



PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (ministry) dated March 11, 2014 in which the ministry denied the appellant's request for a Monthly Nutritional Supplement (MNS), specifically nutritional items pursuant to section 67(1.1), and section 7 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) for the following reasons:

1. With regard to section 67(1.1) of the EAPWDR, the ministry found that a medical practitioner had not confirmed the following:

- That the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition as required under paragraph (a) of section 67(1.1);
- That the appellant displays at least two of the symptoms of malnutrition, underweight status, significant weight loss, significant muscle mass loss, significant neurological degeneration, significant deterioration of a vital organ, or moderate to severe immune suppression as a direct result of a chronic, progressive deterioration of health pursuant to paragraph (b) of section 67(1.1);
- That the appellant requires the nutritional items under paragraph (c) of section 67(1.1) to alleviate a symptom specified in paragraph (b); and
- That failure to obtain the nutritional items would result in imminent danger to the appellant's life as required under paragraph (d) of section 67(1.1).

2. With regard to section 7 of Schedule C of the EAPWDR, the ministry was not satisfied that the appellant required additional nutritional items as part of a caloric supplementation to a regular dietary intake.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation, section 67 and section 7 of Schedule C

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration consisted of:

1) The appellant's Request for Reconsideration dated February 24, 2014 in which he refers to an attached letter from his physician (report from Dr. T.).

2) Report from Dr. T. dated February 21, 2014, stating the following:

- Primary diagnoses are Schizophrenia and Hypercholesterolemia.
- The appellant must remain on long-term antipsychotic medication.
- Weight gain, elevated blood lipid levels, and elevated blood sugars are a well-known complication of antipsychotic medication and some patients develop Diabetes.
- The appellant has experienced significant and serious disturbance in his metabolism but has not yet developed Diabetes, though his blood sugar levels are close to abnormal and he may have Pre-diabetes.
- His low density lipids are elevated to a level which puts him at cardiac risk.
- His metabolic abnormality has caused an increased waist circumference, an additional predictor of cardiac risk.
- The metabolic impact has also affected his liver with elevated enzymes indicating early stages of hepatic inflammation which can progress to cirrhosis over time.
- The appellant is relatively stable in the community while on his medications and his psychiatric team indicates that he needs to stay on his medication regime.
- He has been seen by a dietitian and his diet is quite unhealthy. However, he is quite limited in being able to purchase appropriate foods with lower fat, carbohydrates and sugar, as well as more fruits/ vegetables and healthy protein.
- Vitamins and minerals have not been requested.
- A healthy diet is not solely an increase in caloric intake, and increased calories cause deterioration in health and increased mortality.
- The appellant is overweight, contrary to the best interests of his health, and increased calories would aggravate his diabetic tendency.
- Increased lipids are an established contributor to progressive deterioration in the appellant's health and are an unfortunate side effect of the medication that allows the appellant to function.
- Key issues are glucose and lipid metabolism and not solely a deficiency in muscle mass.
- The appellant's nutritional needs require additional financial support to pay for an appropriate diet.
- The appellant is in urgent need of appropriate nutritional management in addition to medical management and he is keen to address his risk factors, and has been compliant with his medication and follow-up.
- The appellant has two or more symptoms (weight gain, increased waist circumference, elevated lipids with adverse cardiac profile, elevated liver enzymes with hepatic inflammation and borderline fasting glucose) that are a direct result of a chronic progressive deterioration of health (chronic Schizophrenia).

3) Two sets of medical test results for the appellant both dated May 27, 2013:

- In the first set, risk ratios for Cholesterol and Triglycerides are underlined; and the notation "hepatic inflammation" is written beside both "ALT" and "AST".
- In the second set, Glucose Fasting is circled with the notation "Borderline"; and "Creatinine, Gamma GT, ALT, and AST", are all circled with the notation "increased" next to each of these test items.
- In the second set of test results, Cholesterol is also circled, and Triglycerides is circled with the notation "(asterisk) Increased".

4) Application for Monthly Nutritional Supplement dated November 6, 2013 that includes a report from a medical practitioner (report from Dr. W.) stating the following:

a) Under the heading Diagnosis (severe medical conditions), Dr. W. wrote:

- Schizophrenia: "long-standing, controlled by second generation antipsychotics"
- Cardiac Arrhythmia: "experiencing chest pain, blackouts (?SVT's)"
- Hyper cholesterolemia: "increased lipids due to poor diet; weight gain due to antipsychotics"
- Liver function abnormalities: "due to increased lipids and antipsychotics."

b) In response to the question of whether the appellant is being treated for a chronic, progressive deterioration of health due to his severe medical conditions, Dr. W. wrote:

