

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated February 8, 2017, which held that the appellant is not eligible to receive the monthly nutritional supplement (MNS) for either nutritional items or vitamins and minerals because all of the requirements of section 67(1.1) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) were not met. Specifically, the minister was not satisfied that a medical practitioner confirmed that:

- As a direct result of a chronic, progressive deterioration of health, the appellant displays two or more of the symptoms listed in paragraph (b).
- As required by paragraph (c), for the purpose of alleviating a symptom referred to in paragraph (b), the appellant requires the items set out in section 7 of Schedule C, which are “additional nutritional items that are part of a caloric supplementation to a regular dietary intake” and “vitamins and minerals.”
- As required by paragraph (d), failure to obtain the items would result in imminent danger to the appellant’s life.

At reconsideration, the ministry was satisfied that a medical practitioner had confirmed the appellant is being treated for a chronic, progressive deterioration of health on account of a severe medical condition, meeting the requirement of paragraph (a).

PART D – Relevant Legislation

EAPWDR, section 67 and section 7 of Schedule C

PART E – Summary of Facts

The appellant is a recipient of disability assistance and a monthly high protein diet allowance. The appellant requested the MNS for additional nutritional items and vitamins/minerals.

Information provided by the appellant's medical practitioner comprised the Application for Monthly Nutritional Supplement (the MNS application) dated November 16, 2016, and a January 11, 2017 note ("the note") submitted with the appellant's request for reconsideration. For ease of reference, the medical practitioner's information from both documents is summarized together, some of which is described as it relates to the specific questions posed in the MNS application.

The physician diagnosed the appellant with the following medical conditions, and provided additional commentary.

- Major depression
- Chronic anemia – needs iron rich foods prior to surgery. Combination of irritable bowel syndrome (IBS), severe diarrhea, and bleeding per vagina and bladder cause anemia.
- Hematuria (blood in urine) NYD
- Osteopenia – bordering osteoporosis and needs calcium rich diet, vitamin D and calcium supplement.
- Hypertension
- Severe pelvic pain, with grade 4 ("severe") prolapsed uterus, requiring anterior (cystocele) and posterior (rectocele) repair surgery; recurrent hemorrhagic cystitis and bleeding, recurrent urinary infection.

The medical practitioner identified the following four symptoms from those listed in the MNS application. Additional information provided by the medical practitioner is in brackets).

- Underweight status (BMI less than 21; height 5'1", weight 112 ½ lbs.)
- Significant weight loss (Has lost over 6 lbs. in short period of time)
- Significant muscle loss (Yes)
- Significant deterioration of a vital organ (Needs repair of pelvic organs, gets urinary retention. Waiting for surgery)

Information specific to the request for vitamins/minerals

Specify the vitamin or mineral supplement(s) required and expected duration of need.

- Multivitamins and minerals, omega 3 & 6 supplement, calcium with vitamin D, and Glucerna. "Will need for 24 months."

Describe how this item will alleviate the specific symptoms identified.

- Hope to improve anemia, depressed mood and general symptoms (improve muscle mass and frailty). Needs omega vitamins for relief.

Describe how this item will prevent imminent danger to the applicant's life.

- Pre-surgery needs to build general wellness so less risk of anesthesia.
- In the note, the medical practitioner writes "Patient has urgent need for minerals and supplements as well as vitamins to prevent imminent danger to life."

Information specific to the request for additional nutritional items

Specify the additional nutritional items required and expected duration of need.

- No response is provided.

Does the applicant have a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake? If yes, please describe.

- Intermittent abdominal cramps and diarrhea due to IBS.

Describe how the nutritional items will alleviate one or more of the symptoms specified and provide caloric supplementation to the regular diet.

- Improve muscle mass, weight gain, and prevent further deterioration of bones.
- Improve anemia.
- Improve mood (omega vit).

Describe how the nutritional items requested will prevent imminent danger to the applicant's life.

- No response is provided.
- At reconsideration, in the note, the medical practitioner writes "Patient has urgent need for minerals and supplements as well as vitamins to prevent imminent danger to life."

