

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated March 15, 2023, in which the ministry found the appellant was not eligible for a *tube feed nutritional supplement* under the Employment and Assistance for Persons with Disabilities Regulation (“Regulation”) because not all the criteria in section 67.01 were met. The ministry further found that the appellant was not eligible for the supplement as a life-threatening health need under section 69 of the Regulation.

Part D – Relevant Legislation

The ministry based the reconsideration decision on the following legislation:

Employment and Assistance for Persons with Disabilities Regulation – sections 67.01 and 69

The full text is available in the Schedule after the decision.

Part E – Summary of Facts

The information the ministry had at the time of the reconsideration decision included:

1. The record of decision indicating that:

- On January 31, 2023, the ministry received the request for a tube feeding supplement.
- On February 2, 2023, the ministry denied the request and received the appellant's *Request for Reconsideration* on February 28.
- On March 15, 2023, the ministry completed its review and found that the eligibility requirements for the supplement were not met.

The ministry notes that the appellant is designated as a *Person with Disabilities* ("PWD") and is eligible for *Medical Services Only* ("MSO") as a "continued person" under the Regulation.

- On January 31, 2023, the appellant submitted receipts for tube feeding supplies.
- On February 1, 2023, the ministry received an assessment from a registered dietitian who prescribed tube feeding supplies which the appellant requires due to complications from surgery in February 2022.
- On February 2, 2023, the ministry sent a denial letter and *Decision Summary*, explaining that the appellant is not eligible for nutritional items under MSO coverage. The ministry states that the appellant is no longer receiving disability assistance from the ministry and "was not receiving nutrition via tube feed" on the date he was designated MSO.

The ministry says that persons who were not in receipt of the tube feed supplement at the time of transition to MSO "are not eligible for the Tube Feed Nutritional Supplement. Recipients of Medical Services Only benefits are not eligible for any nutritional supplements or funding for nutritional items."

The ministry notes that the appellant is not receiving a supplement under other sections of the legislation; and that he does not have other resources to pay for the tube feeding supplies.

- On February 23, 2022, the ministry received the following:
 - information from an advocate highlighting the urgent need for a tube feeding supplement.
 - a letter from a doctor affirming the need for the supplement.
 - tax and banking information indicating the appellant lacks resources to pay for tube feeding supplies.

2. A *Request for Reconsideration* signed by the appellant on February 28, 2023.

3. A *Funding Request Form for Tube Feed Supplement* from a registered dietitian, dated February 1, 2023. The dietitian reports that in February 2022, the appellant had surgery “that unfortunately resulted in esophageal rupture and perforation. This resulted in need for jejunal enteral feeds for nutrition.” The appellant was in the hospital until August 2022 and has had multiple hospital admissions since then for complications including aspiration, and malnutrition. The appellant has several other medical conditions in addition to the complications from surgery.

The dietitian explains that the appellant has “relied on enteral feeds as sole source of nutrition for almost 1 year” as he has not been able to eat or drink normally. The appellant is a low income, vulnerable senior who previously received PWD assistance before transferring to *Old Age Security* (“OAS”) benefits.

The dietitian says that after paying rent and bills, the appellant is unable to afford tube feed formula and often rations his nutritional formula, resulting in further complications and hospital admissions. The dietitian and a social worker have been sourcing the lowest cost formula and community supports but have “exhausted all other potential resources for formula and funding.”

The dietitian prescribes an IV pole and *Entralite Infinity* pump, as well as the following items monthly:

- Boost Plus Calories or *Resources* nutritional projects
- *Entralite Infinity* bags
- Catheter tip syringes

The expected duration of tube feeding is at least 6 months, with ongoing re-evaluation regarding the ability to trial oral intake of food.

4. Invoices from a medical supply company dated October 5 and December 8, 2022, for nutritional products, (\$489.65, and \$67.20), and Infinity bag set (\$195).

5. Financial documents including the appellant’s 2021 tax assessment, showing total income, \$16,885. Bank statements from November 2022, show OAS deposits and bill payments.

6. A letter from a community advocate, dated February 23, 2023, stating that the appellant was receiving PWD assistance, “but was not given a feeding tube until after he transferred from PWD to *Medical Services Only*.”

In addition to argument for the reconsideration, the advocate notes that the appellant has not been eating because he “cannot afford the supplements that will keep him alive.” The appellant spent the past week hospitalized due to his issues with eating.

7. A letter from a doctor, dated February 15, 2023, describing the appellant’s medical history and need for “jejunal enteral feeds”, and listing the nutritional items and tube feeding supplies he requires. The letter clarifies that the tube feeding supplement is required to prevent malnutrition and subsequent death, and to reduce the strain on health care services.

