



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (Ministry)'s reconsideration decision dated July 27, 2016, finding the appellant is not eligible to receive a MNS caloric supplementation under section 7(c) of Schedule "C" of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) because there was no evidence of any symptoms that would indicate a need for caloric supplementation and the medical information provided by the appellant's medical practitioner did not demonstrate that failure to obtain nutritional items in the form of caloric supplementation will result in imminent danger to the appellant's life.

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

1. An Application for Monthly Nutritional Supplement completed by the appellant's physician dated May 13, 2016, indicating a diagnosis of insulin dependent diabetes mellitus, chronic kidney disease (stage 4) and mood disorder/anxiety. The appellant displays symptoms of malnutrition, significant muscle mass loss and moderate to severe immune suppression. The appellant is 172cm tall and weighs 248lbs. Under Vitamin or Mineral Supplements, the supplement specified is: "In addition to regular diet intake requires extra calories in the form of fresh produce, fish, poultry and lean red meat or 3 cans of Boost/Ensure/Glucerna or some combination of these." Under how these supplements will alleviate the symptoms is written: "provide appropriate glycemic control and adequate weight gain. Under describe how the items will prevent imminent danger to the appellant's life is written: "improve glycemic index". Under Nutritional Items the medical conditions listed are: diabetes mellitus, gout and hypertension. Under describe how the nutritional items will alleviate symptoms of the conditions is written: "[increase] immunity, improve glycemic index". Under describe of the nutritional items will prevent imminent danger to the appellant's life is written: "[increase] immunity, [decrease] [illegible] risk". Under additional comments is written: "needs fresh poultry, red meat, Boost/Ensure [illegible]".
2. The appellant's reconsideration submission includes a document prepared by the appellant dated July 12, 2016, in which he indicates that he has been hospitalized for high blood counts; that his insulin dosage has been increased; that the need to keep his blood count within normal range is dependent on receiving calories from diabetic complying foods; that he was in hospital in March/April with complete renal failure and nearly died; that he has done all he can to comply with his prescriptions and diabetic diet; that he is at risk of further hospitalizations; that high blood counts cause immediate and lasting damage to his kidneys; that he requires increased calories from diabetic complying sources to bring back his health and not to continue damaging his kidneys and long-term health.
3. Attached to the reconsideration submission were 4 documents:
 - i. A copy of the ministry's denial letter dated June 6, 2016, with the decision summary attached on which the appellant's physician has commented: "has insulin dependent DM – very susceptible to infections" and "no pancreatic function leading to need for insulin" and "Needs proper nutrition – otherwise can be readmitted to hospital".
 - ii. A document titled *Complex Care Discharge Planning Initiative* which lists the physicians involved in the appellant's care while in hospital for anuric renal failure and fatty liver disease; the appellant's additional diagnoses of type 2 diabetes, hypertension, obstructive sleep apnea, depression/anxiety, gout and vertigo; and medications calcium carbonate, vitamin D 1000U PO daily and Multivitamin 1 tab PO daily.
 - iii. A document recording the appellant's blood sugar before and 2 hours after meals.
 - iv. An unsigned document dated July 11, 2016, with the following comments: "Firstly – that the symptoms of malnutrition, muscle loss and immune suppression were noted but not supported by description of these symptoms. Secondly – failure to provide

vitamins/minerals vital to applicant resulting in imminent danger to life. The ministry currently supplies a \$35 monthly nutritional supplement. This is insufficient to fill the prescriptions as per client discharge from [hospital] which includes additional vitamins and minerals. Thirdly – the minister has determined that the applicant is not in imminent danger for life if requested MNS is not provided. [The appellant] has been hospitalized recently with near fatal renal failure. Chronic kidney failure is imminent at short notice if [the appellant] does not comply with changed nutritional and prescription plans. [The appellant] is at risk for renal failure if hospital discharge plans are not adhered to. Key to that is change of diet as per original application. [The appellant] is at imminent danger of fatal kidney failure if he does not comply with diabetes T2 insulin care.

