

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision (the “Reconsideration Decision”) of the Ministry of Social Development and Poverty Reduction (the “Ministry”), dated February 13, 2023. The Ministry held that the Appellant was not eligible for a supplement for a Mic-Key feeding tube (the “Mic-Key Tube”) and extension sets (the “Extensions”) because:

- it had not been confirmed by a medical practitioner, nurse practitioner, or a dietitian, in writing, that the Appellant’s primary source of nutrition was through tube feeding, as required by section 67.01(3)(a) of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”);
- the Mic-Key Tube and the Extensions did not meet the definition of medical supplies, pursuant to section 2(1) of Schedule C to the EAPWDR; and
- the Mic-Key Tube and Extensions were not among the class of items for which a supplement could be provided on the basis of a life threatening need, pursuant to section 69 of the EAPWDR.

Part D – Relevant Legislation

EAPWDR- sections 67.01 and 69, Schedule C- section 2(1)

A full text of the above-described legislation appears at the end of Part F of this decision.

Part E – Summary of Facts

The Appellant is a recipient of disability assistance. The Appellant is in receipt of tape, gauze, and syringes to maintain a feeding tube.

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

- the Ministry’s letter to the Appellant, dated December 20, 2022 denying a supplement in respect of the Mic-Key Tube and Extensions;
- the Ministry’s Tube Feed Supplement Decision Summary;
- an undated letter from a dietitian, indicating that the Appellant had recently aged out of the At Home Program and had recently had a feeding tube placed;
- a letter from a doctor, dated January 18, 2023 (the “Doctor’s Letter”), setting out that:
 - the Appellant had changed over from a feeding tube to the Mic-Key Tube, which was low profile and had an access port;
 - the Mic-Key Tube was required for “maintenance of fluids” and the intake of medications, due to a faltering swallow system; and
 - the Mic-Key Tube was also necessary to maintain fluids and to prevent urinary tract infection (“UTI”), organ failure and to maintain medication; and
- the Appellant’s Request for Reconsideration, dated January 25, 2023.

In the Notice of Appeal, the Appellant’s mother wrote that:

- the Appellant required the Mic-Key Tube;
- the Appellant had a series of bladder infections;
- the Mic-Key Tube and medications were of great importance;
- the Appellant’s brother also had a Mic-Key Tube and started with water and medicine.

At the hearing of the appeal, the Appellant’s mother spoke on behalf of the Appellant who is non-verbal. The Appellant’s mother stated that:

- the Appellant had difficulty with swallowing liquids;
- the Appellant’s difficulty with ingesting liquids, including water, juices, and soups, was caused by the Appellant’s throat muscles not being strong enough;
- the Appellant could eat food when spoon fed but that the use of thickener on liquids did not work for the Appellant;
- the Appellant’s difficulty with swallowing made it especially difficult for the Appellant to take medications;
- the Mic-Key Tube was necessary for the Appellant and was not merely an aesthetic preference;
- she did not work and her spouse drove a taxi but money had been tighter since the start of the COVID-19 pandemic.

The Ministry representative stated that:

- in the case of the Appellant, there had been no confirmation, in writing from any of the prescribed professionals referenced in section 67.01 of the EAPWDR, that the Appellant's primary source of nutrition is through tube feeding;
- the evidence suggested that the primary purpose of the Mic-Key was to permit the Appellant to take medications with water, and for the maintenance of fluids;
- water is not nutrition;
- the Ministry does not prescribe that a specific percentage of a person's nutritional intake must be by tube in order for it to be determined that a person's primary source of nutrition is through tube feeding; and
- in the Appellant's case, the Doctor's Letter had not set out the nutritional intake basis for the Mic-Key Tube and, instead, had focused on the need for the tube for the ingestion of medication, and for maintenance of fluids to prevent other illnesses.

The panel admits the evidence given at the hearing of the Appeal as evidence that is not part of the record but which the panel considers is reasonably required for a full and fair disclosure of all matters related to the appeal, pursuant to section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry was reasonable in its determination that the Appellant was not eligible for a supplement in respect of the Mic-Key Tube and Extensions because:

- it had not been confirmed by a medical practitioner, nurse practitioner, or a dietitian, in writing, that the Appellant's primary source of nutrition was through tube feeding, as required by section 67.01(3)(a) of the EAPWDR";
- the Mic-Key Tube and the Extensions did not meet the definition of medical supplies, pursuant to section 2(1) of Schedule C to the EAPWDR; and
- the Mic-Key Tube and Extensions were not among the class of items for which a supplement could be provided on the basis of a life threatening need, pursuant to section 69 of the EAPWDR.

*Panel Decision*Eligibility for supplement under section 67.01

Section 67.01(2) authorizes the Ministry to provide a tube feed nutritional supplement where the following basic eligibility criteria are met:

- the family unit is in receipt of disability or hardship assistance; or
- a person in the family unit is a continued person receiving medical services only and was at the continuation date receiving the tube feed nutritional supplement.

In the case of the Appellant, the Appellant meets the basic requirements under section 67.01(2) by virtue of being in receipt of disability assistance.

In addition, section 67.01(3) of the EAPWDR requires all of the following criteria to be met:

- a medical practitioner, nurse practitioner or dietitian confirms in writing that the person requesting the supplement'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.

In the case of the Appellant, the Ministry determined that the Appellant was not receiving another nutrition-related supplement and did not have any other resources available to pay for the Mic-Key Tube.

The Doctor's Letter, which is the only information that was before the Ministry recommending the Mic-Key Tube is in writing and was prepared by a medical practitioner. The issue is whether or not the Ministry was reasonable in determining that it did not confirm that the Appellant's primary source of nutrition was through tube feeding.