- "Patient's health is one of multiple conditions, with very gradual decline. Increased liver function tests, Increased lipids, Increased weight. Deconditioned because of increased weight (secondary to antipsychotics), metabolic derangements probably contributing to adverse cardiac symptoms."

c) In response to the question of whether the appellant displays two or more of the legislated symptoms under section 67 (1.1) of the EAPWDR as a direct result of a chronic, progressive deterioration of health, Dr. W. indicated:

- Malnutrition: "Overweight due to antipsychotic prescription and inability to avoid high fat and carbohydrate foods. Has minimal resources: unable to afford high nutrition foods".
- Significant muscle mass loss: "Obese (illegible) due to decreased muscle tone".

d) The appellant's height is "72", weight is "263 lbs." and "BMI 35.7".

e) Under the heading Vitamin or Mineral Supplementation, Dr. W. wrote "depleted vitamins and minerals are not the issue".

f) Under the heading Nutritional Items, in specifying additional nutritional items required, Dr. W. stated:

- “Dietitian assessment (June 15/13) attached. Requires increased resources to afford better nutritional choices. Cheaper fat/carb based foods are main source of nutrition. Further education will be relevant when able to afford better foods”.

g) In response to the question of whether the appellant has a medical condition which results in the inability to absorb sufficient calories, Dr. W. wrote “No”.

h) When asked to describe how the nutritional items will alleviate one or more of the legislated symptoms (section 67(1.1)(b)) and provide caloric supplementation to a regular diet, Dr. W. stated:

- MNS will allow the appellant to purchase lower fat and complex carbohydrate foods “instead of cheaper or free higher fat/sugar/carb foods”, and the appellant’s dietitian will counsel him regarding food choices and help to lower his cholesterol and weight.

i) When asked to describe how the nutritional items will prevent imminent danger to the appellant’s life, Dr. W. stated that the appellant has an increased risk of cardiac disease with increased weight, worsening liver function, and arrhythmia, and he is on medications to manage arrhythmias, maintain blood pressure, and lower cholesterol.

j) Under Additional comments, Dr. W. added:

- The appellant saw a dietitian on June 5, 2013, and is taking the antipsychotic medication Olanzapine which has stabilized his Schizophrenia but worsened his increased appetite and weight gain.
- The appellant has limited resources for food choices “meaning an increased reliance on cheaper carbohydrates and fat containing foods, less able to afford fruits, vegetables, complex carbs, etc.”
- The appellant has malnutrition in terms of increased lipids and increased liver function tests, but is not underweight.
- Cardiac symptoms are likely made worse and risk increases with increased lipids.
- “(Illegible) renal function shows slightly elevated count, therefore possible decreased renal function.”
- Liver and kidney disease increase cardiac risk and may contribute to fatigue, blackouts, and chest pain.

Appellant’s Additional Document

At the hearing, the appellant’s advocate introduced a document titled Medical Progress Notes, completed by the appellant’s dietitian, and dated April 3, 2013 and June 5, 2013 (dietitian’s report). In this report the dietitian stated the following:

- The appellant would like to lose weight and eat healthier considering his cholesterol levels.
- He is taking the medication Olanzapine which is likely affecting his appetite, food choices, and weight.

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- His diet is high fat, carbohydrates, and sugar; he has limited funds and choices due to his low income; and he eats too much junk food or fast food for meals.
 - Cheaper options for the appellant to eat healthier were discussed; and
 - The appellant reported blackouts and fatigue on exertion, to be discussed with his doctor.

The ministry had no objections to admitting the dietitian's report as evidence, and the panel finds that it relates to the appellant's medical issues and diet. The panel therefore admits the dietitian's report under section 22(4)(b) of the *Employment and Assistance Act (EAA)* as testimony in support of information that was before the ministry at the time the decision being appealed was made.

The ministry relied on the reconsideration decision at the hearing and did not submit any further information. In his Notice of Appeal dated March 18, 2014 the appellant stated that he has produced "all possible documents as per the ministry's legislation and that the criteria (have) been met."

At the hearing, the appellant stated that his illnesses are partly due to the side effects of his medication and he suffers from a lot of fatigue even after walking for ten minutes. He has also had blackouts for quite some time. His doctor has instructed him to eat better, but his weight has almost doubled since taking his medication.

The appellant's advocate added that there has been a steady decline in the appellant's health over the two years that she has been working with him. He belongs to a community organization that provides low cost meals, and though the organization does its best to offer a balanced diet, it has limited resources and donations, and is only able to offer white bread and peanut butter at times. Also, when the appellant does not make it to these meals he goes without eating. The advocate added that the appellant's regular physician, Dr. T. conducted "total blood panel tests", and is still monitoring the appellant for liver function and pre-diabetes, and the appellant's health is still declining.