The ministry found that the appellant met the legislative requirements to receive the vitamin/mineral supplement.

The ministry found that the appellant did not meet the legislative criteria for the nutritional items (caloric supplementation) because:

1. The appellant is not displaying the symptoms of underweight status, significant weight loss and significant muscle mass loss indicating the requirement for caloric supplementation.
2. The appellant has a BMI of 40, which is in the obese range.
3. The appellant's application indicates that he requires "fresh produce, fish, poultry and lean red meat or 3 cans of Boost/Ensure/Glucerna or some combination of these," but there is no indication that the appellant is suffering from the symptoms of underweight status, significant weight loss and significant muscle mass loss indicating the requirement for caloric supplementation.
4. Documents submitted at reconsideration indicate the need for diabetic complying foods rather than caloric supplementation suggesting a more nutritious diet rather than a diet higher in calories.
5. There is no indication in any of the documents that the appellant requires caloric supplementation in order to avoid imminent danger to his life. Rather what is indicated is the need for the appellant to consume a more nutritious and diabetic-compliant diet.

The appellant did not attend the hearing. The panel being satisfied that the appellant received sufficient notice of the hearing proceeded with the hearing without the appellant in accordance with section 86(b) of the *Employment and Assistance Act*.

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 EAPWDR because there was no evidence of any symptoms that would indicate a need for caloric supplementation and the medical information provided by the appellant's medical practitioner did not demonstrate that failure to obtain nutritional items in the form of caloric supplementation will result in imminent danger to the appellant's life.

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.

In his appeal submission the appellant writes:

The reason for Appeal is based on premise that the rejection was from faulty application and decision that came from it. The decision refers to my BMI of 40, third degree obesity and correlates that to denying calorie supplementation.

The application never intended to ask for more caloric supplementation funding. The intention was for specific calorie replacement funding to comply with dietary requirements of insulin dependent diabetic and fatty liver disease.

Hospital discharge document including fatty liver disease was submitted upon first appeal it appears that disease was not considered in the opinion.

Currently, there is no medication proven to effectively treat fatty liver disease, if the main causes are related to obesity and diabetes. I am both. The only assistance is specific diet requirements which by coincidence are same as diabetic compliant diet.

The ministry relied on its reconsideration decision. In that decision the ministry found that the appellant did not qualify for the MNS because there was no evidence that the appellant required caloric supplementation but rather that he required a more nutritious diet and that there was no evidence that not receiving the MNS would place the appellant in imminent danger to his health.

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 he 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 he, for whatever medical reason, cannot obtain from a regular nutritious 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. Rather, the evidence establishes that the appellant needs to adopt a diet ("fresh produce, fish, poultry and lean red meat or 3 cans of Boost/Ensure/Glucerna or some combination of these,"), which will allow him to mitigate his health issues (diabetes, fatty liver disease,

obesity, etc.). Nowhere is it stated by a medical professional that he requires extra caloric supplementation. In his appeal submission the appellant confirms this stating: “The application never intended to ask for more *caloric supplementation funding*. The intention was for specific *calorie replacement* funding to comply with dietary requirements of insulin dependent diabetic and fatty liver disease.”

Furthermore, section 67(1.1)(d) states that the minister must be satisfied that failure to obtain the caloric supplementation supplement will result in imminent danger to the appellant’s life. Upon review of the evidence before the ministry at the time of the reconsideration decision the panel finds that there is no indication that the appellant will face imminent danger to his life if he does not receive additional calories. Rather, what the evidence indicates is that in order to avoid imminent danger to his life, the appellant needs to adopt a different, more nutritious diet.

As there was no evidence before the ministry at the time of the reconsideration decision to support the appellant’s position that a medical practitioner has stated that he requires caloric supplementation or that the appellant will face imminent danger to his life if he does not receive caloric supplementation, 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.