receipt of disability assistance as he transitioned from provincial disability assistance to federal retirement benefits – including Old Age Security(OAS)/Guaranteed Income Supplement(GIS) and Canada Pension Plan(CPP).
- On March 31, 2021, the appellant applied for the short-term nutritional supplement, Ensure.

Letter from the Appellant to Dr. L – medical history summary (March 12, 2021)

The appellant states he is elderly and living below the poverty line. He has been seriously ill due to colon cancer and needed several operations. As about two-thirds of his colon was removed, he can't properly absorb food and so needs an easily absorbed food supplement such as Ensure. The appellant states he has lost a significant amount of weight, has lost his appetite and recently had to be hospitalized because he passed out partially due to nutritional deficiency.

Prescription for Ensure – written by Dr. L (March 25, 2021)

The prescription is for daily Ensure. The doctor added that the appellant has multiple comorbidities including hemicolectomy.

Letter from the Ministry to the Appellant (April 6, 2021)

- denying short-term nutritional supplement

Request for Reconsideration (May 7, 2021)

- states letter from BC Cancer pending

Letter from BC Cancer to the Ministry – written by Dr. J (May 28, 2021)

The appellant is receiving treatment for metastatic colon cancer. He has severe financial limitations and ongoing significant medical expenses relating to his cancer diagnosis and complications from previous therapies. He needs supplemental funds to allow him to obtain the much-needed meal supplements due to ongoing weight loss. Any assistance that can be provided will assist the appellant as he continues on palliative chemotherapy for his metastatic cancer.

Additional Information

Appellant

Notice of Appeal (July 2, 2021)

The appellant states he did not receive the reconsideration decision as the ministry did not send it to the mailing address that was provided.

Appellant Submission Summary (September 5, 2021)

The appellant states he has stage-four colon cancer. Sitting down triggers painful bowel movements, often with clean up issues, tiring him out. This forces him to lie down in bed to recover, which is debilitating. His limit for sitting down is 45 minutes to three hours, not a long time. This complicates his eating as it triggers bowel movements, often painful and uneasy. It discourages the appellant from cooking meals and eating. As a result, he spends a lot of time in bed hungry because of his constant painful bowel.

The appellant states he can only cook meals once a day, twice a day if he's lucky but some days not at all. Including washing dishes, it takes two to two and a half hours. This is a huge task because of his chemotherapy. The treatment also diminishes all incentive to look after his affairs. The appellant states he is skin and bones, has lost 63 pounds and has not been able to put on weight. He is unable to eat regularly because of his illness and is weakened by it. Although he buys a lot of food, he ends up throwing much of it away.

Also, he has a hernia that sticks out about four to five inches. He uses athletic belts to hold it in. As well, dehydration is a constant problem.

In addition, the owner of the house (where the appellant lives) is trying to sell it and if he succeeds, the appellant will be forced to move incurring costs, even though he is now living below the poverty line.

Ensure, or an equivalent would help reset the appellant's diet contributing significantly to his health.

At the hearing, the appellant added that he also has a blocked urethra because of a tumour. He argued that his personal situation should pre-empt the rules or regulations so he might be provided with food. Sometimes he goes without eating for days and so argued his condition warrants some latitude.

Ministry

At the hearing, the ministry relied on its reconsideration decision. As a question was raised as to whether or not section 69 of the EAPWDR (health supplement for persons facing direct and imminent life threatening health need) was considered in adjudicating the appellant's case, the ministry responded that the appellant would not qualify under section 69 of the EAPWDR either, as section 69 doesn't apply to short-term nutritional supplements or any other nutritional or diet supplement.

The panel considered the additional information to be argument.

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 a short-term nutritional supplement as per section 67.001 of the EAPWDR, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, did the ministry reasonably determine that the appellant was not eligible for a short-term nutritional supplement as he is not currently eligible for disability or hardship assistance?

Relevant sections of the legislation can be found in the Schedule of Legislation.

Appellant Argument

The appellant argues that due to colon cancer, about two thirds of his colon was removed and so he can't properly absorb food. He has lost a significant amount of weight, has lost his appetite and recently had to be hospitalized because he passed out partially due to nutritional deficiency. Therefore, the appellant argues he needs an easily absorbed food supplement such as Ensure. He is elderly and living below the poverty line.

