

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated July 20, 2016, which held that the appellant is not eligible for a Monthly Nutritional Supplement (MNS) for vitamins/mineral supplements pursuant to section 67(1) (1.1) and Schedule C section 7 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). In particular, the ministry determined that the evidence provided by the appellant failed to establish that:

- she has a chronic, progressive deterioration of health resulting from a severe medical condition pursuant to section 67(1) (1.1) (a) of the EAPWDR;
- she displays two or more the symptoms of chronic progressive deterioration of health as listed in section 67(1) (1.1) b) of the EAPWDR, which would indicate a need for vitamin/mineral supplementation;
- pursuant to section 67(1) (1.1) (c) of the EAPWDR she requires one or more of the items set out in section 7 of Schedule C of the EAPWDR to alleviate a symptom referred to in section 67(1) (1.1) (b) of the EAPWDR; and
- pursuant to section 67(1) (1.1) (d) of the EAPWDR failure to obtain the items referred to in section 67(1) (1.1) (c) will result in imminent danger to her life.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation - (EAPWDR) – Section 67(1) (1.1).

Employment and Assistance for Persons with Disabilities Regulation - (EAPWDR) – Schedule C, section 7.

PART E – Summary of Facts

The appellant joined the conference call 17 minutes late and after the ministry representative had completed her presentation. The panel recommenced the hearing to allow both the appellant and ministry to present their case.

The evidence before the ministry at the time of reconsideration consists of:

1. note from the appellant's physician stating that she "requires supplemental nutrition to meet her dietary needs";
2. application for MNS which indicates her medical condition as renal mass. In section 2 for treatments, the physician states "the patient reports hair-loss and her skin depigmentation". In section 3 for display of symptoms, the physician indicates "N/A". In section 5, the physician indicates that calcium supplementation, folic acid, B12 and vitamin D, low sodium diet are the vitamins or minerals required. In the same section, the physician indicates that the vitamins or minerals required will "prevent occurrence of kidney stones". In terms of how the items requested will prevent imminent danger to the appellant's life, the physician states "prevention of complications (severe)". The application is not dated by the physician;
3. note from the appellant's physician stating that she "needs magnesium/calcium/vitamin D and C supplements as this has proven to prevent severe migraines in her case".
4. request for reconsideration (RFR) signed and dated June 6, 2016 in which the appellant explains that she needs to be able to buy foods high in calcium, magnesium and other vitamins to prevent migraines, stones, fatigue and chronic pain. She also stated that she has more than 2 reasons for proper nutrition: 1) migraines, 2) chronic pain, 3) hair-loss, 4) skin issues, 5) weight loss, 6) fatigue, 7) weight issues (loss then gain), 8) bowel issues, and 9) hernia.

Evidence On Appeal

Notice of Appeal, signed and dated August 2, 2016, which states "disagree with decision".

Appellant's Evidence At Hearing

At the hearing the appellant presented the following evidence:

- she has Persons with Disability designation and therefore has medical issue;
- she had a blood test on August 3, 2016 which confirms that she has significant low iron and her doctor told her she stated that she is anemic;
- She provided the lab test to the ministry; however, she did not provide a copy to the EAAT office (the ministry submitted that they have a copy of the lab test on the file);
- the migraines she experiences are due to low iron;
- she is malnourished, and her kidney problem requires to have special diet;
- she requires a low sodium diet, magnesium and calcium to prevent kidney stones; and
- she experiences weight loss which is being monitored by her doctor but this would not be an issue if she had the proper nutrition.

At the hearing the ministry relied on its reconsideration decision and read out to the panel the appellant's August 3, 2016 blood test results, which demonstrate low iron (15 out of normal range of {15-50})but there is no diagnosis of anemia. The ministry also stated that in the MNS application, the

physician failed to link the diagnosis of a kidney mass to the deterioration of health, any symptoms of deterioration, the need for a vitamin/mineral supplement or an imminent danger to the appellant's life.

Admission of Additional Information

The panel found that all of the information of the August 3, 2016 blood test which was presented by the appellant and read out by the ministry representative was in support of the information before the ministry at the time of reconsideration. Accordingly, the panel did admit this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated July 20, 2016, which held that the appellant is not eligible for a MNS for vitamins/mineral supplements pursuant to section 67(1) (1.1) and Schedule C section 7 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, the ministry determined that the evidence provided by the appellant failed to establish that:

- she has a chronic, progressive deterioration of health resulting from a severe medical condition pursuant to section 67(1) (1.1) (a) of the EAPWDR;
- she displays two or more the symptoms of chronic progressive deterioration of health as listed in section 67(1) (1.1) b) of the EAPWDR, which would indicate a need for vitamin/mineral supplementation;
- pursuant to section 67(1) (1.1) (c) of the EAPWDR she requires one or more of the items set out in section 7 of Schedule C of the EAPWDR to alleviate a symptom referred to in section 67(1) (1.1) (b) of the EAPWDR; and
- pursuant to section 67(1) (1.1) (d) of the EAPWDR failure to obtain the items referred to in section 67(1) (1.1) (c) will result in imminent danger to her life.