The appellant also provided two February 4, 2017 handwritten submissions at reconsideration totaling 5 pages in which she reiterates the medical practitioner's information, and describes her financial need. The appellant also reports that she was hospitalized once with a urinary tract infection and again with severe dehydration and frailty. The appellant attaches a copy of her February 2017 BC Hydro bill, and documentation confirming her first hospital admission in December 2016, including urine culture results. The balance of the information comprises the appellant's argument as to why she is eligible for the requested supplements.

On appeal, the appellant provided a March 8, 2017, 3-page handwritten submission with her Notice of Appeal in which the appellant describes her financial need, reviews the medical practitioner's information, noting that the medical practitioner did identify the specific additional nutritional item requested, Glucerna, but listed it with the vitamins and minerals. The balance of the document comprises argument.

On appeal, the ministry provided a late written submission, which was accepted by the panel, stating that it was relying on its reconsideration decision.

The arguments of both parties are set out in Part F of this decision.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision that the appellant is not eligible to receive the MNS for additional nutritional items and vitamins/minerals under section 67(1.1) of the EAPWDR is reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances. That is, has the ministry reasonably determined that a medical practitioner has not confirmed that:

- As a direct result of a chronic, progressive deterioration of health, the appellant displays two or more of the symptoms listed in paragraph (b).
- As required by paragraph (c), for the purpose of alleviating a symptom referred to in paragraph (b), the appellant requires the items set out in section 7 of Schedule C, which are "additional nutritional items that are part of a caloric supplementation to a regular dietary intake" and "vitamins and minerals."
- As required by paragraph (d), failure to obtain the items would result in imminent danger to the appellant's life.

The panel notes that in her appeal submission the appellant raises the question of a "Grandparents clause allowance" and "Code 29" as possibly supporting her case. The panel understands this to mean that the appellant feels she may be eligible to receive the MNS as a "grandfathered" benefit. However, the EAPWD legislation does not include such a provision and a benefit can only be grandfathered in cases where a person has already been in receipt of the benefit, which is not the case for the appellant. Accordingly, the panel's analysis will only address the three aforementioned bases upon which the ministry denied the appellant's request.

Nutritional supplement

67 (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.

Section 67(1.1)(b) – symptoms

The appellant argues that the symptoms of significant weight loss and significant muscle mass loss are explained by the medical practitioner’s identification of severe diarrhea due to IBS, as well as bleeding due to several causes resulting in chronic anemia.

The ministry comments that the note does not address the symptoms set out in paragraph (b). The ministry argues that the information in the MNS application does not establish the symptom of “underweight status” because the appellant’s height and weight indicate a BMI of 21.3, which is within the normal range. The ministry also argues that the symptom of “significant weight loss” is not established because, while the medical practitioner reports a loss of over 6 lbs. in a short period of time, the time period is not established and the appellant’s BMI is currently within the normal range, therefore, the ministry cannot be satisfied that the weight loss has been *significant*. Finally, respecting the symptom of “significant muscle mass loss”, as the medical practitioner does not describe evidence of muscle mass loss or of the period of time over which the muscle mass loss occurred, the ministry cannot be satisfied that the muscle mass loss has been *significant*.

The ministry accepts that “significant deterioration of a vital organ” is supported by the evidence, but concludes that a medical practitioner has not confirmed that the appellant is displaying at least two of the symptoms set out in paragraph (b).

Panel Decision

The legislative language of section 67 requires that the “minister is satisfied” that the requirements are met and the ministry is obligated to make an evidence-based decision, not simply accept a medical practitioner’s confirmation that an applicant is displaying a symptom in the absence of supporting information.

Respecting the symptom of underweight status, while, as the appellant argues, the medical practitioner identifies that the appellant suffers from severe diarrhea that contributes to her chronic anemia, the bouts of diarrhea are described as intermittent, with no further explanation as to how often they occur. Additionally, the information respecting the appellant’s height and weight corresponds with a BMI index that falls within the normal range. The panel finds that the ministry reasonably determined that the information does not establish that the appellant displays the symptom of “underweight status.”

