



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (“Ministry”) reconsideration decision dated March 8, 2013, which held that the Appellant was not eligible to receive monthly nutritional supplements (MNS) of additional nutritional items. The Ministry determined that the Appellant did not meet the eligibility criteria of two or more symptoms; nor, was the Ministry satisfied the Appellant required the additional nutritional item as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of a chronic, progressive deterioration of health, or to prevent imminent danger to the Appellant’s life as set out in Section 67 (1.1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 67 (1).
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C Section 7.

PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision included:

1. The Appellant is a person with disabilities who receives disability assistance.
2. The Appellant's Application for Monthly Nutritional Supplement (MNS) dated November 19, 2012 providing the following information about the Appellant:
 - The Appellant is receiving treatment from a medical practitioner for a chronic, progressive deterioration of health on account of a severe medical condition(s) which are: Cardiac Artery Disease (Severe 5x Stents), Renal Cancer Right Kidney Nephrectomy, Borderline Diabetes Mellitus and Deteriorating Disc Disease.
 - As a direct result of the Appellant's chronic deterioration of health, the Appellant displays one of seven of the symptoms listed in the application; specifically that the Appellant has significant deterioration of a vital organ (indicated as his left kidney).
 - The specifics of the Appellant's height and weight for the purpose of determining the Appellants Body Mass Index (BMI).
 - That the Appellant requires a high protein, low calorie diet for renal, diabetes mellitus and heart disease.
 - The appellant does not have a medical condition that results in an inability to absorb sufficient calories to satisfy [his] daily requirements through a regular dietary intake.
 - That the nutritional items required will help the appellant maintain low cholesterol and be cardio protective.
 - That the nutritional items will help preserve the appellant's remaining kidney's function.
3. Letter from the Ministry to the Appellant dated January 14, 2013.
4. Ministry MNS Decision Summary dated January 28, 2013.
5. Appellant's Request for Reconsideration dated February 18, 2013.
6. Letter from the Appellant to the Ministry dated February 18, 2013, stating:

[quote]

"you people may not be aware of the serious implications this is causing me. I have had cardo vascular disease with heart attacks in 93, 94, 96 and 99. Each followed up with angioplasty. I now have five stents and are unable to have anymore angioplasty. Also lost a kidney to cancer in 2008. In 2010 I found out I have asteo arthristic and degenerative disc disease. The are all very troubling to me both health wise and stress. Between my CPP and my PWD there isn't enough left to be able to eat proper food to sustain my health. It is my feeling and others including a dietition, and my kidney specialist that I will be in deep trouble if I do not eat properly. To have a healthy heart and kidney it is imparitive to eat properly, exercise, lose wieght etc. I am waiting for info from [a dietician specializing in health care and chronic disease. Social Service Development needs to be looked into in a big way regarding health care. The millions that have been spent on brochures for healthy eating go right out the window when the social system is so outdated that a person like myself can't even get the proper help required to live a healthy life if that is all I have left." [end quote]
7. Letter from the registered dietician, dated February 20, 2013, in support of the Appellant's request for a MNS.
8. List of medications the Appellant is required to take on a daily basis.

The Appellant's submission:

The Appellant did not attend the hearing, nor did his representative attend on his behalf. Upon

confirming that the Appellant was notified, the hearing proceeded pursuant to Section 86(b) of the EAR. The Panel relied on the above noted information as the Appellant's submission at the hearing.

The Ministry's submission included the following:

- The Appellant is currently a recipient of disability assistance.
- The Appellant is currently receiving \$40 per month for vitamin and mineral supplements.
- On November 19, 2012, the Appellant submitted an application, which was filled out by his doctor, for a monthly nutritional supplement for additional nutritional items.

PART F – Reasons for Panel Decision

The issue to be decided at appeal is whether the Ministry reasonably concluded that the appellant was not eligible for a monthly nutritional supplement based on his not meeting all of the eligibility criteria outlined in Section 67 (1.1) of the EAPWDR.

The legislation provides:

EAPWDR:

Nutritional supplement

67 (1) The minister may provide a nutritional supplement in accordance with section 7 [*monthly nutritional supplement*] of Schedule C to or for a person with disabilities in a family unit who receives disability assistance under

(a) section 2 [*monthly support allowance*], 4 [*monthly shelter allowance*], 6 [*people receiving room and board*] or 9 [*people in emergency shelters and transition houses*] of Schedule A, or

(b) section 8 [*people receiving special care*] of Schedule A, if the special care facility is an alcohol or drug treatment centre,

if the minister is satisfied that

(c) based on the information contained in the form required under subsection (1.1), the requirements set out in subsection (1.1) (a) to (d) are met in respect of the person with disabilities,

(d) the person is not receiving a supplement under section 2 (3) [*general health supplement*] of Schedule C,

(e) the person is not receiving a supplement under subsection (3) or section 66 [*diet supplements*],

(f) the person complies with any requirement of the minister under subsection (2), and

(g) the person's family unit does not have any resources available to pay the cost of or to obtain the items for which the supplement may be provided.

