

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision of 31 July 2017, which denied the Appellant's request for the Monthly Nutritional Supplement (MNS) on the basis that the Appellant was not eligible under the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) subsection Schedule 67(1) and Section 7 of Schedule C. The ministry was satisfied that the Appellant is a person with disabilities and that a medical practitioner or nurse practitioner has confirmed that he is being treated by that practitioner for a chronic, progressive deterioration of health. However, the ministry was not satisfied that the Appellant's request demonstrated that: 2 or more listed symptoms are present as a result of the chronic progressive deterioration of health; the nutritional items requested are required as part of caloric supplementation to a regular dietary intake to alleviate one or more of the listed symptoms; and the nutritional items requested will prevent imminent danger to life.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation section 67(1.1)
Employment and Assistance for Persons with Disabilities Regulation Schedule C section 7

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

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

- Application for Monthly Nutritional Supplement (MNS) dated 12 May 2017, completed by a medical practitioner (MP). The following is a summary of the information provided in the MNS application, with MP comments in *italics*:
 - the appellant's severe medical conditions are listed as diabetes (*insulin dependent*) and ischemic heart disease (*stented 2016*);
 - the MP indicates that the appellant is being treated for a chronic, progressive deterioration of health (*treatment includes insulin, cardiac medications and dietary adjustment*);
 - as a direct result of a chronic progressive deterioration of health the appellant displays the symptom of significant deterioration of a vital organ (*pancreas, heart*), each of the other symptoms listed is marked with a line/dash;
 - the appellant's height and weight are 69.5" and 210 lbs.;
 - vitamin and mineral supplementation is marked *N/A* and prompts for specifics of vitamin and mineral supplements are marked with a line/dash;
 - the prompt for specification of nutritional items required and the expected duration of need has been left blank;
 - the MP indicates 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 dietary intake;
 - the MP explains that the nutritional items are required to alleviate one or more of the listed symptoms and provide caloric supplementation to the regular diet *to stabilize diabetes and prevent progression of coronary artery disease*;
 - the MP provides the comment *see above* in response to a prompt to explain how the nutritional items will prevent imminent danger to the appellant's life;
 - the MP provides the following additional comments: *Has been seen by dietician at Diabetes Education Programme*
 - *fresh vegetables*
 - *low glycaemic index carbs*
 - *first class protein*
 - *increased fibre content*
 - *improved breakfast habit*
 - *reg. meals/snacks*
- Monthly Nutritional Supplement Decision Summary dated 26 June 2017.
- **Request for Reconsideration** (RFR) dated 18 July 2017, which states: *please see revised Monthly Nutritional Supplement Application (attached)*.

- Included with the RFR was an updated version of the original MNS application, with updates dated 18 July 2017. The revised MNS form contained the same information with some additions:
 - In relation to symptoms, the MP has added an asterix * before “significant deterioration of a vital organ” and in addition to the previous comment: *pancreas, heart* has added 2 *organs*; each of the other symptoms listed has now been marked *N/A* in addition to the line/dash;
 - In the “Additional Comments” portion of the MNS form, the MP has added to the previous comments: *P.S. these items are expensive and they require the support afforded by this programme.*

Notice of Appeal

In the Appellant’s Notice of Appeal dated 10 August 2017, he wrote: *it is my understanding that Dr. [omitted] did not provide sufficient medical information to support the decision. Additional we were unaware of the right/need to provide further explanation in support of the physician’s information. I was informed to add that it is the wish of MLA [omitted]’s office to receive further explanation as other offices are expressing concern.*

Appeal Submissions

The Appellant did not make an appeal submission.

The ministry indicated that its submission would be the reconsideration summary.

Admissibility

The panel finds that there is no information before it that would require an admissibility determination in accordance with section 22(4) of the *Employment and Assistance Act*.

The panel notes that the Appellant has indicated in the Notice of Appeal that a particular MLA’s office wishes to receive further explanation. However, the panel does not have jurisdiction to address or consider this request as the EAA at section 24(1) clearly states that the jurisdiction, or role, of a panel is to determine whether the decision being appealed is reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision of 31 July 2017, which denied the Appellant's request for the MNS, was reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of the Appellant.

Specifically, the ministry was not satisfied that the Appellant's request met the following legislative requirements:

- 2 or more listed symptoms are present as a result of the chronic, progressive deterioration of health;
- the nutritional items requested are required as part of caloric supplementation to a regular dietary intake to alleviate one or more of the listed symptoms; and
- the nutritional items requested will prevent imminent danger to life.

The ministry found that the Appellant is a person with disabilities and that a medical practitioner or nurse practitioner has confirmed that he is being treated by that practitioner for a chronic, progressive deterioration of health.

The relevant legislation is as follows:

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).

(3) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 8.]

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.

In order to receive a monthly nutritional supplement all of the applicable legislative criteria set out in the EAPWDR must be met. The requirements set out at section 67(1) of the EAPWDR are not at issue in this appeal. The Ministry found in the reconsideration decision that the Appellant does not meet all of the criteria for the monthly nutritional supplement for additional nutritional items under section 67(1.1) of the EAPWDR and Schedule C, Section 7. The ministry found that the Appellant had met the requirement under section 67(1.1) (a) of the EAPWDR, as the medical practitioner had confirmed that the appellant is being treated for Diabetes and Ischaemic Heart Disease, but did not meet the requirements set out in and (b), (c) or (d). Specifically, the ministry determined that the Appellant has not demonstrated that two or more of the listed symptoms are present as a direct result of the chronic progressive deterioration of health as required by (b); the additional nutritional items requested are required as part of a caloric supplementation to a regular dietary intake to alleviate a listed symptom of the Appellant's medical condition as required by (c) and section 7 of Schedule C; or that failure to obtain the nutritional items will result in imminent danger to the Appellant's life as required by (d).