Respecting the symptom of significant weight loss, while the medical practitioner has confirmed weight loss of 6 lbs. over a short period of time, in the absence of a description as to what is meant by “short period of time” which is open to a differing interpretations, and as the appellant’s BMI remains within the normal range despite this weight loss, the panel finds that the ministry reasonably

determined that the symptom of underweight status is not supported by the evidence.

Respecting the symptom of significant muscle mass loss, the medical practitioner's information does not describe how muscle mass loss relates to the appellant's medical conditions or, as the ministry notes, any description of the muscle mass loss or the time period over which the loss occurred. In the absence of any details respecting the muscle mass loss, the panel finds that the ministry was reasonable in concluding the muscle mass loss has not been established as being significant.

Based on the above analysis and findings, the panel finds that the ministry was reasonable in not being satisfied that a medical practitioner confirmed that the appellant is displaying at least two of the symptoms set out in section 67(1.1)(b) of the EAPWDR.

Vitamin/Mineral - Section 67(1.1)(c)

The appellant argues that while the surgery, after a long recovery period, may help the severe pelvic organs prolapse, the rest of her severe medical problems including IBS, hematuria, major depression, hypertension, and more, will continue and get worse, and that the information provided in the MNS application and the note establishes that she requires vitamin/mineral supplementation to alleviate the symptoms identified by the medical practitioner.

The ministry argues that the required duration of 24 months and pre-surgical need suggests the need for temporary vitamin/mineral supplementation, rather than an ongoing need on account of a chronic, progressive deterioration of health. Additionally, the medical practitioner has not provided evidence to establish that as a result of a chronic, progressive deterioration of health, the appellant displays the symptom of "malnutrition", which would indicate the need for vitamin/mineral supplementation. Finally, respecting the medical practitioner's statement that vitamin/mineral supplementation is needed to improve anemia, depressed mood and general symptoms (improve muscle mass and frailty), the ministry notes that the symptom of "significant muscle mass loss" has not been established and that the information does not speak to the alleviation of "significant deterioration of an organ."

Panel Decision

The medical practitioner reports that vitamin/mineral supplementation is needed to improve the appellant's anemia, depression, and general symptoms (improve muscle mass and frailty). As previously discussed, the panel found the ministry reasonable in not being satisfied that the appellant displays "significant muscle mass loss." The balance of the medical practitioner's information respecting the need for the vitamin/mineral supplementation does not relate to the alleviation of the other symptoms set out in paragraph (b), including, as the ministry notes, the symptom of malnutrition. Finally, as the ministry notes, the medical practitioner does not identify the need for vitamin/mineral supplementation as relating to the symptom of significant deterioration of an organ. Accordingly, the panel finds that the ministry reasonably determined that a medical practitioner has not confirmed that the appellant requires vitamin/mineral supplementation for the purpose of alleviating a symptom set out in paragraph (b).

Vitamin/Mineral - Section 67(1.1)(d)

The appellant argues that the information establishes that she must start the supplements urgently, as confirmed by the medical practitioner, to enable her to survive and will then require them for 24

months following surgery. She is chronically anemic due to the bleeding described by the medical practitioner, which puts her at risk for her life.

The ministry argues that the medical practitioner's statement "Pre-surgery needs to build general wellness (so less risk of anesthesia" does not establish that failure to obtain the supplementation will result in imminent [emphasis included] danger to the appellant's life. Further, the statement "Patient has urgent need for minerals and supplements as well as vitamins to prevent imminent danger to life" does not establish the cause of imminent danger to life.

Panel Decision

Paragraph (d) requires that failure to provide vitamin/mineral supplementation required to alleviate a symptom set out in paragraph (b) will result in imminent danger to life. In this case, the information from the medical practitioner does not identify a direct causal relationship between the appellant's medical conditions, the prescribed symptoms and an imminent life-threatening need for vitamins/minerals. Rather, the medical practitioner identifies the need as relating to the need to improve general wellness and reduce the risk of anesthesia with upcoming surgery, which the ministry has reasonably viewed as not establishing an "imminent" danger to the appellant's life. Subsequently, in the note, the medical practitioner reports that vitamin/mineral supplementation is urgently needed, without, as the ministry notes, any explanation as to the cause or immediacy of the danger. For these reasons, the panel finds that the ministry reasonably determined that a medical practitioner has not confirmed that failure to provide vitamin/mineral supplementation will result in imminent danger to the appellant's life as required by section 67(1.1)(d) of the EAPWDR.

