

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry)'s reconsideration decision dated March 2, 2017, finding the appellant is not eligible to receive a Monthly Nutritional Supplement (MNS) of vitamin/mineral supplementation and additional nutritional items under sections 7(a) and 7(c) of Schedule "C" of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) because the appellant does not meet the legislated requirements in sections 67(1.1)(b), (c) and (d) of the EAPWDR.

PART D – Relevant Legislation

The relevant legislation is section 67 and sections 7(a) and 7(c) 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:

1. The appellants application for the MNS completed by her physician on January 16, 2017, in which the physician indicated that she is suffering from severe COPD, spinal stenosis and colonic polyposis. Asked if the appellant is being treated for a chronic progressive deterioration of health, the physician writes: “Severe COPD has caused weight loss and exertional dyspnea”. Asked to identify two or more of the legislated symptoms of this condition suffered by the appellant, the physician notes under significant weight loss: “has lost 184 lb over the last 5 months – by her recollection”. The application notes her height at 5’2” and her weight at “152lb was as low as 93lb. Asked to specify the vitamin and mineral supplementation required, the physician writes: “Multivitamin + minerals + [illegible] daily. Asked to describe how this item will alleviate the symptoms, the physician writes: “Ensure the substrates for rehab”. Asked to describe how the item will prevent imminent danger to the appellant’s life, the physician did not comment. Asked to identify the nutritional items required, the physician did not write anything. Asked if the appellant has a medical condition that results in an inability to absorb sufficient calories from a regular diet, the physician writes: “COPD, apparently has a colon Ca but I don’t have any documentation to support the diagnosis. Asked to identify how the caloric supplementation will alleviate her symptoms and provide caloric supplementation, the physician writes: “Improve her strength”. Asked to describe how the nutritional items will prevent imminent danger to the appellant’s life, the physician writes: “none”.
2. The appellant’s application for reconsideration in which she writes: “To provide information requested that [the appellant’s physician] did not complete.

At appeal the appellant submitted a letter from a different physician which states:

The nutritional item required is ENSURE Protein Meal Replacement.

I am confirming that this supplementation is required over and above regular dietary intake.

This nutritional supplement will alleviate symptoms in regards to Chronic Gastritis, Acid Reflux and COPD. This supplementation will prevent imminent danger to applicant’s life.

These conditions confirm [the appellant] meets the criteria set out by the ministry of Social Development for requirements of nutritional supplementation.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision dated March 2, 2017, finding the appellant is not eligible to receive a Monthly Nutritional Supplement (MNS) of vitamin/mineral supplementation and additional nutritional items under sections 7(a) and 7(c) of Schedule "C" of the EAPWDR because the appellant does not meet the legislated requirements in section 67(1.1)(b), (c) and (d) of the EAPWDR.

The relevant legislation is section 67 and sections 7(a) and 7(c) 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.

Admissibility of New Information

Section 22(4) of the *Employment and Assistance Act* states that the panel is empowered to admit as evidence only “the information and records that were before the minister when the decision being appealed was made” and “oral or written testimony in support of” the record of the ministry decision. If the additional evidence substantiates or corroborates the information and records before the minister at the reconsideration stage, the evidence should be admitted; if it does not, then it does not meet the test of admissibility under s. 22(4)(b) of the *Employment and Assistance Act* and should not be admitted.

The ministry states that it considers that if it had had the new information provided by the appellant at appeal before it at the time of the reconsideration decision it may have made a different decision.

In this case, the new information makes four relevant statements:

1. *The nutritional item required is ENSURE Protein Meal Replacement.* As the original application indicates that the appellant does require nutritional supplementation, the panel finds that this description of the item is in support of that information and so is admissible.
2. *I am confirming that this supplementation is required over and above regular dietary intake.* As the original application indicates that the appellant does have a medical condition that results in the inability to absorb sufficient calories, the panel finds that this confirmation of that fact is in support of that information and so is admissible.
3. *This nutritional supplement will alleviate symptoms in regards to Chronic Gastritis, Acid Reflux and COPD.* As this statement is a completely different answer to that provided in the original application, which noted “Improve her strength” when asked to describe how the supplement will alleviate symptoms or provide caloric supplementation, it cannot be “in support of” the information before the ministry at the time of the reconsideration decision and so is not admissible.
4. *This supplementation will prevent imminent danger to applicant’s life.* As this statement contradicts the original application which noted “none” when asked to describe how the supplement will prevent imminent danger to the applicant’s life, it cannot be “in support of” the information before the ministry at the time of the reconsideration decision and so is not admissible.

