



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry)'s reconsideration decision dated October 31, 2016, finding the appellant is not eligible to receive a Monthly Nutritional Supplement (MNS) of vitamin/mineral supplementation and caloric supplementation under sections 7(a) and 7(c) of Schedule "C" of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) because the medical information provided by the appellant's medical practitioner did not demonstrate that failure to obtain the MNS of vitamin/mineral supplementation and caloric supplementation will result in imminent danger to the appellant's life as required by section 67(1.1)(d) of the EAPWDR.

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 July 7, 2016, indicating a diagnosis of degenerative disc disease. In answer to the question as to whether as a direct result of her condition the appellant is being treated for a chronic, progressive deterioration of health, the appellant's physician wrote: "Attended pain clinic every 3 months for injections ... going to see neurologist "neurosurgeon" soon." The application indicates that the appellant displays symptoms of malnutrition ("pain and loss of function reduces desire/ability to eat properly"), underweight status ("down to 105lbs") and significant weight loss ("from 122 – 105lbs in 6 months"). Under Vitamin/Mineral Supplementation, the physician indicates "Centrum once a day/multivitamin" which would alleviate symptoms by "mak[ing] up for lack of nutrients in diet". Under Nutritional Items, the physician specified "boost, ensure, calorie rich instant meals to prevent further weight loss" which would alleviate symptoms by "prevent[ing] further weight loss".
2. The appellant's reconsideration submission includes a letter from her physician dated October 17, 2016 which states:

Although my patient[s] ... life is not at risk. It is probable she will continue to drop weight and begin to lose muscle mass if she does not get the required nutrition to sustain her health. These referred supplements will be beneficial to her and not further put her at risk for chronic malnutrition.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision finding the appellant is not eligible to receive a Monthly Nutritional Supplement (MNS) of vitamin/mineral supplementation and caloric supplementation under sections 7(a) and 7(c) of Schedule "C" of the EAPWDR because the medical information provided by the appellant's medical practitioner did not demonstrate that failure to obtain the MNS of vitamin/mineral supplementation and caloric supplementation will result in imminent danger to the appellant's life as required by section 67(1.1)(d) of the EAPWDR.

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.

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*.

The Appellant's Position

In her appeal submission the appellant writes:

My pain is severe as well as chronic hence my eating is very minimal. I have not had a good appetite for nearly 1 year now, and I continue to drop weight. I now weigh 97lbs and slowly losing weekly. I find it very hard to eat when I am in constant pain. I feel very weak and tired all the time. I am now on Fluoxetine for depression. My body needs a good source of nutrition some how to help gain weight again and stimulate my appetite. "please"

The Ministry's Position

The ministry relied on its reconsideration decision. In that decision the ministry found that the appellant was not eligible to receive the MNS of vitamin/mineral supplementation and caloric supplementation because she met all of the legislative requirements except section 67(1.1)(d) that failure to obtain the MNS items will result in imminent danger to her life as the appellant's physician stated in his letter of October 17 that "my patient[']s ... life is not at risk".

The Panel's Decision

The panel first considered whether the appellant's appeal statement introduced new evidence that was not before the ministry at the time of the reconsiderations decision. In accordance with section 24(2) of the *Employment and Assistance Act*, the panel may only admit information and records that were either before the ministry at the time of the reconsideration decision or are in support of information and records that were before the ministry at the time of the reconsideration decision.

In her statement the appellant indicates that she continues to lose weight due to lack of appetite because of her pain, that she feels tired all the time and that she needs a source of good nutrition. All of this information was before the ministry at the time of the reconsideration decision and as such is admissible. The information that the appellant is now on an anti-depressant was not before the ministry at the time of the reconsideration decision and is not in support of evidence that was. It is new information and is therefore not admissible.

In order to qualify for the MNS under sections 7(a) and 7(c) of Schedule “C” of the EAPWDR the appellant must meet all requirements under section 67 of the EAPWDR. The ministry found that the appellant met all those requirements except the one. This requirement, found in section 67(1.1)(d) is that failure to obtain the MNS items will result in imminent danger to the applicant’s life.

In this case, the appellant’s physician clearly stated in his October 17 letter that “my patient[‘s] ... life is not at risk”. The evidence of the appellant’s physician before the ministry at the time of the reconsideration decision explicitly states that the appellant’s life is not at risk. It was therefore reasonable for the ministry to find that failure to obtain the MNS items would not result in imminent danger to the applicant’s life and that section 67(1.1)(d) was not met.

Accordingly, the Panel finds that the ministry’s reconsideration decision was reasonably supported by the evidence and confirms the ministry’s reconsideration decision.