

Part C – Decision Under Appeal

The issue under appeal is the Ministry of Social Development and Poverty Reduction (“the Ministry”) Reconsideration Decision of February 22, 2024. The Ministry held the Appellant was not eligible for the Nutritional Supplement – Short Term (“the Supplement”) under Employment and Assistance for Persons with Disabilities Regulation (“the Regulation”) section 67.001.

Specifically, the Ministry was not satisfied that a medical practitioner, nurse practitioner or dietician confirmed that the Appellant has an acute short-term need for caloric supplementation to regular dietary intake to prevent critical weight loss while recovering from:

- surgery
- a severe injury
- serious disease
- the side effects of medical treatment

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (“the Regulation”) section 67.001.

See **Appendix**

Part E – Summary of Facts

The hearing took place on April 2, 2024, as a written hearing.

Background:

- The Appellant has been designated as a Person with Disabilities (PWD) and is in receipt of disability assistance.
- On January 3, 2024, the Appellant submitted a request for the Supplement. Included was a letter from his doctor dated January 2, 2024, stating the Appellant required 1 -2 liquid nutritional supplements daily as liquid meal replacements, ongoing, to maintain a healthy weight.
- On January 8, 2024, the Ministry denied the request for the Supplement.
- On February 13, 2024, the Appellant submitted a Request for Reconsideration to the Ministry. The Appellant stated:

In June 2023 I was in the hospital for alcoholism and malnourished. I was put into a coma for approximately 1 month. It was almost faithful (sic). This was and still is a very scary time in my life. Now with my weight dropping again it is getting troublesome. I'm writing this letter due to lack of knowledge. I'm requesting the ministry for help. My alcohol abuse has passed, coming up to two years without a drink. I'm using the \$45 to its limits. I'm working with pro health on getting through them at \$60 a box requiring 3 cases. My weight loss is now being monitored by my doctor's office. All I'm really hoping is the ministry could help me in this matter. I've been asking around and the \$45 the ministry allows varies in amounts from \$45 and larger. I'm only asking for help and the large amount of paperwork is confusing with acts and tribunal reports. I'm really needing help with this along with patience.

- At reconsideration the Appellant also submitted a second letter dated February 13, 2024 from the Appellant's doctor as follows:

To Whom it May Concern

(The Appellant) requires nutritional supplements to maintain a healthy weight. Since his food supplement allowance was discontinued, he has been eating as able but is unable to afford meal replacements. He has lost 13lbs which is significant to

his health. The patient requires meal supplement/replacement ([])or equivalent) likely 1-2 per day to maintain his weight.

- It should be noted that the doctor's letter included in the Request for Reconsideration dated February 13, 2024, indicates the Appellant has lost 13 lbs while the doctor's letter included in the Appellant's original application dated January 2, 2024, says the Appellant has lost 12 lbs.
- On February 22, 2024, the Ministry completed its review of the Request for Reconsideration and denied the Appellant's request for the Supplement.

Documents provided after reconsideration

Appellant Submission

On February 28, 2024, the Appellant submitted his Notice of Appeal noting that he disagrees with the Reconsideration Decision because:

- the Ministry supported him before;
- he is asking for partial help;
- he provided a note from his doctor talking about his weight loss; and,
- he is seeking \$60 extra.

Ministry Submission

On March 19, 2024 the Ministry stated it would rely on its Reconsideration Decision..

Admissibility of New Evidence

The Panel is authorized under Section 22(4) of the *Employment and Assistance Act*, to consider evidence in addition to the information the Ministry had at the time of the Reconsideration Decision if it is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. In this case no new evidence was submitted by either party.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's Reconsideration Decision which denied the Appellant the Supplement was reasonably supported by the evidence or was a reasonable application of the applicable provision in the circumstances of the Appellant.

Appellant Position

The Appellant states that he requires the Supplement to address his weight loss. This has been requested by his doctor. He notes that he has had partial assistance before and that he requires patience and support as it is challenging to understand requirements in the legislation and to appeal to the Tribunal.

Ministry Position

Although the Appellant has experienced weight loss, no information was provided by a medical or nurse practitioner or dietician confirming that the Appellant has an acute short term need for caloric supplementation to a regular dietary intake nor that he requires this supplement to prevent critical weight loss while recovering from one of the conditions specified in the Regulation s. 67.001. That is, the Appellant needs the Supplement to prevent critical weight loss while recovering from:

- Surgery;
- Severe injury;
- Serious disease; or,
- Side effects of medical treatments

Panel Reasons

The Panel must consider whether the Ministry was reasonable in determining that the Appellant did not meet the legislated criteria to receive the Supplement. To provide this supplement, the Ministry must receive confirmation in writing from a medical practitioner, nurse practitioner or dietitian that the Appellant requires the Supplement to prevent critical weight loss while recovering from:

- Surgery;
- Severe injury;
- Serious disease; or,
- Side effects of medical treatments

Acute short-term need

Section 67.001 of the Regulation says the Minister may provide a nutritional supplement for up to three months to a family unit in receipt of disability assistance. The information provided by the Appellant's doctor does not address the length of time for which the Appellant requires the caloric supplementation. The Panel finds there is insufficient information to determine whether the need is acute and short term.

Caloric supplementation is needed to prevent weight loss while recovering

Under this element, a medical practitioner, nurse practitioner or dietician must confirm that the applicant's need for extra calories in addition to a regular diet is to *prevent weight loss while recovering* from one of the following:

- Surgery;
- A severe injury;
- A serious disease; or,
- Side effects of medical treatment.

The Panel notes the Appellant's doctor states his 13 lbs weight loss is significant to his health. Unfortunately, no information is provided regarding the cause of the weight loss or showing that the Appellant is recovering from one of the above conditions.

The Panel notes that the Appellant has requested patience and guidance as he attempts to navigate the legislative and tribunal requirements to get approval for this supplement. The Panel also notes the efforts by the Appellant to seek alternative assistance through Pro Health.

Conclusion

Regarding whether the Ministry's Reconsideration Decision to deny the Appellant the Supplement was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the Appellant, the Panel makes the following findings:

- The Ministry was reasonable in finding that no information from a medical practitioner, nurse practitioner or dietician was provided establishing the Appellant has an acute short-term need for caloric supplementation to an ordinary diet.
- The Ministry was reasonable in finding that insufficient evidence was provided to confirm the Supplement was needed to prevent critical weight loss while recovering from surgery, severe injury, serious disease, or side effects of medical treatments.

Accordingly, the Reconsideration Decision is confirmed regarding the Supplement. The Appellant is not successful in the appeal.

Appendix

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

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.

APPEAL NUMBER 2024 - 0081

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

Corrie Campbell

Signature of Chair

Date (Year/Month/Day)

2024/04/10

Print Name

Glenn Prior

Signature of Member

Date (Year/Month/Day)

2024/04/10

Print Name

Kenneth Smith

Signature of Member

Date (Year/Month/Day)

2024/04/10