The appellant also argues that his personal situation should pre-empt the rules or regulations so he might be provided with food. Sometimes he goes without eating for days and so argues his condition warrants some latitude.

Ministry Argument

The ministry argues that although the appellant's medical practitioner prescribed Ensure due to multiple comorbidities, the appellant is considered as "Medical Service Only", which means that although he is eligible to receive certain medical supplies or services from the ministry, he is no longer eligible for any nutritional supplements, monthly nutritional supplements or diet supplements of any sort. As a result, the applicant does not meet the criteria for short-term nutritional supplementation.

Analysis

Section 61.01 (EAPWDR) - definition of nutrition related supplement

Section 61.01 includes diet supplements, nutritional supplements — monthly (other than vitamins and minerals), nutritional supplements — short-term, tube feed nutritional supplements and supplements under Schedule C related to nutrition.

Ministry records show that on March 31, 2021, the appellant applied for the short-term nutritional supplement, Ensure.

Sections 67.001 (EAPWDR) – eligibility for nutrition related supplement – short-term

Section 67.001 states the minister may provide a nutritional supplement for up to three months for a family unit in receipt of disability assistance or hardship assistance, if a medical practitioner confirms 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 surgery, a serious disease, or side effects of medical treatment.

The appellant argues that due to colon cancer, about two thirds of his colon was removed and so he can't properly absorb food. He has lost a significant amount of weight, has lost his appetite and recently had to be hospitalized because he passed out partially due to nutritional deficiency. He needs an easily absorbed food supplement such as Ensure.

The ministry argues that although the appellant's medical practitioner prescribed Ensure, the appellant is considered as "Medical Service Only", which means that although he is eligible to receive certain medical supplies or services from the ministry, he is no longer eligible for any nutritional supplements, monthly nutritional supplements, or diet supplements of any sort.

The panel notes the prescription for daily Ensure (March 25, 2021) was issued by a medical practitioner. As well, the letter from BC Cancer (May 28, 2021), was written by a medical practitioner and states the appellant is receiving treatment for metastatic colon cancer and has severe financial limitations and ongoing significant medical expenses relating to his cancer diagnosis and complications from previous therapies. The medical practitioner states further that the appellant needs supplemental funds to allow him to obtain the much-needed meal supplements due to ongoing weight loss. The panel also notes, in the letter the appellant wrote to Dr. L (March 12, 2021), he states he is living below the poverty line.

The panel acknowledges that the above evidence supports the appellant's need for financial assistance for an acute short-term caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from surgery, a serious disease, or side effects of medical treatment. The panel also notes that the ministry accepted that the legislative requirements respecting medical need for the nutritional supplementation were met.

However, the panel finds in order to qualify for a short-term nutritional supplement under section 67.001 of the EAPWDR, the appellant must first meet the requirement that he be in receipt of disability assistance or hardship assistance. Ministry records show the appellant is not in receipt of disability assistance as he transitioned from provincial disability assistance to federal retirement benefits including (OAS/GIS) and CPP and is not in receipt of hardship assistance.

Therefore, the panel finds the ministry reasonably determined that the appellant does not qualify for a short-term nutritional supplement (Ensure) under section 67.001 of the EAPWDR.

The panel acknowledges the appellant's difficult circumstances but is bound by the legislation, as is the ministry.

Conclusion

In conclusion, the panel finds the ministry's decision, which determined that the appellant was not eligible for a short-term nutritional supplement as per section 67.001 of the EAPWDR, as he is not currently

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eligible for disability or hardship assistance, was a reasonable application of the legislation in the circumstances of the appellant.

The appellant is not successful on appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Regulation

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 or hardship 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, nurse practitioner or dietitian 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 (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*

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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,

...

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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)

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

Part H – Signatures

Print Name

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2021/09/11

Print Name

Jane Nielsen

Signature of Member

Date (Year/Month/Day)

2021/09/11

Print Name

Wes Nelson

Signature of Member

Date (Year/Month/Day)

2021/09/11