



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (Ministry)'s reconsideration decision dated June 6, 2016, finding the appellant is not eligible to receive a monthly nutritional supplement (MNS) for caloric supplementation because her application did not meet the legislative requirements set out in section 67, and section 7 of Schedule "C" 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. She applied for the MNS and the ministry found that she met all the relevant legislative requirements to receive the \$40.00/month vitamins/minerals MNS under section 7(c) of the EAPWDR, but did not qualify for the \$165.00/month caloric supplementation under section 7(a) of the EAPWDR because there was no indication that she required “caloric supplementation”.

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

1. An Application for Monthly Nutritional Supplement dated either November 30, 2015 or December 1, 2015. Much of the form, completed by the appellant’s physician, is illegible, including the physician’s Medical Practitioner Number. However, what, with difficulty, can be made out is a diagnosis of anemia and irritable bowel syndrome, some indication of malnutrition, not underweight, no significant weight loss, significant muscle loss in “legs”, no significant neurological degeneration and no moderate to severe immune suppression, with significant deterioration of a vital organ left blank. The form indicates that the appellant is 5’4” and 260lbs. It specifies “polyvitamins [*sic*] & minerals” which will “help with anemia treatment”. Asked to describe how these items will prevent imminent danger to the applicant’s life, the physician authoritatively if unhelpfully states “it will”. Asked 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, the physician appears to write: “[Illegible] proper n diet”. Asked to describe how the prescribed nutritional items will help to alleviate one of the identified prescribed conditions and provide caloric supplementation to the regular diet, the physician appears to write: “high protein contents help treating anemia”. Under additional comments the physician writes, “[illegible]”.
2. A Laboratory Investigations Results dated April 26, 2016. It contains a technical description of the appellant’s blood analysis. Hand written on this report is the following: “This patient has insulin resistance and needs to be on specific nutritional supplements to improve this problem so she can lose weight while controlling her blood sugars. She should be on trace mineral concentrate – 50 drops/day, digestive enzymes, Glucerna – 1 bottle twice daily to prevent imminent danger to her health –Diabetes Mellitus–Chronic disease – morbid obesity.”
3. A note from a medical clinic dated April 21, 2016. This typed note states: “This is to certify that the above patient suffers from the following serious health problems. 1. Pernicious anemia which is a vitamin D deficiency which if she does not receive sufficient supplementation can result in Neurological symptoms 2. Irritable bowel syndrome: which causes significant abdominal pain and results in dietary inadequacies do [*sic*] to pain 3. Hypertension which requires medication and a low salt diet 4. Morbid Obesity which has resulted in significant arthritis in joints leading to significant pain and resultant inadequate exercise and resulted in significant fatigue and muscle loss. This has led to obstructive sleep apnea [The appellant] requires the following 1. Vitamins for b12 supplementation 2. Multivitamin for replacing the inadequate dietary supply 3. Low salt diet for hypertension 4. High protein diet intake for rebuilding her muscle loss 5. Calcium supplementation and Vitamin D to prevent Osteoporosis

[Redacted]

and help her arthritis All of the above will help maintain her health and prevent further deterioration of her health”.

4. A referral form with the date illegible, apparently prepared by the appellant’s physician listing: “1) Multi-vitamin 2) [illegible] 3) Vit D – 5,000 IU/day 4) PROBIOTICS (IN FRIDGE) LIVE. The form is not signed.
5. The appellant’s reconsideration submission dated May 20, 2016, which states: “(1) Immune suppression: Cellulitis treated at [a hospital] outpatient clinic with antibiotics [illegible]. Recurrence treated for 1 wk w antibiotics daily. (2) Neurological degenerations: Staggering, hand and feet numbness. Problems with balance. (3) Diabetes: is causing bladder infections and neurological degeneration (4) Malabsorption syndrome, pernicious anemia. B12 not absorbed [illegible] (5) LABRINGITIS [sic] INNER EAR INFECTION”

In its poorly prepared reconsideration decision the ministry found that the appellant’s medical practitioner states that the appellant requires a “high protein diet” but does not report that she has “a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake”. Since the information before the ministry does not establish that the appellant requires extra calories over those found in a regular diet, she does not qualify for the section 7(c) caloric supplementation supplement. The ministry also noted that the appellant is in receipt of a dietary allowance for a high protein diet.

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 caloric supplementation under section 7(c) of Schedule "C" of the EAPWD because her application did not indicate that she required extra calories and because she is receiving another nutrition-related supplement.

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*.

In her appeal submission the appellant writes: "Ministry did not take into consideration [my physician's] statement. Entire page + diabetes + high cholesterol printouts. I meet all criteria."

The ministry relied on its reconsideration decision.

In order to qualify for the MNS under section 7(a) of Schedule "C" of the EAPWDR the appellant must meet all requirements under section 67 of the EAPWDR and provide proof to the ministry, in accordance with section 7(a) of Schedule "C" to the EAPWDR that she requires "additional nutritional items that are part of a caloric supplementation to a regular dietary intake."

This latter requirement means that a medical practitioner must indicate that the appellant requires extra calories which she, for whatever medical reason, cannot obtain from a regular diet. Nowhere in any of the evidence before the ministry and this panel does a medical practitioner indicate that the appellant cannot get sufficient calories from a regular diet and so requires funding to purchase additional calories.

Furthermore, section 67 (1)(d) states that an applicant is not eligible for a MNS if they are receiving another nutrition-related supplement. The ministry states that the appellant is receiving funding for protein supplementation, but there was no evidence before the panel that this is the case. However, the panel notes that the appellant is receiving the MNS for vitamins/minerals. The need for this MNS is supported by the evidence and is being provided. Under section 67(1)(d), then, the appellant cannot receive both the vitamin/mineral supplement and the caloric supplementation supplement.

As there was no evidence before the ministry at the time of the reconsideration decision to support the appellant's application for a MNS under section 7(c) of Schedule "C" to the EAPWDR and the appellant is receiving another nutrition-related supplement, the ministry's decision that the appellant does not qualify for the caloric supplementation supplement was reasonably supported by the evidence and was a reasonable interpretation of the legislation.

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