

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 6, 2017, which held that the appellant is not eligible to receive the monthly nutritional supplement (MNS) of nutritional items because all of the requirements of section 67(1.1) 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 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(a) of Schedule C - “additional nutritional items that are part of a caloric supplementation to a regular dietary intake.”
- As required by paragraph (d), failure to obtain the items will result in imminent danger to the appellant’s life.

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), and 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).

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 who also receives the MNS of vitamins/minerals and a monthly high protein diet allowance. The appellant requested the MNS of additional nutritional items.

Information from the appellant's medical practitioner comprised the Application for Monthly Nutritional Supplement (the MNS application) dated October 21, 2016. When originally submitted, the medical practitioner did not provide responses to all of the MNS application questions. At reconsideration, the MNS application was resubmitted with additional commentary provided by the medical practitioner. All of the medical practitioner's information is reflected in the *Summary of Relevant Information* that appears below. Also submitted at reconsideration was a one-page submission from the appellant's advocate comprised of argument. The arguments of both parties are set out in Part F of this decision.

On appeal, the appellant provided a total of 15 pages, sent via 4 separate email messages (one on May 26, 2017 and three on May 29, 2017). The submissions comprised information relating to hydro and telephone bill payments made by the appellant's brother, with whom the appellant resides, as well as the appellant's description of her health history, including past assaults, medical conditions not identified in the MNS application, surgeries, and items she currently takes (matcha tea, a non-prescription product "Recovery", and Co-Q 10). She reports having been on Boost for over 10 years, commenting "they provided all the info in the past = (It was always sufficient)." The appellant also describes difficulties obtaining food as the grocery store and food bank are not local. The appellant also advises that she just became aware that her current doctor, who completed the MNS application, has not received her previous medical history, which the appellant describes as "huge", and that he would not be able to review her history until a later date as he is out of office for the next couple of weeks.

On appeal, the ministry advised that its submission will be the reconsideration summary. The ministry did not address the appellant's appeal submission.

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the minister when the decision being appealed was made and "oral and written testimony in support of the information and records" before the minister when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the minister at reconsideration. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA – to determine whether the ministry's reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry's decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

The panel finds that the information respecting the nutritional and food intake tends to corroborate the information before the ministry respecting the appellant's nutritional needs. Therefore, the panel admitted this information in accordance with section 22(4) of the EAA. As the balance of the information relates to medical conditions not referenced in the MNS application and other matters not previously addressed or relevant to the issues on appeal, it was determined not to be in support of the information available at reconsideration and therefore not admitted under section 22(4) of the EAA.

Summary of Relevant Information

The medical practitioner diagnosed the appellant with the following medical conditions.

- Hepatitis C
- Anxiety/Panic disorder

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

- Underweight status (chronically ill, malnourished; height 5'7", weight 130 lbs.)
- Significant muscle loss (significantly reduced muscle mass)
- Significant deterioration of a vital organ (Hepatitis)

The following questions with the medical practitioner's answers are contained within the MNS application.

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

- Requires increased protein and healthy oils in diet with reduced carbohydrates to protect and help her liver function.

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.

- Has Hepatitis C. Requires improved nutrition/healthier food choices to help immune system.

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

- Increased protein and healthy fats will improve muscle mass and her immune system.

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

- Requires improved protein in diet to support immune system function and help liver to heal.

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 of additional nutritional items 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 required by paragraph (c), for the purpose of alleviating a symptom referred to in paragraph (b), the appellant requires additional nutritional items that are part of a caloric supplementation to a regular dietary intake; and
- As required by paragraph (d), failure to obtain the items would result in imminent danger to the appellant's life?

Applicable Legislation

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.

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 a criterion is met in the absence of supporting information.

Section 67(1.1)(c) and section 7(a) of Schedule C

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).

The appellant’s advocate, in her request for reconsideration submission, reiterates the information provided by the medical practitioner and argues that the fact that the medical practitioner stated that the appellant is chronically ill and malnourished shows the need for additional calories. However, the panel finds that the ministry is reasonable in concluding that while the medical practitioner indicates that the appellant suffers from malnourishment, the described need for increased protein, healthy oils and reduced carbohydrates to improve liver function and muscle mass does not establish that the appellant has a medical condition resulting in the inability to absorb sufficient calories to meet daily nutritional needs or that additional calories are required for another reason. Similarly, the panel finds that the medical practitioner’s comment that the appellant requires improved nutrition/healthier food choices to help her immune system was reasonably viewed by the ministry as suggesting that the appellant experiences a lack of nutrition due to choice of foods as opposed to a medical condition, and the panel notes that the appellant’s own information identifies difficulties obtaining food. Additionally, as the ministry notes, the appellant’s height and weight indicate a BMI within the normal range. The panel also notes that while the appellant’s appeal submission included a description of items she currently takes, there is no additional information from a medical practitioner and the appellant does not describe the need for caloric supplementation or how the requested MNS supplement would alleviate symptoms of the diagnosed conditions of Hepatitis C and anxiety/panic attacks.

Based on the information provided, 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.

Section 67(1.1)(d)

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, the medical practitioner’s statement in response when asked to describe how the requested nutritional items will prevent imminent danger to life is that the appellant requires improved protein in diet to support her immune system function and to help her liver heal.

The appellant’s advocate argues that a compromised immune system means that the appellant is at risk of contracting infections and that the physician’s statements respecting the need for improved

nutrition, increased protein and healthy fats to improve muscle mass and her immune system shows the necessity of nutritional items to prevent imminent danger to life. The ministry argues that the information respecting the need to support the appellant's immune system and help her liver heal does not establish that failure to provide additional nutritional items will result in an *imminent* (emphasis included) danger to the appellant's life. While the medical practitioner describes benefits to the appellant's health from increased protein and healthy fats, the panel finds that the ministry reasonably determined that supporting the appellant's immune system and helping her liver heal does not indicate the degree of immediacy of life threatening need required to establish that failure to provide the additional nutritional items will result in imminent danger to the appellant's life. Therefore, the panel finds that the ministry reasonably determined that the requirement of section 67(1.1)(d) of the EAPWDR was not met.

Conclusion

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