(1.1) In order for a person with disabilities to receive a nutritional supplement under this section, the minister must receive a request, in the form specified by the minister, completed by a medical practitioner or nurse practitioner, in which the practitioner has

confirmed all of the following:

(a) the person with disabilities to whom the request relates is being treated by the practitioner for a chronic, progressive deterioration of health on account of a severe medical condition;

(b) as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the following symptoms:

- (i) malnutrition;
- (ii) underweight status;
- (iii) significant weight loss;
- (iv) significant muscle mass loss;
- (v) significant neurological degeneration;
- (vi) significant deterioration of a vital organ;
- (vii) moderate to severe immune suppression;

(c) for the purpose of alleviating a symptom referred to in paragraph (b), the person requires one or more of the items set out in section 7 of Schedule C and specified in the request;

(d) failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life.

- (2) In order to determine or confirm the need or continuing need of a person for whom a supplement is provided under subsection (1), the minister may at any time require that the person obtain an opinion from a medical practitioner or nurse practitioner other than the practitioner referred to in subsection (1) (c).
- (3) The minister may provide a nutritional supplement for a period of 3 calendar months to or for a family unit if the supplement is provided to or for a recipient of disability assistance or a dependent child of a recipient of disability assistance if
- (a) the recipient or dependent child is not receiving a supplement under subsection (1) of this section or 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.

[am. B.C. Regs. 317/2008, s. 8; 68/2010, ss. 1 and 2.]

Schedule C

Health Supplements

Monthly nutritional supplement

7 The amount of a nutritional supplement that may be provided under section 67 [*nutritional supplement*] of this regulation is the sum of the amounts for those of the following items specified as required in the request under section 67 (1) (c):

- (a) for additional nutritional items that are part of a caloric supplementation to a regular dietary intake, up to \$165 each month;
- (b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]
- (c) for vitamins and minerals, up to \$40 each month.

The Appellant's argument on Notice of Appeal:

- He needs [his] nutritional supplement to survive.

The Ministry argues:

- The Ministry is satisfied the Appellant is being treated for chronic, progressive deterioration of his health on account of a severe medical condition as set out in Section 67(1.1) of the EAPWD Regulation.
- A MNS is only available to an applicant receiving treatment for a chronic, progressive deterioration of health on account of a severe medical condition and, who, as a direct result of the chronic, progressive, deterioration of health displays two or more of the symptoms outlined in Section 67(1.1) (b) of the EAPWDR. The Appellant's doctor indicated the Appellant displayed one of the seven symptoms listed in the legislative criteria; that being, he has significant deterioration of a vital organ, his left kidney – microalbuminemia; however, the Appellant has not met the legislative criterion for having two or more symptoms as a result of the chronic, progressive deterioration of his health, he has met only one.
- The Appellant is already receiving \$40 per month for vitamin and mineral supplements.
- The Ministry states the Appellant's information has not established that the Appellant requires a MNS to supplement his regular dietary intake in order to alleviate the symptoms of his chronic, progressive deterioration to his health; and, that by doing so; it would

prevent imminent danger to his life as set out in the EAPWDR Section 67 (1.1).

The Panel finds the Ministry's decision to deny the appellant eligibility for a monthly nutritional supplement is a reasonable application of the applicable enactment in the circumstances of the Appellant for the following reasons:

The EAPWDR lists certain criteria that must be met in order for an individual to be deemed eligible for a monthly nutritional supplement. These criteria are:

- That the Appellant be in receipt of disability assistance benefits per Section 67(1).
- That the nutritional items requested must be prescribed by a medical practitioner per Section 67(1.1)(a).
- That the Appellant must have a severe medical condition.
- That the Appellant, as a result of his severe medical condition, is being treated for a chronic, progressive, deterioration of health.
- That the Appellant is displaying two or more symptoms, as listed in Section 67(1.1) (b); and,
- That the Appellant requires a MNS for additional nutritional items as caloric supplementation to his regular dietary intake in order to alleviate the symptoms of his chronic, progressive deterioration to his health; and, that by doing so; it would prevent imminent danger to his life as set out in the EAPWDR Section 67 (1.1)(c) (d).

Information provided indicates:

- The Appellant is in receipt of disability assistance.
- The Appellant does have a severe medical condition in that he has Cardiac Artery Disease ("severe 5 stents"), Renal Cancer right kidney Nephrectomy, Borderline Diabetes Mellitus and Deteriorating Disc Disease.
- That the Appellant, as a result of his severe medical condition, is being treated for a chronic, progressive, deterioration of health.
- The Appellant's physician has not established the Appellant is displaying two or more symptoms, as required in Section 67(1.1) (b); the physician indicates the Appellant is only displaying one symptom.
- The Appellant requires a low calorie diet, not caloric supplementation to a regular dietary intake, therefore, Section (1.1) (2) and Section 7 of Schedule C have not been met.
- That it has not been established that, by not providing the requested MNS, the Appellant would be in imminent, life threatening danger per Section 67(1.1)(d).

The Panel finds that the Appellant has not met all of the criteria required to be eligible for a MNS because he has not displayed two or more symptoms under Section 67(1.1)(b), nor has his doctor established the Appellant requires additional nutritional supplements as part of a caloric supplementation to his regular dietary intake in order to both alleviate the symptoms of his chronic progressive deterioration of health or to prevent imminent danger to his life as set out in 67(1.1) of the EAPWDR.

Therefore, the Panel finds the Ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.