While the doctor strongly advocated in favour of the Mic-Key Tube and requested that it be funded by the Ministry, it is not clear from the Doctor's Letter that the Appellant's primary source of nutrition is through tube feeding.

While the doctor, indicated that the Mic-Key tube would assist with the ingestion of medication and would be helpful in respect of avoiding UTIs and other health issues, the doctor did not address the extent, if any, to which the Appellant's nutrition intake was through tube feeding. The doctor did make reference to the Mic-Key tube being helpful for the "maintenance of fluids" but did not describe the extent to which the fluids made up the Appellant's nutritional intake.

In view of the foregoing, the panel determines that the Ministry reasonably determined that the Appellant was not eligible for a supplement in respect of the Mic-Key tube under section 67.01 of the EAPWDR, due the lack of evidence in the Doctor's Letter about the extent to which the Appellant's primary source of nutrition is through tube feeding.

Eligibility under section 2(1) of Schedule C

Section 2(1)(a) of Schedule C to the EAPWDR authorizes the Ministry to provide disposable or reusable medical or surgical supplies for the following purposes:

- wound care;
- ongoing bowel care, due to loss of muscle function;
- catheterization;
- incontinence;
- skin parasite care; or
- limb circulation care

where the family unit has no other resources to obtain the items, the items are prescribed by a medical or nurse practitioner, the items are the least expensive items for their purpose, and the items are necessary to avoid an imminent and substantial danger to health.

The evidence before the Ministry is that the Mic-Key Tube and Extensions are required for assisting with the ingestion of liquids, not for any of the above described purposes. In the result, the panel finds that the Ministry reasonably determined that the Appellant was not eligible for a supplement under section 2(1) of Schedule C to the EAPWDR.

Section 2(1) (a.1) of Schedule C permits the Ministry to provide a supplement for specific medical or surgical supplies. These supplies include:

- lancets;
- needles and syringes;
- ventilator supplies required for the essential operation or sterilization of a ventilator; or
- tracheostomy supplies.

Neither the Mic-Key Tube nor the Extensions fall into any of these categories of supplies, therefore the panel finds that the Ministry was reasonable in determining that the Appellant is not eligible for a supplement under section 2(1)(a.1) of Schedule C to the EAPWDR.

Finally, section 2(1)(a.2) of Schedule C authorizes the Ministry to provide a supplement in respect of consumable medical supplies if those supplies are required to thicken food and the basic eligibility requirements are met. Namely, the family unit has no other resources to obtain the supplies, the supplies are prescribed by a medical or nurse practitioner, the supplies are the least expensive items for their purpose, and the supplies are necessary to avoid an imminent and substantial danger to health. In this case, the Mic-Key Tube and Extensions are not used for the purpose of thickening food and, in the result, the panel finds that the Ministry was reasonable in its determination that the Appellant is not eligible for a supplement under section 2(1)(1.2) of Schedule C to the EAPWDR.

Eligibility under section 69 of the EAPWDR

Section 69 of the EAPWDR authorizes the Ministry to provide a supplement to a person facing a direct and imminent life threatening need.

In addition to the above requirement that a person be facing a direct and imminent life threatening need, section 69(1)(d) of the EAPWDR sets out that all of the requirements specified in sections 2(1)(a), 2(1)(f), and 3 through 3.11, other than 3(1) of Schedule C must also be met.

As noted above, the Appellant does not meet the requirements of section 2(1)(a) because the Mic-Key Tube and extensions are not intended for any of the uses set out in section 2(1)(a) of Schedule C to the EAPWDR. As satisfying the requirements of section 2(1)(a) is one of the requirements of being eligible for a supplement under section 69, the panel finds that the Ministry was reasonable in determining that the Appellant did not meet this requirement.

Section 2(1)(f) is not applicable to this appeal as it relates to supplements for transportation to and from appointments and the panel also finds that the Ministry was reasonable in its determination that this criterion was not satisfied.

Section 3 of Schedule C to the EAPWDR sets out the basic requirements for eligibility for the supplements in sections 3.1 through 3.12. Sections 3.1 through 3.12 of Schedule C to the EAPWDR set out the various equipment and devices for which supplements may be paid by the Ministry. The Mic-Key Tube and Extensions do not fit into any of the categories of devices set out in those sections, which include:

- canes, crutches and walkers (section 3.1);
- wheelchairs (section 3.2);
- wheelchair seating system (section 3.3);
- scooters (section 3.4);
- toileting, transfers and positioning aids (section 3.5);
- hospital bed (section 3.6);

- pressure relief mattresses (section 3.7);
- floor or ceiling lift devices (section 3.8);
- breathing devices (section 3.9);
- orthoses (section 3.10);
- hearing instruments (section 3.11); and
- non-conventional glucose meters.

Because the Mic-Key Tube and Extensions do not meet the requirements of section 2(1)(a), 2(1)(f) or sections 3 through 3.12 of Schedule C to the EAPWDR, the panel finds that the Ministry was reasonable in its determination that the Appellant was not eligible for a supplement under section 69 of the EAPWDR.

Conclusion

In view of all of the foregoing, the panel finds that the Ministry reasonably determined that the Appellant was not eligible for a supplement for the Mic-Key Tube and Extensions under section 2(1) of Schedule C to the EAPWDR, section 69 of the EAPWDR, or section 67.01 of the EAPWDR.

The panel notes, however, that with respect to section 67.01 of the EAPWDR, evidence from a medical or nurse practitioner or dietitian about the extent to which the Appellant relies on tube feeding as a primary source of nutrition could result in a different outcome on a subsequent application.

The Appellant is not successful in this appeal.

Relevant Legislation

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).

(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.

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.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;

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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)

2023/March/13

Print Name

Bill Farr

Signature of Member

Date (Year/Month/Day)

2023/March/13

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2023/March/13