

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The ministry completed a Reconsideration Decision on May 27, 2009, which denied the appellant his request for Ensure Plus. This request was denied because based on the information provided; the ministry found that this request did not meet the criteria requirements of the legislation. The physician did not confirm in writing that it was required to prevent critical weight loss while recovering from surgery, a severe injury, a serious disease, or side effects of medical treatment.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance Regulation (EAR), Section 74

Employment and Assistance Regulation (EAR), Schedule C, Section 2 (3)

PART E – SUMMARY OF FACTS

Please set out the facts as determined by the panel, based on the evidence at the hearing. Please note that subsection 22(4) of the Employment and Assistance Act states that, in a hearing referred to in subsection (3), a panel may admit as evidence only:

- (a) the information and records that were before the minister when the decision was being made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

The evidence before the ministry was that on January 9, 2009, a medical practitioner signed a request to provide the appellant with the product Ensure Plus as a short-term nutritional supplement. The expected duration was 6 – 8 weeks, as the appellant could not chew food due to major dental work. The ministry approved this request on January 16, 2009. The appellant was sent a letter advising him who the supplier would be and a phone number to order the product. The expiry date was March 31, 2009.

On April 3, 2009, the same medical practitioner again signed a request for the same product with the expected duration being 3 months. The specific diagnosis was fatigue and loss of appetite due to medication, and it was stated that the appellant was unable to eat solids. It was indicated that the requested supplement was in addition to normal dietary intake. The ministry determined that this request does not confirm that the appellant 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. As well the appellant is currently in receipt of a \$40 per month dietary allowance, in addition to monthly support to purchase food items that meet his specific preferences for nutrition.

There was an undated letter included with the Reconsideration Decision signed by an R.N. from the local Health Unit. It states that the appellant has four chronic medical conditions, which affect appetite and contribute to weight loss. He is taking many medications that also affect his appetite and one of the best ways to prevent further illness and fatigue is through vigorous provision of nutrients and calories.

The appellant informed the panel that he had lost approximately 10 pounds after having his teeth extracted, as he was unable to chew food properly. He stated that he does not eat all the different food groups now because he just doesn't feel like it. He won't eat vegetables and he isn't able to eat as much meat as he would like because of the cost and his limited income. The appellant liked the Ensure Plus as it provided better nutrition and it was easy to use. When asked by the panel if he now has teeth and is able to chew most foods, the appellant stated that he could but likes the convenience of the Ensure Plus. He was also asked if he has seen the physician lately who requested the second application for the Ensure Plus. He stated that he had, but there had not been any further requests for the supplement. When asked about the \$40 supplement he receives, he explained that he has been getting the supplement for about 18 months and sometimes uses part of it to buy Ensure Plus.

The appellant brought a letter with him that he had just received that morning from the same Public Health Nurse who had the undated letter in the Reconsideration Decision package. It was addressed to the Ministry of Housing and Social Development and again verified the appellant's health conditions. The panel asked the ministry if there was any objection to the panel accepting the letter. The ministry did not object and the panel had copies made with a copy for the ministry. The panel found that because the letter was from the same nurse who wrote the undated letter in the Reconsideration Decision package and was similar in content, it was acceptable as information under subsection 22 (4) of the Employment and Assistance Act. The panel did find however, that it was an overview of the appellant's various health conditions and did not pertain directly to the condition or application under review. EAR Section 24 does refer to a medical practitioner or to a nurse practitioner, not a public health nurse.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in this case is the reasonableness of the ministry's decision to deny the appellant his request for the short-term nutritional supplement Ensure Plus. The ministry approved the original request made on January 9, 2009 for this product on January 16, with an expiry date of March 31, 2009. The ministry received a second request for the same product on April 3, 2009 signed by the same physician. This request indicated that the diagnosis was 'fatigue and loss of appetite due to medications'.

The legislation provides for nutritional supplements as set out in the Employment and Assistance Regulation, Section 74, the minister may provide a nutritional supplement for a period of 3 calendar months for a recipient of income assistance or a dependent child of a recipient of income assistance if

- (a) the recipient or dependent child is not receiving a supplement under section 2 (3) of Schedule C, and
- (b) a medical practitioner or nurse practitioner confirms in writing that the recipient or dependent child 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

The ministry argues that the appellant was provided with short-term nutritional supplementation in the form of Ensure Plus from January 16, 2009 to March 31, 2009. This was at the request of the appellant's physician, and met the legislative criteria. The second request from the same physician was for a different diagnosis and did not meet the required criteria. The intention of a short-term nutritional supplement is to assist a person in recovery for a short-term need. It is not intended for periods beyond three months. The appellant currently receives \$40 per month dietary allowance, in addition to monthly support, to purchase food items that meet his specific preferences for nutrition.

The appellant has not provided any new information regarding the request made by his physician for the prescribed supplement. He has informed the panel that because of his various medical conditions and the number of medications that he takes, his appetite is not good. He has stated that he isn't always able to buy the types of food that he enjoys eating and that he likes the convenience of taking Ensure Plus. Although he has seen his physician since the requested supplement was denied, there has not been any further request made by his physician for supplementation.

The panel finds that based on the evidence from the physician, the request for Ensure Plus does not meet the criteria required by the legislation to confirm that the appellant is recovering from one of the situations described in EAR, Section 74 (b) or that he required the supplement to prevent critical weight loss. A short-term nutritional supplement is to assist a person recovering from a short-term need and not intended as a long-term supplement of calories. The panel therefore confirms the Reconsideration Decision as per Section 24 (2) (a) of the Employment and Assistance Act as it is reasonably supported by the evidence.

ATTACH EXTRA PAGES IF NECESSARY