



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation’s (the “ministry”) reconsideration decision dated 2016/10/03 which held the appellant was not eligible for a monthly nutritional supplement as he did not meet all the requirements of section 67(1) of the Employment Assistance for Persons with Disabilities Regulation (the “EAPWDR”) and schedule C, section 7 of the EAPWDR, specifically that the ministry is not satisfied that the appellant requires nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of his chronic progressive deterioration of health and to prevent an imminent danger to his life.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 67(1) and Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), schedule C, section 7.

PART E – Summary of Facts

The Appellant is a recipient of disability assistance with no dependent(s).

The evidence before the Ministry at reconsideration included the following documents:

Employment and Assistance Request for Reconsideration dated September 19, 2016:

Appellant's reason for request for reconsideration: "I do need help so I could buy nutritious food for myself and not have to resort to food bank and eat their expired low grade food. I do not drink or smoke. I don't even have a car. I do buy the vitamins, now I need good food in order to wheel myself in my chair. I'm starving!"

The following documents were before the ministry at the time of reconsideration:

1. Application for Monthly Nutritional Supplement dated May 16, 2016. The physician notes that the appellant is paraphasic, has difficulty swallowing and has dysphagia. He states that the appellant requires specific nutritional items to "help prevent muscle loss and death" and that these nutritional items will prevent imminent danger to his life.
2. Letter from the ministry to the appellant dated June 13, 2016 asking for his signature on the Monthly Nutritional Supplement form
3. Letter and Monthly Nutritional Supplement Decision Summary from the ministry to the appellant dated August 23, 2016 notifying the appellant that his request for a monthly vitamins/minerals supplement had been approved however his application for a monthly nutritional supplement had been denied because the ministry is not satisfied that the appellant requires nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of his chronic progressive deterioration of health and to prevent an imminent danger to his life.

Additional evidence was submitted by the appellant's advocate for the appeal hearing. This evidence included the following documents:

- Letter from the advocate to the appellant's physician dated October 28, 2016, requesting more information for this hearing
- Medical Authorization dated October 27, 2016 authorizing the appellant's advocate to obtain private information
- Letter/Form from appellant's physician stating that the appellant is diagnosed with the brain disease Encephalopathy, which can present a very broad spectrum of symptoms. The appellant suffers from memory loss, subtle personality changes, an altered mental state and physical manifestations such as poor coordination of limb movements. He also is affected by persistent fatigue, weakness or lack of muscle coordination, paralysis and speech impairments. In the physician's opinion, the appellant's conditions "regularly prevent him from obtaining the proper nutrition that can lead to an imminent risk of death." Encephalopathy is a condition "that requires specific higher caloric intake with specific food sources that the patient would have to adhere to a specific caloric supplementation over and above that of a regular dietary intake as the medical science health dietary factors are a key component of neuronal membranes that are vital to functioning of brain matter. There is a higher mortality rate

amongst head trauma patients that a hyper metabolic state that is associated with intensive catabolism, leading to a specific need for nutrition that would support a higher level and more frequent basis of eating specific foods than an average person.”

- Article from the University of Maryland Medical Center entitled “Viral encephalitis”. The Nutrition and Dietary Supplements section contains eating tips to help patients with their overall health. Suggested foods containing high levels of antioxidants and healthy oils are recommended and refined foods, alcohol, caffeine and tobacco are not recommended.
- Article from the HHS Public Access entitled “The Influence of Diet and Physical Activity on Brain Repair and Neurosurgical Outcome”. This study found that “...certain types of dietary factors such as omega-3 fatty acids can increase production of molecular systems that serve synaptic function...” They pose that a diet high in omega-3 fatty acids, vitamin E, curcumin and reasonable amounts of caffeine has positive effects. Additionally, cognition and plasticity of the brain have shown improvement with quality caloric intake and the frequency of food consumption. It concludes by posing that diet can contribute to the ability of the brain to counteract neurological disorders.
- Article from SciELO entitled “Nutrition therapy in severe head trauma patients”. This article states: “Despite recent advances in head trauma diagnosis and therapy, the mortality associated with this condition remains high. Few therapeutic interventions have been proven to effectively improve this condition. Head trauma causes multiple metabolic and electrolyte disorders; it is characterized by a hypermetabolic state that is associated with intensive catabolism, leading to specific nutritional needs.”
- Article from Brainline.org entitled “Feed Your Body, Feed Your Brain: Nutritional Tips to Speed Recovery”. This article states: “A healthy diet during the recovery from a brain injury is highly beneficial. Scientists know that deficiencies in certain nutrients and chemicals can cause disruptions in brain functioning and the ability to think clearly. When someone sustains a brain injury, it is necessary to eat enough nutritional calories to help the brain function efficiently.” The article goes on to give nutritional and eating tips to patients.

