



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the Ministry) reconsideration decision made under section 67(1) of the *Employment and Assistance for Persons with Disabilities Regulation* and dated August 29, 2016, that denied the appellant's request for a monthly nutritional supplement on the grounds that the Appellant did not meet the criteria of section 67(1.1) of the *Employment and Assistance for Persons with Disabilities Regulation*, in that he failed to establish that he suffered from a chronic, progressive deterioration of health on account of a severe medical condition, and that as a direct result of that chronic progressive deterioration of health, the Appellant displayed two or more of seven listed symptoms in section 67(1.1)(b).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation, Section 67(1)
Employment and Assistance for Persons with Disabilities Regulation, Section 67(1.1)

PART E – Summary of Facts

Nature of the Appellant's Application

The Appellant applied for a Monthly Nutritional Supplement, which was denied. The Appellant requested reconsideration of the denial.

At the Appeal, the Ministry representative requested permission for another Ministry representative to attend and observe for training purposes. The permission of the Appellant was sought and the Appellant gave verbal permission for the trainee to attend and observe.

Evidence at the Time of Reconsideration

The evidence before the Ministry at the time of Reconsideration consisted of:

A. Appellant's application for monthly nutritional supplement containing a physician's report dated March 23, 2016 in which it is stated:

- The Appellant's severe medical condition is malnourishment with weight loss; weakness; and increased risk of infection
- As a direct result of the severe medical condition the Applicant is being treated for malnourishment, resulting in weight loss, chronic prostatitis, and will be investigated by a urologist for elevated PSA, which the Panel understands to mean Prostate Specific Antigen
- That as a direct result of the chronic progressive deterioration of the Appellant's health he has displayed two of seven specified conditions, namely malnutrition, significant weight loss of 20 to 30 lbs over one year –poor nutritional intake and significant muscle mass loss
- The Appellant is 5 foot 9 inches high and weighs 158.3 pounds
- That the Appellant requires specific nutritional items, a high protein diet
- That the nutritional items requested will alleviate one or more of the symptoms specified, namely malnutrition, significant weight loss, and significant muscle mass loss and will provide caloric supplementation by improving energy and immune system
- That the nutritional items requested will prevent imminent danger to the Applicant's life because of an investigation for alleviated PSA/chronic prostatitis, history of metastatic cervical lymphedema (squamous cell carcinoma in 2001) and dental issues (as a result of radiation treatment in 2002)

B. A letter to the Appellant dated June 15, 2016 from the Ministry denying his request for a monthly nutritional supplement with the health assistant's branches monthly nutritional supplement decision summary, which states:

- That the Appellant is a person receiving disability assistance under the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*
- That the Applicant does not receive a supplement under the *EAPWDR*
- That there are no resources available to the family unit to pay for the Appellant's requested supplement
- That the monthly nutritional supplement requested was prescribed by a medical practitioner or nurse practitioner
- That vitamins/minerals have not been requested
- A great deal of his history from the time when he was a young child up to the present, discussed his history of medical and social problems, the drugs that he has been prescribed for various conditions and the fact that he cannot afford the most recently-

prescribed drug said he had been diagnosed with squamous cell carcinoma a number of years ago but it is in remission now

- That his prostatitis has been investigated to determine if it is cancerous or not and it has been determined to be non-cancerous
- That he cannot afford fresh vegetables or meat and cannot afford a landline telephone, and because he cannot afford those things, he cannot afford a nutritional supplement either
- That he has post-traumatic stress disorder (PTSD), gave evidence of the length of time he has had it, the manifestations of it, and what he believes brought it on
- That he is in receipt of disability assistance
- That he lives in a rented room, for which the rent has recently increased by \$25 per month

ADDITIONAL EVIDENCE

The Appellant submitted two documents as additional evidence; one was a letter from his family physician dated September 26, 2016 and the other was a prescription from a specialist for a drug used to treat the Appellant's prostatitis.

Letter of September 26, 2016

The first document, a letter dated September 26, 2016, confirmed that the Appellant's medical and mental health conditions, identified in evidence at reconsideration, were ongoing, that the high protein diet applied for would benefit the Appellant for those health conditions, and the Appellant was unable to afford proper nutrition and then went on to set out the Appellant's medical and mental health problems, and treatment history.

The Ministry had no objection to admission of the letter of September 26, 2016 as new evidence.

The panel finds pursuant to the *Employment and Assistance Act*, section 22(4)(b), that the letter of September 26, 2016 is admissible as additional evidence as it was in support of the information and records that were before the Minister when the decision being appealed (the Reconsideration Decision) was made, because it addressed the medical conditions and treatment that were in the records before the Ministry at the time of Reconsideration.

Prescription for a Prostatitis Drug

The second document submitted by the Appellant was a prescription for a prostatitis drug from one of his physicians.

