

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (ministry) reconsideration decision dated January 16, 2017 which held that the appellant is not eligible for a Monthly Nutritional Supplement (MNS) for vitamin/mineral supplement or additional nutritional items pursuant to Section 67(1) and Section 7 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The ministry found that the appellant does suffer from a chronic progressive deterioration of health and that he displays two or more of the symptoms listed in section 67(1.1)(b). However the ministry found that the evidence provided by the appellant's medical practitioner (physician) does not confirm that:

- the appellant requires a vitamin/mineral supplement or additional nutritional items, which are part of a caloric supplementation to a regular dietary intake, for the purposes of alleviating a symptom referred in section 67(1.1)(b) [section 67(1.1) (c)], or;
- failure to obtain the items requested would result in imminent danger to the appellant's life [section 67(1.1) (d)].

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – section 67 (1) and (2), and section 7 of Schedule C.

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration consists of:

1. Application for MNS signed and dated (October 5, 2016) by the appellant's physician which lists the appellant's medical conditions as Congestive Heart Failure (severe), Chronic Obstructive Pulmonary Disease (COPD), Atrial Fibrillation and Alcohol Abuse.
 - In specifying the vitamin or mineral supplement required the physician reports that the appellant would do well to be on one multivitamin tablet daily.
 - In describing how the vitamins/minerals will alleviate a specific symptom identified under section 67(1.1)(b) of the EAPWDR, the physician states that the appellant "has eaten poorly for quite some time – needs multivitamin".
 - In specifying the additional nutritional items required, the physician states that the appellant "needs long term high protein, low fat, low carb (carbohydrate) diet". Additional information provided by the physician in the form of a notation on the ministry's November 2, 2016 decision states that the appellant "needs healthy diet and no alcohol for his cardiomyopathy".
 - In describing if the appellant has a medical condition resulting in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake, the physician states "no- though does have problems keeping solids down". Additional information provided by the physician in the form of a notation on the ministry's November 2, 2016 decision states that the appellant "also likely has Irritable Bowel Syndrome [IBS] (vomiting and diarrhea). Does well with daily Ensure 2/day".
 - In describing how the nutritional items required will alleviate a specific symptom identified under section 67(1.1)(b) of the EAPWDR, the physician states "adequate nutrition important for his cardiac health".
2. Request for Reconsideration (RFR) which is signed and dated January 1, 2017 but is left blank.

Evidence on Appeal

In the Notice of Appeal (NOA), which is signed and dated February 21, 2017, the appellant stated that he needs a MNS to maintain his health. The additional products that are needed to maintain weight and muscle mass are expensive.

Evidence at the Hearing

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision which held that the appellant is not eligible for a Monthly Nutritional Supplement (MNS) because he failed to meet the legislative criteria set out in the EAPWDR was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the evidence provided by the appellant's medical practitioner (physician) does not confirm that a vitamin/mineral supplement is necessary for the purpose of alleviating a symptom referred to in section 67 (1.1)(b), or that failure to obtain the items requested would result in imminent danger to his life? Similarly are the additional nutritional items, which are part of a caloric supplementation to a regular dietary intake, are necessary for the purpose of alleviating a symptom referred to in section 67 (1.1)(b), or that failure to obtain the items requested would result in imminent danger to his life?

The relevant legislation is as follows:

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 person with disabilities in a family unit who receives disability assistance under

(a) section 2 [*monthly support allowance*], 4 [*monthly shelter allowance*], 6 [*people receiving room and board*] or 9 [*people in emergency shelters and transition houses*] of Schedule A, or

(b) section 8 [*people receiving special care*] of Schedule A, if the special care facility is an alcohol or drug treatment centre,

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 a supplement under section 2 (3) [*general health supplement*] of Schedule C,

(e) the person is not receiving a supplement under subsection (3) or section 66 [*diet supplements*],

(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).

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 Ministry's Position:

The ministry argues that in order to be eligible for a MNS the appellant must meet all four criteria listed in section 67 (1.1) (a-d) of the EAPWDR. It argues that the evidence provided by the physician does not establish that a vitamin/mineral supplement is required to alleviate a symptom referred to in section 67(1.1)(b) of the EAPWDR, and that failure to obtain a vitamin/mineral supplement will result in imminent danger to the appellant's life. Similarly, the ministry argues that the evidence provided by the physician does not establish that additional nutritional items, which are part of a caloric supplementation to a regular dietary intake, are required to alleviate a symptom referred in section 67(1.1)(b) of the EAPWDR, and that failure to obtain an additional nutritional supplement will result in imminent danger to the appellant's life.

The Appellant's Position:

The appellant's position is that he needs both vitamins/minerals and additional nutritional items to maintain weight and muscle mass.