Additional Nutritional Items - Section 67(1.1)(c) and section 7(a) of Schedule C

The appellant argues that her physician has indicated that her BMI is less than 21, with 21 being normal, and that additional caloric supplementation is identified by the medical practitioner as relating to the appellant's abnormal constipation and diarrhea due to IBS

Respecting the requirements of paragraph (c) and section 7(a), the ministry argues that the medical practitioner does not specify the nutritional items required. Furthermore, in the MNS application and the note, the medical practitioner does not provide enough evidence to establish that the appellant is displaying a symptom set out in paragraph (b) that would indicate a need for caloric supplementation, such as malnutrition, underweight status, significant weight loss or significant muscle mass loss, again noting that the appellant's BMI is within the normal range. Additionally, while the medical practitioner reports intermittent abdominal cramps and diarrhea due to IBS, she does not describe the frequency of these periods; therefore it is difficult to establish that the appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake. Therefore, the ministry is not satisfied that the information establishes that a medical practitioner has confirmed that the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating a symptom referred to in paragraph (b).

Panel Decision

Section 67(1.1)(c) and section 7(a) of Schedule C require that the nutritional items be required as caloric supplementation in addition to a regular dietary intake for the purpose of alleviating a symptom set out in paragraph (b). While it is possible that the medical practitioner mistakenly identified

Glucerna as a vitamin/mineral supplement, for the reasons previously provided, the panel finds the ministry reasonable when determining that the medical practitioner's information respecting the appellant's weight loss of 6 lbs. and current BMI does not establish that the appellant displays the symptoms of underweight status, significant weight loss or significant muscle mass loss. As the ministry notes, these symptoms, as well as the symptom of malnutrition could be indicators of the need for caloric supplementation beyond a regular dietary intake. Also, as the ministry argues, in the absence of some indication as to how often the appellant experiences intermittent severe diarrhea caused by her IBS, the ministry has reasonably concluded that it has not been established that the appellant has a medical condition that results in the inability to absorb sufficient calories required to satisfy daily requirements through a regular dietary intake.

Based on the information provided by the medical practitioner, the panel finds that the ministry reasonably concluded that a medical practitioner has not confirmed that the appellant requires additional nutritional items "that are part of a caloric supplementation to a regular dietary intake" for the purpose of alleviating one the symptoms set out in paragraph (b) and has therefore not met the requirements of section 67(1.1)(c) and section 7(a) of Schedule C.

Additional Nutritional Items - Section 67(1.1)(d)

The appellant argues that the information establishes that she must start the supplements urgently, as confirmed by the medical practitioner, to enable her to survive and will then require them for 24 months following surgery. The appellant notes that the ministry did not reference the information in the note in its reconsideration decision.

The ministry argues that the medical practitioner does not describe how nutritional items will prevent imminent danger to the appellant's life.

Panel Decision

Paragraph (d) requires that failure to provide additional nutritional items required to alleviate a symptom set out in paragraph (b) will result in imminent danger to life. In the MNS application, the medical practitioner does not respond when asked to describe how additional nutritional items will prevent imminent danger to the appellant's life. Subsequently, in the note, the medical practitioner reports that "supplements" are urgently needed, without any description of the supplements, the cause of the danger to life, or the immediacy of the danger. For these reasons, the panel finds that the ministry reasonably determined that a medical practitioner has not confirmed that failure to provide additional nutritional items will result in imminent danger to the appellant's life as required by section 67(1.1)(d) of the EAPWDR.

Conclusion

The panel confirms the ministry's reconsideration decision as it was reasonably supported by the evidence. The appellant is not successful on appeal.