Admission of this document was objected to by the Ministry on the grounds that it did not relate to any matter that was before the Ministry at the time of Reconsideration.

The Appellant's evidence was that the prescription drug was used to treat his prostatitis, and the panel notes that in the records before the Ministry at the time of reconsideration, the Appellant was being investigated for chronic prostatitis.

The panel finds that a change in medication for a medical condition being investigated is not a new issue that was not related to an issue in the record at the time of reconsideration but was rather evidence in support of treatment of a condition that was before the Ministry at the time of Reconsideration, and therefore admits the prescription as additional evidence.



The panel finds pursuant to the *Employment and Assistance Act*, section 22(4)(b), that the prescription for the prostatitis drug is admissible as additional evidence as it was in support of the information and records that were before the Minister when the decision being appealed (the Reconsideration Decision) was made, because it addressed the medical conditions and treatment that were in the records before the Ministry at the time of Reconsideration.

PART F – Reasons for Panel Decision

ISSUE

The issue is whether the Ministry of Social Development and Social Innovation's (the Ministry) reconsideration decision made under section 67(1) of the *Employment and Assistance for Persons with Disabilities Regulation* and dated August 29, 2016, that denied the appellant's request for a monthly nutritional supplement on the grounds that the Appellant did not meet the criteria of section 67(1.1) of the *Employment and Assistance for Persons with Disabilities Regulation*, in that he failed to establish that he suffered from a chronic, progressive deterioration of health on account of a severe medical condition, and that as a direct result of that chronic progressive deterioration of health, the Appellant displayed two or more of seven listed symptoms in section 67(1.1)(b) was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

RELEVANT LEGISLATION

Sections 67(1) and (1.1) *Employment and Assistance for Persons with Disabilities Regulation*

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.

General Scheme of the Legislation

The general scheme of Sections 67 (1) & (1.1) of the *EAPWDR* is that an Applicant must meet four main criteria and four sub-criteria in order to qualify for a Monthly Nutritional Supplement. The first four criteria main criteria are that (i) the person must have designation as a person with disabilities and (ii) must not be a person receiving accommodation and care in a special facility, and (iii) who satisfies the Minister that he or she, based on information contained in a specified form meets the four sub-criteria and (iv) is not receiving another nutrition-related supplement. The four sub-criteria are that the Applicant (v) must be receiving treatment by a physician or nurse practitioner for (vi) a chronic, progressive deterioration of health (viii) caused by a severe medical condition, and (viii) that as a direct result of that deterioration the person displays two or more of seven specific symptoms listed in Section 67 (1.1)(b) *EAPDWR*.

PARTIES' POSITIONS AT APPEAL

Appellant's Position

At this Appeal, the Appellant submitted

- That the Ministry criteria are too narrow, and he should be entitled to a supplement given his history of infection, prostatitis, mental health conditions, and life history

Ministry's Position

At this Appeal the Ministry relied on its position taken at reconsideration, which was:

- That the medical practitioner has not described a severe medical condition from which the Appellant suffers, stating that malnourishment can be a symptom of disease process but it is in this case provided as a sole diagnosis. Malnourishment, unless connected to a degenerative condition is not typically considered a chronic, progressive deteriorating condition in itself, with the statement that the Appellant's information suggests that this may be a result of poor nutritional intake, which is not a medical condition and that while dental issues and the history of cancer are mentioned as well as an alleviated PSA, the information provided does not support that these currently result in a severe medical condition
- The Ministry is not satisfied that as a result of a severe medical condition the Appellant is being treated for a chronic progressive deterioration of health, and the Appellant has not been found to have a severe medical condition and is not receiving treatment for a chronic, progressive deterioration of health
- That the Minister is not satisfied that the Appellant displays the required two or more of the seven listed symptoms of section 67(1.1)(b) as a direct result of a chronic, progressive deterioration of health. Further, two symptoms that are the direct result of chronic progressive deterioration of health must be present to meet the criteria and the applicant has not met the

criteria and the symptoms that are indicated are not accepted. While malnutrition is indicated no information was given to link it to a chronic, progressive deterioration of health. While significant weight loss and muscle mass loss were also noted it was also noted that the Appellant had a body mass index of 23 which is normal and no explanation was given to link either the significant weight loss or muscle mass loss to a chronic progressive deterioration of health