At the hearing the appellant’s advocate referred to the above noted medical information extensively. She pointed out that the appellant must eat a diet of high quality lean proteins, fresh vegetables, fruits, nuts and energy bars. He must also eat several small, complete meals per day. His caloric needs are greater than that of a non-brain injured person due to the fact that he cannot absorb nutrients properly and he burns calories at a higher rate due to his injury. The fact that he has difficulty swallowing and needs to consume foods that he will not choke on adds to the challenge. A proper diet is one of the few options left to the appellant that will enhance his quality of life.

The appellant states that his groceries cost more than an average person’s do, as the foods he must consume to meet his high caloric, high nutritional needs typically cost more to purchase. He also states that at the time of his injury, he weighed more than 225 pounds. He then lost almost 100 pounds and it has taken him years to build his weight back up to his current 171 pounds.

The Ministry did not submit additional evidence on appeal and relied exclusively on the Reconsideration Decision. The Ministry did not object to the submission of additional evidence provided by the appellant’s advocate for this hearing.

The panel finds that the additional evidence provided by the appellant in the notice of appeal was admissible under section 22(4) of the *Employment and Assistance Act* as a panel may admit as evidence information and records that are in support of or supplemental to the evidence that was before the minister at the time of the reconsideration decision. The information submitted for the appeal hearing directly related to the comment raised by the ministry in the reconsideration decision that the patient's physician had not made a connection between the appellant's medical condition and the need for caloric supplementation over and above that of a regular dietary intake. In the Application for Monthly Nutritional Supplement, the appellant's physician states that a nutritional supplement will help prevent further metabolic deterioration, brain injury, muscle loss and death. The additional evidence corroborates and substantiates the metabolic food needs of the appellant and is therefore in support of the information before the minister at time of reconsideration because this directly relates to the caloric supplementation needs of the appellant.

PART F – Reasons for Panel Decision

The issue is whether the Ministry of Social Development and Social Innovation's (the "ministry") reconsideration decision dated 2016/10/03 which held the appellant was not eligible for a monthly nutritional supplement as he did not meet all the requirements of section 67(1) of the Employment Assistance for Persons with Disabilities Regulation (the "EAPWDR") and schedule C, section 7 of the EAPWDR, specifically that the ministry is not satisfied that the appellant requires nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of his chronic progressive deterioration of health and to prevent an imminent danger to his life is a reasonable application of the legislation in the circumstances of the appellant or is reasonably supported by the evidence.

Section 67(1) of the EAPWDR states the following:

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).

(3) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 8.]

[am. B.C. Regs. 317/2008, s. 8; 68/2010, ss. 1 and 2; 145/2015, Sch. 2, ss. 7 and 8.]

Schedule C, section 7 of the EAPWDR is as follows:

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.

Ministry's Position

At reconsideration the ministry was not satisfied that the appellant required nutritional items as part of a caloric supplementation to a regular dietary intake to alleviate the symptoms of his chronic progressive deterioration of health and to prevent an imminent danger to his life. Medical documentation did not specify what type of diet he needed or how it would maintain his health.

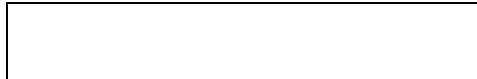
Appellant's Position

The appellant and his advocate argued that the supplemental information provided for this hearing clearly demonstrates a strong correlation between following a specific, high caloric, high nutritional brain injury diet and maintaining the health of the appellant.

Panel Decision

Among other things, the legislation stipulates that in order for the appellant to be eligible for a nutritional supplement, the applicant must demonstrate that failure to provide the nutritional supplement would result in imminent danger to her/his physical health. This was not clearly demonstrated in the appellant's initial submission for reconsideration. Under these circumstances, the ministry denied the nutritional supplement.

The panel finds that in the documentation submitted by the advocate for the appeal hearing, there was ample convincing evidence demonstrating the need for a high nutrition, high caloric diet, specifically a brain injury diet, in order to preserve the appellant's health. The evidence corroborates that head trauma causes multiple metabolic and electrolytic disorders; and is characterized by a hypermetabolic (an abnormal increase in the body's basic metabolic rate) that is associated with intensive catabolism (the rate at which our bodies break down food into energy), leading to specific nutritional needs. A brain injury diet addresses these needs by providing supplemental energy (calories). Further, the appellant, who is dysphagic, must eat higher nutritional, liquid foods on a more frequent basis than the average person. The appellant's physician notes that the appellant's medical condition prevents him from regularly obtaining the proper nutrition that can lead to an imminent risk



of death. The supplemental evidence documents that significant deterioration of cognitive functioning and cellular health in brain injury patients may be attributed an inappropriate diet.

In conclusion, the panel finds the ministry's determination that the appellant was not eligible for a nutritional supplement pursuant to section 67(1) and schedule C section 7 of the EAPWDR was a not a reasonable application of the legislation in the circumstances of the appellant. The panel rescinds the ministry's decision.