

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (“the ministry”) dated 02 May 2013 that denied the appellant's request for a monthly nutritional supplement (MNS) under section 67(1.1) of the Employment and Assistance for Persons with Disabilities Regulation. Specifically, the ministry determined that the information provided did not establish that a medical practitioner has confirmed that as a direct result of a chronic, progressive deterioration of health, the appellant is displaying at least two of the symptoms set out in paragraph (b) of section 67(1.1); that he requires vitamin/mineral supplementation for the purpose of alleviating a symptom referred to in paragraph (b); or that failure to obtain the items requested would result in imminent danger to his life.

The ministry also found that the information provided with the appellant's request and his Request for Reconsideration indicates that nutritional items were not requested.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 67.

PART E – Summary of Facts

The information before the ministry at reconsideration consisted of the following:

1. From the ministries files: the appellant is a recipient of disability assistance.
2. An Application for Monthly Nutritional Supplement dated 03 March 2013, completed by a medical practitioner. The medical practitioner lists the appellant's severe medical conditions as legally blind and osteoarthritis, indicating that these conditions are being treated as a chronic, progressive deterioration of health. The medical practitioner indicates that the appellant displays none of the symptoms listed in the application form. The medical practitioner does not provide the appellant's height and weight. The medical practitioner indicates that the appellant requires vitamin A and vitamin D. In describing how the items requested will alleviate the specific symptoms listed, he states: "slow down [illegible]." The medical practitioner leaves blank the section where he is asked to describe how the requested items will prevent imminent danger to the appellant's life. With respect to nutritional items, the medical practitioner lists [unreadable, possibly "calcium"] and vitamin D, and answers "No" to whether the appellant has a medical condition that results in the ability to absorb sufficient calories, answers "No" to describing how the nutritional items will alleviate one or more of the listed symptoms, and answers ""None" in describing how the nutritional items will prevent imminent danger to the appellant's life. Under additional comments the medical practitioner writes: "legally blind" and "needs vit A & vit D."
3. A letter attached to the above MNS Application from an ophthalmologist dated 12 April 2000. He states that on examination his conclusion is: retinitis pigmentosa, right hyperphoria. He writes: "... as you know, this chronic retinal disease has no specific treatment though in some instances high doses of vitamins A have been tried."
4. The appellant's Request for Reconsideration dated 18 April 2013. Under Reasons, the appellant writes that he needs Vitamin A and mineral support for: immune system, chronic fatigue syndrome and eye disease – retinitis pigmentosa. For lung disease – needs also herbal support and acupuncture. For depression/anxiety – needs vitamin and mineral support with acupuncture. For obesity – needs support for weight loss.

In his Notice of Appeal, dated 13 May 2013, the appellant notes that his doctor did specify vitamin needs. He states he would like to add doctor's notes.

After reconsideration but before the hearing, the appellant submitted a note from his medical practitioner dated 30 May 2013. The medical practitioner indicated that the appellant has high cholesterol, asthma, anxiety, chronic fatigue syndrome, HTN, [unreadable], retinitis and sleep apnea. He states that the appellant needs "high vitamin/high protein/low fat/low salt/low sugar diet to prevent infection, lose weight & get more energy, & prolonged life."

At the hearing, the appellant stated that he had quite a few health problems, many stemming from malnutrition when he was a child. He has found that vitamins and minerals help, as well as herbs and acupuncture. He has taken herbs for his lung problems and these help with his immune system and general health as well. Vitamins are necessary to slow down the deterioration of what is left of his eyesight. He also has liver problems as well as depression and anxiety. He stated that the

supplements all cost money, and to do any good they have to be taken on an ongoing basis. He stated that he has been told that he is a candidate for heart attack or stroke.

The ministry representative noted that the appellant is in receipt of a diet supplement for a high protein diet and that if he was successful in his MNS application, he would have to forgo the diet supplement as section 67(1)(e) of the EAPWDR states that a person cannot be in receipt of both a diet supplement and MNS.

