

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated December 15, 2015, which denied the Appellant's request for Monthly Nutritional Supplement (MNS) items of vitamin/mineral supplements and nutritional items. The Ministry found that the Appellant's application did not establish that a practitioner confirmed that as a direct result of a chronic, progressive deterioration of health, the Appellant displays two or more of the listed symptoms and the Appellant requires vitamin/mineral supplements to alleviate a symptom set out in s.67(1.1)(b) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) or that failure to obtain the supplements would result in imminent danger to his life, as required under s.67(1.1)(d). In addition, the Ministry found that the information provided did not establish that the Appellant requires nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating a symptom referred to in s.67(1.1)(b) or that failure to obtain the items requested would result in imminent danger to the Appellant's life.

PART D – Relevant Legislation

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

PART E – Summary of Facts

Information before the minister at reconsideration included:

- A letter from a physician dated May 12, 2011.
- One page of a two-page Prevention Clinic report dated January 11, 2012
- One page of a two-page Medical Imaging Report dated March 22, 2013.
- First page of a letter from a physician dated February 19, 2015.
- A medical report dated September 23, 2015, with diagnoses of papillary urothelial carcinoma and fragments of blood clot.
- An Operative Report from a hospital dated September 23, 2015, referring to cystoscopy, evacuation of clot, bladder tumor resection and transurethral resection of prostate.
- A Discharge Summary from a hospital dated September 23, 2015.
- The Appellant's Application for Monthly Nutritional Supplement signed October 19, 2015, stating a diagnosis of bladder carcinoma and a note that the Appellant underwent bladder tumor resection on September 21, 2015. In Section 3, which asks if the applicant displays two or more of a list of symptoms, there is a notation "Lost 16 lb" beside the symptom "Significant weight loss". In Section 4 the Appellant's height is reported to be 185cm and his weight to be 100kg. In Section 5, Vitamin or Mineral Supplementation, the physician wrote "multivitamins" in the space provided to "Specify the vitamin or mineral supplement(s) required and the duration of need"; in the space provided to "Describe how this item will alleviate the specific symptoms identified", the physician wrote "boost immune system". The section "Describe how this item or items will prevent imminent danger to the applicant's life" is blank. In Section 6, "Does this applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake? If yes, please describe." The physician wrote "poor appetite". The rest of the form, including the question "Describe how the nutritional items required will alleviate one of more of the symptoms specified in Question 3 and provide caloric supplementation to the regular diet" and "Describe how the nutritional items requested will prevent imminent danger to the applicant's life" is marked "N/A", or not applicable to the Appellant's situation.
- The Ministry's Monthly Nutritional Supplement Decision Summary dated October 22, 2015 with added handwritten notes.
- The Appellant's Request for Reconsideration signed November 15, 2015.

At the hearing, the Appellant submitted:

1. A photograph of an apartment building fire.
2. A newspaper clipping dated April 27, 2012, reporting that the Appellant is homeless and that he suffered smoke inhalation.
3. A newspaper clipping dated April 27, 2012, related to the fire in the Appellant's apartment building.
4. A certificate awarded to the Appellant dated April 25, 2012, related to his actions in the apartment fire.
5. A newspaper clipping dated April 25, 2012, reporting the Appellant's actions during the fire.
6. A brochure, "Financial Information for Cancer Patients", undated.
7. A medical report dated December 30, 2015, listing severe unresolved cough, recent diagnosis of prostate cancer and weight loss of 16 pounds.
8. A notice of appointment with a surgeon dated September 23, 2015, which the Appellant stated he was unable to attend.
9. A list of specific vitamins and supplements and prices, undated, which the Appellant stated was the list of supplements recommended by his physician.

The Ministry objected to the admission of document nos. 1 to 6 inclusive and no. 8 listed above due to relevance. The Ministry did not object to the admission of no. 7 and offered no opinion with respect to no. 9. The Panel considered documents 1 to 6 as argument that is part of the Appellant's submission to the Panel. The Panel admitted nos. 7 and 9 pursuant to s.22(4) of the Employment and Assistance Act, as they are in support of the information and records that were before the minister when the decision under appeal was

made. The medical report confirms medical information previously provided and the list of recommended supplements provides details of the Appellant's request for MNS.

The Appellant stated that he provided the references to a fire in his previous residence to show that his medical conditions include recent lung problems due to the possible inhalation of carcinogenic material from the fire in 2012, which was not mentioned by his physician. The Appellant stated that he had a serious work-related injury and was in receipt of Worker's Compensation (WCB) benefits until they were terminated, then he applied for disability assistance which considerably reduced his income.

