

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated April 1, 2022, which determined that the appellant was not eligible for a tube feed nutritional supplement as per sections 74.01 and 76 of the Employment and Assistance Regulation.

Part D – Relevant Legislation

Employment and Assistance Regulation (EAR), sections 74.01 and 76

Part E – Summary of Facts**Relevant Evidence Before the Minister at Reconsideration****Ministry records show:**

- The ministry determined the appellant was not eligible for income, hardship, or disability assistance due to being in receipt of federal benefits (Canada Pension Plan, Old Age Security, Guaranteed Income Supplement) above the monthly assistance payment rates.
- The ministry has no information to indicate the appellant previously applied for or received disability assistance under the *Employment and Assistance for Persons with Disabilities Act*.

Letter from a Registered Dietician (RD), Health Authority (February 15, 2022)

Recommendation: Tube Feed Supplement

Reason for recommendation: The appellant is not able to tolerate food and fluid orally due to the esophageal mass blocking food from passing into her stomach. She has been relying on enteral nutrition to meet her nutritional and hydration needs and sustain life.

Types of nutritional product required:

- Isosource 1.5 1000 ml/day

Monthly quantity of nutritional product required 30 bags 1.5 liters each/month.

Expected duration of the condition requiring tube feeding: unknown

The appellant is awaiting cancer assessment at the BC Cancer Agency later this month, which will determine if the cancer is treatable or palliative.

Necessary tube feed related supplies:

- EnteraLite Infinity Pump (1 time delivery)
- EnteralLite Infinity Spike Sets (30 per month)
- 60 ml catheter tip syringes (2 per month)

Letter from the Health Authority to the Ministry (February 15, 2022)

- repeats information from RD and shows total cost as \$680.10/month plus one-time fee (refundable deposit) of \$250.00.

Medical Equipment Request and Justification (March 3, 2022)

Requested Health Supplement – Tube Feed Supplement, as outlined in the information from the Health Authority

Letter from the Ministry to the Appellant (March 8, 2022)

- Denying requested health supplement - Tube Feed Nutrition – Tube Feed Nutrition and Supplies, as appellant did not meet eligibility for health supplement.

Letter from the Appellant's Doctor to the Ministry (March 13, 2022)

The appellant's doctor advised that the appellant was diagnosed with dysphagia secondary to esophagus cancer and requires enteral nutrition (tube feed). The doctor refers to the detailed list of equipment and supplies prepared by the Health Authority and adds that this is a life threatening need.

Request for Reconsideration – summary from the Appellant’s Social Worker (March 17, 2022)

The request states the appellant was diagnosed with esophagus cancer in November 2021 and had a gastrostomy feeding tube placed at the time due to swallowing difficulty secondary to the mass.

As per the appellant’s health care providers she is unable to tolerate food and fluid orally and is therefore dependent on tube feeding to ensure her daily survival. Currently, her prognosis is unknown. However; she is not a surgical candidate and is likely to permanently depend on tube feeding.

The appellant does not have the financial means to access the equipment and supplies outlined in the documentation from her RD and the Health Authority.

A hospital within the Health Authority has provided the appellant with a tube feed pump on loan; However, she will be required to return it.

The appellant’s son has been assisting with purchasing feeds but has advised that he is unable to continue on a long-term basis. The appellant’s finances are limited. She receives a monthly combined pension of \$1879.96 and her current monthly expenses include \$1078.30 for rent, \$78.00 for phone, fluctuating medication costs, \$160.00 for incontinence pads, \$70.00 for car insurance \$80.00 for gas and \$10.00 for contents insurance. The appellant also pays for credit card debts (\$280.00 and \$200.00).

After all expenses are paid, the appellant does not have sufficient funds to cover the cost of tube feeding, which is a life preserving health need. The ministry is asked to make an exception and provide funding for tube feeding equipment supplies.

Additional Information

Appellant

Notice of Appeal (April 13, 2022)

The appellant depends on tube feed nutrition to sustain her life. She cannot eat food outside of enteral nutrition and cannot afford tube feeds.

At the hearing, the appellant’s support person stated the appellant appreciates that she doesn’t meet the criteria as stated under the legislation. However, as 70% of the appellant’s income goes toward the cost of the facility she is living in, she is seeking an exception to the legislation.

Ministry

At the hearing, the ministry relied on its record and stated the appellant’s situation simply doesn’t fall within the categories of the legislation. The ministry also confirmed that no exceptions can be made to these sections of the legislation. The ministry offered to provide the appellant with other community resources that may be able to be of assistance.

The panel determined the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision that determined the appellant was not eligible for a tube feed nutritional supplement as per sections 74.01 and 76 of the EAR was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

Appellant Argument

The appellant argues that she depends on tube feed nutrition to sustain her life. She cannot eat food outside of enteral nutrition and cannot afford tube feeds.

