



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry)'s reconsideration decision dated November 3, 2016, finding the appellant is not eligible to receive a Monthly Nutritional Supplement of caloric supplementation (MNS) under sections 7(a) 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 the appellant requires caloric supplementation to a regular diet or that failure to obtain the MNS 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 "myalgic encephalomyelitis" (ME), described as "autonomic and neuroendocrine manifestations, pathological fatigue, post-exertial malaise, sleep dysfunction, pain, neurocognitive manifestations" and "*chronic progressive deterioration of health".

Treatment being received is stated as "This patient is receiving treatment at the Complex Chronic Disease Program (CCDP). The internal med assessment confirms the above dx and includes the following treatment plan: education, referral to OT, RD, ND, sleep coaching, medication supplements." The form indicates that the appellant is suffering from malnutrition ("Protein energy malnutrition based on RD assessment done in June 2016. Patient also has iron-deficiency anemia. Her goal ferritin is 750 and is currently dropping. Related to myalgic encephalomyelitis."), significant muscle mass loss ("Pt. has lost function due to illness and muscle loss. OT and IM assessment repeated use of 4 wheel walker, falls risk, requires assistance for ADLs."), and significant neurological deterioration ("as rated in internal med. Assmt related to ME. Confusion, short-term memory, categorizing and word retrieval, disorientation.").

The form states the appellant's weight as 88kg and height at 160cm.

Under Nutritional Items specified additional nutritional items are: "High protein foods, protein powder, high iron foods, organic fruits and vegetables, gluten-free grains, dairy-free calcium sources and healthy fare."

Asked whether the appellant has a medical condition that results in an inability to absorb sufficient calories through a regular dietary intake the physician writes: "Many patients including this patient with ME experience gut inflammation related to central generalized symptoms. This patient experiences gas, bloating, constipation and diarrhea which further support this state of inflammation which leads to malabsorption."

Asked to describe how the MNS will provide caloric supplementation to a regular diet the physician writes: "Protein, whole grains, healthy fats and fruits and vegetables will all contribute to improved cognition and function. High iron foods will address malnutrition and muscle loss."

Asked to describe how the MNS will prevent imminent danger to the appellant's life the physician writes: "Since all these items will help improve cognition, malabsorption and muscle wasting, this patient will be less likely to acquire infections, have falls or make dangerous decisions due to poor cognition thus preventing danger to life."

Under Additional Comments the physician writes: "This patient is receiving support from the

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dietician at the CCDP clinic who can provide guidance for how to best use additional funds. I believe that these funds can help prevent much higher costs to the health care system. Finally, this patient's current weight is not a good indicator of her health. Based on her diet hx, this patient is at nutrition risk and is not meeting her energy needs with appropriate foods due to low income."

2. The appellant's reconsideration submission includes a letter from her physician dated October 25, 2016 which states:

Malnutrition- *as her dietitian assessment (June 30, 2016) patient is not able to meet her estimated protein and nutrient needs with her current income. This patient has increased protein needs due to her chronic illness and her current protein intake is less than 25% of the protein goal. She has significant protein malnutrition. This is related to increased nutrient needs with ME and the patient's inability to meet her nutrient needs due to low income.*

Significant muscle loss - *although we don't have the results of muscle testing comparing muscle mass prior to illness current muscle mass, such as bioelectrical impedance analysis reports, the... OT assessment (April 19, 2016) notes this patient has a 20 – 30% functional capacity: Limited ability and requires assistance to complete activities of daily living (dressing, bathing, cleaning, meal preparation, household tasks, driving, and leisure). This patient is unable to work. This patient requires a four-wheel walker due to decreased strength and mobility and is at risk for falls. All of this is related to decreased strength and function due to ME, indicating that she has had a significant loss of muscle mass since her symptoms became worse in 2006. As per nursing assessment (April 12/16), prior to illness the patient was able to perform ADLs, work, socialized daily, and attend university.*

Significant neurological degeneration - *both the internal medicine assessment (May 26, 2016) and OT assessment (April 19/16) ... report significant confusion, short-term memory loss, difficulty with categorizing and word retrieval, impaired concentration, disorientation, cognitive overload, hypersensitivity to light and sound, emotional overload, muscle weakness. These symptoms are a result of ME and may be exacerbated by malnutrition due to poor absorption of nutrients. The patient also suffers from chronic vertigo which contributes to disorientation.*

Due to low income, [the appellant] has not been able to afford the recommended ... food items requested. ... if the patient is not able to meet her estimated daily protein and total caloric requirements, this will contribute to additional malnutrition, muscle loss, poor cognition and immune suppression. Poor absorption of nutrients is common in patients with ME likely related to inflammation and caused by increased nutrient needs. More importantly, this patient is not able to meet basic nutritional needs with her current income. Based on dietitian assessment dated June 30, 2016, her medical condition requires higher protein and nutrient needs than a person without these conditions. These additional funds will empower the patient to meet her nutrient needs and improve her function, which will most likely reduce costs to the healthcare system such as

hospital admissions for specialist visits due to a fall or infection or making dangerous choices due to more cognition/memory.

