

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry's) reconsideration decision dated January 26th, 2017, which found that the appellant was not eligible for the Monthly Nutritional Supplement (MNS) of nutritional items because his application did not meet the criteria set out in the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)* section 67(1.1) (b) (c) and (d) and Schedule C, section 7, specifically that the Appellant did not satisfy the Ministry that (b) he displayed two or more symptoms as a result of his chronic, progressive deterioration of health, (c) that the requested nutritional supplement item is required as part of a caloric supplementation to a regular dietary intake, in order to alleviate a symptom of the progressive deterioration of health, and that (d) failure to provide additional nutritional items will result in an imminent danger to his life.

PART D – Relevant Legislation

EAPDR *Employment and Assistance for Persons with Disabilities Regulation, Section 67(1)*
EADPR *Employment and Assistance for Persons with Disabilities Regulation, Schedule C section 7*

PART E – Summary of Facts

The hearing was postponed for 15 minutes to allow for the ministry representative to arrive at the scheduled location.

The ministry representative did not attend the hearing. After confirming that the ministry representative was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

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

- 1) The Appellant's application for MNS dated August 17th, 2016. Part C was completed by a medical practitioner who noted the following: [The Appellant is diagnosed with Type 2 Diabetes, as well as rheumatoid arthritis. The Appellant is being treated for chronic progressive deterioration of health through medication and lifestyle. The Appellant displays the following symptoms; significant muscle mass loss, significant neurological degeneration, and moderate to severe immune suppression. The physician does not elaborate on these symptoms.
*The Appellant does not have a medical condition that results in an inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.
*The recommendation for nutritional supplements will prevent imminent danger to life by assisting in function (muscle loss) and (illegible) control of diabetes.
*The client will benefit from a high protein, low carbohydrate, low preservative diet.
- 2) A Ministry letter dated December 15th, 2016 informing the Appellant that his application for MNS was denied.
- 3) A Ministry MNS Denial Decision Summary.
- 4) Request for Reconsideration dated January 19th, 2017.

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

There are questions the ministry posed that were not in the application requiring more details. My doctor will provide that information which will support what he had in the application.

The panel admitted an additional written document as evidence under section 22(4)(b) of the Employment and Assistance Act in support of the information before the ministry at the time of reconsideration. The document was a letter/form prepared by a community legal advocacy centre and addressed to the Appellant's physician, requesting more information regarding the Appellant's medical condition and the need for the MNS. The Appellant's physician completed and signed the request on February 20th, 2017.

In the letter, the physician provided the following information:

*A description of the muscle mass loss: *"both conditions are associated with loss of muscle mass which cannot be quantified. It is thought significant"*.

*A period of time in which the muscle mass loss occurred: *"Progressively over the last 2 years"*.

*A comment regarding the MNS as a requirement to supplement calories and to prevent further deterioration: *"He needs to follow a high protein diet/supplement to protect muscle mass"*.

*A comment regarding the type of product necessary to prevent the caloric loss: *"I agree that he needs a product such as Ensure or Boost and as above; the supplement should not contain added sugar"*.

At the hearing, the appellant noted that;

*He never asked for this disability.

*He would prefer to be a contributing member of society - by working if he could.

*He has suffered a 40% muscle mass loss over the last few years. He cannot, for example, walk on a treadmill, or if he walks through the mall he has to stop a couple of times.

*While he does not think he will die tomorrow if he does not get Boost, but he fears he could end up in a wheelchair in 4-5 years and that could make him suicidal.

In the reconsideration decision, the ministry noted;

*That a medical practitioner has confirmed that the Appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, specifically type 2 diabetes and rheumatoid arthritis.

*That as a result of the chronic, progressive deterioration of health, the Appellant displays the symptom of moderate to severe immune suppression.

*The physician notes that the Appellant suffers from a significant loss of muscle mass. However, in the physician's report, there is no further information regarding the degree of loss or the period of time in which it occurred.

*The physician also notes that there is a significant degree of neurological degeneration. However, there is no further explanation regarding the degree of degeneration or how it is related to the Appellant's chronic, progressive deterioration of health.

*That in order for the Appellant to be eligible for MNS, he must display two or more symptoms as a result of the chronic, progressive deterioration of health.