Symptoms

The EAPWDR requires, at section (67(1.1)(b) that as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the symptoms listed in the legislation. The listed symptoms are: malnutrition; underweight status; significant weight loss; significant muscle mass loss; significant neurological degeneration; significant deterioration of a vital organ; and moderate to severe immune suppression.

The Ministry argues that the medical practitioner, in the revised request for MNS, has indicated n/a (not applicable) next to symptoms that appeared to have been checked in the original MNS application. The ministry noted that significant deterioration of a vital organ is confirmed by the medical practitioner, who indicated that 2 organs (pancreas, heart) are affected. The ministry

concluded that having two organs affected does not constitute confirmation that two symptoms are present. The ministry found that this criterion was not met.

The panel finds the ministry's assessment reasonable: that confirmation of significant deterioration in relation to two organs does not amount to confirmation that two of the listed symptoms are present. The panel finds that the ministry reasonably concluded that the information presented does not indicate that a medical practitioner has confirmed that the Appellant displays two or more of the listed symptoms as a result of a chronic, progressive deterioration of health. In reaching this conclusion, the panel notes that the Appellant has not provided an argument in relation to this criterion. The Appellant indicates that his understanding is that the medical practitioner did not provide sufficient medical information and he was unaware of the right/need to provide further explanation in support of the physician's information. The panel finds that ministry was reasonable in determining that the Appellant does not meet the requirement of sub-section 67(1.1)(b) of the EAPWDR.

Alleviating a Symptom

Section 67(1.1)(c) requires that the item(s) sought must be set out in Schedule C, section 7, specified in the request, and be required for the purpose of alleviating a symptom referred to in paragraph (b).

The ministry found in the reconsideration decision that this criterion had not been met. In reaching this conclusion, the ministry determined that the information provided did not confirm that the Appellant requires additional nutritional items as a part of caloric supplementation to a regular dietary intake. In assessing the information provided, the ministry noted that the medical practitioner has indicated that the Appellant does not have a medical condition resulting in the inability to absorb sufficient calories through a regular dietary intake. The ministry also considered that when asked to describe how the nutritional items required will alleviate one or more of the symptoms specified and provide caloric supplementation to the regular diet, the medical practitioner stated: *to stabilize diabetes and prevent progression of coronary artery disease*. The ministry found that the medical practitioner has not confirmed any of the symptoms that would demonstrate a need for caloric supplementation and does not confirm a medical condition that interferes with absorption of calories. The ministry pointed out that, given the appellant's height and weight recorded in the MNS application, the appellant's BMI is in the overweight range. The ministry also found that given the list of items requested (fresh vegetables, low glycaemic index carb, first class protein, increased fibre content, improved breakfast habits and regular meals/snacks) the medical practitioner was recommending that the Appellant manage his dietary intake to include the items requested and more regularity in his eating habits. The ministry was not satisfied that the information established a need for caloric supplementation in addition to a regular dietary intake.

The panel finds that the ministry's conclusion on this criterion was reasonable. The panel notes, that the medical practitioner is recommending dietary changes and alteration of eating habits, neither of which is a caloric supplement, and the panel finds that the ministry reasonably required the MP to confirm a need for supplementation of calories beyond recommended food choices within a regular, balanced diet. The panel finds that the ministry reasonably considered the appellant's BMI, being in the overweight category, as one of several factors to determine if the evidence demonstrates that the appellant requires caloric supplementation, or calories added, to a regular dietary intake. Given an opportunity to elaborate on the initial application, the medical practitioner wrote in the revised MNS application that the items requested "are expensive and they require the supplement afforded by this programme," and the panel notes that the medical practitioner does not indicate that there is a need for caloric supplementation to regular dietary intake as required by Schedule C, section 7(a). The panel also notes that the Appellant has not provided an argument in relation to this criterion. The panel concludes that it is reasonable for the ministry to have found the Appellant did not meet the requirements of this provision.

Imminent Danger

Section 67(1.1)(d) requires that failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life.

The ministry found at reconsideration that the evidence supplied by the medical practitioner does not establish that the failure to obtain additional nutritional items that are part of a caloric supplementation to regular dietary intake will result in imminent danger to the Appellant's life. The ministry found that the information provided by the medical practitioner, *stabilize diabetes and prevent progression of coronary artery disease*, is anticipatory in nature and falls short of the immediacy implied by the term "imminent."

The panel finds that the ministry reasonably determined that the evidence does not establish that supplementation will prevent imminent danger to life. As previously discussed, the listed nutritional items consist of recommendations for dietary and habit changes, as specified in the MNS application, and are not specifically part of a caloric supplementation to a regular dietary intake. The panel agrees with the ministry's assessment that the information provided by the medical practitioner that the nutritional items will "stabilize" diabetes and "prevent progression" of coronary artery disease, does not satisfy the legislative requirement for 'imminent' danger as it does not refer to an immediacy indicating that there is a danger to the appellant's life that is likely to happen soon. The ministry was reasonable in determining that the Appellant does not meet the requirements of sub-section 67(1.1)(d) of the EAPWDR.

Conclusion

The panel found the ministry's conclusions on each criterion at issue to be reasonable. Therefore, the panel finds that the ministry's decision finding the Appellant ineligible for the Monthly Nutritional Supplement was a reasonable application of the legislation in the circumstances of the Appellant. The panel confirms the ministry's reconsideration decision. The Appellant is not successful on appeal.