The Appellant’s Position

In her written submission the appellant states: “Dr. did not complete paperwork.”

The Ministry’s Position

The ministry relied upon its reconsideration decision. In that decision the ministry found that:

1. The appellant meets the requirements of section 67(1.1)(a).
2. Despite the appellant's physician not remarking upon it in the application, the appellant did meet the symptom of "significant deterioration of a vital organ" in section 67(1.1)(b). However, the ministry also found that the appellant did not meet the symptom of "significant weight loss" which the appellant's physician had noted. The ministry found that: (i) the weight loss indicated by the physician was "by her recollection" and not documented; (ii) the physician indicated that she currently weighed 152lbs, up from a low of 93lbs indicated weight *gain*; and (iii) the appellant's BMI was 27.8, which is characterized as "overweight".
3. As regards the requirement of section 67(1.1)(c) as it applies to vitamin/mineral supplementation, in the appellant's application the physician does not indicate that the appellant requires vitamin and mineral supplementation in order to address the symptoms of her medical condition.
4. As regards the requirement of section 67(1.1)(c) as it applies to nutritional supplementation, in the appellant's application the physician does not indicate that the appellant suffers from a symptom set out in section 67(1.1)(b) that requires nutritional supplementation such as malnutrition or significant weight loss.
5. There is no confirmation that failure to obtain the vitamin/mineral supplementation would result in imminent danger to the appellant's life (left blank).
6. The appellant's physician indicated "none" when asked whether failure to obtain the nutritional supplementation would result in imminent danger to the appellant's life.

The Panel's Decision

Section 67(1.1)(b): significant weight loss. There was no *medical* evidence before the ministry that the appellant had lost weight. What evidence there was appears to indicate that the appellant did lose a significant amount of weight at some point, but had gained back enough to place her BMI in the "overweight" range. The panel finds that, based on this limited evidence, it was reasonable for the ministry to conclude that this symptom was not made out.

Section 67(1.1)(c): vitamin/mineral supplements to alleviate the symptom. Asked to describe how the vitamin/mineral supplement will alleviate the appellant's symptom, the appellant's physician writes: "Ensure the substrate for rehab". The ministry found that this statement did not establish that vitamin/mineral supplements are necessary to alleviate the symptom of deterioration of a vital organ. The new information submitted at appeal and deemed admissible does not address this supplement. Given the terse and irrelevant comment by the appellant's physician in this matter, the panel finds that it was reasonable for the ministry to conclude that there was insufficient evidence to establish that vitamin/mineral supplements are necessary to alleviate the symptom of deterioration of a vital organ.

Section 67(1.1)(c): nutritional supplement to alleviate the symptom. Asked to describe how the nutritional supplement will alleviate the appellant's symptom, the appellant's physician writes: "Improve her strength". The ministry found that this statement did not establish that nutritional supplement is necessary to alleviate the symptom of deterioration of a vital organ. The new information submitted at appeal in this regard has been deemed inadmissible. Once again, given the terse and irrelevant comment by the appellant's physician in this matter, the panel finds that it was reasonable for the ministry to conclude that there was insufficient evidence to establish that the nutritional supplement is necessary to alleviate the symptom of deterioration of a vital organ.

Section 67(1.1)(d): imminent danger to the appellant's life, vitamin/mineral supplement. Asked to describe how the vitamin/mineral supplement will prevent imminent danger to the appellant's life, the appellant's physician did not respond. The ministry found that this did not establish that vitamin/mineral supplements are necessary to prevent imminent danger to the appellant's life. The new information submitted at appeal and deemed admissible does not address this supplement.

Given that the appellant's physician did not provide any information in this matter, the panel finds that it was reasonable for the ministry to conclude that there was insufficient evidence to establish that vitamin/mineral supplements are necessary to prevent imminent danger to the appellant's life.

Section 67(1.1)(d): imminent danger to the appellant's life, nutritional supplement. Asked to describe how the nutritional supplement will prevent imminent danger to the appellant's life, the appellant's physician wrote "none". The ministry found that this did not establish that nutritional supplement is necessary to prevent imminent danger to the appellant's life. The new information submitted at appeal in this regard has been deemed inadmissible. Given that the appellant's physician indicated that failure to obtain the nutritional supplement will not result in imminent danger to the appellant's life, the panel finds that it was reasonable for the ministry to conclude that there was insufficient evidence to establish that the nutritional supplement is necessary to prevent imminent danger to the appellant's life.

Accordingly, the Panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the ministry's reconsideration decision.