The panel finds that the appellant's statement in his Notice of Appeal, along with his and his advocate's oral statements at the hearing relate to the information he provided regarding his symptoms and diet, and the seriousness and duration of his condition. The panel therefore admits these statements under section 22(4)(b) of the *EAA* as testimony in support of information that was before the ministry at the time the decision being appealed was made.

The panel makes the following findings of fact:

1. The appellant is a recipient of disability assistance in accordance with section 67(1) of the EAPWDR and his application for the MNS was in the form specified by the ministry and it was completed by a medical practitioner pursuant to section 67(1.1).
2. A medical practitioner is treating the appellant for a chronic, progressive deterioration of health that includes weight gain, cardiac symptoms, and elevated lipid and blood sugar levels; and the treatment consists of medications and a referral to a dietitian.
3. A medical practitioner has confirmed that the appellant has a chronic, progressive deterioration of health due to Schizophrenia, cardiac arrhythmia, and hypercholesterolemia.
4. A medical practitioner has prescribed nutritional items to alleviate medical symptoms that include weight gain, increased waist circumference, elevated lipids, cholesterol, and liver enzymes, and borderline fasting blood glucose.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's determination that the appellant did not qualify for the MNS pursuant to sections 67(1.1) and section 7 of Schedule C of the EAPWDR was reasonably supported by the evidence, or was a reasonable interpretation of the legislation in the circumstances of the appellant.

The relevant sections of the legislation are as follows:

Employment and Assistance for Persons with Disabilities Regulation

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

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.

Appellant's position

The appellant's position is that his physician has indicated that he requires the MNS for his medical conditions due to symptoms of weight gain and elevated blood test levels, and his physician has shown that he meets the MNS criteria. He does not know "how close to death" the ministry would need him to be in order to approve the MNS; his condition is very serious due to his blackouts and fatigue, and he "cannot explain in scientific terms" how gradual his decline in health is.

His advocate argued that the appellant does not only need the MNS, he requires ongoing support from his dietitian to become familiar with what he should eat, and he also requires assistance with cooking. The appellant is experiencing a steady decline in health, and they cannot adjust his medications because he needs to keep taking them to keep his Schizophrenia stabilized, and he needs the MNS because treating his Schizophrenia is causing other health problems. The advocate's position is that the appellant's regular physician, Dr. T. provided a thorough report that shows the appellant does meet the criteria in the EAPWDR.

Ministry's position

1. EAPWDR section 67(1.1)(a), Treatment for a chronic progressive deterioration of health as a direct result of a severe medical condition

The ministry argued that the appellant's physician has not confirmed that the appellant is being treated for a chronic progressive deterioration of health due to his medical conditions because his health issues are due to multiple conditions with a very gradual decline and his increased weight is secondary to antipsychotic medication.



2. EAPWDR section 67(1.1)(b), Symptoms as a direct result of a chronic, progressive deterioration of health

The ministry's position is that although the report from Dr. W. indicates two of the legislated symptoms: malnutrition and significant muscle mass loss, the appellant's malnutrition is due to his inability to avoid high fat and carbohydrate foods and afford high nutrition foods, rather than a direct result of chronic, progressive deterioration of health. Further, regarding the loss of muscle mass, the appellant's physician did not provide information on how much muscle mass was lost and over what period of time; therefore, the ministry did not have information that confirmed that the loss of muscle mass was significant.

Regarding the other listed symptoms, the ministry's position is that there is no evidence from a medical practitioner confirming underweight status, significant weight loss, significant neurological degeneration, significant deterioration of a vital organ, or moderate to severe immune suppression. The ministry noted that the appellant's BMI is in the obesity range.

3. EAPWDR section 67(1.1)(c), Nutritional items required to alleviate a symptom described in paragraph (b)

The ministry's position is that this criterion was not met because the reports from Dr. W. and Dr. T. indicated that the appellant has a financial circumstance that limits his ability to obtain high nutrition foods, rather than a medical condition that requires the nutritional items to alleviate symptoms.

4. EAPWDR section 67(1.1)(d), Imminent danger to life due to failure to obtain requested nutritional items

The ministry's position is that Dr. W.'s report indicating that nutritional items will address the appellant's increased risk of cardiac disease does not establish that failure to obtain the nutritional items would result in imminent danger to the appellant's life.

5. EAPWDR, section 7 of Schedule B, Nutritional items are part of a caloric supplementation to a regular dietary intake

The ministry argued that the appellant did not need additional nutritional items as a caloric supplement to his regular diet because his BMI is in the obesity range, and a medical practitioner has not confirmed that he has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements.