The Panel's Decision

Section 67 (1.1) (b) of the EAPWDR requires that as a direct result of the chronic, progressive deterioration of health, an eligible person displays two or more of the listed symptoms. The evidence provided by appellant's physician establishes that the appellant has several severe medical conditions for which he is currently being treated (namely Congestive Heart Failure (severe), (COPD), Atrial Fibrillation and Alcohol Abuse) and that he displays one or more of the listed symptoms of deterioration.

Section 67 (1.1) (c) and (d) of the EAPWDR also require that the medical practitioner confirm that the items requested as a MNS will alleviate the symptoms of deterioration that are listed in section 67 (1.1) (b) of the EAPWDR, and that failure obtain the requested items will result in imminent danger to the person's life. The panel notes that the appellant's inability to afford the requested items is not a legislative consideration.

Vitamins and Minerals:

The appellant has requested a vitamin and mineral supplement. In the MNS application and in response to the question 'describe how this item will alleviate the specific symptoms identified' (under section 67 (1.1) (b) of the EAPWDR), the physician stated "has eaten poorly for quite some time – needs [?] multivitamin". In the additional information which came in the form of a notation, the physician stated that the appellant needs a "healthy diet and no alcohol for his cardiomyopathy". The ministry argued that the physician failed to draw the connection between one of the medical conditions diagnosed and the fact that the appellant has eaten poorly. The panel finds, that given the evidence, the ministry's analysis reasonable. The panel also notes that the physician did not provide evidence to demonstrate how specifically a multivitamin will alleviate the symptoms of weight loss, loss of muscle mass and/or deterioration of the heart.

In the additional information provided in the form of a notation, the physician does indicate that the appellant *likely* suffers from IBS. However, the panel notes that the physician did not conclusively diagnose the appellant with IBS, he did not relate IBS to any of the symptoms of deterioration that were identified in the application and the physician did not explain how, despite the appellant already suffering from the loss of muscle mass and weight, IBS has affected the appellant's overall health.

In the MNS application and in response to the question 'describe how this item will prevent imminent danger to the applicant's life', the physician does not provide an answer. The panel finds that the ministry reasonably found that the evidence does not demonstrate that the failure to obtain a vitamin/mineral supplement will result in imminent danger to the appellant's life.

The panel finds that the ministry reasonably determined that the evidence provided by the appellant's physician does not establish that a vitamin/mineral supplement is required to alleviate symptoms of chronic, progressive deterioration of health, and that failure to obtain a vitamin/mineral supplement

will result in imminent danger to the appellant's life pursuant to section 67 (1.1) (c) and (d) of the EAPWDR.

Nutritional Items:

The appellant has requested additional nutritional items that will provide caloric supplementation to a regular dietary intake. His physician stated that the appellant needs a high protein, low fat and low carbohydrate diet.

In the MNS application and in response to the question 'does this applicant have a medical condition which results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake', the physician answered "no" and added "though does have problems keeping solids down". The panel notes that the physician did not relate the inability to keep solids down to any of the diagnosed medical conditions that cause a chronic progressive deterioration of health. Therefore it is unclear why the appellant cannot keep solid foods down. As mentioned previously, IBS is not a diagnosed medical condition in the case of the appellant and therefore cannot be considered as a cause of chronic, progressive deterioration of health or of the inability to absorb sufficient calories.

In the MNS application and in response to the question 'describe how this item will alleviate the specific symptoms identified' (under section 67 (1.1) (b) of the EAPWDR), the physician stated "adequate nutrition important for his cardiac health". The ministry argues that the physician's evidence demonstrates that the appellant is required to follow a specific diet for his cardiac health and does not demonstrate that the appellant needs additional calories. The physician stated that the appellant needs a high protein, low fat and low carbohydrate diet but did not state that additional food or nutrition was required. The panel finds that, given the evidence, the ministry's analysis was reasonable.

In the MNS application and in response to the question 'describe how this item will prevent imminent danger to the applicant's life', the physician does not provide an answer. The panel finds that the ministry reasonably found that the evidence does not demonstrate that the failure to obtain additional nutritional items will result in imminent danger to the appellant's life.

The panel finds that the ministry reasonably determined that the evidence provided by the appellant's physician does not establish that a vitamin/mineral supplement is required to alleviate symptoms of chronic, progressive deterioration of health, and that failure to obtain additional nutritional items will result in imminent danger to the appellant's life pursuant to section 67 (1.1) (c) and (d) of the EAPWDR.

Conclusion:

The panel finds that the ministry reasonably concluded that the evidence establishes that the appellant's request did not meet the legislative criteria set out in section 67 (1.1) (c) and (d) of the EAPWDR to be eligible for MNS. The panel confirms the ministry's decision.