Additional evidence – written hearing

The appeal format was a written hearing. The appellant filed a *Notice of Appeal* with a hand-written statement explaining that he is “unable to eat or drink regular food/water;” and is unable to afford the nutritional formula and tube feeding equipment, as well as pay rent and bills.

The appellant submitted a letter from the advocate dated April 20, 2023. In addition to argument, the letter states that the appellant was receiving PWD benefits on the date of his surgery, February 25, 2022. The letter says that the appellant continued to receive disability assistance until April 2022.

The letter says the appellant now relies on OAS benefits, approximately \$700 per month. As such, he cannot afford to pay for the nutritional supplement but “relies solely on jejunal enteral feeds.” Upon discharge from the hospital in August 2022, the appellant has been financially responsible for his tube feeding needs and has been threatened with eviction on more than one occasion as he does not have any other resources.

Admissibility of additional evidence

The ministry had no objections to the submissions from the appellant and advocate. The panel finds that the additional information further details the appellant’s medical and financial circumstances. The panel admits the *Notice of Appeal* submission and letter from the advocate under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The ministry did not submit any new evidence or argument. In an email to the Tribunal, the ministry states that the reconsideration summary is the ministry’s submission on appeal. The panel will consider both parties’ arguments in Part F-Reasons.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably determined that the appellant was not eligible for a *tube feed nutritional supplement* under section 67.01 of the Regulation or as a life-threatening health need under section 69. Was the ministry's finding that not all criteria were met, reasonably supported by the evidence or a reasonable application of the legislation?

Analysis

Subsection 67.01(1) of the Regulation describes the tube feeding supplies the ministry may provide funding for. A *tube feed nutritional supplement* is a liquid nutritional product that is fed to a person via a tube attached to their body, and includes the necessary pumps, bags, and other medical equipment or supplies. The ministry was satisfied that the items prescribed by the dietitian and doctor (bags, syringes, etc.) meet the definition of *tube feed nutritional supplement* under the Regulation.

Subsections 67.01(2) and 67.01(3) of the Regulation authorize the ministry to provide funding for a tube feed nutritional supplement where specific requirements are met. Under subsection 67.01(2)(a), the ministry may fund tube feeding supplies where the person is receiving disability assistance and not living at a hospital or care facility.

Alternatively, the ministry may provide a tube feed supplement under subsection 67.01(2)(b) for a "continued person" who was receiving the supplement on their "continuation date." A "continued person" is a person in the family unit who ceased to be eligible for disability assistance for specified reasons that include being 65 or older. Once a person with PWD designation turns 65, they stop receiving disability assistance and become eligible for MSO. The "continuation date" is the date when the person stops being eligible for disability assistance.

Where the person is eligible for the supplement under subsection 67.01(2), three additional requirements must also be met. These are set out in subsection 67.01(3) of the Regulation:

- A medical practitioner, or dietitian must confirm in writing that the person's primary source of nutrition is through tube feeding.
- The person cannot be receiving another nutrition-related supplement.
- There are no resources available to the person to pay for the *tube feed nutritional supplement*.

The ministry said that the appellant's request did not meet the criteria in subsection 67.01(2) but was satisfied that the three additional requirements were met based on the

letters from both a doctor and a dietitian. The ministry notes that the appellant was not receiving another nutrition-related supplement, and his financial information showed that he does not have resources to pay for the tube feed items/supplies. These additional criteria are therefore not at issue in this appeal.

Arguments – Appellant

The appellant’s position on appeal is that he qualifies for the tube feeding supplement under subsection 67.01(2)(a) of the Regulation because he was “in receipt of PWD and not in receipt of only MSO, when he received his tube.” The advocate notes that the appellant was receiving disability assistance in February 2022, when he had the surgery that resulted in his need for “jejunal enteral feeds.” The advocate notes that the appellant continued to receive PWD benefits until April 2022.

The appellant emphasizes that he cannot afford to pay for the “life sustaining treatment via tube feed.” He would like to receive “retroactive payments for the supplement” as he was discharged from hospital in August 2022, and has suffered hardship from paying for tube feed items with his limited OAS resources.

Arguments - Ministry

The ministry’s position is that the appellant is not eligible for a *tube feed nutritional supplement* under section 67.01 of the Regulation because he was not receiving disability assistance when he applied for the supplement, and he was not receiving the tube feeding supplement on the date he transitioned to MSO.

The ministry argues that the appellant is not eligible for the supplement as a life-threatening health need under section 69 of the Regulation because that section only applies to the health supplements and medical equipment that are described in Schedule C. The ministry said the tube feed supplement is not set out under Schedule C of the Regulation.

