

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of November 3, 2016, which denied the appellant’s request for the Monthly Nutritional Supplement (MNS) on the basis that the appellant was not eligible under the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) subsection Schedule 67(1.1) (a) (b), (c) and (d) as well as Section 7 of Schedule C.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation section 67(1)
Employment and Assistance for Persons with Disabilities Regulation Schedule C section 7

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- Notice of appeal dated Nov. 7, 2016.
- A letter from the appellant dated Oct. 21, 2016 explaining her frustration and medical condition.
- Application for Monthly Nutritional Supplement dated Aug. 30, 2016
- Monthly Nutritional Supplement Decision Summary dated Oct. 5, 2016
- Application for Monthly Nutritional Supplement (MNS) dated Oct. 14, 2016
- Request for Reconsideration dated Oct. 11, 2016

In the appellant's Notice of Appeal, she wrote she:

- has been vomiting for the past 8 months;
- needs ensure as she is not tolerating any food of any type; and
- is losing weight.

At the hearing, the appellant stated:

- She had been approved by the ministry to purchase Ensure for 4 months, then was asked to re-apply for the supplement and was denied.
- Without Ensure her health is deteriorating.
- Her doctor has called the ministry to explain her condition but nobody has returned his calls.
- She has found the process frustrating as she is not educated and there are so many forms.
- Current medication and diet recommendations are not working and her doctor doesn't know what to do.
- She has not had the Ensure supplement covered since August 31, 2016.

At the hearing, the ministry stated:

- In policy Ensure is only provided as a temporary supplement for up to three months and that the appellant is required to meet the criteria of section 67 to be given MNS.
- The appellant had not met the criteria of two symptoms.
- The appellant in terms of height/weight had Body Mass Index (BMI) scores of 21.5 and in the second application 23.4 which are both in the normal range and shows an improvement.
- Since stopping taking Ensure, the appellant had gained weight, as noted in her two applications for MNS.
- The appellant may re-apply for MNS and recommended the appellant contact an advocate to assist her in the process.

In the reconsideration decision, the ministry noted:

- Key dates
 - August 30, 2016: Application for MNS received.
 - October 5, 2016: Request for MNS denied.
 - October 18, 2016: Ministry prepared Reconsideration package.
 - October 26, 2016: Request for reconsideration submitted.
 - November 3, 2016: Ministry reviewed appellant's reconsideration request. The ministry determined the appellant was not eligible for the MNS.
- The appellant is currently in receipt of a gluten-free diet allowance in the amount of \$40 per

month and is a Person with Disabilities in receipt of disability assistance.

Applications for MNS dated October 14, 2016 and August 30, 2016 were both completed by the same medical practitioner (MP). Written statements by the MP noted the following;

- **Applicant's severe medical condition:**

- Aug/30
 - Diagnosis is "Cyclical Vomiting" ("wt loss 15-20 lbs. has stabilized"/"Only tolerates Ensure"/"awaits gastroenterologist consult")
- Oct/14
 - Diagnosis is "Cyclical Vomiting" ("2 years recurrent vomiting"), Irritable Bowel Syndrome, anxiety, depression, ("Under psychiatric care") and Borderline Personality ("been hospitalized in past[psychiatry]")

- **Treatment for a chronic, progressive deterioration of health:**

- Aug/30
 - "uncertain- waits diagnosis"
- Oct/14
 - "chronic illness, very debilitating; no further treatment is available for GI symptoms; 3-4 gastroenterologists have said unable to treat further"

- **Symptoms**

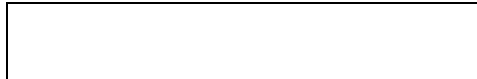
- Aug/30
 - Malnutrition- "Probable"
 - Underweight status- "15-20lbs"
 - Significant weight loss "15-20 lbs."
 - Significant muscle mass loss "uncertain"
- Oct/14
 - Malnutrition- (not noted)
 - Underweight status- "poor muscle"
 - Significant weight loss- "10 lbs. in two months"
 - Significant muscle mass loss- "Probable"

- **Height and weight**

- Aug/30
 - "5'4"; 125lbs."
- Oct/14
 - "5'2"; 128lbs."

- **Vitamin or Mineral Supplementation-** to alleviate one or more symptoms noted above, if symptoms are a direct result of a chronic progressive deterioration of health, and to prevent imminent danger to the applicant's life.

- Aug/30
 - Supplement required and duration of need- "multivitamin; daily"
 - How this item will alleviate the specific symptoms identified- "Ensure to supplement dietary requirements including vitamins and minerals"
 - How this item will prevent imminent danger to the applicant's life- "very poor nutrition".



- Oct/14
 - Supplement required and duration of need- “multivitamin; daily”
 - How this item will alleviate the specific symptoms identified- “very poor dietary intake so risk for vitamin depletion”
 - How this item will prevent imminent danger to the applicant’s life- (no comment made)
- **Nutritional Items-** available to alleviate one or more symptoms noted if those symptoms are a direct result of a chronic, progressive deterioration of health and the nutritional items are medically essential, will provide caloric supplementation to a regular dietary intake and are required to prevent imminent danger to the applicant’s life.
 - Aug/30
 - Nutritional items required and duration of need- “Ensure; Gluten free diet; multivitamins; protein powder (no duration noted)
 - 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- “yes, recurrent vomiting.”
 - Describe how the nutritional items required will alleviate one or more of the symptoms noted and provide caloric supplementation to the regular diet-“able to keep down ensure”
 - How nutritional items requested will prevent imminent danger to the applicant’s life-“as above”
 - Oct/14
 - Nutritional items required and duration of need- “Ensure/boost to provide protein and calories” (no duration noted)
 - 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- “cyclical vomiting; irritable bowel syndrome; likely stress related as well”
 - Describe how the nutritional items required will alleviate one or more of the symptoms noted and provide caloric supplementation to the regular diet-“protein and caloric intake”
 - How nutritional items requested will prevent imminent danger to the applicant’s life-“likely gradual deterioration of health”
- **Additional Comments**
 - Aug/30
 - “Awaits consultation”
 - Oct/14
 - Comments made by the MP were related to unsuccessful attempts to contact the ministry.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision of November 3, 2016 which denied the appellant's request for the Monthly Nutritional Supplement was reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of the appellant. Specifically, the minister was not satisfied that the appellant's request meets the requirements of Section 67(1.1) (a) (b), (c) and (d) of the EAPWDR and Schedule C Section 7 of the EAPWDR as eligibility criteria were not met.

