



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated April 7, 2016, wherein the Ministry determined that the Appellant is not eligible for the Monthly Nutritional Supplement (MNS) of nutritional items and vitamin/mineral supplements. The Ministry determined that the Appellant failed to meet the criteria set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 67(1.1)(b), (c), (d) and Schedule C, section 7(a); specifically, the Appellant did not satisfy the Ministry that he has a chronic, progressive deterioration of health and as a result displays two or more of the listed symptoms, that the requested nutritional items are required as part of a caloric supplementation to regular dietary intake or that failure to obtain the requested supplementation will result in imminent danger to his life.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 61.01; 67; Schedule C, section 7

PART E – Summary of Facts

Information before the minister at reconsideration included:

- The Appellant's Application for Monthly Nutritional Supplement dated October 13, 2015.
- The Ministry Monthly Nutritional Supplement Decision Summary dated January 18, 2016.
- The Ministry's letter to the Appellant advising him of their decision, dated January 18, 2016.
- A letter "To Whom it may Concern" from the Appellant's physician dated February 11, 2016 in which she states that the Appellant indicates he has been losing muscle mass, that she thinks he is and that it is likely due to insufficient funds to secure sufficient protein in his diet, that the Appellant suffers from neurological symptoms which her impression is that [they] relate to inadequate nutrition and his antipsychotic medication for bipolar disorder and schizophrenia.
- The Appellant's Request for Reconsideration dated March 2, 2016.

At the hearing the Appellant referred to the letter from his physician dated February 11, 2016 in which she listed loss of muscle mass and neurological symptoms. He stated that he is on antipsychotic medication. He stated that he is decompensated severely mentally and physically and needs vitamins and supplements for his mind.

The Ministry responded that the Appellant's request does not meet the legislative criteria and certain criteria are not mentioned by the Appellant's physician. She stated that there is insufficient information to approve the request. In response to questions from the Panel, the Ministry stated that the Appellant's underweight status is not established, there is only one of the required two symptoms listed by the physician and the request deals with a requirement for a high protein diet, not caloric supplementation.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision that the Appellant is not eligible for the Monthly Nutritional Supplement (MNS) of nutritional items and vitamin/mineral supplements. The Ministry determined that the Appellant failed to meet the criteria set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 67(1.1)(b), (c), (d) and Schedule C, section 7(a); specifically, the Appellant did not satisfy the Ministry that he has a chronic, progressive deterioration of health and as a result displays two or more of the listed symptoms, that the requested nutritional items are required as part of a caloric supplementation to regular dietary intake or that failure to obtain the requested supplementation will result in imminent danger to his life.

Legislation

EAPWDR

Definitions

61.01 In this Division:

"nutrition-related supplement" means any of the following supplements:

- (a) a supplement under section 66 [*diet supplement*];
- (b) a supplement under section 67 [*nutritional supplement – monthly*], other than a supplement for vitamins and minerals;
- (c) a supplement under section 67.001 [*nutritional supplement – short-term*];
- (d) a supplement under section 67.01 [*tube feed nutritional supplement*];
- (e) a supplement under section 2 (3) of Schedule C that is related to nutrition;

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 does display two or more symptoms as required and that he needs supplementation to deal with his physical and mental issues.

The Ministry position is that the Appellant's application does not adequately address the legislative requirements for approval of the MNS and vitamin/mineral supplementation. The Ministry argued that although the Appellant's physician wrote that he has lost 50 pounds since starting on a disability pension, the Appellant's body mass index (BMI) is in the normal range, that the physician did not confirm that the Appellant has a chronic, progressive deterioration of health as a direct result of severe medical conditions and that the Appellant's physician did not provide sufficient information to establish that due to a chronic, progressive deterioration of health resulting from a medical condition, the Appellant is displaying the symptom of malnutrition indicating a need for vitamin/mineral supplementation. In addition, the physician did not specify what vitamins or minerals the Appellant requires, and it cannot be confirmed that failure to obtain

vitamin/mineral supplementation will result in imminent danger to the Appellant's life.

The Panel notes that the original application for MNS and the subsequent letters from the Appellant's physician do not address a chronic, progressive deterioration of health but a diagnosis of bipolar disorder and schizophrenia. The Appellant's physician indicated on the application for MNS that he displays the symptom of underweight status and later in a letter confirmed that the Appellant also displays the symptom of neurological degeneration and that he is losing muscle mass, however the physician did not complete the application form in full and she did not confirm that the Appellant's symptoms are as a result of a chronic, progressive deterioration of health. The Ministry determined that the Appellant's BMI is within the normal range, which argues against a determination that he has significant weight loss, and found that this symptom is not supported by the evidence. The Ministry did accept the symptom of significant neurological degeneration but found that it cannot be linked to a chronic, progressive deterioration of health. The Panel finds that the Ministry reasonably determined that the Appellant's application for MNS did not meet the legislative requirement that two or more of the symptoms specified in s.67(1.1)(b), EAPWDR are as a result of a chronic, progressive deterioration of health.

With respect to nutritional items, the Appellant's physician did not specify the nutritional items the Appellant requires, did not describe how nutritional items would alleviate one or more of the symptoms listed and did not describe how the nutritional items would prevent imminent danger to the Appellant's life. In addition, the physician did not indicate a need for caloric supplementation as specified in s.7 of Schedule C, EAPWDR, but rather a need for additional protein. The Panel finds that the Ministry reasonably determined that the Appellant's application did not meet the legislative criteria for approval.

The Panel therefore confirms the Ministry decision.