- That vitamins and mineral supplements were not approved as they were not requested, but are available if the Appellant has met all of the criteria and it is confirmed that despite the intake of a regular caloric diet, wasting weight loss or a nutrition deficiency is occurring; further that the Appellant has not met the criteria of displaying two or more symptoms and the information provided does not confirm a need for nutritional supplementation
- Further that although a high protein diet is requested to improve energy and immune system it is not specified that supplemental calories in addition to regular dietary intake is necessary. It is not confirmed that despite the intake of a regular diet that wasting, weight loss, or nutritional deficiencies related to a chronic, progressive deterioration of health are occurring. No issues with absorption that would necessitate additional caloric intake are noted and the need for supplementation is not linked to alleviation of any of the three specified symptoms, namely malnutrition, significant weight loss, or significant muscle mass loss, and it is not specified that supplementation of nutritional items over and above regular dietary intake will prevent imminent danger to life and as a result the applicant did not meet the criteria for nutritional supplementation,

and in addition,

- Submitted that in the form specified by the Minister under Section 67 (1.1) *EAPDWR* that the physician did not provided a diagnosis of a severe medical condition, but provided a symptom, namely “malnourishment”, which the Ministry maintained was synonymous with one of the seven listed symptoms, specifically “malnutrition”, as set out under Section 67 (1.1)(b) of the *EAPWDR*.
- The Ministry representative was unsure of what diagnostic code from what manual was used for reference by the clerk who determined whether a diagnosis of a medical condition had been listed in the required form or not. The Ministry representative was however certain that “malnourishment” was only a symptom and not a diagnosis
- The Ministry representative also noted that a \$40.00 per month high protein diet supplement is something that is available to individuals without the stringent qualifications required by Section 67 of the *EAPWDR*, but that while the Appellant was asking for protein supplement in his application for a monthly nutritional supplement, he had not asked for the high protein diet supplement that can be supplied on an application with less stringent conditions than an application for a Monthly Nutritional Supplement
- The Ministry representative also submitted that in the forms specified by the Minister, the Appellant’s physician had not provided reasons for the Appellant’s malnutrition, one of the seven specified symptoms set out in Section 67(1.1)(b) *EAPWDR* nor had the physician provided reasons for “malnourishment” in the section dealing with diagnosis.
- That the Ministry representative was unsure if a manual was referred to which sets out a condition stated to be a “severe medical condition” is in fact a “severe medical condition”
- That the Appellant had never applied for a vitamin or mineral supplement
- That a monthly nutritional supplement is separate and apart from a request for a high protein

diet supplement.

ANALYSIS

Criteria 1 & 2- Person With Disabilities and Not in a Facility

Section 67(1)(a) & (b) *EAPWDR* provides that a person may be provided with a nutritional supplement by the Minister if the person is a person with disabilities, and not in a treatment center.

Appellant's Position

The Appellant gave evidence that he is a person in receipt of disability assistance, and lives in a rented room, and therefore he satisfied these criteria.

Ministry's Position

The Ministry's position was that the Appellant is a person in receipt of disability assistance, and is not a person in a treatment center, and therefore these criteria were satisfied.

The Ministry accepted that the Appellant met these criteria.

Criteria 3 through 8

Section 67(1)(a) & (b) *EAPWDR* provides that a person must be receiving treatment by a physician or nurse practitioner for a chronic, progressive deterioration of health as a direct result of a severe medical condition, and must display at least two of seven listed conditions.

If and only if a physician or nurse practitioner has confirmed that the Applicant has a chronic, progressive deterioration of health as a direct result of a severe medical condition do the listed symptoms of Section 67(1.1)(b) come into play.

In Receipt of Treatment for a Severe Medical Condition

Section 67(1)(a) *EAPWDR* provides in part that a person must be receiving treatment by a physician or nurse practitioner for a severe medical condition.

Appellant's Position

The Appellant says that his physician filled out the specified form and diagnosed a severe medical condition which was "malnourishment" and because the physician did so and went on to specify that there were at least two of the seven symptoms required by Section 67(1.1)(b), that he did qualify for the Monthly Nutritional Supplement.

Ministry's Position

The ministry's position was that while the form specified by the minister had been completed by a physician, there was no confirmation in that form that the Appellant has a severe medical condition; only that the Appellant's condition is "malnourishment" which is a symptom, and not a medical condition. The Ministry representative said that as no physician or nurse practitioner has therefore confirmed that the Appellant is being treated for a severe medical condition, that therefore the rest of the criteria, specifically whether or not the medical condition is chronic and progressive and whether

or not the Appellant displays any of the symptoms required to be shown in Section 67 (1.1)(b), is not relevant.

The Ministry also pointed out that the Appellant at 5 foot 9 inches in height and 158.3 pounds in weight had a body mass index within normal limits.

Panel Finding

The panel finds the condition stated by the physician to be a severe medical condition, namely “malnourishment”, in the specified form, is not a severe medical condition but rather a symptom, and thus the requirement of Section 67(1.1)(a) a physician or nurse practitioner confirm that the Appellant is receiving treatment for a severe medical condition has not been met.