*As the Appellant only displays one symptom, he is ineligible to receive the MNS.

*In describing how the nutritional items will alleviate one or more of the symptoms, the physician writes "N/A" as well as reports that the appellant has no condition that results in the inability to absorb sufficient calories.

*The physician does not provide the necessary support for the fact that failure to receive the MNS will result in an imminent danger to the Appellant's life.

PART F – Reasons for Panel Decision

The issue under appeal is the ministry's reconsideration decision dated January 26th, 2017, which found that the appellant was not eligible for the Monthly Nutritional Supplement (MNS) of nutritional items because his application did not meet the criteria set out in the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)* section 67(1.1) (b) (c) and (d) and Schedule C, section 7, specifically that the Appellant did not satisfy the Ministry that (b) he displayed two or more symptoms as a result of his chronic, progressive deterioration of health, (c) that the requested nutritional supplement item is required, as part of a caloric supplementation to a regular dietary intake, in order to alleviate a symptom of the progressive deterioration of health, and that (d) failure to provide additional nutritional items will result in an imminent danger to his life.

The relevant sections of the legislation are 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 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.

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

Panel Decision

The Appellant's position is that he feels he should receive the MNS because it will help him from wasting/deteriorating further. The Ministry's position, as set out in the reconsideration decision, is that the Appellant's request does not meet the legislative criteria for approval. The ministry accepted that the Appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, specifically type 2 diabetes and rheumatoid arthritis. The Ministry found that the Appellant had met the criteria in section 67(1.1)(a), EAPWDR, in that he has a chronic and progressive deterioration of health on account of a severe medical condition and that as a result, he displays one (moderate to severe immune suppression) of the two or more required symptoms listed in subsection (b) of section 67(1.1). However, the Ministry found that in addition to the Appellant's application not fully satisfying the requirements of subsection (b), in subsection (c) the ministry determined that the requested nutritional supplement item is not required, as part of a caloric supplementation to a regular dietary intake, in order to alleviate a symptom of the appellant's progressive deterioration of health. Further, in subsection (d), the ministry found that it was not established that the failure to obtain the items will result in imminent danger to the Appellant's life. However, the Appellant's position was that while he believes that he will not likely die tomorrow from his condition, if he winds up in a wheelchair in 4-5 years, the lack of support could lead to his suicide through depression.

The panel determined that even considering the supplemental information provided as additional evidence in the February 20th, 2017 letter from the physician; the information does not fully establish that the appellant has met the criteria of section 67(1.1)(b) where the appellant is required to display two or more required symptoms. Specifically, while the ministry accepts the physician's determination that the appellant does display a (moderate to severe immune suppression); the panel determined that the added detail that the muscle mass loss occurred progressively over the last two years, does not provide any additional details or description to explain the basis for calling the muscle mass loss significant. Instead, he says it "cannot be quantified." Further, in relation to the requirement that a nutritional supplement must have the purpose of alleviating a symptom as per section 67(1.1)(c), the physician indicates that he agrees that the Appellant requires Ensure or Boost to "promote muscle mass". However, given the ministry reasonably determined that the symptom of significant muscle mass loss had not been established, along with the conflicting information from the doctor in the application (i.e., that the appellant does not have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular diet and the answer of "N/A" to how nutritional items required would alleviate one or more of the symptoms,) the panel finds the ministry reasonably determined that the criteria in section 67(1.1)(c) had not been met.

Lastly, while the medical practitioner stated that the additional nutritional items would assist in promoting muscle mass for the appellant, the information before the ministry did not establish that the failure to receive the MNS would result in an imminent danger to the appellant's life. The panel finds that the ministry reasonably determined that the appellant did not meet the criteria of 67(1.1)(d). The panel finds that the ministry was reasonable in determining that the legislative requirements of EAPWDR section 67(1.1)(b), (c) and (d) were not met.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's reconsideration decision finding the appellant ineligible for MNS of nutritional items on the basis that the legislative criteria of EAPWDR section 67(1.1)(b), (c) and (d) and Schedule C section 7(a) were not met was a reasonable application of the relevant legislation in the circumstances of the appellant.

Therefore, the panel confirms the ministry's decision pursuant to section 24(1)(a) and section 24(2)(a) of the Employment and Assistance Act. The appellant therefore is not successful in his appeal.