Decision

In order for a recipient of disability assistance to be eligible for the MNS under section 67 of the EAPWDR, all of the criteria in section 67(1.1), along with the additional criteria in section 7 of Schedule C must be satisfied.



1. EAPWDR section 67(1.1)(a), Treatment for a chronic progressive deterioration of health as a direct result of a severe medical condition

The panel notes that the reports from Dr. W. and Dr. T. indicate that the appellant is being treated with medication and a referral to a dietitian for symptoms and conditions related to the effects of the antipsychotic medication that is needed to control his Schizophrenia. While the ministry argued that the appellant's symptoms including obesity and related heart and liver abnormalities are a result of his medication and unhealthy diet, the reports from Dr. W. and Dr. T. indicate that the medication is needed long term to stabilize Schizophrenia and the appellant is at risk for developing diabetes and liver disease and he already has elevated blood sugar levels. Further, Dr. W. stated that the appellant's health is on a gradual decline.

With the antipsychotic medication being a necessary component of managing Schizophrenia and the medical test results indicating abnormal findings that put the appellant at risk for developing further serious conditions, the panel finds that the ministry was unreasonable in determining that the appellant is not experiencing a chronic, progressive deterioration of health as a direct result of a severe medical condition, his Schizophrenia. The panel therefore finds that the criteria in section 67(1.1) paragraph (a) are met.

2. EAPWDR section 67(1.1)(b), Symptoms as a direct result of a chronic, progressive deterioration of health

Paragraph (b) lists seven symptoms in clauses (i) to (vii), and requires at least two of them to be displayed on account of a chronic, progressive deterioration of health. The panel notes that Dr. W.'s and Dr. T.'s reports and the dietitian's report do list a variety of symptoms, but most of the symptoms indicated in these reports are not among the ones listed in paragraph (b).

Regarding the first listed symptom, (i) malnutrition, the panel finds that the ministry was not reasonable in determining that the appellant did not display this symptom. Dr. W.'s report indicates that the appellant has malnutrition in terms of increased lipids and liver function abnormalities and these are related to the effects of his antipsychotic medication (e.g., weight gain) which is a necessary component of managing Schizophrenia.

However, with regard to the other six symptoms, the panel finds that the ministry was reasonable in determining that these were not displayed because the evidence from Dr. W. and Dr. T. was that the appellant is overweight rather than (ii) underweight (status) or (iii) experiencing significant weight loss; and neither the doctors' reports, nor the dietitian's report include any mention of (v) significant neurological degeneration, (vi) significant deterioration of a vital organ, or (vii) moderate to severe immune suppression.

With regard to the symptom in clause (iv) significant muscle mass loss, the panel finds that the ministry was reasonable in finding that while Dr. W.'s report indicated muscle mass loss, whether the loss was significant could not be determined as there was no information regarding the amount of muscle mass lost, or the time period over which it was lost.

Therefore, the panel finds that the ministry reasonably determined that two of the listed symptoms were not established.

3. EAPWDR section 67(1.1)(c), Nutritional items required to alleviate a symptom described in paragraph (b)

The panel finds that the ministry reasonably determined that this criterion was not met because the reports from Dr. W. and Dr. T. indicated that the appellant has a financial circumstance that limits his ability to obtain high nutrition foods, rather than a medical condition that requires the nutritional items to alleviate symptoms. The panel notes that the reports also did not specify how the symptoms listed in paragraph (b) would be alleviated.

4. EAPWDR section 67(1.1)(d), Imminent danger to life due to failure to obtain requested nutritional items

The panel finds that the ministry reasonably determined that there was no evidence of imminent danger to life if nutritional items were not obtained because Dr. W.'s report indicating that nutritional items will address the appellant's increased risk of cardiac disease does not speak to any consequences of not obtaining the items. Also, while Dr. T.'s report discusses serious conditions and symptoms, it does not explain how the appellant's life would be in imminent danger without the requested nutritional items. Further, Dr. W.'s report notes a very gradual decline in the appellant's health.

5. EAPWDR, section 7 of Schedule B, Nutritional items are part of a caloric supplementation to a regular dietary intake

The panel finds that the ministry reasonably determined that there was no evidence that additional nutritional items were required as part of a caloric supplementation to a regular dietary intake. The information in Dr. W.'s and Dr. T.'s reports and the dietitian's report indicated the appellant requires fewer calories overall due to his overweight status, comprised of calories from healthier foods to manage his cholesterol, cardiac, and liver symptoms. The ministry also reasonably found that there was no evidence the appellant has a medical condition that causes an inability to absorb sufficient calories.

Conclusion

The panel confirms the ministry's reconsideration decision as being reasonably supported by the evidence.