The panel finds that the Ministry’s determination at Reconsideration that a physician or nurse practitioner has not confirmed that the Appellant be receiving treatment on account of a severe medical condition, was a reasonable application of the requirement of Section 67(1.1)(a) of the *EAPWDR* in the circumstances of the Appellant and is reasonably supported by the evidence.

Chronic Progressive Deterioration of Health

Section 67(1)(a) *EAPWDR* provides in part that a person must be receiving treatment by a physician or nurse practitioner for a chronic, progressive deterioration of health.

Appellant’s Position

The Appellant’s position was that his health was deteriorating as evidenced by the continued diagnosis of several mental health conditions, including PTSD, depression and anxiety disorder, and the medical conditions of chronic prostatitis, recent infections and continuing changes in medication intended to address those issues and that these conditions having existed for a lengthy period of time and continuing, are chronic.

Ministry’s Position

The Ministry’s position was that the issue of whether or not the Appellant was suffering from a chronic progressive deterioration of health was irrelevant. The Ministry took the position that as consideration of whether or not the Appellant was suffering from a chronic progressive deterioration of health will only come into play if it is determined that the Appellant has a severe medical condition confirmed by a physician or nurse practitioner, and that as none has been confirmed, whether or not the Appellant was suffering from a chronic progressive deterioration of health is not a consideration.

Panel Finding

The panel finds that while the Appellant was suffering from a chronic progressive deterioration of health due to conditions the Appellant gave evidence of, there was no evidence that the chronic progressive deterioration of health was on account of a severe medical condition, because no severe medical condition had been confirmed by a physician or nurse practitioner.

The panel finds that the Ministry’s determination at reconsideration that the Appellant had no chronic progressive deterioration of health on account of a severe medical condition confirmed by a physician or nurse practitioner, was a reasonable application of Section 67(1.1)(a) *EAPWDR* in the circumstances of the Appellant and was reasonably supported by the evidence.

Two or More of Seven Listed Symptoms, Alleviation of Them & Imminent Danger to Life

Section 67(1.1)(b) *EAPWDR* sets out seven symptoms, two of which must be displayed by an applicant for a monthly nutritional supplement. The section requires that the symptoms must be displayed as a direct result of the Applicant's chronic, progressive deterioration of health. Section 67(1.1)(c) & (d) provide that the supplement, additional nutritional items as a part of caloric supplementation to a regular dietary intake, must be supplied for the purpose of alleviating at least one of the symptoms, and failure to provide the additional nutritional items will result in imminent danger to the applicant's life.

Appellant's Position

The Appellant's position was that his medical conditions, specifically malnutrition, significant weight loss, and significant muscle mass loss, as noted by his physician in the form specified by the minister, were as a direct result of his chronic, progressive deterioration of health, due to a severe medical condition. He did not address what would be the consequences of not receiving additional nutritional items.

Ministry's Position

The Ministry's position was that while three of the seven possible symptoms specified in section 67(1.1)(b) *EAPWDR*, namely malnutrition, significant weight loss, and significant muscle mass loss, had been set out by the physician in the specified form, there was no evidence to show that those symptoms were the result of a chronic, progressive deterioration of health due to a severe medical condition because no severe medical condition had been identified. What was identified was "malnourishment", a symptom, not a diagnosis. Further, there was no evidence that additional nutritional items would alleviate any of the symptoms the physician noted and there was no evidence that provision of them would prevent imminent danger to the Appellant's life.

Panel Finding

The panel finds that although the Appellant's physician had reported that he was suffering from three of the seven symptoms listed in section 67(1.1)(b) *EAPDWR*, and that as those three, being more than the required two, may have been as a result of a chronic, progressive deterioration of health, that because there was no diagnosis of a severe medical condition for which the Appellant was being treated, then the symptoms were not relevant. Further, as there was no link between provision of the supplement, additional nutritional items, and alleviation of the Appellant's symptoms, and no evidence that failing to supply them would result in imminent danger to the Appellant's life, the criteria required by section 67(1.1)(c) & (d) *EAPWDR* have not been satisfied.

The panel finds that the Ministry's determination at reconsideration that the Appellant had no symptoms ascribable to a severe medical condition and that supplying the supplemental calories would alleviate the Appellant's symptoms and prevent imminent danger to the Appellant's life was a reasonable application of Section 67(1.1)(b), (c) and (d) *EAPWDR* in the circumstances of the Appellant and was reasonably supported by the evidence.

Conclusion

The panel finds therefore that the Ministry's determination at reconsideration that the Appellant did not satisfy all of the requirements of section 67(1) and (1.1) *EAPWDR* was a reasonable application of the legislation in the circumstances of the Appellant was reasonably supported by the evidence.



The Panel confirms the Ministry decision and the Appellant is not successful in his appeal.