

**PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

The following is a summary of the Ministry Reconsideration Decision of February 3, 2010, which denied the appellant her request for a nutritional supplement – Ensure.

The information provided by the medical practitioner or nurse practitioner does not confirm in writing that you have an acute, short term need for extra 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.

**PART D – RELEVANT LEGISLATION**

(State the relevant Legislation considered)

Employment and Assistance Regulation, Section 74

**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 December 14, 2009 a physician signed a prescription note for the appellant. It states 'Ensure (High Protein) requires 12 per day. Needs 6 month supply. Required for Crohn's Disease'. There is a note dated the following day, December 15, 2009 from a pharmacy, with no name or address on it stating '2 week supply. Ensure @ 12 bottles per day = 168 bottles. \$11.99/case of 6 - \$335.72'. The panel was informed by the ministry that this Pharmacy Note was brought into the ministry office by the appellant. The ministry contacted the Pharmacy for a cost of supplying Ensure to the appellant for a life threatening Emergency Need Supplement and it was the ministry who added the numbers and the cost to the note.

The appellant provided evidence by stating that she has applied for the Persons with Disabilities designation and is waiting for a decision through that process. In the meantime, she has received a two-week supply of ensure from the ministry through an emergency need request. She also has been able to get donations of Ensure from friends who used it and had a few bottles that were no longer required. The appellant explained that the Request for Reconsideration Section 2 note was not a note to her physician as mentioned by the ministry. It was in fact additional information from the physician to the ministry. Because there was some concern about the physician's handwriting being illegible and the timeframe of getting the information for the Request for Reconsideration, the Medical Office Assistant printed out the note, signed it and also had the physician sign it. The note states "Additional information from Physician. The appellant has Crohn's Disease. She needs Ensure on a daily basis to retain a healthy weight. She has already lost weight while not having the Ensure. Her body does not break down the food she eats; which means she does not get the calories required to maintain her weight. It is extremely important for her to get at least 12 Ensure per day. Please supply her with a 6-month supply ASAP. She will end up in the hospital if she does not receive the Ensure".

ATTACH EXTRA PAGES IF NECESSARY

## PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in this hearing is the reasonableness of the ministry's decision to deny the appellant her request for Ensure, a nutritional supplement product.

The legislation provides for Nutritional Supplements under EAR, Section 74

### Nutritional supplement

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 (B.C. Reg. 317/2008)
  - (i) surgery
  - (ii) a severe injury
  - (iii) a serious disease, or
  - (iv) side effects of medical treatment

The ministry confirms that the appellant is not in receipt of a supplement under Section 2 (3) of Schedule C. The ministry argues however that the information provided by the medical practitioner does not confirm that the appellant has an acute short-term need of caloric supplementation to a regular dietary intake to prevent weight loss while recovering from surgery, a severe injury, a serious disease, or side effects of medical treatment. The ministry has determined that the request has not met Section 74 (b) of the legislation.

The appellant argues that her body only has limited ability to absorb enough nutrition from her regular diet and she requires the supplement because of a serious disease. Her medical practitioner has confirmed that she has an acute need for short-term caloric supplementation to a regular dietary intake to prevent critical weight loss while recovering from a serious disease, Crohn's Disease.

The panel finds that the medical information provided is not as clear as it could be, or should be. This is due partly to the fact that it was provided quickly in order for the appellant to meet a timeframe of the reconsideration process. The ministry refers to a hand written notation that appears under Section 2 of the Request for Reconsideration form. The ministry found this to read 'is signed by MOA to the Physician'. It was, in fact, written and signed by the Medical Office Assistant (MOA) for the physician who also signed it. Serious disease is underlined. The panel finds that the physician has indicated on two different occasions that the appellant has a serious disease and has indicated that she needs Ensure for six months. Six months does not meet the legislative criteria of three months for the supplement, however six months is a short-term period of time and the physician has not indicated that it will be needed on a permanent basis.

The Physician indicates that the appellant requires the supplement to maintain her weight, as her body does not absorb the calories needed with a normal diet. It is indicated and underlined that the supplement is extremely important and required ASAP. The ministry has in fact informed the panel, that a short-term supply of Ensure was provided to the appellant for two weeks as an Emergency Need Supplement.

The panel finds that the request for the nutritional supplement does meet the requirements of EAR, Section 74 (b) and therefore rescinds the Ministry Reconsideration Decision under the EAA, Section 24 (1) (a) and 24 (2) (b) as it is not reasonably supported by the evidence.