

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision of April 9, 2013 wherein the ministry decided that the appellant was not eligible for a monthly nutritional supplement (MNS) – either for nutritional items for caloric supplementation or for vitamins and minerals. The basis for the decision was that the appellant did not satisfy the eligibility criteria set out in section 67(1.1) and Schedule C, section 7 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). In particular, the ministry found that the appellant's physician had not confirmed that the appellant satisfied the following legislative criteria:

- That the appellant required caloric supplementation to a regular dietary intake as specified by EAPWDR Schedule C section 7(a);
- That the appellant required the MNS for the purpose of alleviating one or more of the prescribed symptoms as required by EAPWDR section 67(1.1)(c); and
- That failure to obtain the MNS will result in imminent danger to the appellant's life as required by EAPWDR section 67(1.1)(d).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)
Section 67 [*nutritional supplement*]
Schedule C, section 7 [*monthly nutritional supplement*]

PART E – Summary of Facts

As a preliminary procedural matter, the panel chair advised the parties that he had previously attended elementary school with the appellant and the appellant's older brothers. The parties were invited to make submissions with respect to actual or perceived bias. Both parties indicated that they were satisfied to have the appeal proceed with the panel as constituted.

As an additional preliminary matter, the appellant was granted a brief adjournment to allow his representative time to review the appeal record. The appellant is in the process of moving and had already packed his copy of the appeal record.

The evidence before the ministry at the time of the reconsideration decision included the following:

- An Application for Monthly Nutritional Supplement form signed, and then subsequently amended, by the appellant's physician (the application form).
- The ministry's original decision denying the MNS, dated February 14, 2013.
- A Request for Reconsideration form signed by the appellant on February 26, 2013.

The appellant is a person with disabilities in receipt of disability assistance.

In the application form, the physician diagnosed the appellant with type II diabetes and pancreatic insufficiency leading to digestive issues. The physician also indicated that the appellant displays two of the symptoms prescribed in EAPWDR s. 67(1.1)(b) – significant neurological degeneration (cerebral palsy), and significant deterioration of a vital organ (pancreas). The appellant's height and weight result in a Body Mass Index consistent with morbid obesity. With respect to vitamin or mineral supplementation required, the physician specified Creon 10 "to aid in digestion." With respect to nutritional items required, the physician specified "low carbohydrate diet – diabetic diet extra protein", and did not respond to the question as to whether the appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. The physician did not respond to questions in the application form as to how either nutritional items or vitamins/minerals would alleviate the identified symptoms, or would prevent imminent danger to the appellant's life.

In his Notice of Appeal the appellant noted that he "has a number of serious health issues that necessitate a loss of weight to circumvent a heart attack & to prevent the onset of use of diabetic insulin."

At the appeal hearing the appellant, through his representative, said that his main health issues are weight, diabetes, and his pancreas condition which negatively affects the way his body processes food. The representative submitted that the appellant does not require caloric supplementation as he is overweight, but that he is in need of additional vitamins and minerals. The representative has known the appellant for a year and a half and helps him shop for groceries. She said that, like many persons on restricted incomes, the appellant has little money left for nutritious food after paying for rent, utilities and other necessities. She said that in order to stretch his food budget the appellant buys the cheapest brands and eats more pasta than fresh fruits, vegetables or protein. The appellant added that when he has meat with a meal it is "the size of a deck of cards", and that he can't afford

vegetables. The representative said that she is working with the appellant to get his weight down through nutrition and exercise. The appellant stressed that if he doesn't get his weight down he is at risk of a heart attack and increased insulin use.

The panel has assessed the information provided by the appellant in his Notice of Appeal and orally at the appeal hearing as providing additional detail with respect to the risks and effects of the medical conditions identified by his physician, and has accepted them as evidence in support of the information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which held that the appellant is not eligible for a MNS, is reasonably supported by the evidence or whether it is a reasonable application of the applicable enactment in the circumstances of the appellant.

The applicable legislation is as follows:

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, ...

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,

...

(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.

...

Schedule C

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 position is that his health is imminently at risk due to both the possibility of increased insulin use and heart attack. He is not able to buy the nutritious food he needs for vitamins, minerals, and weight reduction unless he obtains the MNS.

The ministry's position is that it is bound by the legislation. The ministry argued that the appellant's physician provided no information with respect to how the MNS would alleviate at least one of the prescribed symptoms identified by the physician, and that the physician had not confirmed that failure to obtain the MNS would result in imminent danger to the appellant's life.

The Panel's Decision

Section 7 of Schedule C of the EAPWDR provides for a monetary MNS for two types of items: up to \$165 "for additional nutritional items that are part of a caloric supplementation to a regular dietary intake" and up to \$40 "for vitamins and minerals". The panel understands the appellant's position with respect to his wanting additional funds for buying more fruit, vegetables and protein. However, to be eligible for the MNS there are a number of legislative criteria that must be satisfied. There are three criteria that the ministry found were not satisfied.

Firstly, with respect to the need for caloric supplementation, the evidence is that the appellant's Body Mass Index is consistent with morbid obesity. The physician has not indicated that the appellant is displaying the symptoms of malnutrition, underweight status, significant weight loss, or significant muscle mass loss. The appellant, through his representative, has acknowledged that he is overweight and that caloric supplementation is not required. Rather, he confirms that he needs to lose weight to reduce his health risk. The appellant argued that he currently has to stretch his budget by purchasing pasta and cheaper brands rather than fruit or vegetables or protein. However, this does not deal with the lack of evidence to show that the appellant requires additional calories. The panel concludes that the ministry reasonably found that the appellant does not require caloric supplementation.

Secondly, with respect to alleviating one or more of the identified symptoms as required by EAPWDR s. 67(1.1)(c), the physician has not confirmed that nutritional items or vitamins/minerals will alleviate the identified symptoms of the appellant's cerebral palsy or deterioration of the appellant's pancreas. The physician recommended Creon 10 as a vitamin/mineral supplement to "aid... digestion". There is a link between the appellant's pancreatic insufficiency and poor digestion, but the physician has not

indicated that the Creon 10 will alleviate the symptom of deterioration of the pancreas, only that it will "aid in digestion". Similarly, no evidence has been presented to link improved digestion with alleviation of the appellant's cerebral palsy. The panel concludes that the ministry reasonably found that it was not satisfied that the physician had confirmed that the MNS would alleviate at least one of the two identified symptoms.

Thirdly, the physician has not confirmed that failure to obtain nutritional items or vitamins/minerals will result in imminent danger to the appellant's life, as required by s. 67(1.1)(d). The term "imminent" indicates a danger that is more likely than not to happen very soon. This degree of immediacy is not evidenced in the appellant's circumstances. The appellant has indicated that his overweight condition puts him at risk of heart attack and increased insulin use, but these assertions are not confirmed by the physician who did not provide any evidence or opinion as to how the MNS items will prevent imminent danger to the appellant's life. The panel concludes that the ministry reasonably found that this legislative criterion was not satisfied.

Conclusion

Based on the foregoing analysis, the panel finds that the ministry's reconsideration decision was a reasonable application of the legislation in the circumstances of the appellant, and accordingly confirms that decision.