The relevant legislation is as follows:

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.

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

The appellant argues that she is anemic and has a kidney mass which require additional vitamins and minerals that she cannot currently afford. She also argues that she has suffered both weight loss followed by weight gain as a result of her medical conditions. She argues that she needs additional vitamins and minerals to manage: 1) migraines, 2) chronic pain, 3) hair-loss, 4) skin issues, 5) weight loss, 6) fatigue, 7) weight issues (loss then gain), 8) bowel issues, and 9) hernia, which are symptoms of her medical conditions. She further submitted that she has more appointments with a specialist and her family physician as a result of the recent finding regarding her iron deficiency.

The Ministry's Position

The ministry's position as set out in the Reconsideration Decision is that the appellant is ineligible for MNS for vitamins/minerals on the basis that she has not satisfied the legislative requirements in the EAPWDR sections 67(1)(1.1)(a-d) and Schedule C section 7. In particular the evidence fails to establish that the appellant has a chronic, progressive deterioration of health resulting from a severe

medical condition, she displays two or more the symptoms of chronic progressive deterioration of health as listed in section 67(1) (1.1) b) of the EAPWDR, she requires one or more of the items set out in section 7 of Schedule C of EAPWDR to alleviate symptoms of chronic progressive deterioration, and failure to obtain the items requested will result in imminent danger to her life.

The Panel's Decision

Section 67(1)(1.1) states that in order to receive a nutritional supplement the ministry must receive a request completed by the medical practitioner or nurse practitioner and the request must confirm that the recipient has a chronic, progressive deterioration of health resulting from a severe medical condition, displays two or more the symptoms of chronic progressive deterioration of health, requires the requested items to alleviate symptoms of chronic progressive deterioration, and failure to obtain the items requested will result in imminent danger to the recipient's life.

In this case, the request was completed by the appellant's physician. The appellant argues that the lack of vitamins and minerals is linked to 9 medical issues she experiences. However, the physician did not establish that the appellant has a chronic, progressive deterioration of health resulting from a severe medical condition since he stated only that the appellant suffers from hair-loss and skin depigmentation. The appellant argued that she suffers from weight loss. However, the physician did not confirm that the appellant suffers from significant weight loss, which is one of the symptoms specified in section 67(1.1)(b) of the EAPWDR. In addition, the physician did not establish that the appellant displays any of the other symptoms of chronic progressive deterioration of health because when given the opportunity, he stated "N/A" to all of the symptoms of deterioration listed on the MNS application, which are the symptoms specified in section 67(1.1)(b) of the EAPWDR.

Furthermore, the physician did not establish that the appellant requires the requested items to alleviate symptoms of chronic progressive deterioration because he stated that the requested items were required to prevent kidney stones, which, according to the appellant's physician, do not result in one or more of the symptoms of deterioration specified in section 67(1)(1.1)(b) of the EAPWDR and on the MNS application. Finally, the physician did not establish that the failure to obtain the items requested will result in imminent danger to the appellant's life because he stated only that the requested items are required for the "prevention of complications (severe)" and not to prevent an imminent danger to her life. The appellant has argued that she faces many challenges as a result of poor nutrition. However, the legislation is clear that this must be confirmed by a medical practitioner or nurse practitioner and the appellant's physician did not provide sufficient information in the MNS application to meet the legislative requirements. The panel finds, that the ministry reasonably determined that the appellant does not qualify for a MNS for vitamins/minerals pursuant to section 67(1)(1.1)(a-d) and Schedule C section 7 of the EAPWDR.

Conclusion

The panel finds that the ministry reasonably concluded the evidence establishes that the required criteria set out in sections 67 (1)(1.1)(a-d) and Schedule C section 7 of the EAPWDR have not been met. The panel therefore finds that the ministry's decision to deny the appellant's request for a MNS for vitamins/minerals was a reasonable application of the legislation and was supported by the evidence. Thus, the panel confirms the ministry's reconsideration decision. The appellant was not successful in her appeal.