She argues further that her finances are limited and after all expenses are paid, she does not have sufficient funds to cover the cost of tube feeding, which is a life preserving health need. The ministry is asked to make an exception and provide funding for tube feeding equipment supplies.

Ministry Argument

The ministry states it may provide a tube feed supplement for a recipient of income, disability, or hardship assistance if a medical practitioner, nurse practitioner or dietitian confirms in writing that the person's primary source of nutrition is through tube feeding. As well, the appellant must not be in receipt of a supplement under the legislation, and there must be no other resources available to pay for the tube feed nutritional supplement. The ministry determined the appellant is not receiving another nutrition-related supplement and there are no resources available to the appellant to pay for the tube nutritional supplement.

However, the ministry argues the appellant is not a recipient of income or hardship assistance, nor a "continued" person, and therefore, not eligible for this supplement.

In addition, the ministry argues the tube feed supplement is also not available for consideration as a life-threatening health need as the tube feed nutritional supplement is not set out in the EAR under Schedule C, sections 2(1)(a) or (f), or sections 3 to 3.12 and therefore the ministry is not authorized to provide the tube feed nutritional supplement under this legislation.

Analysis**Section 74.01, EAR – tube feed nutritional supplement**

Subsection (1) defines "tube feed nutritional supplement" as a liquid nutritional product fed to a person via a tube to the stomach or intestines and the pumps, tubes, bags and other medical equipment or supplies required to feed the liquid nutritional product to the person. The panel notes evidence provided by the RD and the Health Authority support the definition of a tube feed nutritional supplement.

Subsections (2)(a) and (b) state the minister may provide a tube feed nutritional supplement for a family unit in receipt of income or hardship assistance or for a continued person. The ministry argues the appellant is not a recipient of income or hardship assistance, nor a "continued" person, and therefore, not eligible for this supplement.

Subsection (3) states the minister may provide a tube feed nutritional supplement if a medical practitioner or dietitian confirms in writing that the person's primary source of nutrition is through tube

feeding, the person is not receiving another nutrition-related supplement and there are no resources available to the person to pay for the tube feed nutritional supplement.

The panel notes evidence provided by an RD and the appellant's doctor demonstrate that a medical practitioner and dietician confirmed the appellant's primary source of nutrition is through tube feeding, ministry records state the appellant is not receiving another nutritional supplement and the appellant states she does not have sufficient funds to cover the cost of tube feeding.

The panel finds that although the appellant has demonstrated that she does not have the resources to pay for the tube feeding equipment, subsections 74.01(2)(a) and (b) require that the appellant is in receipt of income or hardship assistance or is a continued person, in order to be eligible for a tube feed nutritional supplement. As there is insufficient evidence to demonstrate that the appellant is in receipt of income or hardship assistance or a continued person, the panel finds the ministry decision to deny the tube feed supplement under section 74.01(2) reasonable.

Section 76 EAR - direct and imminent life-threatening health need

Section 76(1) states the minister may provide 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 for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, if the minister is satisfied that the person faces a direct and imminent life-threatening need and there are no resources available to the person's family unit to meet that need.

The panel notes evidence submitted by the appellant (letters from RD, the Health Authority, appellant's doctor) all indicate the appellant faces a direct and imminent life-threatening need. The panel also notes the appellant argues that she does not have sufficient funds to cover the cost of tube feeding.

The panel finds that although the appellant has demonstrated that she faces a direct and imminent life-threatening need and that there are no resources available to meet that need, tube feeding health supplements are not included under Schedule C, sections 2(1)(a) and (f) [*general health supplements*] or 3 [*medical equipment and devices*].

As the panel finds tube feed supplements are not available under section 76 of the EAR for a life-threatening health, the panel finds the ministry decision to deny eligibility for a tube feed supplement as a life-threatening health need under section 76 of the EAR, reasonable.

In the appellant's request for reconsideration, she asked the ministry to make an exception and provide funding for tube feeding equipment supplies. The panel acknowledges the difficulty the appellant is facing. However, the ministry and the panel are both bound by the legislation and therefore not able to make exceptions.

Conclusion

In conclusion, the panel finds the ministry decision which determined the appellant was not eligible for a tube feed nutritional supplement as per sections 74.01 and 76 of the EAR 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 Regulation

Definitions

66.1 In this Division:

"continued person" means

- (a) a main continued person under section 66.3 (1) or 66.4 (1), or
- (b) a dependent continued person under section 66.3 (2) or 66.4 (2);

Access to medical services only

66.3

(1) Subject to subsection (4), a person is a main continued person if

- (a) the person was
 - (i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for income assistance, and
 - (ii) a qualifying person on that date, and
- (b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance.

