

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision, dated July 14, 2022 (the “Reconsideration”), which concluded that the Appellant was not eligible for a short term nutritional supplement (“STNS”) of Boost because the Appellant was not in receipt of disability or hardship assistance and because the Appellant’s doctor had not provided information to confirm that the Appellant had an acute short term need for caloric supplementation. In particular, the Appellant’s doctor did not confirm Boost was required for recovery from any of the issues set out in section 67.001(b)(i) through (iv) as required by the provisions of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”).

Part D – Relevant Legislation

EAPWDR- sections 61.01 and 67.001

This legislation can be found following this decision.

Part E – Summary of Facts

The Appellant is a Person with Disabilities (PWD) who is a main continued person receiving medical services only. On February 18, 2022, the Appellant submitted a request for an STNS for Boost, which was denied by the Ministry.

The information before the Ministry at the time of the Reconsideration included the following:

- letter from the Ministry to the Appellant, dated February 22, 2022, denying the request for the STNS for Boost with the Ministry's STNS decision summary attached;
- a prescription from the Appellant's doctor, dated February 18, 2022, advising that the Appellant requires Boost twice daily to maintain an adequate caloric intake (the "February Note"); and
- the Appellant's Request for Reconsideration, dated June 24, 2022 (the "RFR"), which included a handwritten note from the Appellant, setting out that:
 - the Appellant was still anemic and may have non-functioning kidneys;
 - the Appellant's doctor had advised that the Appellant had a need for Boost;
 - the Appellant had multiple health issues that made it difficult to get proper nutrition and the Appellant was losing weight;
 - the Appellant's weight had dropped from 200 pounds to 119 pounds;
 - the Appellant had previously taken Boost, which helped maintain her weight; and
 - the Appellant was waiting on three surgeries.

The Appellant's Notice of Appeal, dated August 18, 2022, included a submission with the following documentation:

- Handwritten note from the Appellant, dated August 16, 2022, indicating that papers would be brought in on behalf of the Appellant for Boost;
- Medical Orders Scope of Treatment form in respect of the Appellant, in regards to treatment the Appellant received in July;
- A business card for a nurse at a hospital where the Appellant received treatment;
- An angiographic report, dated May 27, 2022;
- A cardiology discharge form, dated August 5, 2022;
- Discharge prescriptions for a number of medications to be either continued or discontinued;
- A referral to a heart clinic, dated July 30, 2022; and
- An e-mail from the Appellant to the Ministry, dated August 18, 2022 with the Appellant's submission for reconsideration of the initial Ministry denial of the short term nutritional supplement.

Prior to the hearing of the Appeal, the Appellant also provided the Tribunal with an additional submission (the "Submission") which included the following:

- A pamphlet from a local heart clinic;

- A letter, dated July 20, 2022, from the Ministry in response to a request for information by the Appellant under the Freedom of Information and Protection of Privacy Act;
- A letter, dated July 14, 2022, from the Ministry, which included the Reconsideration;
- A note from the Appellant’s doctor, dated August 25, 2022 (the “August Note”), setting out that “due to multiple medical issues, this woman (the Appellant) requires Boost twice a day to maintain adequate caloric intake. She’s at high risk of losing more weight, which would negatively effect her health”; and
- Letter from a registered nurse, dated August 26, 2022, setting out that:
 - The Appellant was being followed by a heart clinic for severely reduced heart function;
 - The Appellant had been ordered a nutritional supplement of Boost twice daily by her doctor; and
 - The requirement for the Boost was related to maintaining health and protein intake due to an inability to consume adequate calories from other sources during periods of decompensation of multiple co-morbid conditions and to prevent weight loss.”

At the hearing of the appeal, the Appellant confirmed that she was receiving Canada Pension Plan and Old Age Security benefits and was no longer receiving disability assistance and stated that she understood the reasoning behind the Reconsideration from the standpoint that she was no longer in receipt of disability benefits.

The Appellant also described suffering from heart failure which recently resulted in an admission to hospital. The Appellant stated that she has been referred to a local heart clinic. The Appellant has also had a defibrillator and pacemaker provided to her but was not going to have heart surgery until her system could tolerate it.

With respect to nutritional issues, the Appellant described being anemic, suffering from diarrhea, and being unable to process potassium or other minerals, which were not appearing in her system. The Appellant also noted she is a Type II diabetic and is under long-standing psychiatric care for her mental health; both of which, according to the Appellant, require good nutrition which she receives from Boost.

The Appellant described the cost of Boost and advised that, at present, Boost is being provided by a local church which the Appellant feels guilty about taking due to the need of others, including recent immigrants, for Boost. The Appellant described having been able to obtain Boost while on disability assistance as part of the monthly nutritional supplement, which was confirmed at the hearing by the Ministry representative.