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 caloric supplementation under section 7(a) of Schedule "C" of the EAPWDR because the medical information provided by the appellant's medical practitioner did not demonstrate the appellant requires caloric supplementation to a regular diet or that failure to obtain the MNS 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.

This appeal was held by written hearing by consent of the parties in accordance with section 22(3)(b) of the *Employment and Assistance Act*.

The Appellant's Position

The appellant did not make any submissions on appeal.

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 caloric supplementation because she did not meet the following legislative requirements:

- 1) Section 7(a) of Schedule C to the EAPWDR requires that the appellant needs "caloric supplementation to a regular dietary intake", while the evidence indicates that what the appellant needs is to increase her protein intake and improve her diet to meet her specific nutritional needs, rather than that she needs additional calories that she cannot get from a regular dietary intake.
- 2) Section 67(1.1)(d) requires that failure to obtain the MNS items will result in imminent danger to the appellant's life, while there is no indication in any of the evidence that the appellant's life would be in imminent danger if she did not receive the MNS.

The Panel's Decision

In her appeal submission, the appellant submitted 14 pages of medical assessment materials from a medical facility beyond those provided to the ministry at reconsideration. These included a CCDP Internal Medicine Assessment (May 26, 2016), a CCDP Occupational Therapist Interdisciplinary Assessment (April 19, 2016) and a CCDP Initial Dietician Assessment (June 30, 2016). 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. The panel reviewed these materials and found that they simply repeat and slightly expand upon the information that was before the ministry at the time of the reconsideration. As they do not contain any new information that was not before the ministry at the time of the reconsideration, the panel admitted the evidence.

In order to qualify for the MNS under sections 7(a) of Schedule "C" of the EAPWDR the appellant must meet all requirements of that section and of section 67 of the EAPWDR. The ministry found that

the appellant met all those requirements except two.

The first, in section 7(a) of Schedule C to the EAPWDR, requires that the appellant needs “caloric supplementation to a regular dietary intake”. It is important to note that this requirement is for extra calories in order to meet a regular caloric intake. It is not for particular or additional nutrient intake, or for particular supplements such as protein. In other words, in order to qualify for this MNS, the applicant must require a supplement that provides extra calories because they cannot get enough calories from the food that they eat.

In this case, the evidence indicates that what the appellant needs is to increase her protein intake and improve her diet to meet her specific nutritional needs, rather than that she needs additional calories that she cannot get from a regular dietary intake.

Her physician indicates that the nutritional items needed are: “High protein foods, protein powder, high iron foods, organic fruits and vegetables, gluten-free grains, dairy-free calcium sources and healthy fare.” These are not items to add calories to the appellant’s diet but rather to address her needs for specific types of foods.

Asked to describe how the MNS will provide caloric supplementation to a regular diet the physician writes: “Protein, whole grains, healthy fats and fruits and vegetables will all contribute to improved cognition and function. Again, this is a provision for certain types of foods rather than for additional caloric intake.

The appellant’s physician states: “patient is not able to meet her estimated protein and nutrient needs with her current income. This patient has increased protein needs due to her chronic illness ...”. Again, this is an indication that the appellant requires additional protein and nutrients, not that she requires extra calories.

The appellant’s physician states: “Poor absorption of nutrients is common in patients with ME likely related to inflammation and caused by increased nutrient needs. More importantly, this patient is not able to meet basic nutritional needs with her current income. Based on dietitian assessment dated June 30, 2016, her medical condition requires higher protein and nutrient needs than a person without these conditions.” A requirement for higher protein intake and more nutritional foods is not a requirement for additional calories.

Nowhere in all of the material before the ministry and this panel does the appellant’s physician state that the appellant requires caloric supplementation because she cannot get enough calories from a regular diet. This is the legislative requirement, and with no evidence to suggest that the appellant’s physician considers that the appellant cannot get enough calories from a regular diet, the ministry was reasonable in finding that it was not met.

The second requirement that the ministry found that the appellant did not meet is found in section 67(1.1)(d), that failure to obtain the MNS will result in imminent danger to the applicant’s life. Again, nowhere in any of the evidence does the appellant’s physician indicate that the appellant’s life is in imminent danger if she does not receive this MNS.

Asked to describe how the MNS will prevent imminent danger to the appellant’s life the physician

writes: "Since all these items will help improve cognition, malabsorption and muscle wasting, this patient will be less likely to acquire infections, have falls or make dangerous decisions due to poor cognition thus preventing danger to life." The dangers described here are neither "imminent" nor "life-threatening". Rather, they are possible dangers that, if they came about, could harm the appellant's health and (as the physician points-out) require further interventions by the health care system.

Given that there is no evidence suggesting that the appellant's life is in imminent danger if she does not receive the MNS, the ministry was reasonable in finding that this legislative requirement 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.