With the exception noted below, the panel finds the additional information provided in the medical practitioner's note and by the appellant in his testimony at the hearing is in support of information that was before the ministry on reconsideration. The medical conditions listed by the medical practitioner confirm those mentioned in the appellant's Request for Reconsideration. The panel therefore admits this new information as evidence pursuant to section 22(4) of the Employment and Assistance Act. The panel does not consider the medical practitioner's recommendations regarding the appellant's diet as evidence, but rather as a new request for nutritional items. The panel will consider this request in Part F (Reasons for Panel Decision) below.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably denied the appellant's request for a monthly nutritional supplement (MNS) for vitamins and minerals because it had not been established that all the required criteria set out in the EAPWDR, section 67 (1.1) and Schedule C section 7, had been met. Specifically, the issue is whether the following ministry determinations are reasonably supported by the evidence or are a reasonable application of the legislation in the circumstances of the appellant:

- the information provided did not establish that a medical practitioner has confirmed that as a direct result of a chronic, progressive deterioration of health, the appellant is displaying two or more of the symptoms set out in paragraph (b) of section 67(1.1);
- that he requires vitamin/mineral supplementation for the purpose of alleviating a symptom referred to in paragraph (b); or
- that failure to obtain the items requested would result in imminent danger to his life.

The ministry also found that the information provided with the appellant's request and his Request for Reconsideration indicates that nutritional items were not requested.

The relevant legislation is from the EAPWDR:

Nutritional supplement

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

if the minister is satisfied that

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

67 (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).

And from Schedule C of the EAPWDR:

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.

MNS – vitamins and minerals

The position of the ministry is that the information provided regarding the appellant's request for an MNS for vitamins and minerals does not meet the criteria set out in paragraphs (b), (c) and (d) of section 67 (1.1) of the EAPWDR. In particular, the appellant's medical practitioner has not reported that, as a result of his chronic, progressive deterioration of health, he displays any of the symptoms listed in paragraph (b). It follows that the requested vitamin and minerals cannot be said to alleviate the prescribed symptoms. Further, the medical practitioner has not provided any information as to how the failure to provide the requested vitamins and minerals, required to alleviate the symptoms, will result in imminent danger to the appellant's life.

The appellant's position is that he requires the vitamins and minerals listed in the application to address some of his many health issues as described in his medical practitioner's note, and as part of a dietary regime to maintain his immune system and general health. At the hearing, he acknowledged that his medical practitioner may have been too busy to complete the form adequately.

The panel notes that the criteria set out in section 67(1.1) are "consecutive" or "sequential." First, a medical practitioner must confirm that the applicant is being treated for a chronic, progressive deterioration of health. If this is established, as it has been in the appellant's application, a medical practitioner must then confirm that as a result of this chronic, progressive deterioration of health, the applicant is displaying two or more of the symptoms listed in paragraph (b). Only if two or more such symptoms are identified can the remaining criteria be applied. In the present appeal, the medical practitioner has given a professional opinion that the appellant displays none of the symptoms. Accordingly, the panel finds that the ministry reasonably determined that the appellant was not

eligible for an MNS for vitamins and minerals.

MNS – nutritional items

The position of the ministry is that the items requested under nutritional items in the MNS Application, namely [unreadable, possibly "calcium"] and vitamin D, are not nutritional items as the terms commonly understood, and that given the "No" and "None" responses to the questions asked in that part of the Application, nutritional items were considered not to have been requested.

The position of the appellant is that his medical practitioner has submitted for this appeal a description of the nutritional items he requires, in the form of a high vitamin/high protein/low salt/low sugar diet.

The panel does not consider the medical practitioner's itemization of [unreadable, possibly "calcium"] and vitamin D, to constitute a request for nutritional items and finds that the ministry reasonably determined that nutritional items were considered not to have been requested in the Application. As to the diet recommended by the medical practitioner submitted for this appeal, the panel notes that this request was not before the ministry at reconsideration. As the jurisdiction of the panel is limited to the outcome of a reconsideration decision, the panel cannot make a determination regarding this post-reconsideration request.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for the requested MNS was reasonably supported by the evidence. The panel therefore confirms the ministry's decision.