(2) Subject to subsection (6), a person is a dependent continued person if

- (a) the person was a dependant of a main continued person under subsection (1) on the main continued person's continuation date, and
- (b) the person is currently a dependant of that main continued person.

Access to transitional health services

66.4 (1) Subject to subsection (4), a person is a main continued person if

- (a) the person was, on or after September 1, 2015,
 - (i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for income assistance, and
 - (ii) a recipient of income assistance on the date referred to in subparagraph (i), and
- (b) the person has not, since the date referred to in paragraph (a) (i), been part of a family unit in receipt of income assistance, hardship assistance or disability assistance.

(2) A person is a dependent continued person if

- (a) the person was a dependent child of a main continued person under subsection (1) on the main continued person's continuation date, and
- (b) the person is currently a dependent child of that main continued person.

Tube feed nutritional supplement

74.01

(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 liquid 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 income 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

76 (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).

(2)For the purposes of subsection (1) (c),

(a)"adjusted net income" has the same meaning as in section 7.6 of the Medical and Health Care Services Regulation, and

(b)a reference in section 7.6 of the Medical and Health Care Services Regulation to an "eligible person" is to be read as a reference to a person in the family unit, other than a dependent child.

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 67 [*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.1) the following medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies:

- (i) lancets;
- (ii) needles and syringes;
- (iii) ventilator supplies required for the essential operation or sterilization of a ventilator;
- (iv) tracheostomy 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 67 [*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 or section 7.1 of this Schedule, 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.

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 — toileting, transfers and positioning 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 lift devices

3.8

Medical equipment and devices — breathing devices

3.9 (1)Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule:

(a)if all of the requirements set out in subsection (2) of this section are met,

(i)a positive airway pressure device,

- (ii)an accessory that is required to operate a positive airway pressure device, or
 - (iii)a supply that is required to operate a positive airway pressure device;
 - (b)if the minister is satisfied that the item is medically essential to monitor breathing,
 - (i)an apnea monitor,
 - (ii)an accessory that is required to operate an apnea monitor, or
 - (iii)a supply that is required to operate an apnea monitor;
 - (c)if the minister is satisfied that the item is medically essential for clearing respiratory airways,
 - (i)a suction unit,
 - (ii)an accessory that is required to operate a suction unit, or
 - (iii)a supply that is required to operate a suction unit;
 - (d)if the minister is satisfied that the item is medically essential for clearing respiratory airways,
 - (i)a percussor,
 - (ii)an accessory that is required to operate a percussor, or
 - (iii)a supply that is required to operate a percussor;
 - (e)if the minister is satisfied that the item is medically essential to avoid an imminent and substantial danger to health,
 - (i)a nebulizer,
 - (ii)an accessory that is required to operate a nebulizer, or
 - (iii)a supply that is required to operate a nebulizer;
 - (f)if the minister is satisfied that the item is medically essential to moisturize air in order to allow a tracheostomy patient to breathe,
 - (i)a medical humidifier,
 - (ii)an accessory that is required to operate a medical humidifier, or
 - (iii)a supply that is required to operate a medical humidifier;
 - (g)if the minister is satisfied that the item is medically essential to deliver medication,
 - (i)an inhaler accessory device,
 - (ii)an accessory that is required to operate an inhaler accessory device, or
 - (iii)a supply that is required to operate an inhaler accessory device.
- (2)The following are the requirements in relation to an item referred to in subsection (1) (a) of this section:
- (a)the item is prescribed by a medical practitioner or nurse practitioner;
 - (b)a respiratory therapist has performed an assessment that confirms the medical need for the item;
 - (c)the minister is satisfied that the item is medically essential for the treatment of moderate to severe sleep apnea.
- (3)The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is as follows:

- (a) in the case of an item referred to in subsection (1) (a) (i), 5 years from the date on which the minister provided the item being replaced;
 - (b) in the case of an item referred to in subsection (1) (a) (ii) or (iii), one year from the date on which the minister provided the item being replaced;
 - (c) in the case of an apnea monitor, suction unit, percussor, nebulizer or medical humidifier, 5 years from the date on which the minister provided the item being replaced;
 - (d) in the case of an inhaler accessory device, one year from the date on which the minister provided the device being replaced;
 - (e) in the case of an accessory or supply for an item referred to in paragraph (c) or (d), one year from the date on which the minister provided the device being replaced.
- (4) A ventilator is not a health supplement for the purposes of section 3 of this Schedule

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

APPEAL NUMBER 2022-0072

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)

2022/04/30

Print Name

Julie Iuvancigh

Date (Year/Month/Day)

2022/05/02

Print Name

Rick Bizarro

Signature of Member

Date (Year/Month/Day)

2022/04/30