At the hearing of the appeal, the Ministry relied on the Reconsideration, noting that the Appellant, no longer being on disability assistance, does not meet the basic eligibility requirement under section 67.001. The Ministry also set out its position that the information submitted after the Reconsideration would likely have led it to seek further information from the Appellant’s doctor, prior to denying the STNS, but that its decision on the STNS would have depended on the information provided by the Appellant’s doctor which, at the time of the Reconsideration, did not confirm an acute short term need for caloric supplementation according to the Ministry.

With respect to the information included with the Notice of Appeal and in the Submission, the panel notes that the Ministry had no objections to it being admitted as evidence. While the Ministry's position is not determinative of the issue, the panel also admits the information provided with the Notice of Appeal, the information in the Submission, and the oral evidence given at the hearing of the appeal, pursuant to section 22(4) of the *Employment and Assistance Act*, as evidence that is not part of the record but which the panel considers reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for a short term nutritional supplement of Boost because the Appellant was not in receipt of disability or hardship assistance and because the Appellant's doctor had not provided information to confirm that the Appellant had an acute short term need for caloric supplementation and, in particular, for recovery from any of the issues set out in section 67.001(b)(i) through (iv) as required by the provisions of the EAPWDR.

Panel Decision

Section 61.01 of the EAPWDR describes the various types of nutrition-related supplements that are available to recipients of certain categories of assistance. Section 61.01 also references the sections of the EAPWDR which set out the eligibility criteria for those types of nutrition-related supplements. Among the types of nutrition-related supplements that are available is the STNS whose eligibility criteria is set out in section 67.001 of the EAPWDR.

Section 67.001 provides that the Ministry may provide the STNS to recipients of disability assistance or hardship assistance. The Appellant is not receiving either hardship assistance or disability assistance. The Appellant is a main continued person who is in receipt of medical services only assistance which is not among the categories of persons eligible for the STNS under section 67.001. In the result, the panel finds that the Ministry was reasonable in its determination that the Appellant does not meet the basic eligibility requirement for the STNS and is ineligible for an STNS.

Despite the Ministry's determination that the Appellant did not meeting the basic eligibility requirements for the STNS, as described above, the Ministry also addressed the medical information provided by the Appellant with the request for the STNS. In addition to the basic eligibility requirements discussed above, to be eligible for the STNS, recipients of disability assistance or hardship assistance cannot be receiving any other nutrition-related supplement and a medical practitioner, nurse practitioner or dietitian must confirm in writing that the applicant for the supplement has an acute short term need for caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from:

- surgery;
- a severe injury;
- a serious disease, or
- side effects of medical treatment.

In the Appellant's case, the February Note from the Appellant's doctor set out only that the Appellant required Boost twice daily. There was no information from the doctor setting out the reasons that the Appellant required Boost twice daily nor confirmation that the Boost was needed for caloric supplementation to the Appellant's regular diet in order to prevent weight loss while the Appellant recovered from any of the medical issues identified in subsection (b) of section 67.001 of the EAPWDR.

The information provided by the Appellant with the Notice of Appeal provided slightly more detail but still nothing from the Appellant's doctor or any other type of medical practitioner described in section 67.001(b) of the EAPWDR confirming that the reason for the need for Boost was caloric supplementation to prevent weight loss while the Appellant recovered from any of the identified medical issues in section 67.001(b) of the EAPWDR.

The information provided by the Appellant with the Submission, however, included significantly more information than the information originally provided to the Ministry or the information provided by the Appellant with the Notice of Appeal. Included in the documents provided with the Submission were letters from the Appellant's doctor and a nurse, confirming that the Appellant has an acute need for caloric supplementation to her regular diet in order to prevent critical weight loss. However, neither the doctor nor the nurse related the need for caloric supplementation to *recover* from any of the issues set out in section 67.001(b).

In view of all of the foregoing, the panel finds that the Ministry also reasonably determined that the Appellant had not met the criteria set out in section 67.001(b) of the EAPWDR, although it is not clear to the panel that the Ministry needed to make a determination about this as it had already determined that the Appellant did not meet the basic eligibility requirement of being in receipt of disability or hardship assistance.

The panel confirms the Ministry's decision. The Appellant is not successful in this appeal.

Relevant Legislation

Section 61.01 of the EAPWDR defines a nutrition-related supplement and sets out which sections of the EAPWDR authorize various types of nutrition-related 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;

Section 67.001 sets out the eligibility criteria for an STNS:

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.

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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

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2022/09/12

Print Name

Carmen Pickering

Signature of Member

Date (Year/Month/Day)

2022/09/13

Print Name

Maryam Majedi

Signature of Member

Date (Year/Month/Day)

2022/09/12