

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated December 10, 2014 in which the ministry denied the appellant's request for a monthly nutritional supplement (MNS) for vitamin/mineral supplements. In its decision, the ministry determined the appellant did not meet the qualifying criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 67(1.1). The ministry found the appellant's physician reported his condition resulted in only one symptom, there was insufficient evidence to establish that the requested MNS was required to alleviate a listed symptom, and it was not established that failure to obtain the requested items would result in imminent danger to his life.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 67(1.1)
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C,
section 7

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- An Application for Monthly Nutritional Supplement dated September 01, 2014 in the name of the appellant completed by his physician. The physician writes:
 1. The appellant's severe condition is a fatty liver.
 2. His treatments are Tecta, diet, exercise, and vitamin supplements.
 3. As a direct result of the fatty liver the appellant displays a single symptom of "Significant deterioration of the liver."
 4. Details of his height and weight
 5. The required supplements are daily multivitamin, vitamin D, and a calcium supplement.
 6. In response to the question of how the supplements will prevent imminent danger to the applicant's life the physician writes it will, "improve liver function."
- In his request for reconsideration dated November 28, 2014 the appellant writes,
 1. He believes the ministry's policies and rules are too strict and are discriminatory.
 2. Requests the ministry change its policy and rules because they contravene international law.
 3. The appellant included four newspaper articles about government and corporate salaries, provincial poverty, and government drug policy.

With his Notice of Appeal dated December 18, 2014 the appellant wrote he finds the EAPWDR discriminatory. He submitted new evidence including:

- An ultrasound imaging report dated August 11, 2014. The attending physician wrote the appellant's liver is "quite large" and shows moderately pronounced increased echogenicity due to significant fatty infiltration and that his spleen is "large."
- A letter dated January 5, 2015 written to the ministry from the appellant. He writes that the reconsideration decision that denied him his request was completed in either bad faith or improper review. The letter requests that the ministry conduct a reconsideration review considering his argument that being overweight can be a symptom and that the doctor has prescribed vitamins/supplements to prevent imminent danger to the appellant and therefore he did not feel it necessary to explain.
- An information pamphlet on the topic of Monthly Nutritional Supplements from the BC Coalition of Peoples with Disabilities.
- Two past decisions of the Employment And Assistance Appeal Tribunal.
- An undated letter written to the panel by the appellant. The letter summarizes the ministry's reconsideration decision and outlines the appellant's position. The letter includes information copied from a website about common symptoms of a fatty liver. The letter also contains the names of several past court cases under the heading "Impact of Improper Hearings."

At the hearing the appellant submitted new evidence, an amended version of the Application for Monthly Nutritional Supplement. The application included the same information as the one dated September 1, 2014 but added the following:

- Diagnoses the appellant with another severe medical condition, diabetes.
- Adds a second symptom, malnutrition, with the detail, "poor diet leads to fatty liver, weight gain."
- Notes that the symptom, liver deterioration, "fatty liver causes scarring, progressive damage to the liver."

- He writes that the vitamins/minerals will “prevent progression of liver damage and prevent liver failure.”
- To the question of how the requested items will prevent imminent danger to the appellant, the physician added, “prevent liver failure.”
- The application adds a new request for Nutritional items, diabetic diet, which was not contained in the initial application.

This letter was not admitted as evidence as per the Employment and Assistance Act section 22 (4). The panel found that the evidence contained in the amended version of the Application for Monthly Nutritional Supplement is not in support of evidence that was before the ministry at the time of the reconsideration nor does it corroborate information in the original application. The evidence includes significant changes to the appellant’s medical condition by introducing a newly diagnosed condition, diabetes, and a new symptom, malnutrition as well as a new request for a MNS of a diabetic diet. The Employment and Assistance Act section 22 (4) allows the panel only to admit as evidence oral or written testimony in support of the information and records that were before the minister when the decision being appealed was made. The panel finds that this new evidence does not meet the criteria noted above.

