

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (Ministry)'s reconsideration decision dated January 11, 2016, finding the appellant is not eligible to receive a monthly nutritional supplement of vitamins/minerals supplements (MNS) because her application did not specify which vitamins/minerals she required so that the ministry could not determine that they are necessary to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to life in accordance with section 67 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

PART D – Relevant Legislation

The relevant legislation is section 67 of the EAPWDR and section 7 of Schedule C of the EAPWDR.

PART E – Summary of Facts

The appellant is in receipt of disability assistance as a sole recipient.

On October 2, 2015 the appellant submitted an Application for Monthly Nutritional Supplement to the ministry. In it her physician confirmed that the appellant was being treated for a chronic, progressive deterioration of health, due to a severe medical condition, namely stasis ulcers secondary to paraplegia and writes, “secondary sepsis and long hospitalization for this.”

The ministry denied the appellant’s application on November 17, 2015.

On December 23, 2015 the appellant submitted a reconsideration request which included a two-page letter from her physician dated December 16, 2015. In this letter the physician details the appellant’s “complex medical needs” in the context of her requiring MNS. These include Neurological deficits, morbid obesity, severe decubitus ulcers and muscle mass loss. Under Summary/Recommendation the physician writes that the appellant “requires monthly nutritional supplement funding to support medical needs related to bone density; muscle mass; weight loss; skin integrity. It is medically necessary for [the appellant] to be supported in her efforts toward reactivation and reclaiming her health – through provision of monthly nutritional supplement funding.”

In her reconsideration request the appellant wrote:

I am requesting for reconsideration of monthly nutritional supplement as a high diet of protein is required for multiple health issues, bone deterioration, muscle deterioration from being confined to a wheelchair for over 30 years with paraplegia and unable to weight bear at all. Along with this three years ago I had weight loss surgery resulting in major weight loss and it requires a high protein diet to continue with success and can't get enough nutritional value out of meals without majority being protein and supplements. So I asked that my request to be reconsidered as it is needed for multiple reasons. Also there is a letter from my doctor included. With age this is progressively worse and challenging.

In its reconsideration decision the ministry found that, based on the information provided by the appellant’s physician at reconsideration, the appellant met the legislative criteria for MNS under section 7(a) of Schedule C to the EAPWDR for caloric supplementation. It also determined, however, that the appellant did not qualify for the vitamin/mineral supplement under section 7(c) because the physician did not identify which vitamins/minerals required by the appellant and why they were needed to alleviate the symptoms of the appellant’s chronic, progressive deterioration of health and to prevent imminent danger to health.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision finding that the appellant is not eligible to receive a MNS vitamins/minerals supplements because her application did not specify which vitamins/minerals she required so that the ministry could not determine that they are necessary to alleviate the symptoms of her chronic, progressive deterioration of health and to prevent imminent danger to life in accordance with section 67 of the EAPWDR.

The relevant legislation is section 67 of the EAPWDR and section 7 of Schedule C of the 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 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).

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.

With the consent of both parties, the appeal proceeded as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

Included in the appellant's appeal submission is a two-page letter dated February 15, 2016 prepared by the appellant's physician which describes in detail the vitamin/mineral supplements required by the appellant in the context of her health issues including osteoporosis, obesity and bariatric surgery, and severe decubitus ulcers. The physician writes that the appellant, "has experienced severe chronic progressive deterioration of her health over the last several years. She requires additional funding to support her vitamin and mineral needs to prevent micronutrient deficiencies, further deterioration in her bone health, neurological deficits, blood health and skin integrity." This is followed by a detailed list of the vitamins/minerals and amounts required by the appellant.

The panel considered the admissibility of this letter pursuant to section 22(4) of the EAA. In order for the letter to be admissible it must be either information or records that were before the ministry at the time of the reconsideration decision, or testimony that is in support of information or records that were before the ministry at the time the reconsideration decision. In this case, the letter contains precisely the information that the ministry required but did not have at reconsideration. It is therefore not information or records that were before the ministry at the time of the reconsideration decision nor is it testimony in support of information or records that were before the ministry at the time of the reconsideration decision. Accordingly, the panel finds that this letter is not admissible.

The ministry's position is that it did not have enough information at the time of the reconsideration decision to determine that the appellant requires a MNS for vitamins/minerals because the physician did not identify which vitamins/minerals required by the appellant and why they were needed to alleviate the symptoms of the appellant's chronic, progressive deterioration of health and to prevent imminent danger to health.

In her appeal notice the appellant writes: "I did not realize and understand this was required with the reconsideration. All information regarding the vitamins and minerals unfortunately weren't submitted with reconsideration which are necessary to also aid in the healing and continued health."

The information contained in the physician's letter that was before the ministry at the time of the reconsideration decision contains no reference to the appellant's need for vitamin/mineral supplementation. Given this complete lack of information, it was reasonable for the ministry to determine that the appellant did not qualify for the MNS for vitamins/minerals in accordance with section 67 of the EAPWDR and section 7(c) of Schedule C to the EAPWDR..



Accordingly, the Panel confirms the ministry's reconsideration decision.