Panel's decision*Tube feed nutritional supplement*

The panel finds that the ministry's decision to deny the *tube feed nutritional supplement* is a reasonable application of the legislation in the circumstances of the appellant. Under subsection 67.01(2)(a) of the Regulation, the appellant would have been eligible for ministry funding for tube feeding supplies, had he applied for the supplement while he was still receiving disability assistance from the ministry.

The evidence is that the appellant did not request a health supplement from the ministry for tube feeding until January 31, 2023. The appellant was not receiving disability assistance from the ministry at that time because the payments stopped in April 2022 when he was transitioned to MSO. The appellant required tube feeding during his hospital stay, to manage the complications from his surgery, but there is no indication that he applied for or received ministry funding for tube feeding supplies during the hospitalization or shortly thereafter.

Therefore, the appellant is not eligible for the *tube feeding nutritional supplement* as a recipient of disability assistance because he did not request the supplement until after he stopped receiving disability assistance from the ministry. When the appellant requested the tube feeding supplement in January 2023, he was receiving MSO benefits, not disability assistance. The birth date information on the indicates the appellant turned 65 in January 2022. Both the ministry and the advocate confirm that the appellant stopped receiving PWD benefits in April 2022.

Subsection 67.01(1) of the Regulation defines the *tube feed nutritional supplement* as tube feeding supplies (pumps, tubes, bags, etc.), but the ministry does not provide these supplies directly to the client. The ministry is authorized to provide funding for the health supplements set out in the Regulation provided that specific eligibility requirements are met. Eligible clients can then use ministry funding to purchase the items that are medically required. The appellant submitted receipts from a medical supply company indicating that the tube feeding supplies would be purchased from a private supplier.

The appellant does not qualify for the tube feeding supplement under subsection 67.01(2)(b) of the Regulation because although he was a "continued person" as of the date he requested the tube feed supplement from the ministry (January 2023), he was not receiving funding for the supplement on his "continuation date." That date would have been April 2022 when the appellant was already 65 years old and stopped receiving disability assistance from the ministry.

Life-threatening health need

To be eligible for a health supplement under section 69 of the Regulation, the person must not only be facing a life-threatening health need and have no resources to meet the need. There is also a requirement to be ineligible for health supplements under the Regulation. As a recipient of MSO, the appellant meets the basic eligibility requirement for health supplements under section 62(c) provided that the criteria under other sections of the Regulation are met; in particular, Schedule C.

Section 69 only applies to health supplements that are set out in specific sections of Schedule C of the Regulation. These health supplements include medical or surgical supplies for wound care and other conditions, medical transportation, mobility aids, orthotics, glucose monitors, and other specialized medical equipment.

As noted by the ministry, tube feeding supplies are not set out in Schedule C. Therefore, the ministry has no legal authority to provide the *tube feeding nutritional supplement* under section 69 of the Regulation even where a life-threatening health need is established. Accordingly, the ministry reasonably determined the appellant is not eligible for a tube feeding supplement to meet a direct and imminent life-threatening health need under section 69.

Conclusion

The panel finds that the ministry was reasonable in saying that the appellant is not eligible for a health supplement to fund his tube feeding supplies under sections 67.01 or 69 of the Regulation. The panel acknowledges that the appellant requires “jejunal enteral feeds” for his medical condition and does not have sufficient resources to cover the cost. The panel is sympathetic, but unfortunately the ministry has no discretion under the legislation to provide the supplement on the evidence that was presented. The panel confirms the reconsideration decision as a reasonable application of the legislation. The appellant is not successful with his appeal.

Schedule – Relevant Legislation

EAPWDR

Division 4 — Health Supplements

Definitions

61.01 In this Division:

"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);

"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;

Access to medical services only

61.1 (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 disability assistance, and

(ii) a person with disabilities on that date,

- (b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance, and
- (c) in the case that the family unit referred to in paragraph (a) (i) was a family unit identified in subsection (3) (g), the agreement referred to in subsection (3) (g) is in force...

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of disability assistance, ceases to be eligible for disability assistance

- (a) on a date the family unit includes a person aged 65 or older,
- (b) as a result of a person in the family unit receiving an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act*,
- (c) as a result of a person in the family unit receiving a payment under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,
- (d) as a result of a person in the family unit receiving employment income,
- (e) as a result of a person in the family unit receiving a pension or other payment under the *Canada Pension Plan* (Canada),

General health supplements

62 The minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for

- (a) a family unit in receipt of disability assistance...or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person

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 (2) (b) [*people in 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).

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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

Margaret Koren

Date (Year/Month/Day)

2023/05/26

Print Name

Anil Aggarwal

Signature of Member

Date (Year/Month/Day)

2023/05/26

Print Name

Peter Mennie

Signature of Member

Date (Year/Month/Day)

2023/05/26