In response to questions from the Panel, the Appellant stated that his physician suggested he take the supplements, as detailed in the list provided, daily. The Appellant's advocate opened a suitcase filled with various bottles and containers of medications and supplements and stated that the definition of "supplements" is too narrow because some of these items from the Appellant's country of origin have helped him. With reference to the spaces left blank on the application form, the Appellant stated that he does not know why the physician did that, except that he did not take sufficient time completing the form. The Appellant stated that he has at least two of the symptoms listed on the form, including significant muscle mass loss, but he does not know why the physician did not include them. The Appellant stated that he lost 16 lbs. and has had a small bowel obstruction and a serious gastric condition.

The Ministry stated that there are two components to the Monthly Nutritional Supplement (MNS): the nutritional or dietary need and vitamins and minerals, with a different allowance for each, and the questions asked on the application form reflect this. The Ministry stated that in the section asking for two or more symptoms, the Appellant's physician listed one; in the section relating to vitamins and minerals asking for specification of what is required and how the items will alleviate the specific symptoms identified, the physician did not specify, other than multivitamins, and did not describe how the items will prevent imminent danger to his health. In the section dealing with nutritional items, there is no entry in two of the sections, and "poor appetite" is the only entry in the space asking if the applicant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements. The Ministry described the process by which a decision is made with respect to applications for MNS, and concluded that there is insufficient information in the Appellant's application to determine that it meets the requirements for approval. The Ministry clarified that the expectation is that the necessary information is provided by the medical practitioner and the Ministry only rarely contacts the medical practitioner after receiving an application, when a point of clarification is required. The Ministry stated that the Appellant is currently in receipt of a high protein diet allowance of \$40 per month.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision which denied the Appellant's request for Monthly Nutritional Supplement (MNS) items of vitamin/mineral supplements and nutritional items. The Ministry found that the Appellant's application did not establish that a practitioner confirmed that, as a direct result of a chronic, progressive deterioration of health, the Appellant displays two or more of the listed symptoms and the Appellant requires vitamin/mineral supplements to alleviate a symptom set out in s.67(1.1)(b) of the EAPWDR or that failure to obtain the supplements would result in imminent danger to his life, as required under s.67(1.1)(d). In addition, the Ministry found that the information provided did not establish that the Appellant requires nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating a symptom referred to in s.67(1.1)(b) or that failure to obtain the items requested would result in imminent danger to the Appellant's life .

Legislation

EAPWDR

Definitions

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 family unit in receipt of disability assistance, if the supplement is provided to or for a person in the family unit who
- (a) is a person with disabilities, and
 - (b) is not described in section 8 (1) [*people receiving special care*] of Schedule A, unless the person is in an alcohol or drug treatment centre as described in section 8 (2) 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,
 - (d) the person is not receiving another nutrition-related supplement,
 - (e) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 7 (c).]
 - (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).

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 he meets the requirements for MNS and it is not his fault if his physician did not complete the application form correctly. The Appellant argued that his exposure to material from a fire caused health problems that his physician did not list, and that he takes several supplements on the recommendation of his physician.

The Ministry's position is that it is the Appellant's physician who must provide the information requested in the application for MNS, and the information provided was insufficient to determine that the Appellant meets the requirements of the legislation. The Ministry argued that the Appellant's application did not meet the legislative requirements for approval.

The Panel compared the Appellant's application for MNS with the legislative requirements for approval. Section 67(1.1) of the EAPWDR requires that a medical practitioner or nurse practitioner confirm that an applicant for a nutritional supplement display two or more of a list of symptoms; the Appellant's physician listed one. While the Appellant argued that he has also experienced significant muscle mass loss, this symptom has not been confirmed by a medical practitioner or nurse practitioner, as required by Section 67(1.1) (b) of the EAPWDR.

The practitioner identified "multivitamins" as being required by the Appellant and the Appellant provided a list of specific vitamins that he stated the physician recommended. However, the practitioner must also confirm

that failure to obtain the items requested will result in imminent danger to the applicant's life as required under s.67(1.1)(d), EAPWDR; the physician left that section blank. In addition, with respect to nutritional items that are part of a caloric supplementation to a regular dietary intake, the physician wrote "poor appetite" in the space provided to indicate whether the applicant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements and did not describe how the nutritional items will alleviate one or more of the identified symptoms and provide caloric supplementation as required under s.67(1.1)(c) and s.7 of Schedule C, EAPWDR. Further, asked to describe how the nutritional items will prevent imminent danger to the Appellant's life, the practitioner wrote that this was not applicable.

The Panel finds that the Ministry reasonably determined that the information provided in the Appellant's application for MNS as well as the additional evidence provided at the hearing did not establish that a practitioner confirmed that as a direct result of a chronic, progressive deterioration of health, the Appellant displays two or more of the listed symptoms and the Appellant requires nutritional or vitamin/mineral supplements to alleviate a symptom set out in s.67(1.1)(b) of the EAPWDR, that he requires caloric supplementation to a regular dietary intake or that failure to obtain the supplements would result in imminent danger to his life, as required under s.67(1.1).

The Panel therefore confirms the Ministry decision.