At the hearing the appellant told the panel his weight gain was caused by malnutrition, he has been diagnosed with diabetes, the physician has clarified his symptoms, and that he needs vitamins because food is not as nutritious as it once was.

At the hearing the ministry told the panel that it stands by its decision. The ministry added that the evidence provided by the appellant’s physician contained in the Application for Monthly Nutritional Supplement did not state that his condition resulted in two or more symptoms. The evidence did not support that failure to obtain the supplements would result in imminent danger to the appellant’s life

PART F – Reasons for Panel Decision

The decision under appeal is the reasonableness of the ministry's decision to deny the appellant's request for a Monthly Nutritional Supplement to purchase vitamin supplements. The ministry determined that the appellant's request did not meet the criteria set out in the applicable legislation. The ministry found that the appellant did not meet the criteria of having two or more symptoms, nor did he provide evidence demonstrating the requested MNS are required to alleviate a symptom or that failure to receive the supplement poses an imminent threat to his life.

The applicable legislation is the EAPWDR section 67 and the EAPWDR Schedule C section 7:

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).

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.

Arguments of the Parties

The argument of the appellant is that he requires a vitamin/mineral supplement to improve his liver function. He argues that his physician has prescribed them to alleviate the symptoms of his fatty liver and to prevent imminent danger to his health. The appellant argues that the legislation needs to be interpreted in favour of the appellant whenever the appellant's health is in danger and that the legislation is unfair in how it deals with people with disabilities.

The ministry argues that the appellant did not meet the qualifying criteria set out in EAPWDR section 67(1.1) and Schedule C section 7. The appellant's condition results in only one symptom whereas the legislation requires that it result in two or more. The evidence does not support the criteria that the requested MNS is required to alleviate a listed symptom. The ministry argues that the evidence provided does not support the appellant's position that failure to obtain the supplements would result in imminent danger to the appellant's life.

Panel Decision and Reasons

The applicant applied for a vitamin/mineral supplement (multivitamin, calcium, and magnesium supplement). To qualify for these an applicant must meet the criteria set out in EAPWDR 67 (1) and (1.1). The ministry has found that the appellant has met the criteria of EAPWDR 67(1) as well as EAPWDR 67(1.1)(a) so the panel will not address these. The panel will review the reasonableness of the ministry's decision to find the appellant failed to meet the three criteria EAPWDR 67(1.1)(b), (c), and (d).

The EAPWDR 67(1.1)(b) requires that as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the following symptoms: malnutrition, underweight status, significant weight loss, significant muscle mass loss, significant neurological degeneration, significant deterioration of a vital organ, moderate to severe immune suppression. In the appellant's Application for Monthly Nutritional Supplement the physician has indicated that the appellant displays one symptom, significant deterioration of the liver. The panel finds that the ministry was reasonable to find that the appellant has not met the criteria of displaying two or more symptoms as a result of his chronic condition.

The EAPWDR 67(1.1)(c) requires 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. The physician wrote "n/a" on the application in response to the question; describe how these items will alleviate the specific symptoms identified. With no information provided it is not possible to determine if the requested vitamin/mineral supplement will meet this criteria. The panel finds that the ministry was reasonable to find that the criterion of EAPWDR 67(1.1)(c) has not been met.

The EAPWDR 67(1.1)(d) requires that failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life. In response to the question, describe how this item (vitamin/mineral supplement) will prevent imminent danger to the applicant's life, the physician responded, that it will improve liver function. The physician does not include information on the potential outcome of his liver condition or if his liver is deteriorating. Without this information the ministry could not reasonably determine if the appellant is under the threat of imminent danger to his

life. The panel finds the ministry was reasonable to determine the appellant had not established that failure to obtain the vitamins/minerals would result in imminent danger to his life.

The panel finds that the ministry's decision was reasonably supported by the evidence and therefore confirms the ministry's decision.