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:

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- (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).

Schedule 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.

The appellant's position

The appellant's position is that as she had been supplied by the ministry with Ensure to assist with her condition that when asked to re-apply by a ministry employee, she should be able to continue receiving this support through MNS. As the medical profession is unable to help her with her condition, at this time, Ensure is the only nutrition she is able to maintain her health with.

The ministry's position

The ministry's position is that the information provided in the MNS application and the Request for Reconsideration does not establish that the appellant has met the required criteria as stated in the EAPWD Regulation, subsection 67(1.1) (a), (b), (c) and (d).

A monthly nutritional supplement is provided for Persons with Disabilities (PWD) designation who is in receipt of disability assistance and who have a severe medical condition causing a chronic, progressive deterioration of health with symptoms of wasting. The supplement is intended to prevent imminent danger to the person's life by providing essential, specific items to supplement regular nutritional needs.

With respect to the EAPWD Regulation, subsection 67(1.1) (a), the ministry states the evidence does not meet the required criteria. The ministry accepts the applicant has a chronic severe medical condition but as the MP states "likely gradual deterioration of health" with the use of the term "likely", the ministry determined the appellant is not currently experiencing a chronic, progressive deterioration of health.

The ministry determined the appellant did not meet the criteria of displaying at least two of the symptoms set out in the EAPWD Regulation, subsection 67(1.1) (b). "There must be two or more symptoms present."

- Malnutrition- in the first application was the MP's statement of "probable" does not establish that the appellant is currently displaying the symptom of malnutrition.
- Underweight- although the MP states the appellant has lost 10-20 lbs. the two BMI scores show the appellant is in the normal range therefore the symptom of underweight status is not supported by the evidence provided.
- Significant weight loss- Although the MP notes "weight loss of 10-20 lbs." and "10 lbs. in two months", it was also noted the appellant's weight loss had "stabilized". As the two applications indicate the appellant has a normal range in her BMI score and has shown a 3 lb. weight gain, the ministry is not satisfied the weight loss has been significant, as set out in the legislation.
- Significant muscle mass loss- in the applications the MP notes "uncertain" and "probable" with regards to significant muscle loss. The ministry notes these statements do not establish that the appellant is displaying the symptom of significant muscle loss.

The ministry notes that as the appellant did not meet the criteria on section 67(1.1)(a) and (b), she is not eligible to have section 67(1.1) (c) and (d) considered as it cannot be established that the appellant requires vitamin/mineral supplementation to alleviate a symptom as a direct result of a chronic, progressive deterioration of health.

Nutritional items can be provided to alleviate one or more of the symptoms specified if those symptoms are a direct result of a chronic progressive deterioration of health and the nutritional items are medically essential to provide caloric supplementation to a regular dietary intake and prevent imminent danger to the applicant's life. The ministry stated the appellant was not eligible for consideration as she did not meet the required criteria. They also note that the MP states Ensure is required, but does not link this to alleviation of an accepted symptom. It must be demonstrated that a deteriorating, wasting condition is present and that calories, over and above that of regular dietary intake are necessary to alleviate the associated symptoms. It was not confirmed the appellant is currently consuming a regular diet, and that in addition to this, requires extra calories and will continue to need these. There is no provision in the applicable legislation to provide a liquid diet in place of a regular dietary intake, or to provide "top up" in cases where regular diet is not being consumed. It is not specified that supplementation will prevent imminent danger to life.

Panel Decision

In order for a person with disabilities to receive a nutritional supplement under section 67 of the EAPWD Regulations, 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:

- (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;

The evidence supplied by the MP did not directly state the appellant was experiencing a progressive deterioration of health on account of a severe medical condition but instead stated "likely gradual deterioration of health", the panel feels the ministry was reasonable in determining that the appellant has not meet the requirements of this provision.

- (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;

The evidence supplied would indicate the appellant does not meet the criteria of suffering from at least two of the above symptoms. In the applications for MNS, the MP wrote in reference to malnutrition; "probable" and did not make any notes in the second application. For underweight status and weight loss the evidence shows the appellant is within the normal range and that her weight appears to have stabilized and in fact increased. The MP notes of "uncertain" and "probable" in

reference to muscle mass loss are not conclusive statements. No notes in either application address significant neurological degeneration, significant deterioration of a vital organ, or moderate to severe immune suppression. The ministry was reasonable in determining that the appellant does not meet the requirements of this section.

- (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;

The evidence supplied does not support the appellant displaying two or more symptoms as is required in section 67 (1.1) (b). As there are no symptoms to be alleviated, it is reasonable the ministry found the appellant did not meet the requirements of this provision.

- (d) failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life.

The evidence supplied does not specify that supplementation will prevent imminent danger to life. The ministry was reasonable in determining that the appellant does not meet the requirements of this section.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for the Monthly Nutritional Supplement was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision. The appellant is not successful in her appeal.